



EU Agency for Criminal Justice Cooperation



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

## Key factors for successful investigations and prosecutions of core international crimes

Since 2016, investigations and prosecutions of the crime of genocide, crimes against humanity and war crimes (known collectively as core international crimes), have steadily risen within the EU. The number of newly opened cases in Member States increased overall by 44% between 2016 and 2021.

This trend can be attributed, in part, to the escalation of conflicts and the commission of atrocities near EU borders (most recently in Ukraine, Belarus and Syria), leading to an influx of refugees in Member States. The higher level of expertise in the core international crimes field now available among national authorities also explains the increase in investigations.

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 of core international crimes. Together, they serve as a cen-

tral hub for the exchange of information and expertise, and assist national jurisdictions, international bodies and civil society in coordinating accountability efforts.

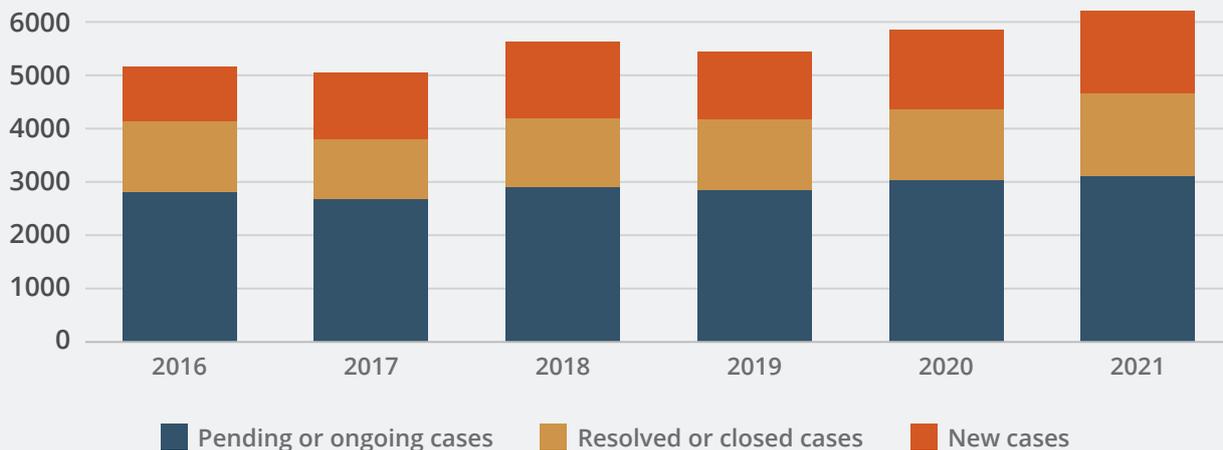


In 2014, the Genocide Network adopted its *Strategy to combat impunity for core international crimes within the EU and its Member States*. The Strategy, based upon lessons learned and best practices identified by the Genocide Network Contact Points, recommended a set of measures to support national authorities in their fight against impunity. Developments observed since then highlight and confirm key elements of success in tackling these heinous crimes.

### Adopting a complete legislative framework

Without up-to-date legislation defining war crimes, crimes against humanity and the crime of genocide into national law, it is impossible for Member States

Core international crimes cases in the EU (2016-2021)



to effectively investigate and prosecute cases. Instead, national authorities may have to prosecute for lesser crimes or offences (murder, terrorism, sanctions violations). They may also face legal hurdles such as statute of limitations, which are inapplicable to core international crimes.

But for prosecutions to be successful, transposing the definition of the crimes in a penal code is insufficient. Notions such as command and superior responsibility, or joint criminal enterprise, must be implemented as well. Member States also need to adopt a flexible procedural framework that allows national authorities to prosecute based on universal or extraterritorial jurisdiction.

This means that States must be able to prosecute foreign nationals for crimes committed abroad. In practice, most Member States apply some form of extraterritorial jurisdiction for these crimes. However, conditions may apply, such as:

- ▶ presence or residence of a suspected perpetrator on the Member State's territory;

- ▶ condition of double criminality or ratification of the Rome Statute of the International Criminal Court (ICC) by the State where the crimes were committed or the State of which the suspect has the nationality; or

- ▶ approval from the Ministry of Justice, Prosecutor General or another official to open a case.

Where conditions apply, they may impede arrests of suspects or the opening of a case into alleged core international crimes.

Member States should also ensure that their criminal procedural framework facilitates the use of structural investigations. A structural investigation enables national authorities to collect information and gather evidence before a suspect has been identified. Its focus is on general and structural aspects of the situation at hand, instead of an individual incident or perpetrator. It first seeks to gather evidence on contextual elements of the crimes and structures or groupings of potential perpetrators operating in that context.

## Factual complexity

**Nature and scale of crimes** – Core international crimes occur on an unparalleled scale and may involve thousands of direct victims, hundreds of potential witnesses and multiple perpetrators. Investigators will be confronted with unfamiliar languages, cultures, values and social, ethnic and historical characteristics.

**Fragile post-crime environment** – Investigators may not be able to travel to or obtain cooperation from the State in the territory where the crimes were committed. Witnesses are likely to have fled to other regions or countries, making them difficult to identify, locate and contact – with severe financial and logistical implications. Witnesses may be afraid of repercussions if they testify.

**Nature of the information** – Overwhelming amounts of information must be consolidated and managed (open-source evidence, battlefield information, satellite imagery, testimonies, international documents and NGO reports). Investigators risk re-traumatising witnesses and face issues of credibility, witness tampering and over-documentation.

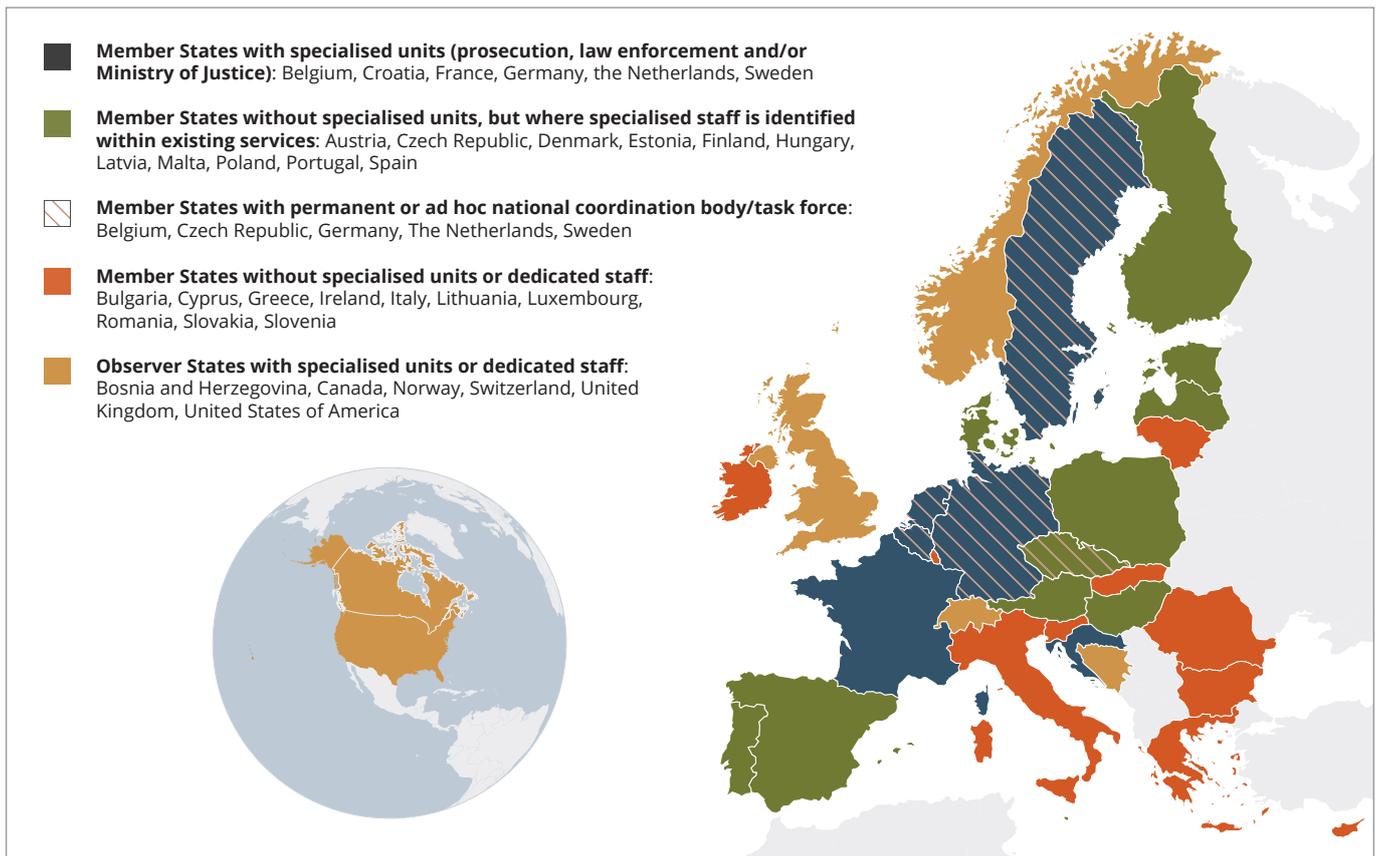
## Legal complexity

**Contextual elements** – In addition to objective and subjective elements, prosecutors need to prove contextual elements, such as the existence of and nexus with an armed conflict (war crimes), a widespread or systematic attack against a civilian population (crimes against humanity) or the intent to destroy, in whole or in part, a national, ethnical, racial or religious group (crime of genocide).

**Establishing linkage** – Prosecutors need to prove linkage between the crime base and alleged perpetrator, either through direct or indirect perpetration. This is challenging as persons planning or ordering crimes generally operate far from the place where crimes are committed.

**Various sources of law** – In addition to national laws, prosecutors need to be familiar with, *inter alia*, international humanitarian law, treaty and customary law and secondary sources such as the jurisprudence of international courts.

## Specialised war crime units within Member States and Observer States



### Supporting specialisation and providing adequate resources

The factual and legal complexity of core international crimes differentiates them from the majority of national or transnational crimes and leads to unique challenges for national authorities. These challenges are also exacerbated by the fact that access to the crime scene is impossible or limited as most of these crimes are perpetrated outside the EU.

To build successful cases despite these challenges, States should set up specialised units or dedicated staff with no additional tasks, ideally within the prosecution, law enforcement and judicial cooperation services. Specialisation within immigration and/or asylum authorities also brings added value.

Unsurprisingly, Member States that have established such units are also those dealing with the highest number of ongoing core international crimes cases. This is explained by the fact that specialised staff is uniquely trained to handle specific challenges of this crime area and able to act proactively in opening new cases. Specialisation allows the building of expertise and retention of knowledge, which is particularly important as these cases usually span over several years.

For the success of specialised units, it is essential to allocate adequate human, financial and material resources. It is also advised to adopt a multidisciplinary approach and involve – alongside investigators and prosecutors – analysts, digital experts, historians, anthropologists, asset recovery and financial investigation experts, as well as media and military specialists. With this level of specialisation, staff is better equipped to navigate multiple evidence sources – open-source information, satellite imagery, battlefield information – and exploit new technologies and investigative tools, such as the possibilities offered by artificial intelligence.

Where specialised units exist within different services, it is advisable to create a national task force or cooperation framework between actors at national level (including the Ministry of Justice, Ministry of Interior, Ministry of Foreign Affairs, immigration/asylum authorities, counter-terrorism services and intelligence services). This guarantees coordination between the different competent authorities when implementing complex requests for cooperation or extradition, preparing trials or dealing with issues of international immunities.

## Cooperating with key accountability actors

Member States are increasingly successful in the fight against impunity, thanks to the support and cooperation of key accountability organisations:

- ▶ The International Criminal Court (ICC);
- ▶ The United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD);
- ▶ The United Nations International Impartial and Independent Mechanism for Syria (IIIM); and
- ▶ The United Nations Independent Investigative Mechanism for Myanmar (IIMM).

UNITAD and IIIM have gathered and shared evidence and analysis with national authorities which proved instrumental, not only for the cumulative prosecution of Foreign Terrorist Fighters (FTFs) for terrorism-related offences and core international crimes committed in Syria and Iraq, but also for prosecuting crimes of the Syrian regime, notably in Germany.

Furthermore, civil society organisations (CSOs) are essential partners for national authorities in:

- ▶ Documenting crimes;
- ▶ Facilitating an entry point for potential witnesses;
- ▶ Supporting criminal complaints before prosecuting authorities;
- ▶ Accompanying or representing victims through proceedings; and
- ▶ Enhancing outreach efforts.

This fragmented context reflects the fact that there is no 'one-stop-shop' to pursue accountability for core international crimes. Refugees, victims, witnesses, information and evidence are scattered across the world. To detect and investigate these crimes efficiently, and anticipate issues linked to the admissibility of evidence, national authorities must create synergies with other stakeholders, for example by signing cooperation agreements with investigative mechanisms. Cooperation at national level is another prerequisite. Core international crimes generally intersect with other serious crimes – terrorism, violations of sanctions or restrictive measures, illegal trade in natural resources or money laundering. Therefore, Member States need to consider coordinating prosecutorial efforts with counter-terrorism units, revenue services, customs, immigration authorities and intelligence agencies.

Eurojust and the Genocide Network support States in this complex environment. The Genocide Network meetings which, in 2022, gathered up to 200 specialised practitioners from 33 national jurisdictions and 19 international organisations and CSOs, provide a platform to gather information, share updates and engage in consultation on ongoing cases. This setting offers a unique interface between national Contact Points and CSOs. Furthermore, Eurojust supports national investigations and prosecutions of core international crimes, advising Member States on the use of relevant judicial cooperation tools such as coordination meetings and joint investigations teams (JITs).

### Genocide Network Report on the Cumulative Prosecution of FTFs



The *Expert Report on Cumulative prosecution of foreign terrorist fighters for core international crimes and terrorism-related offences* demonstrates that it is possible to cumulatively prosecute and hold FTFs accountable for core international crimes

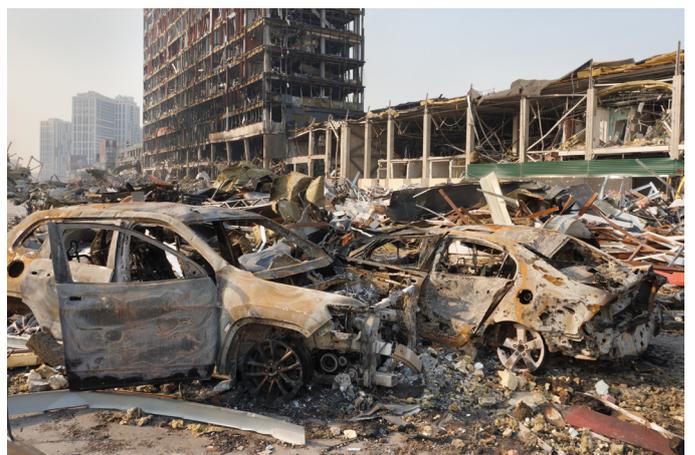
in addition to terrorism-related offences. The report highlights key national jurisprudence and developing national practice in the EU.

### Genocide Network Report on the Prosecution of Sanctions Violations



The *Expert Report Prosecution of sanctions (restrictive measures) violations in national jurisdictions: a comparative analysis*, highlights links between sanctions violations and the commission or complicity of core international

crimes, in particular where corporate actors are involved. It demonstrates that sanctions violations may provide an alternative or additional path towards accountability, as well as preliminary evidence for wider investigations leading to other forms of serious criminality, such as terrorism or illegal trade. The report also presents applicable legislation in Member States penalising sanctions violations.



Clockwise from the top: aftermath of devastating airstrikes in Aleppo and Idlib (Syria); Rohingya refugees fleeing violence and human rights violations in Myanmar; large-scale destruction of civilian infrastructure and growing evidence of war crimes following Russia's invasion of Ukraine in February 2022. Photos © Shutterstock

## The growing use of joint investigation teams to investigate and prosecute core international crimes

A JIT is an advanced judicial cooperation tool made up of law enforcement and judicial national authorities who can, within this framework, directly exchange information and evidence collected on the territory of the JIT members, cooperate in real time and carry out joint operations. Eurojust provides operational, legal and financial support to JITs.

A JIT significantly increases speed and efficiency in complex cross-border investigations, and has increasingly appeared as a well-suited tool for core international crimes cases. The first JIT concerning core international crimes was set up in 2018 in the 'Caesar case', which led to two convictions of Syrian nationals in Germany. It was the first time that a court adjudicated crimes against humanity committed by the Syrian regime.

The success of the landmark 'Caesar case' inspired other cases, and in October 2021 a JIT between Sweden and France was established to support proceedings involving core international crimes

committed by FTFs against the Yazidi population in Syria and Iraq. Channelling investigative efforts through the JIT will avoid multiple interviews of the same victims, thus mitigating the risk of re-traumatisation. The JIT will also support enhanced cooperation with UNITAD and the IIIM.

In March 2022, a JIT between Ukraine, Lithuania and Poland was set up within a month from the Russian invasion of Ukraine with the legal and technical support of Eurojust.

Tasked with investigating war crimes, crimes against humanity and other core international crimes committed in Ukraine, the main aim of the JIT is to support the gathering of evidence and its swift and secure exchange between partners. The JIT will also facilitate and support the cooperation of members with the ICC Office of the Prosecutor (ICC-OTP). In a remarkable development, the ICC-OTP joined the JIT as a participant on 25 April 2022. This will allow a higher level of cooperation between the ICC and EU Member States.



### #JusticeDone

Syrian official sentenced to life for crimes against humanity with support of joint investigation team assisted by Eurojust



**JUSTICE DONE:** In a landmark judgement on 13 January 2022, the German Higher Regional Court of Koblenz sentenced a former high-ranking Syrian official to life imprisonment for his involvement in crimes against humanity. In 2021, an associate of the high-ranking official was sentenced by the same court to four and a half years' imprisonment for crimes against humanity and torture.

**CRIME:** In 2011 and 2012, an official of the Syrian intelligence services caused the death of 27 members of the opposition to the regime, as a result of torture and inhumane conditions of imprisonment.

**ACTION:** The Syrian official was arrested in February 2019 in Germany together with his associate, and an indictment was filed against both defendants in October 2019. This was followed in August 2020 by the start of the trials – the first worldwide to address widespread and systematic torture committed by the Syrian regime.

**EUROJUST'S ROLE:** In cooperation with national investigators and prosecutors working on the case, a German-French JIT was set up with the support of Eurojust and the Genocide Network in 2018. Eurojust and the Genocide Network supported the investigations and prosecution by providing long-term analytical assistance and the organisation of regular coordination meetings to enable swift judicial cooperation between the German and French authorities.



Holocaust memorial at the Choral Synagogue in Mariupol, Ukraine. Photo © Shutterstock

“ Eurojust will act as a bridge between the investigations of EU Member States and the independent and impartial investigation of the ICC. The exercise of universal jurisdiction by the Member States is not an obstacle for the ICC to act; on the contrary, it is a clear sign of our shared determination to ensure that core international crimes will not go unpunished.

– Eurojust President **Ladislav Hamran** –

## Addressing the rights and needs of victims and witnesses

The participation of witnesses in proceedings is crucial to building strong core international crimes cases. National authorities fully integrate the victims’ rights dimension into their prosecution strategies by considering the specific challenges related to victims and witnesses of these crimes, including safety concerns, different legal cultures, the risk of re-traumatisation and the right to legal representation. These considerations are also envisaged by Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime.

Victims and witnesses of core international crimes require legal, and in many instances psychosocial,

support, as well as protection measures which may be difficult to grant under existing national laws.

The magnitude of these cases, and the large number of victims, may justify exceptional measures – such as translation of the case file, interpretation, recording and broadcasting of the hearings. National authorities should have the necessary possibilities and resources to engage in outreach efforts towards the affected community, as such efforts have proven to be highly effective in building trust and encouraging victims to approach authorities. Maintaining close cooperation with CSOs that may facilitate contacts or outreach is critical.



*Immense work has already been done, by the Genocide Network, by Eurojust, EU Institutions and NGOs to respond to the victims' call for justice and bring cases to court. Our work is far from over, but it is a promising start. Syria is one situation. The number of cases in the EU is growing. Last year about 1 500 new cases opened relating to many different situations and countries across the globe.*

– Head of Genocide Network Secretariat **Matevž Pezdirc** –

## Ensuring political support and awareness



European headquarters of the United Nations in Geneva, Switzerland and headquarters of the International Criminal Court in The Hague, the Netherlands. Photos © Shutterstock

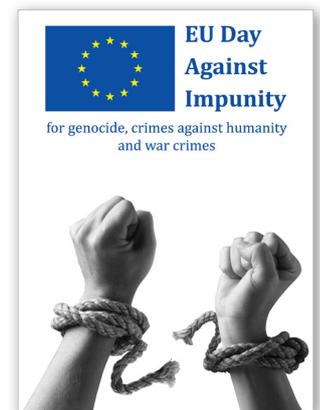
Under international law, States have the main responsibility of fighting impunity for core international crimes, and must prosecute such crimes, regardless of where the crimes have been committed, and irrespective of the nationality of the perpetrator or the victim. This obligation stems from customary law and international treaties such as the 1949 Geneva Conventions and the Rome Statute of the ICC.

While the ICC was created as the first permanent international court for core international crimes and may prosecute heads of states and other high-level officials who may otherwise enjoy immunity before national criminal courts, its ability to exercise jurisdiction is limited. In addition, the ICC

jurisdiction focuses on higher-level perpetrators who are ‘most responsible’ for the crimes. More importantly, in line with the principle of complementarity enshrined in the Rome Statute, the ICC will only assume jurisdiction where States are unwilling or unable to do so.

Fulfilling this duty, however, requires political support and the engagement of judiciary and law enforcement services. Experience has shown that strong, credible leadership from the Member States’ Ministry of Justice and Prosecutor General’s Office leads to increased prosecutorial activities with impressive results. In practice, the political drive to pursue criminal accountability will translate into the implementation of the core international crimes in national legislation, the creation of specialised units, and the allocation of adequate resources – all invaluable elements in the fight against impunity. While some situations, such as the violent conflict in Ukraine, can quickly garner political momentum, delivering justice takes time and it is important to sustain this support in the long term.

To build long-term political support, the Genocide Network and Eurojust undertake a number of activities. The EU Day against Impunity, organised by the EU Presidency, the European Commission, Eurojust and the Genocide Network, held every year on 23 May, highlights the importance of Member States-led investigations and prosecutions, and pays homage to victims and survivors.



Other partners have recognised the vital need for a stronger judicial response to many situations across the world. In March 2021, the European Parliament adopted a resolution on the Syrian conflict calling on the Commission to present an EU action plan

on impunity to better coordinate and harmonise Member States' resources and efforts to prosecute war criminals in the EU. In April 2022, the President of the Commission stated that atrocities allegedly committed on the territory of Ukraine would not go unanswered and that the EU would support the

Ukrainian Prosecution Services and the ongoing JIT so that evidence may be collected, analysed and processed. This renewed political resolve sends a strong message to perpetrators and their victims: those who commit such heinous crimes will be brought to court.

## Case examples

### **German Federal Court of Justice finds that functional immunity does not preclude criminal proceedings against organs of a foreign State for international crimes**

A former lieutenant in the Afghan army fled to Germany in 2015 and was prosecuted for the war crimes of torture and outrage upon personal dignity for having desecrated a body. In January 2021, the Federal Court of Justice found that in accordance with customary international law, lower-ranking State officials cannot benefit from functional immunity before national courts for charges of war crimes, despite those crimes being committed while discharging his duties for the State of Afghanistan.

### **Cumulative prosecution of a French company for complicity in crimes against humanity and financing of terrorist activities**

Between 2012 and 2015, Lafarge, a company incorporated under French law, and its local subsidiary, Lafarge Cement Syria, operated a cement plant in a region of Syria occupied by various armed groups, including ISIL. The subsidiary made payments to these armed groups so that the activity would not be compromised.

In 2018, Lafarge was indicted on the charges of complicity in crimes against humanity, financing of terrorist activities and endangering the lives of others. An interlocutory appeal court quashed the indictment. However, in September 2021 the French High Court (*Cour de cassation*) found that there is sufficient evidence to suggest that ISIL and other affiliated groups have committed crimes against humanity in the vicinity of the cement plant operated by Lafarge. In addition, the Court found that Lafarge financed, via its subsidiaries, ISIL activities of several million dollars and that it had precise knowledge of the actions of the organisation which were likely to constitute crimes against humanity. The Court concluded that knowingly paying a sum of several million dollars to an organisation whose purpose is purely criminal is sufficient to be considered complicity by aiding and abetting. The case was remitted to the interlocutory court for proceedings to move forward.

### **Swedish District Court finds Swedish national guilty of grave war crimes for enlisting her son to ISIL armed forces**

In March 2022, a Swedish woman was sentenced to six years imprisonment for grave war crimes. The accused took her then 11-year-old son to Syria in April 2013, when a fully non-international armed conflict was ongoing in the country. Soon after arrival, the boy was recruited and for two and a half years used as a child soldier by ISIL armed groups (before he turned 15). The accused was the single guardian of the boy and he lived with her in Syria. The boy died in Raqqa, Syria, at the age of 16.

The District Court of Stockholm found that the accused, who had a long history of following the Salafist movement, must have been aware of the risk that the boy would be used in the hostilities, seeing that this was a clear part of ISIL ideology when she decided to take him to Syria. Moreover, the Court found that the accused, as the only guardian, had taken no adequate steps to protect him once in the conflict zone. The Court took into account that there was evidence to support that she voluntarily stayed in an ISIL-controlled area.

The Court ruled that the accused, together and in co-conspiracy with other perpetrators, ensured that the boy was enlisted and used as a child soldier by ISIL armed groups. Battlefield evidence obtained in Syria by coalition forces and expert testimony from UNITAD on ISIL recruitment of child soldiers was submitted in the trial.



**Conviction of a Dutch national for the war crime of outrage upon personal dignity committed from the Netherlands** – In June 2021, a Dutch national was found guilty of terrorist offences as well as the war crime of outrage upon personal dignity for spreading ISIL ideology through Telegram groups. The accused distributed a video showing ISIL prisoners being burned alive, sharing her own dehumanising comments. In doing so, she acted in line with the strategy of ISIL as a ‘media mujahedin’ and furthered the outrage upon the personal dignity of the victims while the conflict was still ongoing in Syria and Iraq. This represents a nexus between the behaviour of the accused and the conflict. The accused was sentenced to six years’ imprisonment.

This case is unique in two ways: this is the first time that a person was convicted for committing war crimes in the context of the conflict in Syria from within the territory of the Netherlands, and this is the first time that the Court reached the conclusion that ISIL was not only a terrorist organisation but also a criminal organisation with an aim to commit core international crimes.



*Now more than ever we need to demonstrate that the rule of law, that International law, is something relevant to people’s lives. To do that we must work together, between international, regional and national levels, to put the law into action. The innovative and meaningful partnerships that my Office is developing with Eurojust and European national authorities demonstrates what we can achieve together.*

– Prosecutor of the International Criminal Court **Karim A. A. Khan QC**–

**German national convicted of crimes against humanity for enslaving a Yazidi woman in Syria** –

In April 2021, a German court sentenced a German woman to four years and three months of imprisonment for aiding and abetting the enslavement of a Yazidi woman (crime against humanity), pillaging (war crime against property) and participation in a terrorist organisation. In February 2015, the accused travelled with her three-year old daughter to Syria to join ISIL. She became the spouse of an ISIL fighter and was provided, free of charge, two dwellings appropriated by ISIL as spoils of war. In Syria, she received the visit of another spouse with an enslaved Yazidi woman who carried out housework and childcare tasks for the accused.

**Iraqi national sentenced to life imprisonment by German Court for genocide against the Yazidi minority** –

In November 2021, a German court found an Iraqi national and member of ISIL guilty of genocide, crimes against humanity and war crimes for the death of a five-year old Yazidi girl he left to die under the scorching sun after tying her to a window as punishment. The Court found that the accused and his wife, a German national, had held the Yazidi girl and her mother as slaves in their house in Fallujah, and that the accused had the intent to eliminate the Yazidi religious minority. It is the first time worldwide that a court convicts a member of ISIL for the genocide committed against the Yazidi.



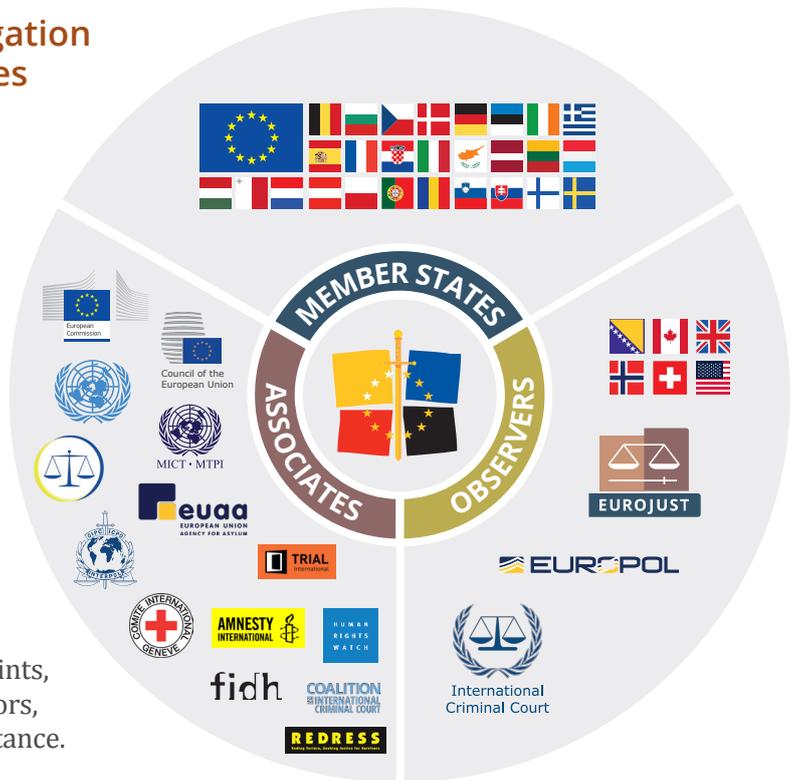
Yazidi civilians, who fled ISIL terror, at refugee camp in Kurdistan. Photos © Shutterstock

## The European Network for investigation and prosecution of genocide, crimes against humanity and war crimes

The European Network for investigation and prosecution of genocide, crimes against humanity and war crimes ('Genocide Network') enables close cooperation between national authorities investigating and prosecuting the crime of genocide, crimes against humanity and war crimes (known collectively as core international crimes). The Network was created by the Council of the EU in 2002 to ensure perpetrators do not attain impunity within the Member States.

All EU Member States are represented in the Genocide Network through national Contact Points, comprising specialised and dedicated prosecutors, investigators and officers for mutual legal assistance.

The Genocide Network provides a platform for practitioners to exchange operational information and share experience and best practices through biannual plenary meetings. Its members consist of national authorities in all Member States and six Observer States (Bosnia and Herzegovina, Canada, Norway, Switzerland, the United Kingdom and the United States), Eurojust, Europol, the International Criminal Court, and Associates including organisations from the European Union, the United Nations and beyond, as well as civil society actors. The Network is a unique forum bringing together all actors with a common goal: the fight against impunity.



“ I want to congratulate the Genocide Network on its excellent work. Eurojust’s new role is clearly paying off. The national judicial authorities are also making impressive use of the EU tools at their disposal. We are constantly working on improving cross-border cooperation and ending impunity. As more core international crimes are brought to justice in the EU, the efficient use of these tools for handling cases is vital for tackling the impunity gap.

– European Commissioner for Justice **Didier Reynders** –



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

Eurojust, Johan de Wittlaan 9, 2517 JR The Hague, Netherlands

Phone: +31 70 412 5000 - E-mail: [info@eurojust.europa.eu](mailto:info@eurojust.europa.eu) - Website: [www.eurojust.europa.eu](http://www.eurojust.europa.eu)

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