

German Federal Prosecutor's Office dismisses Rumsfeld war crimes case

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Critics call move political capitulation to U.S. pressure

Synopsis

On April 27, 2007, Germany's Federal Prosecutor announced she will not proceed with an investigation against Former Defense Secretary Donald Rumsfeld, Attorney General Alberto Gonzales, former CIA Director George Tenet, and other high-ranking U.S. officials for torture and other war crimes committed in Iraq, Afghanistan, and Guantánamo.



Donald H Rumsfeld

The 400-page complaint was filed on November 14, 2006, by Berlin attorney Wolfgang Kaleck on behalf of the Center for Constitutional Rights (CCR), the International Federation for Human Rights (FIDH), the Republican Attorneys' Association (RAV), more than 40 other international and national human rights groups, 12 Iraqi citizens who were held in Abu Ghraib, and one Saudi citizen still held at Guantánamo.

Attorneys said they are contemplating an appeal of the decision as well as filing similar cases in other countries.

"Fundamentally, this is a political and not a legal decision," said CCR President Michael Ratner. "We will continue to pursue Rumsfeld, Gonzales, and the others in the future - they should not feel they can travel outside the U.S. without risk. Our goal is no safe haven for torturers."

Prominent jurists, scholars, and human rights experts from around the world had examined the complaint and found it sound. Many signed on in support.

The complaint states that because of the failure of authorities in the United States and Iraq to launch any independent investigation into the responsibility of high-level U.S. officials for torture despite a documented paper trail and government memos implicating them in direct as well as command responsibility for torture, and because the U.S. has refused to join the International Criminal Court, it is the legal obligation of states such as Germany to take up cases under their

universal jurisdiction laws.

In her decision to not go forward with an investigation, Federal Prosecutor Monika Harms argued that the crimes were committed outside of Germany and the defendants neither reside in Germany, nor are they currently located in Germany, nor will they soon enter German territory. However, the German law of universal jurisdiction expressly states that it is a universal duty to fight torture and other serious crimes, no matter where they occur or what the nationality of the perpetrators and victims is.

“Since its passage in 2002, not one of the many cases brought under our fine law of universal jurisdiction has been pursued by the prosecutor’s office,” said German attorney Wolfgang Kaleck. “Is this law meant only to look good on the books but never to be invoked?” In the same time period, according to human rights activists, other countries including the Netherlands, the United Kingdom, Spain, Denmark, and France have exercised universal jurisdiction and brought to justice perpetrators from countries such as Afghanistan, Mauretania, Argentina, Uganda, and more.

The prosecutor also stated that investigations would not have had a reasonable chance of succeeding, but in addition to providing extensive evidence in the form of publicly-available documents and government memos, attorneys had secured the cooperation of General Janis Karpinski, former commander of Abu Ghraib and other U.S.-run prisons in Iraq, as well as other witnesses and victims who were willing to travel to Germany to testify before the court in Karlsruhe or meet with prosecutors to help them determine how to proceed with the case.

An earlier version of the complaint was lodged in fall 2004. In dismissing that case in February 2005 in response to heavy official pressure from the U.S., the former federal prosecutor stated that there were no indications that the authorities and courts of the United States were refraining from holding officials accountable. Yet more than two years later, only low-ranking officials have ever been charged. Although U.S. military and civilian personnel have been implicated in hundreds of known instances of detainee abuse, internal displacement, torture, and death, very few have been prosecuted in the U.S. anywhere else.

“We will continue to work for justice for the victims of these crimes,” said a representative of FIDH. “Torturers are enemies of all humankind – they can be brought to justice anywhere.”

For copies of the complaint and other documents, visit www.ccr-ny.org.

Further contact information: Claire Tixeire, FIDH, (English): (0041) 79331 2450; (001) 6467631685

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