



## Grand Chamber hearing concerning two war crime cases in Bosnia and Herzegovina

The European Court of Human Rights is holding a Grand Chamber<sup>1</sup> hearing today **Wednesday 12 December 2012 at 9.15 a.m.** in the case of **Maktouf and Damjanovic v. Bosnia and Herzegovina** (Application nos. 2312/08 and 34179/08).

The case concerns complaints brought by two men about the Court of Bosnia and Herzegovina, established in 2000 as a result of the international peace process, which convicted them of war crimes committed during the 1992-1995 war.

*The hearing will be broadcast 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 applicants are Abduladhim Maktouf and Goran Damjanović, an Iraqi national and a national of Bosnia and Herzegovina ("BiH"), respectively. Mr Maktouf was born in 1959; he lives in Malaysia. Mr Damjanović was born in 1966; he is serving his prison sentence in Bosnia and Herzegovina.

In Bosnia and Herzegovina<sup>2</sup> jurisdiction over domestic war crime cases can be divided into two categories: cases that were already pending before the Entity/District courts on 1 March 2003 (when the 2003 Code of Criminal Procedure of Bosnia and Herzegovina entered into force); and, new cases (reported after 1 March 2003) which fall under the exclusive jurisdiction of the Court of Bosnia and Herzegovina ("the State Court"). The State court was set up in November 2000 by the High Representative, an international administrator for Bosnia and Herzegovina, a position established by an informal group of States actively involved in the peace process, with the authorisation of the United Nations Security Council.

The State Court can decide to take over war crime cases because of their sensitivity or complexity, and, vice versa, transfer less sensitive and complex cases to the competent Entity/District Court. As a rule, in war crime cases, the Entity/District courts apply the 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia ("the SFRY") and impose on average lighter sentences than the State Court, which applies the 2003 Criminal Code of BiH. In an agreement of December 2004 between the High Representative and the BiH prosecuting authorities, international judges can be appointed to the State Court. Between 2004 and 2006, the High Representative did indeed appoint more than 20 international judges to the State Court, including those sitting on Mr Maktouf's case, for a renewable period of two years.

<sup>1</sup> 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."

<sup>2</sup> On 14 December 1995 the General Framework Agreement for Peace in Bosnia and Herzegovina, ("the Dayton Peace Agreement") entered into force which put an end to the 1992-95 war in Bosnia and Herzegovina. Under that Agreement, Bosnia and Herzegovina consists of two Entities: the Federation of Bosnia and Herzegovina and the Republika Srpska.

<sup>3</sup> Bosniacs were known as Muslims until the 1992-95 war. The term "Bosniacs" (Bošnjaci) should not be confused with the term "Bosnians" (Bosanci) which is commonly used to denote citizens of Bosnia and Herzegovina irrespective of their ethnic origin.

In April 2006 and November 2007, respectively, the Trial Chamber of the State Court found both applicants guilty of war crimes against civilians. Mr Maktouf, who had helped to abduct two civilians in 1993 in Travnik in order to exchange them for members of the ARBH forces (the local armed forces mostly made up of Bosniacs<sup>3</sup>) who had been captured by the HVO forces (the local armed forces mostly made up of Croats), was sentenced to five years' imprisonment. Mr Damjanović, who had taken a prominent part in the beating of captured Bosniacs in Sarajevo to punish them for resisting a Serb attack, was sentenced to 11 years' imprisonment.

Both men's constitutional complaints were ultimately rejected. Mr Damjanović's complaint was dismissed as out of time in April 2009. Mr Maktouf's case resulted in a leading decision in June 2007 by the Constitutional Court which found that none of Mr Maktouf's rights under the European Convention of Human Rights had been breached.

Relying on Article 6 § 1 (right to a fair trial), Mr Maktouf alleges that the proceedings against him were unfair, notably because the international judges who decided on his case on appeal were not independent as they were appointed by an international administrator (the High Representative) for a term of only two years. Both applicants also allege that they were not granted the benefit of a more lenient criminal law with regard to the calculation of their sentences and that they were treated differently from those who were tried before the Entity/District courts, which, as a rule, apply the 1976 Criminal Code in war crime cases and impose on average lighter sentences. They rely on Articles 7 (no punishment without law), 14 (prohibition of discrimination) and Article 1 of Protocol No. 12 (general prohibition of discrimination).

## Procedure

The applications were lodged with the European Court of Human Rights on 17 December 2007 and 20 June 2008, respectively. A [statement of facts](#) was communicated to the parties for observations on 31 August 2010. On 10 July 2012 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),  
Nina **Vajić** (Croatia),  
David Thór **Björgvinsson** (Iceland),  
Päivi **Hirvelä** (Finland),  
George **Nicolaou** (Cyprus),  
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),  
Nona **Tsotsoria** (Georgia),  
Zdravka **Kalaydjieva** (Bulgaria),  
Nebojša **Vučinić** (Montenegro),  
Angelika **Nußberger** (Germany),  
Paulo **Pinto de Albuquerque** (Portugal),  
Johannes **Silvis** (the Netherlands), *judges*,  
Kristina **Pardalos** (San Marino),  
Ledi **Bianku** (Albania),

Işıl **Karakaş** (Turkey), *substitute judges*,

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

## Representatives of the parties

### Government

Zikreta **Ibrahimovic**, *Deputy Agent*,

Sandra **Malešić**, *Assistant Agent*,

Hilmo **Vučinić** and Maja **Kapetanović**, *Advisers*;

### Applicant

Senad **Kreho**, Aldin **Lejlić**, Adil **Lozo** and Ismet **Mehić**, *Counsel*;

Adi **Kreho**, Harum **Lozo** and Nina **Kisić**, *Advisers*.

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### Press contacts

[echrpres@echr.coe.int](mailto:echrpres@echr.coe.int) | tel: +33 3 90 21 42 08

**Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)**

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

**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.