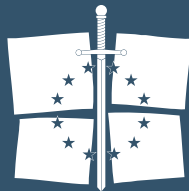




EU Agency for Criminal
Justice Cooperation



EU Network for investigation and
prosecution of genocide, crimes
against humanity and war crimes

Supporting judicial authorities in
the fight against

CORE INTERNATIONAL CRIMES

The crime of genocide, crimes against humanity and war crimes, known collectively as core international crimes, threaten the peace, security and well-being of our world. While today's conflicts and atrocities largely take place outside EU borders, their impact is keenly felt within the Member States. Under international law, the primary responsibility to investigate and prosecute these heinous crimes falls on national authorities.

The escalation of nearby conflicts in the European Union's wider neighbourhood, combined with the influx of refugees to the Member States in recent years, has left States struggling to manage a growing number of challenging cross-border cases. Successful investigations are built on specialist knowledge and close coordination between national authorities, and often require the gathering of

evidence scattered across different countries. Most cases require interactions with third States and international partners.

Eurojust, the EU Agency for Criminal Justice Cooperation, and the EU Network for investigation and prosecution of genocide, crimes against humanity and war crimes ('the Genocide Network') support national authorities in their investigations and prosecutions.

Working out of Eurojust's premises in The Hague, their role involves cooperating with practitioners in the field, as well as NGOs and international bodies, such as the International Criminal Court (ICC) or the International, Impartial and Independent Mechanism for Syria (UN IIIM), to ensure best practice and serve as a central hub for information and knowledge-sharing during cases.

Judicial coordination of investigations and prosecutions

Eurojust and the Genocide Network support the investigation and prosecution of core international crimes at national level, for example by facilitating joint approaches and enabling effective sharing of evidence, knowledge and resources.



Facilitating joint investigations

Joint investigation teams (JITs) enable authorities to work together closely and efficiently during cross-border investigations of core international crimes. Eurojust provides operational and financial support to the JIT partners, including setting up the JIT, often building on the insight and observations of the Genocide Network.

Supporting cumulative prosecutions

Eurojust and the Genocide Network advocate and support the cumulative prosecution of foreign terrorist fighters (FTFs), to ensure full and comprehensive prosecution for war crimes, crimes against humanity and the crime of genocide, in addition to terrorism-related offences, such as membership of terrorist organisations.

Sharing awareness and best practice

With limited understanding of core international crimes in many parts of the world, Eurojust and the Genocide Network play an important role in raising awareness among non-specialist judicial practitioners. This work is channelled through close cooperation with national authorities, including prosecutors and law enforcement.

Intensifying the EU response to core international crimes

Core international crimes often have direct links with the Member States. Through international treaties such as the Geneva Conventions and the Rome Statute of the International Criminal Court (ICC), national authorities have the primary responsibility to investigate and prosecute war criminals and other perpetrators of core international crimes irrespective of where the crimes have been committed.

States exercise their jurisdiction over these crimes based on the principle of nationality (of a perpetrator or victim) or on the principle of extraterritorial (universal) jurisdiction. The latter enables prosecution of a perpetrator regardless of his or her nationality or that of their victims, subject to certain conditions such as presence or residence in the State of prosecution.

Combined with inflows of refugees to the Member State, the recent escalation of nearby conflicts in Syria and Northern Iraq, as well as more distant locations such as Rwanda, Sierra Leone and the Democratic Republic of Congo, has brought these crimes increasingly within the scope of Europe’s judiciary. These recent or ongoing crimes may directly implicate EU nationals, such as those committed by foreign terrorist fighters (FTFs). Alternatively, citizens of Member States may be involved in investigations as witnesses of the committed offences, or even as victims.



Site of mass graves in Butare, Rwanda, one of several memorials to the victims of the 1994 genocide in which an estimated 800,000 people were murdered. Photo © Shutterstock

As core international crimes are not statute-barred, a number of investigations concerning cases pertaining to the Second World War or to the former communist regimes of Eastern Europe remain ongoing. Additionally, there are ongoing cases relating to the war in former Yugoslavia. Jurisdiction for cases committed in the Member States is based on the principle of territoriality.

Finally, Member States may receive requests for mutual legal assistance relating to core international crimes not linked with their territory, but for the purpose of collecting evidence (for instance, financial or bank information) or the seizure of proceeds of crimes committed abroad.

| Year | Pending or ongoing cases | Resolved or closed cases | New cases |
|------|--------------------------|--------------------------|-----------|
| 2016 | 2851 | 1314 | 1073 |
| 2017 | 2681 | 1183 | 1233 |
| 2018 | 2925 | 1346 | 1426 |
| 2019 | 2906 | 1294 | 1295 |

A growing caseload has brought to light the challenges presented at national level by complex cross-border assignments. Investigators and prosecutors may face obstacles in establishing jurisdiction, linking a perpetrator with a crime scene, gathering evidence and finding witnesses. They are often restricted from visiting States where crimes have been committed, preventing them from locating evidence and interviewing witnesses.

Frequent links with other types of crimes, including terrorism, migrant smuggling and human trafficking, trafficking of diamonds and other natural resources, and money laundering present further challenges. These obstacles demand a coordinated approach, with national authorities working together and sharing resources under a cohesive strategy.

In 2017, Sweden convicted a Syrian asylum seeker for participating in the mass killing of seven captured Syrian soldiers. A video of the killings, on which the perpetrator appeared, was published in 2013 by the New York Times. Prosecution involved international cooperation and used information available on social media, such as YouTube and Facebook, to determine time and place and obtain further evidence of the killings.

The Defence argued that the killings were the result of a trial. However, regardless of the issue of whether the situation allowed for a non-state actor to try enemy soldiers *per se*, the Prosecution, based on evidence from social media and forensic analysis of videos, determined there had been a very short time frame between the capture of the soldiers – being persons *hors de combat* – and their execution, preventing any fundamental due process.



Photo © Shutterstock

“ *It is very encouraging to see EU Member States increasingly taking up their responsibilities and prioritising prosecution of genocide, war crimes and crimes against humanity. The European Union is an area of security and justice and we cannot and will not be a safe haven for whoever has committed these atrocities anywhere in the world.* ”

– Eurojust President Ladislav Hamran –

The role of the Genocide Network and Eurojust

The Genocide Network was established in 2002 by the Council of the European Union to enable close cooperation between the national authorities when investigating and prosecuting core international crimes. The Network’s mandate is to ensure perpetrators do not attain impunity within the Member States.

EU States are represented in the Genocide Network through national Contact Points, comprising specialised and dedicated prosecutors, investigators and officers for mutual legal assistance. The Contact Points provide operational support to their colleagues at national and European Union level in the form of judi-

cial cooperation. The Network provides a platform for practitioners to exchange operational information and share experience and best practice through biannual meetings. The Network is a unique forum, with Member State national authorities joining Observer States and associate organisations from the European Union, United Nations and beyond, as well as civil society, in a common goal: the fight against impunity.

A close partnership

The Genocide Network Secretariat was established in 2011 and is hosted by Eurojust. The Secretariat forms

“ I would like to congratulate the national authorities for their efforts to follow up on these complex cases. Please remember that Union bodies are there to assist. This is a clear signal to everyone that the EU stands united and firm to stop impunity for serious international crimes. I would also like to express my thanks to the Genocide Network hosted by Eurojust that does a fantastic job in that regard. ”

– European Commissioner for Justice Didier Reynders –

part of the Eurojust staff, functioning as a separate unit, and draws on Eurojust’s administrative resources to perform its tasks.

Eurojust has Observer Status within the Network, joining selected third States, Europol and the Prosecutor of the International Criminal Court (ICC-OTP). With the introduction of the new Eurojust Regulation in 2019, the Agency has also assumed a central role in coordinating the fight against core international crimes. Together, Eurojust and the Network enable close cooperation and information exchange between national authorities. Due

to the often complex nature of cross-border investigations, the Agency’s support through judicial tools such as coordination meetings and coordination centres is a key success factor in many cases.

Eurojust also provides practical, legal and financial support to joint investigation teams (JITs), which often stem from the observations and groundwork of the Genocide Network (see the ‘Caesar case’ on page 5).

Moreover, investigations benefit from the Agency’s global network of Liaison Prosecutors and Contact Points, giving prosecutors quick access to more than 50 jurisdictions around the world.





The 'Caesar case' – the use of a JIT to tackle core international crimes in Syria

In 2012, the Genocide Network devoted special focus to the developing situation in Syria. Due to the proximity of the conflict, it was clear that Member States would soon experience refugee flows comprising victims and witnesses of core international crimes, as well as perpetrators. Additional understanding was given to reports of abuses and executions of detainees held by the Al-Assad regime, which, according to a report by the UN Commission of Inquiry on Syria, included the killing of more than 11 000 detainees between March 2011 and August 2013. These concerns were reinforced by several other parties, including civil society organisations, such as Human Rights Watch or the Syrian Network for Human Rights.

A series of ad hoc meetings within the Network led to a Eurojust case. In 2018, a joint investigation team (JIT) was established involving French and German authorities with support from Eurojust to further advance the investigation and coordination of prosecutions. The JIT created an unprecedented step towards achieving accountability for the crimes committed in Syria, taking into account the lack of international possibilities: in 2018, three international arrest warrants were issued by French and German authorities, targeting high-ranking Syrian regime officials.

Due to the French-German cooperation, three members of the Syrian intelligence service were arrested in Germany and France in 2019. In April 2020, the trial against two of them began at the Higher Regional Court in Koblenz, Germany. With the men charged with crimes against humanity committed in Syria, the trial is the first worldwide to address widespread and systematic torture committed by the Syrian regime.

Outreach: raising awareness of core crimes at practitioner level

Alongside their core activities, Eurojust and the Genocide Network undertake a range of activities aimed at raising awareness among EU practitioners without specialist knowledge of core international crimes. This role includes working with partners such as the European Judicial Training Network (EJTN) and the European Union Agency for Law Enforcement Training (CEPOL) to deliver specialist trainings and workshops. More widely, Eurojust and the Network play an advocacy role by making Member States aware of the importance of tackling core international crimes occurring in extraterritorial (and often distant) locations, and investing sufficient resources in their investigation and prosecution.



Cumulative prosecutions of foreign terrorist fighters

Foreign terrorist fighters (FTFs) – members of ISIL (Da’esh), Jabhat al-Nusrah and their affiliates – may also be prosecuted for core international crimes, alongside terrorism-related offences. ISIL (Da’esh) should not be only considered a terrorist organisation, but also a party to a non-international armed conflict in Iraq and Syria as an organised non-state armed group. Consequently, its members may be held responsible for committing core international crimes.

Many FTFs have links with Member States through nationality or residency, while others seek to enter EU territory as refugees or asylum seekers. While, in the European Union, FTFs are often tried for their primary terrorism offences, many also carry responsibilities for other crimes committed in third States. All too often, these other offences – which may include war crimes, crimes against humanity and even the crime of genocide – have gone unpunished due to lack of awareness and/or evidence.

Eurojust and the Genocide Network advocate and support so-called ‘cumulative prosecutions’ that encompass the full criminal scope of individual offences, enabling longer sentences and delivering greater justice to victims. Members of terrorist groups, such as ISIL (Da’esh) and its affiliates, can be successfully prosecuted for membership of a terrorist organisation combined with war crimes of pillage, slavery,

enlisting of child soldiers or murder, or even for crimes against humanity and the crime of genocide. Additional possibilities to issue convictions lie in so-called ‘selfie’ or ‘posing’ cases: the use of photographs and videos posted on social media depicting the inhumane treatment of dead persons.

Collecting evidence to build strong cases

Cumulative prosecutions often hinge on the effective collection of evidence that can be used at trial and/or as the basis for opening criminal investigations or prosecutions. Evidence may include battlefield evidence collected by military forces, UN bodies, regional organisations or NGOs during or after hostilities, but equally open-source information such as social media accounts or information stored on electronic devices. Eurojust and the Genocide Network play a central coordinating role, by operationally supporting national authorities in building cases and facilitating the exchange of operational information, and also by playing a strategic, trend-setting role to enable sharing of knowledge, best practice and case law. Additionally, Eurojust is associated with Europol’s Analysis Project Core International Crimes (AP CIC), which aims to facilitate the cooperation and coordination of EU Member States and Third Parties’ efforts to identify and investigate individuals, networks and groups involved in these crimes.

“ *The most serious crimes of concern to the international community as a whole must not go unpunished. Their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.* ”

– The Rome Statute of the International Criminal Court –

ISIL (Da’esh) commander indicted by Hungarian authorities for crimes against humanity

In a rapid intervention coordinated by Eurojust, Hungarian authorities arrested a high-profile target linked to ISIL (Da’esh) suspected of committing terrorist activities and crimes against humanity in Syria. The defendant was accused of commanding an armed unit that allegedly murdered at least 25 people in a Syrian town. The act was filmed, and the video was made public on social media. The defendant, a Syrian national, was arrested while trying to leave Hungary and was cumulatively charged with terrorism offences and crimes against humanity.

German court imprisons national for membership of a terrorist organisation and war crime of inhumane treatment of a dead person - A German national travelled to Syria in 2013 and joined ISIL (Da'esh). During his time in Syria, the man participated in and filmed with his mobile phone the mutilation of a dead soldier of the opposing side while commenting on it in a degrading manner. Upon his return to Germany, he was prosecuted and found guilty of membership of a terrorist organisation and committing a war crime. The man was sentenced to eight-and-a-half years' imprisonment.

Suspected ISIL (Da'esh) fighter accused of genocide for murdering Yazidi child - In April 2020, the trial began in a German court of an Iraqi national accused of torturing and murdering a five-year-old Yazidi girl in Iraq. The man, thought to be a former terrorist fighter and ISIL (Da'esh) member, faced charges of genocide and human trafficking for the purpose of labour exploitation. The trial is the first ever to address genocide against the Yazidi, a religious minority living in Iraq, Syria and Turkey.



Prosecution of French national for the crime of genocide and crimes against humanity - In 2016, France opened a structural investigation against unknown persons to collect information and identify potential French perpetrators of the crime of genocide and crimes against humanity committed by ISIL (Da'esh) against ethnic and religious minorities, specifically Christians and Yazidis in Syria and Iraq. A Yazidi victim in Germany identified a French national as an ISIL (Da'esh) fighter. Based on international cooperation with national judicial authorities, the International, Impartial and Independent Mechanism for Syria (UN IIIM), specialised NGOs and victims, the French prosecution authorities identified their national as a perpetrator. This was the first case of a French foreign fighter being investigated for both terrorism and core international crimes.



Dutch national receives additional sentences for war crimes - In July 2019, a Dutch national was prosecuted as an ISIL (Da'esh) terrorist fighter after returning to the Netherlands from Syria. Further to his conviction for membership of a terrorism organisation, the man was found guilty of the war crime of inhumane treatment of dead persons, which increased his sentence. Using a Facebook photo of the accused posing next to a deceased man hanging on a cross, prosecutors were able to bring charges of degrading and humiliating treatment of dead bodies. The man was sentenced to seven-and-a-half years in prison (five years for his membership of ISIL (Da'esh), and two-and-a-half for the war crime).



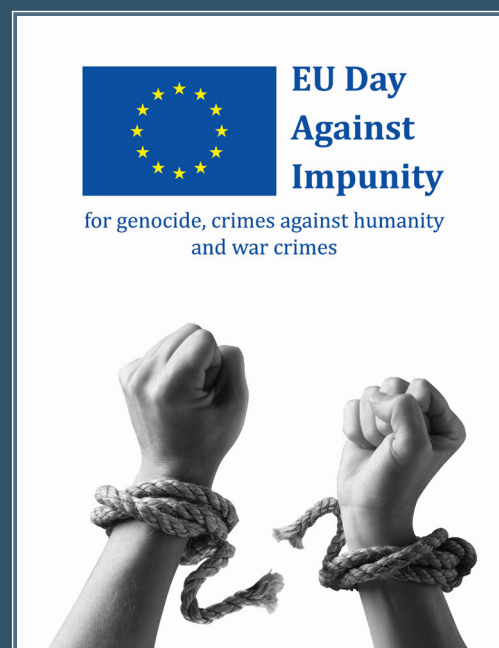
Civilians caught up in the terror waged by ISIL. Photos © Shutterstock

The EU Day against Impunity

Organised by the EU Presidency, the European Commission, Eurojust and the Genocide Network, the EU Day against Impunity is an important measure to combat impunity for core international crimes in the Member States, bringing together decision-makers, practitioners and other parties involved in combating such crimes.

First taking place on 23 May 2016, this annual event aims to raise awareness of the nature of core international crimes and the importance of Member State-led investigations and prosecutions in preventing impunity. The event also highlights the work of national authorities in enforcing international criminal law, as well as the position and participation of victims in criminal proceedings for these crimes.

The event is attended by practitioners, representatives of international tribunals, Member States, the European institutions and international organisations, NGOs, academics, lawyers and the media.



“ We must not forget that for all the legal questions and practical challenges that serious international crimes pose and that we are trying to address, this is about people. People who were deprived of their dignity and suffered unimaginable crimes; people who saw their children, parents, brothers and sisters die. These crimes are being committed again and again. And the people deserve our protection. They deserve that justice be served. We must continue tirelessly with our efforts to stop impunity. ”

European Commissioner for Justice Didier Reynders



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