The Washington Post

Germany convicted a Syrian man of war crimes in Syria. Can national courts prosecute injustices everywhere?

The landmark case invoked the principle of 'universal jurisdiction'

By Leslie Johns, Maximo Langer and Margaret E. Peters

Today at 7:45 a.m. EST

On Jan. 13, a German domestic court found Anwar Raslan — a former security official in Syrian President Bashir al-Assad's regime — guilty of crimes against humanity.

Raslan, referred to as "Anwar R." in some news coverage, was charged with overseeing the torture of thousands of prisoners in Syria, many of whom were sexually assaulted and/or killed. Human rights groups and news organizations have carefully detailed Raslan's acts and the German trial.

But why is a German court prosecuting crimes committed by a Syrian against other Syrian nationals on Syrian territory? Raslan's trial reflects an important and growing trend in international politics: the assertion of universal jurisdiction by domestic courts. This move toward universal jurisdiction, our research suggests, is driven by migration. The movement of people — such as Syrian refugees — across borders has changed the tactics that individuals and governments adopt to uphold international law.

What is universal jurisdiction?

The legal term "jurisdiction" describes a court's authority to rule on specific cases and legal questions. Domestic legal systems usually limit the jurisdiction of domestic courts to cases that involve their country's territory, nationals or national security.

However, Raslan did not commit his crimes on German territory. Neither he nor his victims were German nationals, and his actions did not affect Germany's security. To convince the German court to hear the case, German prosecutors had to invoke "universal jurisdiction."

This concept was originally developed as a tool for domestic courts to punish maritime pirates, who committed crimes on the high seas, outside of the territorial jurisdiction of any country. However, Israel began a legal trend in the early 1960s when it used universal jurisdiction as a tool to investigate and ultimately prosecute Adolph Eichmann, a Nazi official who oversaw the Holocaust in Europe, years before Israel even existed. Other countries slowly began to mimic Israel's arguments, and the use of universal jurisdiction has surged in recent decades.

Germany is the country that most frequently asserts universal jurisdiction over human rights crimes. Our data indicates that Germany has opened over 650 cases using universal jurisdiction. Spain takes second place, with over 350 cases, including the well-known attempt to prosecute Chilean dictator Gen. Augusto Pinochet for crimes committed in Argentina and Chile.

Canada, France, Sweden and the United Kingdom have over 100 universal jurisdiction cases each. But universal jurisdiction isn't a tool used exclusively by Western nations. Argentina, Senegal, and South Africa have also pursued such cases.

What drives universal jurisdiction cases?

Our research suggests that migration may be driving universal jurisdiction cases. To test this hypothesis, we examined how many migrants moved to each country, along with the characteristics of their home countries.

We found that the countries who received larger numbers of immigrants tended to have more universal jurisdiction cases. This relationship was especially strong for migrants from home countries with a long history of human rights abuses.

In addition, we found that universal jurisdiction cases are unlikely to be launched against a country's military allies.

How migration influences these cases

Many migrants are victims of or witnesses to atrocities in their home country. Others are the perpetrators of such atrocities. For example, Raslan fled Syria and moved to Germany in 2014.

After migrants arrive in a new country, they have several ways to seek justice for the violence that they sought to escape. First, they can report crimes to police and prosecutors in their new home country, and assist in investigations. Universal jurisdiction cases often rely on migrants to provide evidence, locate witnesses and testify in trials. For instance, in Raslan's case, various alleged victims saw him in Berlin and reported him to German authorities.

Second, migrants can mobilize public opinion in their new home country by informing the public about crimes that occurred elsewhere. For example, Syrian migrants in Germany organized to promote prosecutions. They created their own nongovernmental organizations and worked with local groups to inform the German media and public about atrocities in Syria.

Third, migrants frequently seek meetings with elite officials — including judges and legislators — to persuade them to act. They use their personal narratives to humanize conflicts in faraway places, such as Syria. In Raslan's case, testimony from Syrian migrants contributed to the Federal Court of Justice, Germany's highest court, issuing an arrest warrant against him in 2019.

And fourth, many countries allow individual victims to launch private prosecutions. This power is mostly unknown in the United States, where only public prosecutors can file charges and serve as the prosecuting party in criminal proceedings. However, a number of countries allow the alleged victim of a crime, a private citizen or certain nongovernmental organizations to be a party in the criminal process together with, or instead of, public prosecutors. In the Raslan case, several Syrian torture survivors were private prosecutors.

The importance of universal jurisdiction

Events like the Syrian refugee crisis in Europe are influencing criminal prosecutions in places such as Germany. As individuals move across borders, their demands for justice accompany them.

Migration transforms atrocities committed on foreign soil into crimes that can be remedied in domestic courts. In short, migrants help to uphold international law in domestic courts, offering victims of these crimes new options to seek justice.

Professors: Check out TMC's expanding list of classroom topic guides.

Leslie Johns is a professor of political science and law at UCLA.

Máximo Langer is a professor of law at UCLA.

Margaret E. Peters is an associate professor of political science at UCLA.