



Grand Chamber hearing on the British armed forces in Iraq

The European Court of Human Rights is holding a **Grand Chamber¹** hearing today **Wednesday 11 December 2013 at 9.15 a.m.** in the case of **Hassan v. the United Kingdom** (Application no. 29750/09).

The case concerns the acts of British armed forces in Iraq, extra-territorial jurisdiction and the application of the European Convention of Human Rights in the context of an international armed conflict.

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 applicant, Khadim Resaan Hassan, is an Iraqi national who now lives in Syria. Prior to the invasion of Iraq in March 2003 by a coalition of armed forces led by the United States of America, Mr Hassan was a general manager in the national secretariat of the Ba'ath Party, at the time the governing party under the leadership of Saddam Hussein. Mr Hassan was also a General in El Quds Army, the private army of the Ba'ath Party. He lived in Um Qasr, a port city in the region of Basrah, south-eastern Iraq.

The case concerns the capture of Mr Hassan's brother, Tarek, by British armed forces and his detention at Camp Bucca in Iraq (close to Um Qasr). Mr Hassan claims that Tarek was under the control of British forces, and that his dead body was subsequently found bearing marks of torture and execution.

In April 2003, after occupying Basrah, the British army started arresting high-ranking members of the Ba'ath Party. According to Mr Hassan, he went into hiding at this time. He claims that in April 2003, the British army came to his home in the early hours of the morning and took away Tarek. Other members of his family were allegedly told by the British authorities that Tarek had been taken as a hostage, and would only be released when Mr Hassan surrendered himself. The UK Government accept that British forces arrested Tarek but claim that he was not a hostage, and that he was detained as a suspected prisoner of war, in accordance with the Third Geneva Convention, until his status could be determined. It is the UK Government's argument that, in the context of an international armed conflict, the provisions of the European Convention on Human Rights either should not apply at all or should be applied to take account of law of armed conflict, including the Geneva Conventions of 12 August 1949.

The Government and Mr Hassan both accept that Tarek was taken by British forces to Camp Bucca, a detention facility operated by United States forces. However, the British forces exercised some control over inmates that had been arrested by the UK military. The extent of this control and its legal consequences are disputed by the parties. The UK Government state that, following interrogation by both US and UK authorities, Tarek was established to be a non-combatant and that he was released on or around 12 May 2003.

¹ Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects."

Mr Hassan states that Tarek did not contact his family during the period that the Government claim he was set free. According to Mr Hassan, Tarek's body was discovered some 700 kilometres away from Um Qasr near a town north of Baghdad in early September 2003. He claims that his brother had eight bullet wounds in his chest from a Kalashnikov rifle and his hands were tied with plastic wire and had many bruises. The UK Government submit that there is no independent evidence of the cause of Tarek's death, emphasising that he was found in an area that had never been controlled by British forces and that Kalashnikovs were not used by the British military.

In 2007 Mr Hassan brought proceedings in the British administrative court seeking a declaration that there had been a breach of his human rights under the European Convention on Human Rights, compensation and an order requiring the government to carry out an inquiry into the death of his brother. However, the case was dismissed after the court found that Camp Bucca was a United States rather than a United Kingdom military establishment, and that the UK therefore did not have the relevant jurisdiction.

Procedure

Mr Hassan lodged an application with the European Court of Human Rights on 5 June 2009. In his application, he alleges that his brother was arrested and detained by British forces in Iraq and was subsequently found dead in unexplained circumstances. He complains under Article 5 §§ 1, 2, 3 and 4 (right to liberty and security) of the Convention that the arrest and detention were arbitrary and unlawful and lacking in procedural safeguards. He also complains under Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment) and 5 that the British authorities failed to carry out an investigation into the circumstances of his brother's detention, ill-treatment and death.

The case was adjourned pending the Court's examination of *Al-Skeini and Others v. the UK*, and was then [communicated](#) to the Government for observations on 30 August 2011. On 4 June 2013 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.

Composition of the Court

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

Dean **Spielmann** (Luxembourg), *President*,
 Josep **Casadevall** (Andorra),
 Guido **Raimondi** (Italy),
 Ineta **Ziemele** (Latvia),
 Mark **Villiger** (Liechtenstein),
 Isabelle **Berro-Lefèvre** (Monaco),
 Dragoljub **Popović** (Serbia)
 George **Nicolaou** (Cyprus),
 Luis **López Guerra** (Spain),
 Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
 Ledi **Bianku** (Albania),
 Zdravka **Kalaydjieva** (Bulgaria),
 Vincent A. **de Gaetano** (Malta),
 Angelika **Nußberger** (Germany),
 Paul **Mahoney** (the United Kingdom),
 Faris **Vehabović** (Bosnia and Herzegovina),
 Robert **Spano** (Iceland), *judges*,
 Paulo **Pinto de Albuquerque** (Portugal),

Helena **Jäderblom** (Sweden),
Ganna **Yudkivska** (Ukraine), *substitute judges*,

and also Michael **O'Boyle**, *Deputy Registrar*.

Representatives of the parties

Government

Ruth **Tomlinson**, *Agent*,
James **Eadie QC** and Christopher **Staker**, *Counsel*,
Michael **Addison** and Anna **McLeod**, *Advisers*;

Applicant

Tim **Otty QC**, Tom **Hickman** and Tom **Cleaver**, *Counsel*,
Phil **Shiner**, Bethany **Shiner** and Leisha **Shiner**, *Advisers*.

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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.