



Grand Chamber to examine case concerning airstrike in Kunduz

The Chamber of the European Court of Human Rights to which the case **Hanan v. Germany** (application no. 4871/16) had been allocated has **relinquished jurisdiction in favour of the Grand Chamber of the Court**¹.

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

Principal facts

The applicant, Abdul Hanan, is an Afghan national who was born and lives in Omar Khel, Afghanistan.

On 20 November 2001 the United Nations Security Council authorised the establishment of an International Security Assistance Force (ISAF) in Afghanistan. On 22 December 2001 the German Parliament authorised the deployment of German armed forces as part of ISAF. Subsequently, NATO assumed command of ISAF. Parallel to the command structure of ISAF, disciplinary and administrative command and control remained with the respective troop contributing nations. German troops were deployed as part of ISAF's Regional Command (RC) North and primarily took over the Provincial Reconstruction Team (PRT) Kunduz. At the relevant time, PRT Kunduz was commanded by German Colonel K.

On 3 September 2009 insurgents hijacked two fuel tankers which became immobilised on a sandbank in the Kunduz River, around seven kilometres from the base of PRT Kunduz. At 1.49 am on 4 September 2009 Colonel K. ordered two United States Air Force airplanes to bomb the still immobilised fuel tankers. The airstrike destroyed both fuel tankers and killed Mr Hanan's two sons Abdul Bayan and Nesarullah, approximately 12 and 8 years old respectively. The total number of victims has never been established. Different reports indicate that between 14 and 142 people died, of which 14 to 113 were civilians.

The German Federal Public Prosecutor General initiated a criminal investigation on 12 March 2010, examining the actions of Colonel K. and a First 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. The Prosecutor General concluded that Colonel K. had had no intent to kill or harm civilians or damage civilian objects to a degree that had been disproportionate to the military benefit of the airstrike. K.'s plea that he had acted on the presumption, based on the information available to him, that the persons present at the fuel tankers were insurgents, could not be rebutted. In October 2010 a redacted version of the discontinuation decision was served on the applicant's representative. In February 2011 the 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 him for adjudication. It found that the investigation by the Federal Public Prosecutor General constituted an effective investigation, as defined by the case-law of the Federal Constitutional Court and 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 investigation was discontinued based on questions of intent. As regards the

¹ Under Article 30 of the European Convention of 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."

decision of the Court of Appeal, the Federal Constitutional Court concluded that, even though it had declared the applicant's motion inadmissible, it nevertheless had considered the Federal Public Prosecutor General's decision in detail. The decision was served on the applicant's counsel on 13 July 2015.

Complaints and 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 of Human Rights, Mr Hanan argues that the relevant conduct was attributable to Germany and that his sons were under Germany's jurisdiction within the meaning of that provision. Relying on Article 2 (right to life), he complains that the investigation into the September 2009 airstrike that killed his two sons was not effective. He further alleges under Article 13 (right to an effective remedy) that he has had no effective domestic remedy at his disposal to challenge the decision to discontinue the investigation.

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

Following the communication of the application, both the French Government and the Institute of International Studies of the Università Cattolica del Sacro Cuore 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 to which the case was allocated relinquished jurisdiction in favour of the Grand Chamber on 27 August 2019.

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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.

² 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.