

Progress or Patchwork?

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Germany has received widespread acclaim for its domestic implementation of international criminal law (ICL) in the [German Code on Crimes against International Law](#) (*Völkerstrafgesetzbuch*) and for completing multiple universal jurisdiction (UJ) trials in recent years. Most notably, the Higher Regional Court in Koblenz [convicted](#) Syrian state officials of crimes against humanity. However, in terms of language accessibility and overall transparency of the proceedings for the international public, the German judiciary has yet to assume its desired 'pioneering role' (*Vorreiterrolle*) in the prosecution of international crimes. Unlike other European countries that conduct criminal trials on the principle of [universal jurisdiction](#), translations of judgments and other forms of multilingual information have been in short supply in Germany. Commentators have widely [criticized](#) the accessibility and outreach of German UJ proceedings as inadequate. Correspondingly, one of the multiple aims of a recently introduced [draft bill](#) for the 'further development of international criminal law' is to improve the 'broad impact' (*Breitenwirkung*) of UJ proceedings and judgments. However, the explanatory memorandum falls short of providing a comprehensive explanation and justification of this objective and the purpose and legitimacy of UJ trials in Germany more generally. The following analysis of the draft bill reveals that the reform may result in no more than a few superficial adjustments, without significantly improving the international outreach of German UJ trials.

The Abstract Objective

The government draft bill lacks clarity as to *why* – in contrast to domestic criminal trials – increased and extended publicity of UJ proceedings is desirable and justified. The central theoretical questions remain unanswered: What procedural requirements for national criminal proceedings can be deduced from the normative structure of the principle of UJ – e.g. if conceptualized as a representative administration of justice in the name and interest of the international community for its involvement in and information about the proceedings? How can the participation of those affected and the international community – on whose behalf national UJ proceedings are being conducted – be guaranteed?

Possible justifications for more public access already differ with regard to the various target groups of UJ proceedings. Those directly affected by a specific international criminal offense must be guaranteed equal access to justice; the [explanatory memorandum](#) (p. 1, 14) itself refers to Goals 16 (3) and (6) of the United Nations' [Agenda 2030 for Sustainable Development](#). While a right to information about specific international legal proceedings could also be derived from the so-called [right to truth](#) under international law (cf. [here](#), p. 44 et seq.), international media representatives have a [constitutional right](#) to equal access to information. Insofar as one assumes that international law – and not just extraterritorial extended domestic criminal law – is applied in German UJ proceedings, international criminal tribunals, foreign criminal courts, and international criminal legal scholarship also

have a genuine interest in informational access to the proceedings. A successful communicative exchange between these various bodies is essential for the success of the evolving international criminal justice system and a prerequisite for Germany's aspired leading role in the further development of ICL. Finally, the international public itself could be the addressee of UJ trials. If one conceptualizes UJ – as argued in more detail [here](#) – as a *vicarious* administration of ICL, which Germany only exercises in the interest and on behalf of the international community, the international public should be the normative starting and end point of every UJ trial. Consequently, the transparency of the proceedings and the public communication of judgments could be a necessary condition for the legitimacy of national UJ trials.

The Concrete Measures

Three concrete measures are being discussed to increase the 'broad impact' of UJ trials: allowing media representatives to use translations during the trial, the production of audio-visual recordings for scientific and historical purposes, and the publication of translated judgments.

Courtroom Translation

The proposed amendment regarding the use of translations by media representatives proves to be a clarification that acknowledges an already established practice. Whisper interpreters have been able to work in German courtrooms for audience members in the past (so-called "chuchotage" (*Flüsterdolmetschen*)), even though no specific legal basis existed (comp. [here](#), para. 2). Only pandemic-related distancing regulations had made this established method impossible and, in turn, prompted the request of media representatives to use the court's translation infrastructure in the so-called [Al-Khatib trial](#) at the Koblenz Higher Regional Court. In the subsequent [summary proceedings](#) before the German Federal Constitutional Court, the court in Koblenz was ordered to guarantee that accredited media representatives with a special connection to the Syrian conflict may follow the German-language proceedings in Arabic either with the help of their own arrangements or by allowing them to access the court's translation system for a fee. Similarly, the current [government draft](#) (p. 25) leaves it to the discretion of the criminal courts to grant media representatives access to the court's translation system. The [government draft](#) (p. 25) is explicitly not intended to create a subjective right to courtroom translation.

Also, the draft bill does not include provisions on the access to courtroom translation for victims' organizations and other third parties, who wish to follow the proceedings in the courtroom. It is noteworthy that the Federal Constitutional Court indeed [rejected](#) an application by non-journalists related to the Al-Khatib trial who were seeking access to the court's translation system. The court argued that these individuals would have the opportunity to learn about the proceedings via media reports. Transferring a pandemic-related distinction, made only in an interim decision, into law is nonetheless problematic. Besides distinct considerations at the constitutional and legislative level, the proposed amendment may result in a regression in linguistic participation for non-journalistic spectators of UJ trials, who were regularly allowed to use whispered translation in the past.

Audio-Visual Recordings

Contrary to the expectations of many foreign observers, German criminal trials are not recorded or transcribed by default as of now. Only in exceptional cases, recordings for academic or historical purposes may be authorized. In previous UJ proceedings, courts rejected applications for audio-visual documentation of the trial with reference to the qualified requirement in the respective law of outstanding historical significance 'for the Federal Republic of Germany', [s. 169 \(2\) German Courts Constitution Act](#) (GVG). The [government draft](#) (p. 17) proposes the removal of the reference to Germany, aiming to enable audio-visual recordings of UJ trials, given that these proceedings often involve 'value decisions of global significance'.

Nonetheless, the audio-visual documentation of UJ proceedings will still require specific justification in the future. A potential alternative could be to provide audio-visual documentation in all UJ proceedings without a case-by-case examination. This would alleviate the courts of the difficult and potentially presumptuous decision as to whether a crime against international law is significant enough to justify an audio-visual recording. Considering the general reservations of the German judiciary regarding the digital documentation of criminal proceedings, it is (unfortunately) to be expected that the proposed amendment will, at best, result in a marginal improvement in the accessibility and impact of UJ trials, if at all.

Translations of Judgements

The draft bill remains silent on the crucial matter of whether translations of judgments should be published in UJ proceedings. While the preceding [policy paper](#) (p. 4) vaguely articulated the Federal Government's intention to translate UJ judgments, particularly in case of 'groundbreaking judgments' (*wegweisende Urteile*), the draft bill lacks explicit provisions on the issue. The potential translation of judgments by the Ministry of Justice, as suggested, raises multiple concerns. First, entrusting the translation process to a state ministry compromises the structural independence of ICL from national interests. Responsibility is shifted away from the competent criminal courts, which serve a [dual role](#) as a state organ and an independent part of a developing international criminal justice system in UJ proceedings.

Secondly, allowing a state ministry to decide, on a case-by-case basis, whether translations are published, also introduces an abstract risk that the determination whether a judgement will be translated might be influenced by political considerations, particularly in assessing whether a judgment is 'groundbreaking' (*wegweisend*) enough. A viable alternative could be to ensure sufficient funding for the higher regional courts and their associated press offices specifically for UJ proceedings. Additional costs associated with providing the public with multilingual information, such as through the translation of judgments, could be charged to the federal government in accordance with [s. 120 \(7\) GVG](#), an option the [draft bill](#) (p. 4) itself acknowledges for other additional costs.

Conclusion

In conclusion, the government draft falls short of adequately recognizing the significance of addressing crimes under international law in a manner accessible to the international public. Instead of developing a coherent strategy for expanding the public outreach of UJ proceedings, the reform project focuses on addressing three specific issues, all of which have been previously criticized as deficient in past proceedings. The proposed individual amendments run the risk of being largely symbolic. The justice minister's emphatic claim, 'This is progress [...]' ([here](#), p. 17878), overstates the likely impact of the proposed amendments. In contrast, true progress could be achieved if the draft would not only address errors and shortcomings of past trials but would systematically equip the German justice system for the current upsurge of UJ cases.

