



Grand Chamber hearing concerning investigation into Katyń massacre

The European Court of Human Rights is holding a Grand Chamber¹ hearing today **Wednesday 13 February 2013 at 9.15 a.m.** in the case of **Janowiec and Others v. Russia** (Application nos. 55508/07 and 29520/09)

The case raises complaints about the adequacy of the investigation by the Russian authorities into the 1940 Katyń massacre.

The hearing will be broadcast from 2.30 p.m. on the Court's Internet site (www.echr.coe.int). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.

The applicants are 15 Polish nationals who are relatives of 12 victims of the Katyń massacre. The 12 victims were police and army officers, an army doctor and a primary school headmaster. Following the Red Army's invasion of the Republic of Poland in September 1939, they were taken to Soviet camps or prisons and were then killed by the Soviet secret police without trial, along with more than 21,000 others, in April and May 1940. They were buried in mass graves in the Katyń forest near Smolensk, and also in the Pyatikhatki and Mednoye villages.

The investigations into the mass murders were started in 1990. The criminal proceedings lasted until 2004 when it was decided to discontinue the investigation. The text of the decision has remained classified to date and the applicants have not had access to it or to any other information about the Katyń criminal investigation. Their repeated requests to gain access to that decision and to review its top-secret classification were continuously rejected by the Russian courts which found among other things that, as the applicants had not been recognised as victims, they had no right to access the case materials. The applicants' requests for rehabilitation of their relatives were also rejected by the Chief Military Prosecutor's Office and the courts alike.

On 26 November 2010 the Russian Duma adopted a statement about the "Katyń tragedy", in which it reiterated that the "mass extermination of Polish citizens on USSR territory during the Second World War" had been carried out on Stalin's orders and that it was necessary to continue "verifying the lists of victims, restoring the good names of those who perished in Katyń and other places, and uncovering the circumstances of the tragedy...".

Relying in particular on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicants complain that the Russian authorities did not carry out an effective investigation into the death of their relatives and displayed a dismissive attitude to all their requests for information about their relatives' fate.

1 Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Procedure

The applications were lodged with the Court on 19 November 2007 and 24 May 2009 respectively. They were communicated to the Russian authorities, respectively, in October 2008 and November 2009.

The Court declared [admissible](#), on 5 July 2011, the applicants' complaint under Article 2 of the European Convention, namely that the Russian authorities failed to carry out an adequate criminal investigation into the circumstances surrounding their relatives' deaths. At the same time, the Court joined to its examination of the merits of the complaint the issue of temporal jurisdiction, in other words, whether the Court could examine the adequacy of an investigation into events which had occurred before Russia ratified the Convention. In the same decision, the Court also declared admissible the applicants' complaint that the way the Russian authorities had reacted to their requests and applications had amounted to ill-treatment under Article 3 of the Convention.

A [public hearing](#) was held on 6 October 2011.

On 16 April 2012 in its [Chamber judgment](#) the European Court of Human Rights held, by a majority, that it could not examine the merits of the applicants' complaint under Article 2 (obligation to investigate loss of life) because it could not establish a genuine connection between the deaths of the victims in 1940 and the entry into force of the European Convention in Russia in 1998. However, it held that Russia's response to the attempts of the closest relatives of the victims (Ms Wolk, Mr Janowiec, Ms Michalska, Mr Tomaszewski, Mr Wielebnowski, Mr Gustaw Erchard, Ms Irena Erchard, Mr Jerzy Karol Malewicz, the late Mr Krzysztof Jan Malewicz, and Ms Mieszczankowska) to find out the truth about what happened in 1940 had amounted to inhuman treatment, in violation of Article 3 (prohibition of inhuman treatment). The Court found no violation of Article 3 in respect of the remaining five applicants who had never had personal contact with their missing fathers or relatives. The Court also found that Russia had failed to cooperate with the Court under Article 38 (obligation to furnish necessary facilities for examination of the case) by refusing to provide a copy of its decision to discontinue the investigation.

On 5 July 2012 the applicants requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 24 September 2012 the panel of the Grand Chamber accepted that request.

Composition of the Court

The case will be heard by a Grand Chamber, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Guido **Raimondi** (Italy),
Ineta **Ziemele** (Latvia),
Isabelle **Berro-Lefèvre** (Monaco),
Corneliu **Bîrsan** (Romania),
Peer **Lorenzen** (Denmark),
Khanlar **Hajiyev** (Azerbaijan)
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
Luis **López Guerra** (Spain),
Kristina **Pardalos** (San Marino),
Vincent A. **de Gaetano** (Malta),
Julia **Laffranque** (Estonia),
Helen **Keller** (Switzerland),
Helena **Jäderblom** (Sweden),

Krzysztof **Wojtyczek** (Poland),
Dmitry **Dedov** (Russia), *judges*,
Alvina **Gyulumyan** (Armenia),
André **Potocki** (France),
Ledi **Bianku** (Albania), *substitute judges*,

and also Erik **Fribergh**, *Registrar*.

Representatives of the parties

Russian Government

Georgy **Matyushkin**, *Agent*,
Nikolay **Mikhaylov** and Pavel **Smirnov**, *Advisers*;

Applicants

Ireneusz **C. Kamiński**, Józef **Szewczyk** and Bartolomiej **Sochański**, *Counsel*.

Third parties

Polish Government

Maciej **Szpunar**, *Deputy Minister of Foreign Affairs*,
Aleksandra **Mężykowska**, *Co-Agent*,
William **Schabas**, *Adviser*.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.