



## Grand Chamber hearing on the Netherlands armed forces in Iraq

The European Court of Human Rights is holding a **Grand Chamber** hearing today **Wednesday 19 February 2014 at 9.15 a.m.** in the case of **Jaloud v. the Netherlands** (Application no. 47708/08)

The case concerns the alleged shooting of an Iraqi civilian by a Netherlands serviceman, a member of the Stabilisation Force in Iraq (SFIR).

*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 applicant, Sabah Jaloud, is an Iraqi national who was born in 1943 and lives in An-Nasiryah, 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., a Netherlands soldier, 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.

## Procedure and complaints

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 Chamber<sup>1</sup>. 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).

## 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),  
Alvina **Gyulumyan** (Armenia)  
Ján **Šikuta** (Slovakia),  
Päivi **Hirvelä** (Finland),  
Luis **López Guerra** (Spain),  
András **Sajó** (Hungary),  
Zdravka **Kalaydjieva** (Bulgaria),  
Kristina **Pardalos** (San Marino),  
Aleš **Pejchal** (the Czech Republic),  
Johannes **Silvis** (the Netherlands),  
Valeriu **Grițco** (the Republic of Moldova),  
Iulia Antoanella **Motoc** (Romania), *judges*,  
Elisabeth **Steiner** (Austria),

<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".

Linos-Alexandre **Sicilianos** (Greece),  
Boštjan M. **Zupančič** (Slovenia), *substitute judges*,

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

## Representatives of the parties

### Government of the Netherlands

Roeland **Böcker**, *Agent*,  
Martin **Kuijjer**, Bas **Van Hoek** and Henk **Warnar**, *Advisers*;

### Applicant

Anne Willebrord **Eikelboom** and Liesbeth **Zegveld**, *Counsel*;

## Third parties

### Government of the United Kingdom

Ruth **Tomlinson**, *Agent*,  
James **Eadie**, *Counsel*,  
Jonathan **Benson** and Megan **Addis**, *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.