



Forthcoming hearings in February 2014

The European Court of Human Rights will be holding the following three hearings in February 2014:

Sargsyan v. Azerbaijan (application no. 40167/06), which concerns an Armenian refugee's complaint that he was forced to flee from his home in 1992 during the Armenian-Azerbaijani conflict over Nagorno-Karabakh. A first Grand Chamber hearing on the admissibility and merits of the case was held on 15 September 2010. In a decision of 14 December 2011, the Court declared the application partly admissible. At the upcoming hearing, the Court will carry out a further examination of the merits.

Tarakhel v. Switzerland (no. 29217/12) concerns a couple of Afghan nationals and their five children. The Swiss authorities rejected their application for asylum and ordered their deportation to Italy. The applicants complain that the conditions in which they would be accommodated in Italy as asylum-seekers would not satisfy the requirements of the Convention.

Jaloud v. the Netherlands (no. 47708/08), which concerns the alleged shooting of an Iraqi civilian by a Netherlands serviceman, a member of the Stabilisation Force in Iraq (SFIR).

After these hearings the Court will begin its deliberations, which will be held in private. Its ruling in the cases will, however, be made at a later stage. A limited number of seats are reserved for the press. To be sure of having a place, you need to book in advance by contacting the Press Unit (+33 (0)3 90 21 42 08).

On 5 February 2014 at 9.15 a.m.: Grand Chamber hearing in the case Sargsyan v. Azerbaijan (Application no. 40167/06)

The applicant, Minas Sargsyan, an Armenian national, was born in 1929 and died in 2009 in Yerevan after having lodged his complaint with the European Court of Human Rights. Two of his children are pursuing the application on his behalf.

The case concerns Mr Sargsyan's complaint that he was forced to flee from his home in 1992 during the Armenian-Azerbaijani conflict over Nagorno-Karabakh (the Nagorno-Karabakh Autonomous Oblast - "the NKAO"), which, at the moment of the dissolution of the Soviet Union in December 1991, was an autonomous province landlocked within the Azerbaijan Soviet Socialist Republic ("the Azerbaijan SSR"). In 1989 the NKAO was approximately 75% ethnic Armenian and 25% ethnic Azeri.

Armed hostilities in Nagorno-Karabakh started in 1988, coinciding with Armenian demand for the incorporation of the NKAO into Armenia. In September 1991 the Regional Council of the NKAO announced the establishment of the "Nagorno-Karabakh Republic" ("NKR"), consisting of the territory of the NKAO and the Shahumyan district of Azerbaijan. The "NKR" reaffirmed its independence from Azerbaijan in January 1992. After that, the conflict gradually escalated into full-scale war. By the end of 1993, ethnic Armenian forces had gained control over almost the entire territory of the former NKAO as well as seven adjacent Azerbaijani regions. The conflict resulted in hundreds of thousands of internally-displaced people and refugees on both sides. In May 1994 the parties to the conflict signed a cease-fire agreement, which holds to this day. Negotiations for a peaceful solution have been carried out under the auspices of the Organization for Security and Co-operation in Europe (OSCE). However, no final political settlement of the conflict has been reached.

The self-proclaimed independence of the “NKR” has not been recognised by any state or international organisation.

The applicants state that Mr Sargsyan and his family, ethnic Armenians, lived in a two-floor house with auxiliary premises in the village of Gulistan of the Shahumyan region (the Azerbaijan SSR). Shahumyan shared part of NKAO’s northern border. The region did not form part of NKAO, but was later claimed by the “NKR” as part of its territory. According to Mr Sargsyan, prior to the conflict, 82% of the population of Shahumyan were ethnic Armenians. Due to the Nagorno-Karabakh conflict, he was forced to flee in June 1992.

They complain about Mr Sargsyan’s forced displacement from Gulistan and continuing refusal by the Azerbaijani Government to allow him access to his property and home. They rely on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights and Article 8 (right to respect for private and family life) of the Convention. They also complain under Article 13 (right to an effective remedy) of the Convention, in conjunction with the other complaints, that there were no effective remedies available to ethnic Armenians who were forced to leave their homes in Azerbaijan due to the unresolved status of the Nagorno-Karabakh conflict.

Further relying in particular on Article 8, the applicants complain about the reports of alleged demolition or vandalism of Armenian cemeteries in Azerbaijan. They submit that Mr Sargsyan not being able to visit the graves of his close relatives and not knowing what had happened to them – but being aware that they were at risk of destruction – caused him severe suffering and distress, visiting and maintenance of cemeteries being one of his religious customs.

Lastly, they submit under Article 14 (prohibition of discrimination), in conjunction with the other complaints, that only ethnic Armenians living in Azerbaijan were the target of violence and that the Azerbaijani Government failed to investigate such attacks against Armenians or to provide redress for illegal occupation of their properties as well as destruction of Armenian cemeteries.

The application was lodged with the European Court of Human Rights on 11 August 2006. On 11 March 2010 the Chamber to which the case was assigned relinquished jurisdiction in favour of the Grand Chamber.¹ The Armenian Government intervened as a third party. A first Grand Chamber hearing was held on 15 September 2010.

In a decision of 14 December 2011, the Court declared the application partly admissible ([see press release of 9 January 2012](#)). Noting that it was in dispute between the parties whether the Government of Azerbaijan had effective control over Gulistan, the Court joined the Government’s objection that it lacked jurisdiction and had no responsibility under Article 1 of the Convention to its examination of the merits of the case. Furthermore, the Court joined to the examination of the merits of the case the following questions: whether Mr Sargsyan had been in a position to claim victim status in respect of the alleged continued lack of access to the graves of his relatives in Gulistan; whether effective remedies existed at national level, which should have been used by the applicant.

At the same time, the Court rejected the Government’s objection based on the declaration, which they had made at the time of ratifying the Convention, and their objection that the application fell outside the Court’s temporal jurisdiction, finding that Mr Sargsyan’s lack of access to his properties had to be considered a continuing situation which the Court could examine as from 15 April 2002, the date on which Azerbaijan had ratified the Convention. The Court also dismissed the objection by the Government of Azerbaijan that the application had been submitted out of time.

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”.

On 12 February 2014 at 9.15 a.m.: Grand Chamber hearing in the case of Tarakhel v. Switzerland (no. 29217/12)

The applicants are an Afghan couple and their five children.

After living in Iran for 15 years, they left for Turkey and from there travelled to Italy illegally by boat. They were arrested at sea by the Italian police; the first two applicants were then registered in the EURODAC system (the European fingerprint database for identifying asylum seekers and irregular border-crossers) in July 2011 and taken with their children to a reception centre in Bari. Later, they travelled to Austria, where they lodged an application for asylum, which was rejected. In November 2011 they entered Switzerland and applied for asylum there. The Federal Migration Office rejected their application in January 2012 and made an order for their deportation to Italy. The applicants appealed to the Federal Administrative Court, submitting that the conditions in which asylum seekers were accommodated in Italy were in breach of Article 3 of the Convention and that the federal authorities had not given due consideration to that factor. Their appeal was dismissed and the applicants applied to the Court, seeking an interim measure (under Rule 39 of the Rules of the Court) preventing their deportation to Italy. On 18 April 2012 the Court indicated to the Swiss Government, under Rule 39, that the applicants should not be deported to Italy for the duration of the proceedings.

Relying on Articles 3 (prohibition of torture and of inhuman or degrading treatment), 8 (right to respect for private and family life) and 13 (right to an effective remedy), the applicants submit that the conditions in which they would be accommodated in Italy as asylum-seekers would not satisfy the requirements of the Convention and would be incompatible with the presence of young children. They complain that the Swiss authorities did not give sufficient consideration to their personal circumstances and did not take into account their family situation.

The application was lodged with the Court on 10 May 2012. On 25 June 2012 the Court gave notice of the application and put questions to the Swiss Government under Article 3 (prohibition of inhuman or degrading treatment) of the Convention. On 24 September 2013 the Chamber to which the case had been assigned decided to relinquish jurisdiction in favour of the Grand Chamber (Article 30 of the Convention).

On 19 February 2014 at 9.15 a.m.: Grand Chamber hearing in the case Jaloud v. The Netherlands (no. 47708/08)

The applicant, Sabah Jaloud, is an Iraqi national who was born in 1943 and lives in An-Nasiriyah, Iraq. The case concerns the investigation by the Netherlands authorities into the circumstances surrounding the death of his 29-year old son, Azhar Sabah Jaloud, who died of gunshot wounds in Iraq on 21 April 2004 in an incident involving Netherlands Royal Army personnel.

Following the invasion of Iraq in March 2003 by a coalition of armed forces led by the United States of America, the Netherlands Government contributed troops to the Stabilisation Force in Iraq (SFIR). From July 2003 until March 2005 Netherlands troops were stationed in the province of Al-Muthanna in south-eastern Iraq as part of Multinational Division South-East (MND-SE), which was under the command of an officer of the armed forces of the United Kingdom. The participation of Netherlands forces in MND-SE was governed by a Memorandum of Understanding between the United Kingdom and the Kingdom of the Netherlands to which Rules of Engagement were appended. Both documents were and remain classified.

At around 2.30 a.m. on 21 April 2004, a patrol of six Netherlands soldiers led by Lieutenant A. arrived at a vehicle checkpoint named "B-13", located on the main supply route "Jackson" north of the town of Ar Rumaytah (in the province of Al-Muthanna). The personnel already present at the checkpoint were all members of the Iraqi Civil Defence Force ("ICDC"). The commander of the checkpoint, ICDC

Sergeant H.S., had summoned the Netherlands soldiers following a drive-by shooting which had occurred at around 2.12 a.m. At this time a car had approached the checkpoint, slowed and turned. Shots had been fired at the ICDC personnel guarding the checkpoint, and the ICDC had returned fire. No one had been hit, and the car had driven away and disappeared.

Around 15 minutes after the arrival of the Netherlands soldiers, a black Mercedes car approached the checkpoint at speed. It hit a barrel set out in the middle of the road to form the checkpoint, but it did not stop. Shots were then fired at the car: Lieutenant A. fired 28 rounds from a Diemaco assault rifle, and shots may also have been fired by one or more ICDC personnel using the Kalashnikov AK-47 assault rifle. The driver then stopped the car. Azhar Sabah Jaloud was in the front passenger seat. He was hit in several places, including the chest. Netherlands soldiers removed him from the car and attempted to administer first aid; however, he was declared dead around one hour after the shooting.

An investigation was launched by the Netherlands Royal Military Constabulary (a branch of the Netherlands armed forces) later that morning. The AK-47 of Sergeant H.S., the Diemaco assault rifle of Lieutenant A., and the Mercedes car involved in the incident were all seized. Statements were taken from the personnel involved, and an X-Ray and autopsy were carried out on Azhar Sabah Jaloud's body. An examination of the car suggested that it had been fired on from both the right and the left sides. The X-Ray and autopsy both found metallic objects inside the chest, the autopsy identified these as bullet fragments, and these were submitted for examination by the Baghdad police. However, none of these investigations were able to establish which weapon the bullets had been fired from.

In early 2007, Sabah Jaloud's representative wrote to the Netherlands authorities, requesting information on whether any Netherlands personnel were being prosecuted for the incident. A public prosecutor replied, stating that the investigation had indicated that Lieutenant A. had acted in self-defence, and that therefore no Netherlands servicemen had been identified as suspects. He further concluded that Azhar Sabah Jaloud had presumably been hit by an Iraqi bullet. In October 2007 Sabah Jaloud's representative lodged a request with the Military Chamber of the Arnhem Court of Appeal for the prosecution of Lieutenant A., complaining that his son's shooting had been an unnecessary use of force against a civilian. However, in April 2008 this court found that Lieutenant A. had reacted to friendly fire from across the road, mistaking it for hostile fire from inside the car. He had therefore acted within the confines of his instructions, and the decision not to prosecute had been sound.

Sabah Jaloud lodged an application with the European Court of Human Rights on 6 October 2008. Relying on Article 2 (right to life) of the Convention, he complains that the investigation into the shooting of his son was neither sufficiently independent nor effective. On 9 July 2013 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber². The Government of the United Kingdom has been given leave to submit written comments and take part in the hearing (Article 36 § 2 of the Convention).

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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.