



## Majdi Nema's Case Updates before the Criminal Court in Paris on Charges of Complicity in War Crimes and the Crime of Enforced Disappearance.

### What are the facts behind the case?

Majdi Nema, alias Islam Alloush, former leader of the group Jaysh Al Islam (“The Army of Islam”), was arrested on 29 January, 2020 in Marseille, then indicted by the French War Crimes Unit of the Paris Judicial Tribunal for war crimes, torture and enforced disappearance, and complicity in these crimes. He was placed in pre-trial detention.

This arrest marked the start of the first judicial investigation into crimes committed in Syria by the Islamist rebel group. Mainly active in Eastern Ghouta, on the outskirts of Damascus, Jaysh Al Islam has been regularly accused of committing international crimes against civilian populations living under its control from 2013 until 2018.

Several reports and corroborating testimonies point to crimes committed by the group, such as the systematic use of torture in prisons, extra-judicial executions, enforced disappearances, attacks on the civilian population, and using them as human shields.

The group is also suspected of being responsible for the enforced disappearances of Razan Zaitouneh, human rights lawyer, co-founder of the Local Coordination Committees (LCC) and member of SCM, of Wael Hamada, human rights defender, and of their colleagues Samira Al-Khalil, political activist, and Nazem Al Hammadi, human rights lawyer. All were kidnapped in December 2013 from the joint offices of the Violations Documentation Centre (VDC) and Local Development and Small Projects Support (LDSPS) in Douma.

On 26 June 2019, the International Federation for Human Rights (FIDH), the Syrian Center for Media and Freedom of Expression (SCM) and the Ligue des droits de l’Homme (LDH) had filed a complaint against Jaysh Al Islam for the crimes committed by the group in Syria. Ever since, our organisations have been accompanying the victims and their families in their quest for justice.

Five victims have joined the case as civil parties alongside the three organisations.

## **What are the charges held against Majdi Nema?**

Majdi Nema was a spokesperson for the Jaysh Al Islam group at least between 2013 and 2016, when the rebel group was rampant in the Eastern Ghouta region, which it occupied, and particularly in the town of Douma. Numerous reports and testimonies attribute to Jaysh Al Islam acts of torture, enforced disappearances and war crimes committed during this period.

Majdi Nema is accused of complicity in the war crime of enlisting minors and for participating in a group formed to prepare war crimes and will be tried by the Paris Criminal Court.

## **Why was the case filed in France and not in Syria or before the ICC?**

Despite the gravity and scale of crimes perpetrated in Syria since the brutal repression of the March 2011 uprising that led to more than twelve years of conflict, there are limited avenues for victims and their families to obtain justice and redress. Syria has not ratified the Rome Statute and, despite attempts to obtain a resolution from the UN Security Council to refer the situation to the ICC, Russia and China's repeated vetoes have prevented the ICC from opening an investigation on Syria.

With the path to the ICC blocked, and no real prospect of independent justice and accountability inside Syria, victims have turned towards other countries – such as Germany, Sweden, and France – to investigate cases based on what is known as extraterritorial or universal jurisdiction. Syrian lawyers, individuals and organisations as well as international human rights organisations have launched cases in these countries to obtain investigations on torture, crimes against humanity and/or war crimes charges.

## **What criteria apply in France for initiating investigations into crimes perpetrated in Syria?**

French courts traditionally have jurisdiction over acts committed on French territory or abroad by a French perpetrator or against a French victim.

However, in the case of so-called “international” crimes, the French legislator has adopted several texts enabling victims who cannot hope to obtain justice in their own country to have access to justice.

For example, since the United Nations Convention against Torture was transposed into French law in 1986, any public official or other person acting in an official capacity or at its instigation or with its express or tacit consent suspected of having committed acts of torture may be prosecuted and tried in France.

The same condition applies since August 2013 for suspects of enforced disappearance, following the incorporation of the United Nations Convention on the Protection of All Persons from Enforced Disappearance into French law.

Irrespective of their nationality and country of residence, victims of torture and enforced disappearance can file a criminal complaint with the French prosecutor and participate in the proceedings as civil parties. This status gives victims extensive rights throughout the investigation, such as the ability to request that specific acts of investigation be undertaken, or that certain witnesses be called to testify.

Regarding crimes against humanity, genocide and war crimes committed abroad, on August 9, 2010, the French Parliament adopted a law incorporating the Rome Statute into French law. This law grants French courts jurisdiction to judge the perpetrators of these crimes if the following conditions are met:

- ★ The suspect resides in France,
- ★ There is incriminating legislation of such acts in the State in which they were committed, or either the State in which the crimes were committed or the State of which the suspect is a national is party to the Rome Statute,
- ★ Prosecutions can only be initiated at the request of the French prosecutor.
- ★ The suspect is not subjected to any extradition request or prosecution from an international or national court

These provisions were timidly modified by the 23 March 2019 law which excluded the double criminality requirement for the crime of genocide, and removed the express declination of jurisdiction by the ICC.

On 1 January, 2012, a specialised unit for the prosecution of crimes against humanity and war crimes was created in Paris. This unit now consists of a team of five prosecutors, three independent investigating judges and a team of specialised investigators, working exclusively on international crimes cases. At present, the French unit is conducting 85 preliminary investigations and 79 judicial investigations relating to international crimes committed outside French territory, of which approximately 10 concern crimes committed in Syria

## What is the position of the French Supreme Court regarding the interpretation of the conditions for the application of universal jurisdiction?

On 17 March, 2023, the Plenary Assembly of the French Supreme Court (Cour de cassation) examined the interpretation of several of the conditions for the application of universal jurisdiction in France, following the appeal in cassation lodged by the defence in the Nema case and the opposition lodged by the FIDH against the Chaban ruling of 24 November, 2021.

The two cases were examined jointly by the Court, and resulted in two decisions issued on 12 May, 2023 (n°22-82.468 and n°22-80.057).

**With regard to the condition of habitual residence**, required for war crimes, crimes against humanity and crimes of genocide, the Supreme Court ruled that the fulfilment of this requirement should be assessed “**by taking into account a set of indicators, such as the duration the stay, actual or foreseeable, the conditions and reasons for the presence of the person on French territory, his or her desire to settle or remain there, or his or her family, social, material or professional ties**”. The assessment of this body of evidence lies within the sovereign appreciation of the lower courts.

Majdi Nema had been on French territory for almost three months when he was apprehended by the legal authorities. In addition, he was an Erasmus student at the “Institut de recherches et d’études sur le monde arabe et musulman” at the University of Aix-Marseille. He had a library card from this university, as well as a French telephone card. The investigators also noted that Majdi Nema stayed in his apartment most of the time, acting “like an effective resident rather than a tourist”.

According to the jurisprudence of the Supreme Court, he therefore had a habitual residence in France.

Furthermore, **with regard to the condition of double criminality**, the Supreme Court ruled that this condition “**does not imply that the criminal characterisation of the facts is perfectly identical in both legislations, but only requires that the facts be incriminated by both**”. Thus, “**the condition of incrimination by the foreign law can be fulfilled through a common law offence constituting the basis of the crime prosecuted, such as murder, rape or torture**”.

In this case, the Supreme Court found that “**the acts for which Mr. Nema was indicted, under the qualification of war crimes and complicity, were punishable, in substance, by Syrian law through common law offenses and the offence of involving children in hostilities**”.

Finally, **with regard to the crime of torture**, the Supreme Court ruled that the definition of a person acting in an official capacity “**must be understood to include a person acting for or on behalf of a non-governmental entity, when the latter occupies a territory and exercises quasi-governmental authority over it**”. In this case, the Supreme Court found that “**the Jaysh Al Islam organisation exercised quasi-governmental functions in the territory of Eastern Ghouta, which it occupied at the relevant time**”.

The French courts therefore had jurisdiction over the case.

## **What are the latest developments in the case?**

In July 2023, the investigating judges in the Paris War Crimes Unit referred Majdy Nema to trial before the Paris Criminal Court. They charged him with complicity in war crimes, complicity in enforced disappearances, and participation in a group formed for the purpose of preparing war crimes.

On 20th November 2023, the Investigative Chamber of the Court of Appeal in Paris dropped part of the charges against Majdi Nema, known as Islam Alloush, who was a leader and official spokesman for the Jaysh Al-Islam group in Syria. While his indictment confirmed charges of complicity in war crimes (recruitment of children) and participation in a group that was formed for the purpose of preparing war crimes, the judges ruled out the other three crimes with which Majdi Nema was accused, namely complicity in enforced disappearances, and complicity in the following war crimes: premeditated murder, intentional infliction of great suffering, and deliberate attacks against civilians without questioning the responsibility of Jaysh Al-Islam for committing these crimes.

Therefore, lawyers for the civil parties filed an appeal against the decision before the French Court of Cassation.

## **What was the Supreme Court’s decision on the charges after the appeal by the civil parties?**

On 14 March 2024, the Supreme Court ratified the decision of the Investigative Chamber of the Court of Appeal. It rejected the appeal submitted by the lawyer for the civil parties in the case. In terms of the result, it confirmed the dismissal of the charge of forced disappearance against Majdi Nema, as the judges saw that the criterion was that the accused must be an agent of the state or an individual acting with the permission, support or approval of the state, as defined in French law based on the United Nations Convention against Enforced Disappearances was not met in the case of the Jaysh al-Islam group. While the charge of recruiting children and participating in a group formed for the purpose of preparing war crimes was maintained.

## **What is the role of Jaysh Al-Islam group in the disappearance of the four colleagues from the Syrian Center for Media and Freedom of Expression in Douma?**

Regarding the crime of kidnapping the four activists, the Investigation Chamber stated that “it is clear from the numerous information and testimonies collected that Jaysh Al-Islam must be considered responsible for the disappearance of the four human rights defenders.” The reason for dropping the charge of forced disappearance from the indictment is a legal reason, which is that the legal definition of the perpetrator of this crime does not apply to Jaysh Al-Islam militia. Therefore, the decision of the Investigative Chamber of the Court of Appeal, certified by the Supreme Court, does not constitute an acquittal of the suspect of the crime of complicity in the disappearance of the four colleagues.

## **When is the public trial for Majdi Nema?**

The public trial before the Criminal Court is taking place from April 29 to May 23 2025, in which the parties to the case will then be able to present all evidence before the court again and hear witness testimonies.



