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Information about the criminal complaint lodged against leading Turkish politicians and military personnel according to the German international criminal code (“Völkerstrafgesetzbuch”, VStGB).

Since 2002 the international criminal code exists within the Federal Republic of Germany. It enables prosecution by the German jurisdiction in cases of severe crimes like genocide, crimes against humanity and several forms of war crimes. It is not necessary that perpetrator, victim or scene of the crime have a direct relationship with Germany.

The law consists of 14 articles. The facts of the crimes are described in a very detailed manner. The fact that there is a responsibility of military commanders and political superiors and that the offence also consists of the violation of the responsibility to care for the actions of subordinates is stated explicitly. These regulations relate to international humanitarian law (Geneva Conventions) and the statute of the International Criminal Court in terms of content.

The responsible prosecution organ is the federal prosecutor's office, Germany's highest ranking prosecution. It has created a special department for this. Until now an estimated 20 proceedings have been conducted. The practice is clearly a political one. If the state starts proceedings – e. g. due to the genocide in Rwanda – investigations are conducted with great effort which have led to charges and trials (although no verdict has been given yet). In the case of complaints against politicians/military personnel from “friendly” states it is exactly the other way round. Charges *inter alia* against the former US minister of war Rumsfeld because of torture, or against defendants from Israel were dropped quickly and with formal reasoning. Most of the time the explanation given was that in those countries themselves investigations can be conducted and therefore German jurisdiction is not concerned. If the proceedings are stayed, an appeal before a court is possible.

Our complaint consists of seven parts.

Part I “Cases contained in the complaint” starts with ten selected cases. Giving exactly place, victim and time of a crime, we portray facts and circumstances that violate the international criminal code and the basis of the investigation. There are e. g. cases of extralegal executions, war crimes against civilians or the use of prohibited combat agents (chemical weapons). Means of evidence like photographs and videos are enclosed, witnesses are indicated.

We can through three sample cases show how the presentation is done.

Summary of case 1: Izzet Ozdemir

In 2003 a shepherd was killed through the explosion of an anti-personnel-mine in the Turkish-Iranian border area.

The deadly incident took place on the Turkish side. In the same year Turkey has signed the Ottawa Convention, the international treaty to outlaw these weapons. According to this the country is obliged to no longer own these weapons, to clear the deployed mines until a certain deadline (2014) and to compensate the victims. During several decades a large number of anti-personnel mines had been deployed. The reason for this deployment was first given to be the smugglers but later it was shown to be a measure against PKK combatants. According to media reports about

3000 people died because of this. The removal is creating difficulties up to the present day because correct maps about the places of deployment are lacking. (8 June 2009, Frankfurter Rundschau daily newspaper)

The prosecutor's office in Başkale (file number 2004/31) has rejected a prosecution based on personal negligence. The domestic legal process was unsuccessful. A complaint is pending at the European Court of Human Rights, the status of the proceedings is unknown.

This is a war crime against a civil person according to §8 par. 1 no. 1 VStGB.

The deployment of mines is directly connected to an international/non-international armed conflict. The deployment was meant as a measure against the PKK guerilla. A statement by the responsible garrison headquarters of the gendarmerie in Baskale says that the mine field has been "set up in the fight against the illegal organisation".

Summary of case 2: Ugur Kaymaz

This case of 21 November 2004 is about the shooting of a father and his 12-year old son by Turkish security forces.

During a raid the special unit policemen opened fire at father and son, which were unarmed and unloaded a lorry in front of their house. Both were **hit** by numerous bullets.

The case had a huge impact on the public. The policemen prepared the crime scene and tried to plant the weapons on the shot persons. They were acquitted by a court.

The killing constitutes a crime against humanity.

Summary of case 3: Abbas Amani

During clashes with the Turkish army in 2005 a PKK combatant fell into the hands of the soldiers alive. This is proven through several photographs printed in Turkish newspaper. One of the pictures later shows him dead next to an army vehicle. The official autopsy report states as the cause of death "damage to the spinal cord after neck fracture". This means that he has been killed under the custody of the Turkish soldiers. As evidence the said photographs and the autopsy report are present. The file of the prosecutor's office in Besiri (file number 2006/169) can also be examined.

Juridically spoken this is a war crime against persons according to §8 par. 1 no. 1 VStGB . The victim was a person to be protected according to international humanitarian law, because after being taken a prisoner he had laid down arms and was thus defenceless (§8 par. 6 no. 3 VStGB).

Summary of case 4: Leyla Hannan

In 2008 a group of soldiers from the Turkish army encountered the dead body of a fallen Kurdish female combatant.

As can be seen from a series of pictures – enclosed within this complaint – the soldiers several times photographed the corpse and themselves. Several army personnel pose with weapons next to the dead woman. Others touched her and pulled at the clothes. Both socks of the fallen combatant were removed and obviously – as trophies – taken away.

This constitutes a war crime against persons according to §8 par. 1 no. 9 VStGB.

The deceased is a person to be protected according to international humanitarian law. The right of respect for the deceased is also to be found in art. 34 par. 1 of the additional protocol of the Geneva convention.

The conduct of the soldiers constitutes a degrading treatment. Recognized legally and protected according to §8 par. 1 no. 9 is also the dignity of the dead (MüKo of §8 VStGB, note 194). Protected are the reverence of the relatives and a honourable peace in death. A violation of human dignity however is any degrading like presentation through pictures and their distribution.

Summary of case 5: Ceylan Önkol

On 28 September 2009 12-years old Ceylan was killed during shepherding by a shot from a grenade launcher with calibre 40mm, a standard weapon of the Turkish army. On that day witnesses from a nearby village heard two explosions. Then they found the dead child.

The Turkish prosecutor claimed the death was self-imposed, because the victim allegedly struck an unexploded piece of ammunition with a sickle. Only a later forensic report stated that the explosion took place without the interference of a person, therefore through targeted shooting.

The culprits are to be found in the neighbouring military post Tabantepe.

This constitutes a war crime against persons, because the victim was obviously identifiable as a civilian person.

Summary of case 6: Aliye Timur and others

In September 2009 eight Kurdish combatants were killed in a cave presumably by the use of chemical weapons.

Eye witnesses reported to a German human rights delegation that they saw how the soldiers introduced gaseous material into the cave and shortly after brought the motionless eight victims out of the cave. There are also photos of the corpses which were taken shortly after the autopsy.

After interpreting the photographs, a German forensic pathologist thought the exposure to chemical substances was possible. Further clarification is difficult, because Turkey keeps the autopsy reports and the files of this case secret.

Here the use of prohibited chemical means of warfare is suspected. This is a war crime, because Turkey is signatory to the Chemical Weapons Convention.

Summary of case 7: Ibrahim Atabay

On 7 October 2009 Ibrahim Atabay, an 18-years old student, was tortured by military members and subsequently shot dead.

The security forces operated in the context of a raid. Atabay left the house of his uncle, he was a civilian and unarmed. Soldiers arrested him and handed him over to a special unit of the gendarmerie. They shot him and two other men in a close by chasm. It was claimed that the three men were killed during a combat.

In fact traces on Atabay's body showed that an extra-judicial killing had taken place.

A short while ago Turkish media reported that one of the soldiers has confirmed this in an anonymous letter to the prosecutor's office in Van. Subsequently all soldiers involved were interrogated and the event was confirmed.

The execution by shooting constitutes a crime against humanity.

Summary of case 8: Ozgur Daghan

On 21 June 2009 PKK combatant Ozgur Daghan was killed in combat. Subsequently his corpse was grossly mutilated.

The argumentation is possible through photographs. There is a picture of Daghan alive. Then there are photos that were shown to his father by the Turkish prosecutor's office. Finally there is a whole series of photos which show a pitch-black body with melted skin and bones. It is unknown where these mutilations originated from.

This constitutes a war crime because the mortal remains have been treated in a gravely degrading manner.

Summary of case 10: Hasan Mustafa Hasan and others

On 21 August 2011 in Northern Iraq two civilian cars were hit by rockets from a Turkish F-16 war-plane. Seven persons died in this incident, the youngest of them only 6 months old.

The cars were driving on a public street and were not close to military facilities. In the region, the Turkish air-force took up air raids against assumed positions of PKK fighters.

This constitutes a war crime against civilians.

Parts II “Responsibility of the defendants” and III “Competence and immunity” consist of juridical explanations.

First comes the responsibility according to the international criminal code (“Völkerstrafgesetzbuch”) and the non-existing lapse of time.

Next are explanations – of general and individual kind – of the responsibility of the defendant politicians and military personnel with reference to the statute of the International Criminal Court and the jurisdiction of the ICTY (International Criminal Tribunal for the former Yugoslavia).

The next set of argument is the lack of prosecution outside of the German jurisdiction. There is no sign of a proceeding before an international court. There is also no prosecution in Turkey. Here it is argued with the general “culture of impunity” in the country already against low-ranking police officers, soldiers etc. as well as with the Turkish reason of state and its propagation of the methods as legitimate “fight against terrorism”.

Conclusively there is a reference to the impossibility to plead for immunity of the defendants and to possible approaches for investigations in Germany. The defendants could be interrogated here when they are in the country due to state visits, NATO consultations or talks about weapon trade.

Part IV “Further cases of initial suspicion of war crimes” lists numerous similar cases of human rights violations and suspected use of chemical weapons that have not been included into this complaint. These serve to show that numerous incidents of alleged use of chemical weapons have been reported but are yet to be investigated.

This is followed by **part V “Background”**, a section on the background issues. In this part there is a critical review of the whole human rights situation in Turkey. Through this it becomes clear against which social and state background the crimes take place and which forces – parties, military – there are in Turkey.

Part VI “History of the conflict” is a historical review into the Kurdish-Turkish relations until today. In this review it is substantiated why the reported crimes are “related to an armed conflict” and that the actions of the Turkish state constitute an “extensive or systematic attack against the civilian population”. This must be present so that the complaint possesses the correct juridical form.

Part VII contains juridical formalities like signatures.