

NAME	Ignace Murwanashyaka
DATE OF BIRTH	May 14, 1963
BIRTHPLACE	Butare, Rwanda
NATIONALITY	Rwandan
CURRENT STATUS	Deceased
WARRANT OF ARREST	Issued on November 16, 2009
OPENING OF THE MAIN PROCEEDINGS	May 4, 2011
FIRST INSTANCE JUDGMENT OF SEPTEMBER 28, 2015	Sentenced to 13 years imprisonment for aiding and abetting war crimes and ring leadership
APPEAL JUDGMENT OF DECEMBER 20, 2018	Annulment of the judgment and remittal on appeal of Dr. Ignace Murwanashyaka
JUDGMENT AFTER REFERRAL	N/A as Dr. Ignace Murwanashyaka predeceased

Facts (brief summary):

The FDLR was a hierarchically structured rebel force founded in May 2000 in Lubumbashi in the Katanga province of the Democratic Republic of Congo (DRC), equipped with political organs and a powerful militia, which operated primarily in the Kivu provinces in the east of Congo. Dr. Ignace Murwanashyaka was elected president of this organization in December 2001 and held this office almost continuously until his arrest on November 17, 2009. In connection with his position as president of the FDLR, he coordinated the activities of the rebel force, including directly addressing the combatants on the ground and drafting statements that concealed crimes committed by the FDLR. Through the aforementioned actions, Dr. Ignace Murwanashyaka, in the period between April 12, 2009 and the end of July 2009, significantly promoted several war crimes committed by FDLR troops in the settlements of Minganga, Busurungi, Chiriba and Manje, which claimed countless lives.

Proceedings in the case of Dr. Ignace Murwanashyaka:

1. Federal Court of Justice (BGH) - Detention review of June 17, 2010 (AK 3/10)¹
2. Higher Regional Court Stuttgart (OLG Stuttgart) - First-instance judgment of September 28, 2015 (5 - 3 StE 6/10)²
3. Federal Court of Justice (BGH) - Appeal judgment of December 20, 2018 (3 StR 236/17)³
4. Higher Regional Court Stuttgart (OLG Stuttgart) - No new main hearing due to death of Dr. Ignace Murwanashyaka

1. Federal Court of Justice (BGH) – Detention review of June 17, 2010

As part of the detention appeal, the Federal Court of Justice decided on October 17, 2010, that the pre-trial detention that had been in place since November 17, 2009, shall continue.

The Senate decided thus on the basis of the **urgent suspicion** that the FDLR had committed crimes against humanity pursuant to Sec. 7 (1) Nos. 1 and 6 of the German Code of Crimes against International Law (VStGB), war crimes against persons pursuant to Sec. 8 (1) Nos. 1, 3, 4 and 5 VStGB, as well as war crimes against property and other rights pursuant to Sec. 9 (1) VStGB. As a president and thus a superior pursuant to Sec. 4 VStGB, Dr. Ignace Murwanashyaka was criminally responsible for these acts. Furthermore, in the opinion of the court, he had supposedly made himself liable to prosecution for being a ringleader in a terrorist organization abroad pursuant to Sec. 129a (1) No. 1, (4), Sec. 129b (1) of the German Criminal Code (StGB).

¹ [Federal Court of Justice – Detention review in the case of Dr. Ignace Murwanashyaka.](#)

² [Higher Regional Court Stuttgart – First-instance judgment in the case of Dr. Ignace Murwanashyaka.](#)

³ [Federal Court of Justice – Appeal judgment in the case of Dr. Ignace Murwanashyaka.](#)

According to the Federal Court of Justice, the **elements of crime of Sec. 7 (1) VStGB** were fulfilled by the members of the FDLR, since their actions represent the elements of crime No. 1 (killing of people) and No. 6 (sexual assault and rape) within an extensive and systematic attack against a civilian population and thus an overall crime.

This is clear from the countless attacks by the FDLR on the indigenous population living in the provinces of North and South Kivu in the DRC. In the opinion of the Senate, there was no need for a closer examination of whether a so-called "political element" must also be present for the realization of Sec. 7 (1) VStGB, since the attacks and the acts of violence committed in this context were based on the policies of the FDLR. The attacks were used as a means of struggle to make the Congolese civilian population compliant for its purposes, to secure or even expand its sphere of rule and influence, and to exert pressure on the DRC, Rwanda, as well as the international community.

The Federal Court of Justice also considered the **element of a widespread and/or systematic attack against a civilian population** to be met. It stated that this requirement was given, at least from the beginning of 2009 (with regard to both the quantitative and qualitative elements) since the FDLR's attacks on the civilian population of the DRC were numerous and resulted in countless victims.

Likewise, in the opinion of the court, the acts of the members of the FDLR fulfilled the **elements of a war crime against persons pursuant to Sec. 8 (1) VStGB**. The numerous clashes between the FDLR and Congolese or Rwandan troops constitute an **armed conflict** within the meaning of Sec. 8 (1) VStGB, since both parties to the conflict used armed forces. In this context, the FDLR is also to be considered a party to the conflict under Sec. 8 VStGB because of its structure and existing level of organization. There was no need to classify the conflict as an international or non-international conflict, since the German legislature abandoned this distinction in the ICC Statute for the statutory structure of the VStGB. There is an urgent suspicion

that members of the FDLR, in the course of the armed conflict, killed a **large number of civilians who are protected by international humanitarian law** (Sec. 8 (1) No. 1 VStGB), treated them cruelly or inhumanely by inflicting substantial physical and mental harm (Sec. 8 (1) No. 3 VStGB), sexually coerced and raped them (Sec. 8 (1) No. 4 VStGB), and incorporated children under the age of 15 into the FDLR and used them to actively participate in hostilities (Sec. 8 (1) No. 5 VStGB). These acts were committed on the basis of the FDLR's combat strategy and for this reason, in the view of the Senate, were **functionally related to the armed conflict** and consequently did not merely occur "on the occasion" of it.

Furthermore, there is also an urgent suspicion that members of the FDLR have committed **war crimes against property and other rights** pursuant to Sec. 9 (1) VStGB.

The Federal Court of Justice considered the reason for detention in Sec. 112 (3) of the German Code of Criminal Procedure (StPO). The case at hand constituted a **serious crime** within the meaning of Sec. 112 (3) StPO, since Dr. Ignace Murwanashyaka was urgently suspected of being a ringleader in a terrorist organization abroad pursuant to Sec. 129a (1) No. 1, (4), Sec. 129b StGB. In addition, there was also a **risk of absconding** pursuant to Sec. 112 (2) No. 2 StPO. Due to the obvious possibility of sentencing Dr. Ignace Murwanashyaka to a substantial, possibly even life sentence, the court assumed a high incentive to flee based on this expectation of punishment. However, there were no circumstances that could reduce the probability of flight. Consequently, the Federal Court of Justice assumed that it was more likely that Dr. Ignace Murwanashyaka would evade the criminal proceedings rather than surrender, insofar as he remained free. Finally, the Senate also affirmed **the danger of collusion pursuant to Sec. 112 (2) No. 2 StPO** as another reason for detention. Since it could be assumed that Dr. Ignace Murwanashyaka, as president of the FDLR, would contact his subordinates in the DRC, and cause them to influence the witnesses known to the court in an illegal manner so that they would withdraw their statements.

In the opinion of the court, the **special requirements within the meaning of Sec. 121 (1) StPO** for the continuation of pre-trial detention beyond six months were met. Especially the particular difficulty of the proceedings (occurrence of the offense abroad, request for legal assistance, examination of witnesses located abroad, etc.) and the resulting considerable scope of the investigations did not yet permit a judgment and consequently justified the continuation of pre-trial detention.

2. Higher Regional Court Stuttgart (OLG Stuttgart) – First-instance judgment of September 28, 2015

Dr. Ignace Murwanashyaka was sentenced to 13 years imprisonment for **ringleading a foreign terrorist organization in combination with aiding and abetting four war crimes** according to Secs. 129a (1) No. 1, (4), 129b (1) StGB as well as Sec. 8 (1) No. 1, (6) No. 2, Sec. 9 (1) Alt. 1 and 2 VStGB.

With reference to the **FOCA soldiers**, there was **criminal liability for war crimes against persons against property and other rights** and under Sec. 8 (1) No. 1, (6) No. 2, Sec. 9 (1) VStGB.

In Kipopo, in connection with a non-international armed conflict, these killed at least 13 persons protected under international humanitarian law (Sec. 8 (6) No. 2 VStGB) and without a given imperative by the armed conflict, destroyed to a considerable extent property of the opposing party that was subject to the violence of their own party in violation of international law.

In addition, FOCA soldiers in Busurungi killed 96 persons protected under international humanitarian law in connection with a non-international armed conflict and also committed war crimes against property and other rights there within the meaning of Sec. 9 (1) VStGB.

In Chiriba and Manje, a total of 20 persons protected under international humanitarian law were killed, and there, too, the FOCA soldiers fulfilled in each case the

criminal offense of war crimes against property and other rights as defined in Sec. 9 (1) VStGB.

All of these killings took place in connection with a non-international armed conflict within the meaning of Secs. 8 to 12 VStGB because, during the years 2007 to 2009, armed conflicts took place in the two Kivu provinces between the FDLR and its changing war opponents. Both the burning of homes and the simultaneous looting and killing of civilians were functionally related to this armed conflict at the national level.

The civilians killed were protected under international humanitarian law within the meaning of Sec. 8 (6) No. 2 VStGB, since they were in the control of the FDLR when they were killed. The concept of "being in the grip of violence" is to be interpreted broadly in this context. In the course of the attacks mentioned above, the FDLR militiamen had already entered the villages, in some cases even the homes of those killed, and killed them with firearms or cutting and stabbing weapons, without them having the opportunity to defend themselves or flee.

There was no authority to commit these acts in any case, so that all of the war crimes established proved to be factual, unlawful and culpable.

In the opinion of the Higher Regional Court Stuttgart, Dr. Ignace Murwanashyaka is **guilty of aiding and abetting four war crimes pursuant to Secs. 8 and 9 VStGB in conjunction with Sec. 27 StGB.**

The attack on Mianga on April 12, 2009, the attack on Busurungi on May 10, 2009, the attack on Chiriba between May 25 and 27, 2009, and the attack on Manje on July 20-21, 2009, constitute **four war crimes wilfully and unlawfully committed by FOCA soldiers as principal acts** to which Dr. Ignace Murwanashyaka wilfully aided and abetted.

According to the established case law of the Federal Court of Justice, **assistance** is to be considered as "any act which objectively promotes the bringing about of the

result of the offence by the principal offender", whereby causality for the principal offence is not required.

Dr. Ignace Murwanashyaka aided and abetted the principal offenses in two ways, according to the Higher Regional Court. First, he aided and abetted psychologically by agreeing to procure telephone cards, telephone units, and accessories for Thuraya telephones to secure communications among FOCA's senior officers and by taking these actions. Second, he primarily aided and abetted psychologically by impliedly agreeing to deny or minimize war crimes ordered or not prevented by the FOCA leadership in interviews, memoranda, and press statements, and by putting these assurances into action. By doing so, he helped the FOCA leadership hide the acts committed from international public opinion to prevent stronger interventions by the United Nations. Because of his subordinates' knowledge of Dr. Ignace Murwanashyaka's actions, Dr. Murwanashyaka's contribution to the crime was also reflected in the main acts, reinforcing or perpetuating the FOCA leaders' resolve to commit war crimes and solidifying the morale and fighting ability of the FOCA militiamen.

Dr. Ignace Murwanashyaka acted **intentionally with regard to his assistance as well as with regard to the commission and completion of the four main acts**. He at least condoned the commission of several war crimes through the killing of civilians. Knowledge of the "unjust dimension" of the attacks actually carried out by FOCA was not required, however, since this is not part of the statutory elements of the crime and therefore does not have to be included in the intent to aid and abet in order to justify the verdict of guilty.

Dr. Ignace Murwanashyaka is also **guilty of ringleading a terrorist organization abroad pursuant to Secs. 129a (1) No. 1, (4), 129b (1) StGB**.

The authorization to prosecute from the Federal Ministry of Justice required under Sec. 129b (1) Sentences 3 to 5 StGB was granted on December 8, 2008.

The FDLR also constitutes an **association in non-European countries** within the meaning of Secs. 129a, 129b (1) Sentences 1 and 2 StGB, since it is organized on hierarchical levels and its tightly organized military wing has a sufficient organizational structure. The existence of an association is also not ruled out by the fact that the FDLR is to be regarded as a military organization under Secs. 7, 8 VStGB, since neither the wording nor the meaning and purpose of Secs. 129 et seq. StGB or Secs. 7 et seq. VStGB support such a view. If interpreted otherwise, the protective purpose of Secs. 129 et seq. StGB would be significantly impaired if military or paramilitary units were excluded from the scope of the provisions from the outset.

Furthermore, the FDLR is a **terrorist organization** in both its political and military branches. Both its purposes and its activities are aimed at committing crimes within the meaning of Sec. 129a (1) StGB, namely war crimes against the Congolese civilian population. As already described, such crimes were committed on several occasions both in 2009 and before the beginning of 2009, at least through systematic looting pursuant to Sec. 9 VStGB. The existence of other objectives of the FDLR does not contradict this assessment either, since the commission of crimes does not have to be the sole or main purpose of the association. Rather, it is sufficient that the offenses serve to achieve the further goals or are intended to prepare them, which was undoubtedly the case here.

Dr. Ignace Murwanashyaka was also a **ringleader** within the meaning of Secs. 129 and 129a StGB, since he played a leading role in the FDLR by acting on its behalf in a particularly decisive manner. As president and chairman of the *Comité Directeur*, he acted extensively in the sense of a political leadership role, thus possessed considerable influence within the association and was therefore involved in the FDLR in a decisive manner.

In doing so, he also acted with the requisite **intent**, as he had knowledge of the acts of the FOCA command and their subordinates on the territory of the DRC for years.

The Higher Regional Court Stuttgart denied criminal liability as a superior pursuant to Sec. 4 VStGB for failure to prevent the international crimes committed by the FOCA soldiers due to the lack of superior status. In addition, the court also denied criminal liability in this context as an indirect offender of omission pursuant to Sec. 13 (1) StGB in conjunction with Sec. 25 (1) Alt. 2 StGB, Sec. 2 VStGB, since he lacked the position as a guarantor of surveillance. The court could not establish a liability due to (ineffectual) attempt in accordance with Sec. 4 VStGB in conjunction with Secs. 22, 23 StGB and 2 VStGB. The findings during the main hearing revealed that he was aware that he was only formally the supreme military leader of the FDLR, but that he was actually dependent on the military branch and had no command authority over the military in military matters.

3. Federal Court of Justice (BGH) – Appeal judgment of December 20, 2018

At the hearing on December 20, the Federal Court of Justice set aside the judgment of Higher Regional Court Stuttgart, insofar as it relates to Dr. Ignace Murwanashyaka, while upholding a large part of the findings, and referred the case back to another chamber of the Higher Regional Court Stuttgart for a new hearing and decision.

After conducting the comprehensive review required in response to Dr. Ignace Murwanashyaka's substantive complaint, the Senate concluded that the verdict of guilty against Dr. Murwanashyaka must be set aside, since the **conviction for aiding and abetting four war crimes alone was, in the opinion of the Senate, legally erroneous to his detriment**. Thus, the verdict of guilt against him was overturned in its entirety.

The Higher Regional Court had correctly assumed (based on the findings of the verdict that were free of legal errors) that the FDLR militiamen had committed war crimes against persons as well as against property and other rights in the attacks on

the Congolese settlements of Mianga, Busurungi, Chiriba and Manje, which constituted participatory principal offenses within the framework of Sec. 27 (1) StGB and Sec. 2 VStGB. However, the statements that Dr. Murwanashyaka had participated in these principal offenses as an accomplice were met with far-reaching legal reservations.

In the opinion of the Federal Court of Justice, the assumption that Dr. Murwanashyaka intentionally aided and abetted in this regard is not supported by the findings of the verdict. It was not shown without legal error that the latter objectively promoted or facilitated the main offenses and that he had an intention to assist related to the main offenses.

The statements in the verdict reasoning the effect of promotion with regard to the actions of Dr. Murwanashyaka (supplying the FOCA leadership with telephone units and accessories) suffered overall from the lack of a concrete connection of these activities to the main offenses and to his intent related thereto.

The Higher Regional Court Stuttgart found 18 individual acts of provision by Dr. Murwanashyaka. These covered the period from December 2007 to August 2009. Ten of these gratuities took place before March 2, 2009, and thus at least one month before the main offenses, so that the latter could probably not yet have formed intent with regard to the war crimes at that time. Four further acts fell into the months of July and August 2009, when the principal offenses - in the case of three of the grants certainly and in the case of one of them possibly - had already ended. For the most part, therefore, the focus was on possible acts of promotion, which, for legal reasons, could not be significant for the criminal liability of Dr. Murwanashyaka for aiding and abetting.

With regard to the four remaining acts of supply in the months of March to May 2009, the Higher Regional Court did not provide any further details as to how these had specifically affected the convicted war crimes. This would have been imperative,

however, since it is not obvious that these acts of supply had a facilitating or facilitating effect on the war crimes. In this regard, it should at least have been established by the Higher Regional Court Stuttgart that the means for satellite telephony were specifically available at the time of the commission of the war crimes.

With regard to the propaganda activities and the written messages of Dr. Murwanashyaka, it is also not sufficiently clear from the reasons for the verdict that these objectively promoted or facilitated the war crimes.

Of the 14 individual acts established in the verdict, only six undoubtedly fall within the period of the commission of the war crimes. Furthermore, it was not established without an error of law that the militiamen were strengthened in their will by these individual acts to commit the specific war crimes in the four named localities. The maintenance of a high level of motivation, as presented by the Higher Regional Court Stuttgart and confirmed by witness testimony, lacks a connection to the concrete decision of the FOCA militiamen to commit the crimes. The general increase in "morale" and "fighting strength" of the militiamen cited in the legal assessment is likewise not sufficient to justify physical aiding and abetting.

The court assumed, based on the reasoning of the promotion effect with a general consideration of probability within the framework of the grounds for judgment at first instance, that the Higher Regional Court Stuttgart had merely taken a general view with regard to the promotion effect. A psychologically mediated effect of the propaganda activity on the FOCA executives could not be inferred from the verdict, at least in the opinion of the Senate, since the findings lacked any information in this regard.

In addition, the statements in the verdict regarding Dr. Murwanashyaka's intent to assist in the main offenses also contained legal errors. The findings in this regard were unclear and not free of contradictions. Although numerous evidence results potentially relevant to the subjective side of the crime are documented, at the same

time there is a lack of sufficient identification as to which conclusions were drawn from this. The Higher Regional Court also did not sufficiently explain that any aiding and abetting intent on the part of Dr. Ignace Murwanashyaka related to all elements of the offense under Sec. 8 VStGB. The general statements made in the context of the findings of the verdict were not sufficient to extend the aiding and abetting intent to the central characteristic of the victims' "feeling of being in the grip of violence". The justification of aiding and abetting intent with regard to war crimes against property and other rights was also not convincing. The conclusion that Dr. Ignace Murwanashyaka was aware of the reason for and the manner of the military action and that he at least condoned the excesses of violence that were not required as a result is not comprehensible and has not been proven in any other way.

The appeal of the Attorney General (GBA) against Dr. Ignace Murwanashyaka uncovered legal errors in favour as well as against him, especially with regard to his aiding and abetting intent.

At the outset, it should be noted that the verdict does not stand up to substantive review, however, insofar as the Higher Regional Court did not classify the crimes committed in the Kivu provinces as crimes against humanity.

Contrary to the legal assessment made by the Higher Regional Court, the findings proved the criminal liability of the FOCA leaders and fighters for crimes against humanity under Sec. 7 (1) No. 1 VStGB.

The attacks on the settlements of Kipopo, Mianga, Busurungi, Chiriba und Manje were components of a premeditated systematic attack on the civilian population pursuant to Sec. 7 (1) VStGB, and as part of this attack, members of the FDLR intentionally caused the deaths of people within the meaning of Sec. 7 (1) No. 1 VStGB.

Since it cannot be inferred from the verdict, which idea Dr. Murwanashyaka had about the main acts of the FDLR mitiamen in question, it was also not possible to

decide to what extent his intent (with regard to aiding and abetting) included crimes against humanity in the correct interpretation and application.

Furthermore, the Higher Regional Court erred in law in rejecting the subjective requirements of aiding and abetting with regard to the war crimes committed in Kipopo against persons and against property and other rights. In this regard, too, Dr. Ignace Murwanashyaka's ideas, as already mentioned above, were not presented clearly and without contradiction.

4. Higher Regional Court Stuttgart (OLG Stuttgart) – No new main hearing due to death of Dr. Ignace Murwanashyaka

In the so-called "Rwanda proceedings" pending before the 6th chamber of the Higher Regional Court Stuttgart following a referral back by the Federal Court of Justice, Dr. Ignace Murwanashyaka, a 55-year-old Rwandan national, died on April 16, 2019. A new main hearing did not take place and will not take place again, as the death of a defendant precludes a decision on the merits.