



## Forthcoming Grand Chamber judgment concerning investigation into Katyn massacre

The European Court of Human Rights will be delivering a Grand Chamber judgment in the case of **Janowiec and Others v. Russia** (application nos. 55508/07 and 29520/09) at a **public hearing on 21 October 2013 at 11 a.m.** – local time – in the Human Rights Building, Strasbourg.

The case concerns complaints by relatives of victims of the 1940 Katyn massacre – the killing of several thousands of Polish prisoners of war by Soviet officials – that the Russian authorities' investigation into the massacre was inadequate.

### Principal facts

The applicants are 15 Polish nationals who are relatives of 12 victims of the Katyn massacre. The 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 later killed, along with more than 20,000 other prisoners of war, on order of the highest officials of the USSR, without trial in April and May 1940. They were buried in mass graves in the Katyn forest near Smolensk, and also in the Pyatikhatki and Mednoye villages.

A criminal investigation into the mass murders started in 1990. The proceedings lasted until September 2004 when the Russian Chief Military Prosecutor's Office decided to discontinue it. In December 2004, 36 out of a total of 183 volumes of files from the investigation were classified as "top secret". The text of the decision to discontinue the Katyn criminal investigation was also classified and the applicants have not had access to it or to any other information about the investigation. Their requests to be provided with copies of that decision and of documents relating to their relatives were rejected by the military prosecutor's office. The Russian courts confirmed those decisions in judgments eventually upheld by the Supreme Court in May 2007 (as regards the applicants in the first case) and January 2009 (as regards the applicants in the second case). The courts found in particular that, being foreign nationals, the applicants had no right to access classified materials. An application by the Russian non-governmental organisation Memorial seeking to have the decision of September 2004 to discontinue the Katyn investigation declassified was likewise rejected by the courts.

On 26 November 2010 the Russian Duma adopted a statement about the "Katyn 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 Katyn and other places, and uncovering the circumstances of the tragedy...".

### Complaints and procedure

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

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, namely that the Russian authorities failed to carry out an adequate criminal investigation into the circumstances surrounding the deaths of their relatives. At the same time, the Court joined to its examination of the merits of the complaint the issue of its temporal jurisdiction, in other words, whether the Court could examine the adequacy of an investigation into the events which had occurred before Russia ratified the Convention. In the same decision, the Court also declared admissible the applicants' complaint under Article 3.

A Chamber hearing was held on 6 October 2011. On 16 April 2012, the Court delivered its Chamber judgment in the case. It held, by a majority, that there had been a violation of Article 3 in respect of ten of the applicants and no violation of Article 3 in respect of the remaining five applicants; and a breach of Russia's obligation to cooperate with the Court under Article 38 (obligation to furnish necessary facilities for examination of the case). The Court also found that it could not examine the merits of the complaint under Article 2.

The case was referred to the Grand Chamber of the Court under Article 43 (referral to the Grand Chamber) on 24 September 2012 at the request of the applicants. A Grand Chamber hearing was held on 13 February 2013.

The Polish Government intervened in the proceedings both before the Chamber and the Grand Chamber as a third party in accordance with Article 36 of the Convention (third party interventions). Furthermore, the following organisations were granted leave to submit written comments as third parties in the proceedings before the Grand Chamber: Open Society Justice Initiative; Amnesty International; the Public International Law and Policy Group; Memorial; the European Human Rights Advocacy Centre; and, the Transitional Justice Network.

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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.