



## Grand Chamber hearing on Germany's investigation into a lethal airstrike in Afghanistan

The European Court of Human Rights is holding a **Grand Chamber**<sup>1</sup> hearing today **Wednesday 26 February 2020 at 9.15 a.m.** in the case of **Hanan v. Germany** (application no. 4871/16).

The case concerns an investigation into an airstrike in Afghanistan which killed the applicant's two sons.

*A recording of the hearing will be available from 2.30 p.m. on the Court's Internet site ([www.echr.coe.int](http://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, Abdul Hanan, is an Afghan national who was born and lives in Omar Khel, Afghanistan.

In December 2001 the German Parliament authorised the deployment of German armed forces as part of a United Nations International Security Assistance Force (ISAF) in Afghanistan which NATO subsequently assumed command of.

Parallel to the command structure of ISAF, disciplinary and administrative command and control remained with the troop contributing nations. German troops were deployed as part of ISAF's Regional Command (RC) North and primarily took over Provincial Reconstruction Team (PRT) Kunduz. PRT Kunduz was commanded at the time by a German, Colonel K.

In September 2009 insurgents hijacked two fuel tankers which became immobilised on a sandbank in the Kunduz River, around seven kilometres from PRT Kunduz's base. At 1.49 am on 4 September 2009 Colonel K. ordered two United States Air Force airplanes to bomb the immobilised vehicles. The airstrike destroyed the tankers and killed Mr Hanan's two sons, Abdul Bayan and Nesarullah, aged approximately 12 and 8 respectively. The total number of victims has never been established. Various reports indicate that between 14 and 142 people died, mostly civilians.

After initiating a preliminary investigation in the days after the airstrike, the German Federal Public Prosecutor General opened a criminal investigation in March 2010, examining the actions of Colonel K. and a Staff Sergeant who had assisted him on the night of the airstrike.

The criminal investigation was discontinued in April 2010 owing to a lack of sufficient grounds for suspicion that the accused had incurred criminal liability.

The Federal Public Prosecutor General concluded that Colonel K. had had no intent to kill or harm civilians or damage civilian objects to a degree that was disproportionate to the military benefit of the airstrike. Criminal liability for offences pursuant to the German Code of Crimes against International Law could therefore be eliminated. The Federal Prosecutor General also held that all possible offences pursuant to the German Criminal Code, such as murder, were justified by the lawfulness of the attack under international law. In October 2010 a redacted version of the discontinuation decision was served on the applicant's representative. In February 2011 the

1 Under Article 30 of the European Convention on Human Rights, "[w]here 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."

Düsseldorf Court of Appeal dismissed a motion by Mr Hanan to compel the bringing of public charges as inadmissible.

On 19 May 2015 the Federal Constitutional Court refused to admit a constitutional complaint by Mr Hanan for adjudication. It found that the Prosecutor General's investigation had been effective, as defined by its own case-law and that of the European Court of Human Rights. Additional investigatory measures, such as hearing further witnesses who had been present during the airstrike, would not have provided any further relevant information as the decision to end the investigation had mainly been based on the finding that the accused had been convinced, at the time of ordering the airstrike, that the people in the immediate vicinity of the lorries were armed insurgents.

It also found that although the Court of Appeal had declared the applicant's motion inadmissible, it had nevertheless considered the Prosecutor General's decision in detail. The decision was served on the applicant's counsel in July 2015.

## Procedure

The application was lodged with the European Court of Human Rights on 13 January 2016.

Relying on Article 1 (obligation to respect human rights) of the European Convention, Mr Hanan argues that the facts of which he complains occurred within the jurisdiction of Germany.

Relying on Article 2 (right to life), he complains that the investigation into the airstrike was not effective. He alleges under Article 13 (right to an effective remedy) that he has had no effective domestic remedy to challenge the decision to discontinue the investigation.

On 2 September 2016 the German Government was given [notice](#)<sup>2</sup> of the application, with questions from the Court.

The Governments of Denmark, France, Norway, Sweden and the United Kingdom, the Human Rights Centre of the University of Essex, the Open Society Justice Initiative, the Institute of International Studies of the Università Cattolica del Sacro Cuore di Milano and Rights Watch UK were given leave to intervene in the procedure before the Court, in accordance with Rule 44 § 3 (a) of the Rules of Court.

The Chamber which had been allocated the case relinquished jurisdiction of it in favour of the Grand Chamber on 27 August 2019.

## Composition of the Court

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

Linos-Alexandre Sicilianos (Greece), *President*,  
 Robert Spano (Iceland),  
 Jon Fridrik Kjølbro (Denmark),  
 Ksenija Turković (Croatia),  
 Paul Lemmens (Belgium),  
 Helen Keller (Switzerland),  
 André Potocki (France)  
 Aleš Pejchal (the Czech Republic),  
 Yonko Grozev (Bulgaria),

<sup>2</sup> In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges may decide to bring to the attention of a Convention State's Government that an application against that State is pending before the Court (the so-called "communications procedure"). Further information about the procedure after a case is communicated to a Government can be found in the Rules of Court.

Carlo **Ranzoni** (Liechtenstein),  
Mārtiņš **Mits** (Latvia),  
Tim **Eicke** (the United Kingdom),  
Lətif **Hüseynov** (Azerbaijan),  
Lado **Chanturia** (Georgia),  
Erik **Wennerström** (Sweden),  
Saadet **Yüksel** (Turkey),  
Anja **Seibert-Fohr** (Germany), *judges*,  
Faris **Vehabović** (Bosnia and Herzegovina),  
Arnfinn **Bårdsen** (Norway),  
Paulo **Pinto de Albuquerque** (Portugal), *substitute judges*,

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar*.

## Representatives of the parties

### Government

Almut **Wittling-Vogel** and Nicola **Wenzel**, *Agents*,  
Heike **Krieger**, *Counsel*,  
Sarah **Weinkauff**, Stefan **Sohm**, Mareike **Wittenberg**, Jeannine **Drohla**, and Christian **Ritscher**,  
*Advisers*;

### Applicant

Wolfgang **Kaleck** and Dapo **Akande**, *Counsel*,  
Florian **Jessberger**, Chantal **Meloni**, Andreas **Schüller**, and Iaroslavna **Sychenkova**, *Advisers*.

### Third party France

François **Alabrune**, *Agent*,  
Eglantine **Leblond**, *Adviser*.

### Third party United Kingdom

Chanaka **Wickremasinghe**, *Agent*,  
Sir James **Eadie**, QC, *Counsel*.

### Third party Rights Watch UK

Samuel **Wordsworth**, QC, and Can **Yeginsu**, *Counsels*.

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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.