

Lawfare on Israel's war on Gaza reaches Germany

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A woman holds a placard as people take part in a demonstration in support of Palestinians in Gaza, in Frankfurt, Germany [File: Kai Pfaffenbach/Reuters]

Berlin, February 26 (RHC)-- Lawyers in Germany have filed charges against some of the country's most senior politicians, including Chancellor Olaf Scholz, accusing them of "aiding and abetting genocide" in the Gaza Strip.

The case on behalf of German Palestinians who have family in the besieged Strip centres around the issue of alleged complicity, given Germany's continued support of Israel despite the incredibly high civilian death toll amid incessant bombardment.

Nearly 30,000 Palestinians have been killed by Israel since October 7, in a campaign that followed an attack in southern Israel which killed 1,139 people by Hamas, the group that governs Gaza. "We, the living, must remember the dead in Gaza, tell their stories and fight for justice," Nora Ragab, a migration researcher and one of the German Palestinians involved in the case, said in a statement.

Ragab's motives for getting involved are both political and personal. "My aunt and uncle were over 70 so, like a lot of the older people in northern Gaza, they decided to stay after evacuation orders were given," she told Al Jazeera.

When an Israeli bulldozer arrived one day in November to demolish the newly built house next door, Ragab's uncle went outside to ask the soldiers not to destroy the home because peaceful civilians lived there. "The neighbours saw everything," she recounted. "They told us he went outside with his hands up. But the soldiers shot him anyway. When my aunt tried to drag him back into the house, they shot her too."

Ragab's cousins returned home on November 24 to check on their parents during a pause in fighting. They found them dead in the courtyard. The couple were embracing. The cousins counted 60 bullet wounds. "It is my responsibility to ensure people in Germany don't look away," Ragab said.

The legal case is being backed by a number of civil society organisations, including the European Legal Support Center, the Palestine Institute for Public Diplomacy, and the UK-based Law for Palestine. Lawyers filed charges against senior politicians who sit on Germany's Federal Security Council after January's interim ruling by the United Nation's highest court, the International Court of Justice (ICJ). The ICJ said it was "plausible" that Israeli acts in Gaza might amount to genocide.

Germany's Federal Security Council directs national security policy and authorises weapons exports. In addition to Scholz, Foreign Minister Annalena Baerbock, Economy Minister Robert Habeck, Finance Minister Christian Lindner and others also stand accused.

For Ragab, the act of bringing this charge against German politicians has been important. "Of course, it's not going to bring them back," she said. "But we should be doing everything to try and stop this violence. Germany actually has a special responsibility because of its history. That is why it should take even the slightest accusation of genocide really seriously, investigate it and do everything possible to prevent and punish it."

The charges hinge on three main points, explained Nadija Samour, the German lawyer who filed the case with the country's federal prosecutor.

Firstly, statements made in support of Israel by German government officials.

Secondly, the withdrawal of German funding for the United Nations Relief and Works Agency for Palestine Refugees in the Near East, or UNRWA, the main provider of aid in Gaza.

The third point involves German weapons exports to Israel.

These rose from 32 million euros (\$35 million) in 2022 to 303 million euros (\$328 million) last year.

Most of the increase was approved by the German government after October 7. Currently, German politicians are considering sending Israel more tank shells.

Samour said that if the federal prosecutor thinks the case has legs, they will investigate the charges. If they do not, they have to explain why, she said. Since the ICJ's verdict, similar court cases have been

launched elsewhere.

One in the United States, against U.S. President Joe Biden, has not been successful. Another in the Netherlands was successful and stalled exports of F-35 fighter jet parts to Israel. Both cases are being appealed.

So can the German case succeed? Local law experts say it is unlikely. “I don’t think this legal route will be successful,” said Stefan Talmon, a professor of international law at the University of Bonn. “The law around this topic is much too complicated.”

The ICJ decision is only an interim one, therefore the threshold for evidence is not as high, Talmon explained.

“So establishing that [German politicians] are responsible for aiding and abetting an act of genocide in the Palestinian territories seems to me to be incredibly difficult,” he told Al Jazeera.

There have been successful convictions like this in the past in Germany but these involved individuals helping an offender directly, Talmon noted.

Kai Ambos, a professor of international criminal law at the University of Gottingen, agreed. “We need a main crime to [ascertain] secondary responsibility,” he wrote in an emailed interview. Although it can’t be completely ruled out, it’s “unlikely that the [federal prosecutor] will initiate a formal investigation,” he said.

It is not uncommon for German politicians to be charged in this way. During her time in office, former Chancellor Angela Merkel had 407 charges filed against her, including for aiding and abetting murder.

Between 2021 and 2023, 55 charges were filed against Scholz. The federal prosecutor has so far declined to investigate them.

But the charges filed last week are more of a political move, Talmon suggested, part of what international lawyers call “lawfare”. “It is where one party – often the one that is at a military disadvantage – uses the law to their advantage,” he said. “It’s also a way of raising awareness, getting media attention and showing your own political base you’re doing something.”

The South African case against Israel at the ICJ is an example. Recent charges have also been brought by Ukraine against Russia. “Still, as people say, something always sticks,” Talmon continued. “In a society like Germany, it may help raise awareness that the world is not quite as black and white as it is often portrayed here.”

The lawyers involved acknowledge the difficult political landscape in Germany, where pro-Palestinian protests were banned at one stage. They are hoping for an investigation but if that does not happen, they are also happy putting pressure on politicians over the possible delivery of extra tank shells to Israel, a deal that has yet to be finalised.

A German government spokesperson told Al Jazeera that Germany believes Israel has the right to defend itself but that it should also abide by international humanitarian law. “The German government is not closing its eyes to the huge suffering the conflict is causing people in the Gaza Strip,” the spokesperson said in an emailed statement. “We are calling for humanitarian pauses and corridors.”

Regarding potential weapons exports, he would only say these are decided “on a case-by-case basis after careful consideration”.

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