

The New York Times

Copyright © 2006 The New York Times

NEW YORK, WEDNESDAY, NOVEMBER 15, 2006

12 Detainees Sue Rumsfeld In Germany, Citing Abuse

By MARK LANDLER

FRANKFURT, Nov. 14 — A week after President Bush announced that Defense Secretary Donald H. Rumsfeld would resign, lawyers asked a German prosecutor to investigate Mr. Rumsfeld and other American officials for suspected war crimes stemming from the treatment of prisoners in military jails in Iraq and Cuba.

The lawsuit filed in Karlsruhe on Tuesday cites 11 other current and former American officials, including Attorney General Alberto R. Gonzales, who it says helped formulate legal reasoning legitimizing the use of torture.

The suit, filed by civil-rights legal groups on behalf of 12 detainees — 11 Iraqis and a Saudi — asserts that they were subjected to beatings, sleep deprivation, withholding of food and sexual humiliation.

With lawyers all but admitting they do not expect to see Mr. Rumsfeld hauled before a German court, the suit is as much about politics as it is about law. They hope to make an example of the man who helped engineer the war policy in Iraq, hounding him into private life with suits filed in other countries if Germany does not pursue the case.

"Even if we never put Rumsfeld on trial in a German court, he will be harassed and publicly stamped as a torturer," said Wolfgang Kaleck, a Berlin lawyer who filed the complaint along with the Center for Constitutional Rights, an American group, and other legal organizations.

Mr. Kaleck acknowledged that Germany would be reluctant to prosecute top American officials. But he described a protracted legal procedure, during which he said Mr. Rumsfeld might encounter trouble traveling to Germany or other European Union countries. The lawyers picked Germany in part because German law has the principle of universal jurisdiction, under which courts are entitled to prosecute people for war crimes regardless of where the crimes were committed.

The Pentagon is in the process of reviewing the filing, said a spokeswoman, Cynthia O. Smith. "We have no reason to believe the suit has merit," she said, noting that the allegations of abuse at the Abu Ghraib pris-



Photographs by John MacDougall/Agence France-Presse — Getty Images

Wolfgang Kaleck, center, said Donald H. Rumsfeld would be "publicly stamped as a torturer" with lawsuits.

on in Baghdad and at Guantánamo Bay, Cuba, had been investigated by Congress and the courts.

The German prosecutor's office confirmed it had received the document and said it would begin reviewing it.

This is the second time lawyers have asked German prosecutors to investigate Mr. Rumsfeld in connection with accusations of war crimes. Prosecutors turned down a request in February 2005, saying the case would be better handled by United States prosecutors.

The lawyers contend that almost two years later, the United States has done nothing to investigate the role of senior Bush administration officials in the treatment of prisoners who are suspected terrorists.

Moreover, they contend, the Military Commissions Act, passed in September, will make it harder to prosecute American officials at home if charged with violating the Geneva Conventions because it provides retroactive immunity dating to the attacks of Sept. 11, 2001.

"We've had two years of complete inaction by the Bush administration," said Kenneth Roth, the executive director of Human Rights Watch, which has expressed support for the case. "They've been very good at prosecuting lower-level officials, but done nothing to investigate high-level officials."

Among the others charged in the suit are John C. Yoo and Jay S. Bybee, two former Justice department lawyers who were integral in drafting the administration's legal

arguments for treatment of suspected terrorists. It also cites George J. Tenet, the former director of the Central Intelligence Agency.

Janis L. Karpinski, who as a brigadier general commanded the military police unit at Abu Ghraib and was relieved of her command and demoted to colonel after the abuses came to light, has offered to testify. Ms. Karpinski, who was a defendant in the first lawsuit and has since left the Army Reserve, traveled to Berlin to offer to stand as a witness.

While the first lawsuit focused on Abu Ghraib, this one includes as a plaintiff Mohammed al-Qahtani, a

Saudi who was arrested in Afghanistan months after he tried to meet up with some of the Sept. 11 hijackers. A lawyer for Mr. Qahtani, who is being held at Guantánamo Bay, claims he was subjected to abuse authorized by Mr. Rumsfeld.

The lawyers said they also chose to file the suit in Germany for practical reasons. Several military officials implicated in the mistreatment at Abu Ghraib returned to bases in Germany and, if still here, could testify.

The lawsuit comes at an awkward time for Chancellor Angela Merkel, who has been trying to improve German-American relations.

Prosecuting high-level officials for war crimes in foreign countries has a patchy record, legal experts say. A Spanish judge was unable to win the extradition of Gen. Augusto Pinochet, the former Chilean dictator, to face trial for crimes against humanity. But General Pinochet was held in London, and upon return to Chile, he found himself under legal siege.

Henry A. Kissinger, a former secretary of state, has been sought for questioning by overseas courts about involvement with Latin American dictatorships in the 1970s.

"If I were Rumsfeld's travel agent, I would advise him to choose some other part of 'old Europe,'" said Detlev F. Vagts, emeritus professor of international law at Harvard Law School, referring to Mr. Rumsfeld's now famous poke at two wayward American allies, Germany and France. "There is some danger out there."



Janis L. Karpinski, the former commander at Abu Ghraib, flew to Germany for the lawsuit.