

## Universal jurisdiction of French justice for crimes committed in Syria

Friday, May 12, 2023

Plenary Assembly - appeals n° 22-80.057 et 22-84.468

In two rulings today, the Court of cassation clarifies the conditions under which the French justice system has jurisdiction to prosecute and judge acts of torture, crimes against humanity or war crimes when the acts were committed abroad and neither the perpetrator nor the victim is French.

The Court recognizes the "universal jurisdiction" of the French justice system in two cases concerning such acts committed in Syria.

*Warning: This press release is not intended to set out in full the content of the rulings handed down. It aims to present a summary of their main legal contributions.*

### Topic : "Universal" jurisdiction of the French criminal judges and courts

In principle, the French judicial authorities have jurisdiction over crimes committed in France and, under certain conditions, over crimes committed abroad, in particular when the perpetrator is French or the victim is French.

Nevertheless, in certain cases, the French authorities have jurisdiction over crimes committed abroad by a foreign person on a foreign victim. This is known as "universal" jurisdiction.

*Art. 689-1 of the Code of criminal procedure*

In application of international conventions, any person who is in France may be prosecuted and judged by the French courts when he has committed outside the territory of the French Republic one of the offenses listed in the following articles.

*Art. 689-2 of the Code of criminal procedure*

In application of the 1984 New York Convention against Torture, any person who has committed acts of torture (as defined in Article 1 of this Convention) may be prosecuted and tried by the French courts.

*Art. 689-11 of the Code of criminal procedure*

**If he or she habitually resides on the territory of the French Republic**, any person may be prosecuted and tried by the French courts if he or she is suspected of having committed one of the following offenses abroad:

- **The crime of genocide** defined in the Criminal code;
- **Other crimes against humanity** defined in the Criminal code, **if the facts are criminalized by the legislation of the State where they were committed** or if that State or the State of nationality of the suspect is a party to the 1998 Rome Convention.
- **War crimes and offenses** defined in the Criminal code, **if the acts are punishable under the law of the State where they were committed** or if that State or the State of nationality of the suspect is a party to the 1998 Rome Convention.

### Facts and procedure

#### Case n°1 :

After a report from OFPRA, the French judicial authorities opened an investigation into acts committed in Syria between 2011 and 2013 against opponents of the Syrian regime, likely to constitute crimes against humanity.

A Syrian national, charged with complicity in crimes against humanity, challenged the jurisdiction of the French courts: he asked for the cancellation of the proceedings. **He argued, among other things, that crimes against humanity aren't criminalized in Syria, where they were allegedly committed. This lack of double criminality would prevent the jurisdiction of French courts.**

The Court of Appeal dismissed his claim.

The Syrian national appealed this ruling before the Court of cassation. The Criminal Chamber of the Court of Cassation considered that the French authorities did not have jurisdiction: it therefore quashed the decision of the Court of Appeal.

The International Federation for Human Rights, a civil party, which had not been informed of the suspect's appeal, filed a third-party proceeding against the decision of the Criminal Chamber.

#### Case n°2 :

Several individuals and associations filed a complaint before the French judicial authorities for acts allegedly committed by an Islamist group in Syria between 2012 and 2018, which could constitute crimes against humanity, torture and war crimes.

A Syrian national was arrested in France where he had arrived less than three months earlier as a student.

He was charged with acts of torture and war crimes, and challenged the jurisdiction of the French courts and asked that the proceedings be annulled. **He argued in particular that:**

- **He did not usually reside in France ;**

- **The war crimes of which he was accused are not criminalized in Syria, the State where they were allegedly committed;**
- **He could not be prosecuted in France for acts of torture because, at the time of the events, he was not an official agent of the Syrian state.**

The Court of Appeal dismissed his claims.

The Syrian national filed an appeal before the Court of cassation.

Following a request by the Prosecutor-General of the Court of cassation, the First President ordered that the two cases be heard by the Court's plenary assembly: the most solemn Court formation possible, in which all of the Court's six different chambers are represented together, for very serious and transversal matters.

## The ruling of the Court of cassation

### "Habitual Residence"

A foreign national may be tried before a French court for crimes against humanity or war crimes committed abroad against foreign victims, provided that he or she habitually resides on French territory.

**Question :** How to define this notion of "habitual residence"?

**Response :** In order for France to be considered as the foreign national's habitual residence, there must be a sufficient connection between France and this person. The judge must assess this link on the basis of a set of indicators: the duration of the individual's presence in the country, but also the reasons for their stay, the conditions under which it took place, the manifestations of an intention to reside for an extended period in France, and the existence of family, social, material or professional ties.

### The legislation of the foreign State

A foreign national may be tried before a French court provided that the acts defined under French law as crimes against humanity or war crimes or offenses are criminalized under the legislation of the State where they were committed. This is referred to as the "double criminality" requirement.

**Question :** How must this 'double criminality' requirement, described above, be met?

**Response :** For there to be double criminality, it is not necessary that the acts covered in France by the offences of crimes against humanity or war crimes be qualified in the exact same way by the laws of the foreign country: it is sufficient if the foreign legislation punishes these acts as common offences such as murder, rape or torture rather than specifically as crimes against humanity or war crimes.

### The position of the perpetrator of torture within the foreign state

**Question :** Does the universal jurisdiction of French courts to judge acts of torture committed abroad, when neither the perpetrator nor the victim is French, only concern acts committed by public officials and persons acting in an official capacity?

**Response :** Yes. However, the concept of a person "acting in an official capacity" also includes a person acting for or on behalf of a non-governmental entity, in the situation where that entity occupies territory and exercises a quasi-governmental authority over the territory.

**In the two cases, the Court of cassation considers that the necessary conditions have been met for the French justice system to charge Syrian nationals involved in investigations for acts committed in Syria against members of the Syrian population.**

**The Court dismissed their appeals. As a result, the French investigations concerning them can continue.**



[Footage of the hearing](#)