



Forthcoming Grand Chamber judgment concerning two war crime cases in Bosnia and Herzegovina

The European Court of Human Rights will be delivering a Grand Chamber judgment in the case of **Maktouf and Damjanović v. Bosnia and Herzegovina** (application nos. 2312/08 and 34179/08) **at a public hearing on 18 July 2013 at 11 a.m.** – local time – in the Human Rights Building, Strasbourg.

The case concerns complaints by two men convicted by the Court of Bosnia and Herzegovina of war crimes about the proceedings before that court. They complain in particular that a more stringent criminal law, namely the 2003 Criminal Code of Bosnia and Herzegovina, was applied to them retroactively than that which had been applicable at the time they committed the offences – in 1992 and 1993 respectively – namely the 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia.

Principal facts

The applicants are Abduladhim Maktouf and Goran Damjanović, an Iraqi national and a national of Bosnia and Herzegovina, respectively. Mr Maktouf was born in 1959; he lives in Malaysia. Mr Damjanović was born in 1966; he is serving his prison sentence in Bosnia and Herzegovina. Both applicants were convicted by the Court of Bosnia and Herzegovina (“the State Court”) of war crimes committed against civilians during the 1992-1995 war.

War crimes chambers were set up within the State Court in early 2005 as part of the International Criminal Tribunal for the former Yugoslavia’s completion strategy. The State Court can decide to take over war crime cases because of their sensitivity or complexity, and it can transfer less sensitive and complex cases to the competent Entity court. In an agreement of December 2004 between the High Representative (an international administrator for Bosnia and Herzegovina, a position established with the authorisation of the United Nations Security Council) and the Bosnia and Herzegovina authorities, international judges can be appointed to the State Court. Between 2004 and 2006, the High Representative appointed more than 20 international judges to the State Court for a renewable period of two years.

Mr Maktouf had helped to abduct two civilians in 1993 in Travnik in order to exchange them for members of the ARBH forces (mostly made up of Bosniacs) who had been captured by the HVO forces (mostly made up of Croats). In July 2005, a trial chamber of the State Court convicted him of aiding and abetting the taking of hostages as a war crime and sentenced him to five years’ imprisonment under the 2003 Criminal Code of Bosnia and Herzegovina (“the 2003 Criminal Code”). In April 2006, an appeals chamber of the court confirmed the conviction and the sentence after a fresh hearing with the participation of two international judges.

Mr Damjanović had taken a prominent part in the beating of captured Bosniacs in Sarajevo in 1992 to punish them for resisting a Serb attack. In June 2007, a trial chamber of the State Court convicted him of torture as a war crime and sentenced him to 11 years’ imprisonment under the 2003 Criminal Code. An appeals chamber of the same court upheld that judgment in November 2007.

Both men's constitutional complaints were ultimately rejected. Mr Damjanović's complaint was dismissed as out of time in April 2009. Mr Maktouf's case resulted in a leading decision in June 2007 by the Constitutional Court, which found in particular that none of Mr Maktouf's rights under the European Convention of Human Rights had been breached.

Complaints and procedure

Relying on Article 6 § 1 (right to a fair trial), Mr Maktouf alleges that the proceedings against him had been unfair, notably because the international judges who decided on his case on appeal had not been independent. Relying on Article 7 (no punishment without law), both applicants complain that the State Court retroactively applied to them a more stringent criminal law, the 2003 Criminal Code, than that which had been applicable at the time of their commission of the criminal offences, namely the 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia ("the 1976 Criminal Code"). Relying on Article 14 (prohibition of discrimination) and Article 1 of Protocol No. 12 (general prohibition of discrimination), they also complain that they were treated differently from those who were tried before the Entity courts, which normally applied the 1976 Criminal Code in war crime cases and imposed on average lighter sentences than the State Court.

The applications were lodged with the European Court of Human Rights on 17 December 2007 and 20 June 2008, respectively. On 10 July 2012 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber. A Grand Chamber [hearing](#) was held on 12 December 2012.

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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.