



United Kingdom required to investigate deaths of six civilians killed in Iraq in 2003 in incidents involving British soldiers

In today's Grand Chamber judgment in the case **Al-Skeini and Others v. the United Kingdom** (application no. 55721/07), which is final¹, the European Court of Human Rights held, unanimously, that:

in the exceptional circumstances deriving from the United Kingdom's assumption of authority for the maintenance of security in South East Iraq from 1 May 2003 to 28 June 2004, the UK had jurisdiction under **Article 1 (obligation to respect human rights)** of the European Convention on Human Rights in respect of civilians killed during security operations carried out by UK soldiers in Basrah;

and, that there had been a failure to conduct an independent and effective investigation into the deaths of the relatives of five of the six applicants, in **violation of Article 2 (right to life)** of the Convention.

The case concerned the deaths of the applicants' six close relatives in Basrah in 2003 while the UK was an occupying power: three of the victims were shot dead or shot and fatally wounded by British soldiers; one was shot and fatally wounded during an exchange of fire between a British patrol and unknown gunmen; one was beaten by British soldiers and then forced into a river, where he drowned; and one died at a British military base, with 93 injuries identified on his body.

The judgment was delivered today at a public hearing at the European Court of Human Rights, Strasbourg, at 11 a.m. (local time).

Principal facts

Background

On 20 March 2003, the United States of America, the United Kingdom and their coalition partners, through their armed forces, entered Iraq with the aim of displacing the Ba'ath regime then in power. On 1 May 2003 major combat operations were declared to be complete and the US and the UK became occupying powers. They created the Coalition Provisional Authority (CPA) "to exercise powers of government temporarily". One of the powers of government exercised by the CPA was the provision of security in Iraq. The security role assumed by the occupying powers was recognised by the United Nations Security Council in Resolution 1483, adopted on 22 May 2003, which called upon them "to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability ...". The occupation came to an end on 28 June 2004, when full authority for governing Iraq passed to the Interim Iraqi Government from the CPA, which then ceased to exist.

¹ Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

During the period of the occupation, the UK had command of the military division - Multinational Division (South East) - which included the province of Al-Basrah, where the applicants' relatives died. From 1 May 2003 onwards the British forces in Al-Basrah took responsibility for maintaining security and supporting the civil administration. Among the UK's security tasks were: patrols, arrests, anti-terrorist operations, policing of civil demonstrations, protection of essential utilities and infrastructure and protecting police stations.

Individual cases

The applicants, six Iraqi nationals, are: Mazin Jum'Aa Gatteh Al-Skeini, Fattema Zabun Dahesh, Hameed Abdul Rida Awaid Kareem, Fadil Fayay Muzban, Jabbar Kareem Ali and Colonel Daoud Mousa.

1) **Mazin Jum'Aa Gatteh Al-Skeini** is Hazim Jum'aa Gatteh Al-Skeini's brother (Hazim Al-Skeini), who was 23 when he died. Hazim Al-Skeini was shot dead in the Al-Majidiyah area of Basrah just before midnight on 4 August 2003 by a soldier in command of a British patrol.

In his witness statement, Mr Al-Skeini explained that, on 4 August 2003, members of his family had been in the village of Al-Majidiyah for a funeral ceremony; in Iraq it is customary for guns to be discharged at a funeral. He stated that he saw soldiers shoot and kill his brother and another man - both unarmed and only about ten metres away from the soldiers - for no apparent reason.

According to the British account of the incident, the patrol, approaching on foot and on a very dark night, heard heavy gunfire in Al-Majidiyah. They saw two Iraqi men in a street in the village, one of whom was about five metres from Sergeant A, who was leading the patrol. Sergeant A saw that he was armed and pointing a gun in his direction. In the dark, it was impossible to tell the position of the second man. Believing that his life and those of the other soldiers in the patrol were at immediate risk, Sergeant A opened fire on the two men without giving any verbal warning.

A charitable donation of 2,500 dollars (USD) from the British Army Goodwill Payment Committee was given to the tribe to which the two victims belonged, together with a letter explaining the circumstances of their deaths and acknowledging that they had not intended to attack anyone.

It was decided by UK commanding officers that the incident fell within the applicable Rules of Engagement². As a result, it was also decided that no further investigation was required.

2) **Fattema Zabun Dahesh**, who has three young children and an elderly mother-in-law to support, is the widow of Muhammad Salim, who was shot and fatally wounded by a British soldier shortly after midnight on 6 November 2003.

Basing her evidence on eye-witness accounts, Ms Dahesh stated that, on 5 November 2003, during Ramadan, Mr Salim went to visit his brother-in-law at his home in Basrah. At about 11.30 p.m. British soldiers raided the house. They broke down the front door. One of the British soldiers came face-to-face with Mr Salim in the hall of the house and fired a shot at him, hitting him in the stomach. The British soldiers took him to the Czech military hospital, where he died on 7 November 2003.

² The **Rules of Engagement** stipulated, among other things, that firearms be used only as a last resort, to protect human life, and that a challenge had to be given before firing unless it would increase the risk of death or injury to those under threat.

According to the British account of the incident, the patrol had received information through one of their interpreters that a group of heavily-armed men had been seen entering the house. The order was given for a quick search-and-arrest operation. After the patrol failed to gain entry by knocking, the door was broken down. Sergeant C heard automatic gunfire from within the house. Two men armed with long-barrelled weapons rushed down the stairs towards him. There was no time to give a verbal warning. Sergeant C believed that his life was in immediate danger. He fired one shot at the leading man, Mr Salim, and hit him in the stomach.

The applicant's family subsequently informed the patrol that they were lawyers and were in dispute with another family of lawyers over the ownership of office premises, which had led to their being subjected to two armed attacks, one only 30 minutes before the patrol's forced entry. The commanding officer produced a report which concluded that the patrol had deliberately been provided with false intelligence by the other side in the feud.

Ms Dahesh received USD 2,000 from the British Army Goodwill Payment Committee, together with a letter setting out the circumstances of the killing.

It was decided that the incident fell within the Rules of Engagement and that no further investigation was required.

3) **Hameed Abdul Rida Awaid Kareem** is the widower of Hannan Mahaibas Sadde Shmailawi, who was shot and fatally wounded on 10 November 2003 at the Institute of Education in the Al-Maaqal area of Basrah, where he worked as a night porter and lived with his wife and family.

In his witness statement, Mr Kareem claimed that, at about 8 p.m. on 10 November 2003, he and his family were sitting round the dinner table when there was a sudden burst of machine-gunfire from outside the building. Bullets struck his wife in the head and ankles and one of his children on the arm. They were taken to hospital, where his child recovered, but his wife died.

According to the British account of the incident, Ms Shmailawi was shot during a fire-fight between a British patrol and a number of unknown gunmen. When the area was illuminated by parachute flares, at least three men with long-barrelled weapons were seen in open ground, two of whom were firing directly at the British soldiers.

It was decided that the incident fell within the Rules of Engagement and that no further investigation was required.

4) **Fadil Fayay Muzban** is the brother of Waleed Sayay Muzban, aged 43, who was shot and fatally injured on the night of 24 August 2003 by a British soldier in the Al-Maaqal area of Basrah.

Basing his evidence on eye-witness accounts, Mr Muzban stated that his brother was driving a minibus at about 8.30 p.m. on 24 August 2003 when it "came under a barrage of bullets", leaving his brother mortally wounded in the chest and stomach.

Lance Corporal S stated that he had ordered the driver of a suspicious-looking minibus - with curtains over its windows, being driven towards his patrol at slow speed with its headlights dipped - to stop. The driver (Mr Muzban) punched him in the chest and tried to grab his weapon, before accelerating away, swerving in the direction of members of the patrol. Lance Corporal S fired at the vehicle's tyres and it stopped about 100 metres from the patrol. The driver appeared to be reaching for a weapon. Lance Corporal S believed that his team was about to be fired on. He therefore fired a number of shots. The driver got out and was ordered to lie on the ground. The patrol checked the minibus

for other armed men; it was empty. The driver had three bullet wounds in his back and hip. He was given first aid and then taken to the Czech military hospital where he died.

The Royal Military Police Special Investigation Branch (SIB) started an investigation on 29 August 2003. Material was collected from the scene of the shooting and statements were taken from the soldiers present, except Lance Corporal S, who had shot Mr Muzban. The commanding officers concluded that the case fell within the Rules of Engagement and successfully requested that the SIB investigation be terminated. The deceased's family received USD 1,400 from the British Army Goodwill Payment Committee and a further USD 3,000 in compensation for the minibus.

Following Mr Muzban's application for judicial review (see below), the investigation was re-opened some nine months later, and forensic tests were carried out. Prosecutors took depositions from the soldiers, including Lance Corporal S. The investigation was completed on 3 December 2004. An independent senior lawyer advised that there was no realistic prospect of establishing that Lance Corporal S had not fired in self-defence. The file was sent to the Attorney General, who decided not to exercise his jurisdiction to order a criminal prosecution.

5) **Jabbar Kareem Ali** is the father of Ahmed Jabbar Kareem Ali, who died on 8 May 2003, aged 15.

According to statements he made in the UK courts, Mr Ali searched for his son on 8 May 2003 when he did not return home at 1.30 p.m. as expected. He was told that his son and three other Iraqi youths had been arrested by British soldiers that morning, in the context of a crack-down on looting. They were allegedly beaten and forced into the Shatt Al-Arab river. His son could not swim and his body was found in the water on 10 May 2003.

The SIB opened an investigation. Four soldiers were tried for manslaughter at a court martial held between September 2005 and May 2006, but by that time another three soldiers suspected of involvement had gone absent without leave. It was the prosecution case that the soldiers had driven the four youths to the river and forced them in at gunpoint "to teach them a lesson" because they were suspected of looting. The soldiers were acquitted when the key prosecution witness, one of the other Iraqi youths forced into the water at the same time as Ahmed, was unable to identify them.

Mr Ali brought civil proceedings against the Ministry of Defence for damages in respect of his son's death. He received 115,000 pounds sterling (GBP) on 15 December 2008 and a formal apology from the British Army.

6) **Colonel Daoud Mousa** was a colonel in the Basrah police force. His son, Baha Mousa, was aged 26 when he died in the custody of the British Army, three days after having been arrested by soldiers on 14 September 2003.

According to Colonel Mousa, early in the morning of 14 September 2003, he went to pick his son up from work at the Ibn Al-Haitham Hotel in Basrah. He found his son and six other hotel employees lying on the floor of the hotel lobby with their hands behind their heads. He was told it was a routine investigation that would be over in a couple of hours. On the third day after his son had been detained, members of the Royal Military Police informed Colonel Mousa that his son had been killed in custody at a British military base in Basrah. He was asked to identify the corpse. Baha Mousa's body and face were covered in blood and bruises; his nose was broken and part of the skin of his face had been torn away.

A hotel employee, who was arrested on 14 September 2003, testified that Iraqi detainees were hooded, forced to maintain stress positions, denied food and water and

kicked and beaten in detention and that Baha Mousa was taken into another room, where he was heard screaming and moaning.

The SIB was immediately called in to investigate the death of Baha Mousa, who was found to have 93 identifiable injuries on his body and to have died of asphyxiation.

Colonel Mousa brought civil proceedings against the Ministry of Defence, which concluded in July 2008 with a formal and public acknowledgement of liability and the payment of GBP 575,000 in compensation. In a written statement given in Parliament on 14 May 2008, the Secretary of State for Defence announced that there would be a public inquiry into the death of Baha Mousa. It has yet to deliver its report.

Legal proceedings

On 26 March 2004, the Secretary of State for Defence decided, in connection with the deaths of the relatives of all six applicants (among others): not to conduct independent inquiries into the deaths; not to accept liability for the deaths; and, not to pay just satisfaction. The applicants applied for judicial review.

On 14 December 2004 the Divisional Court accepted only Colonel Mousa's claim and rejected the claims of the first four applicants; the claim of the fifth was stayed. The court held that the State was normally only required to apply the Convention within its own territory. There were some exceptions to that rule, and the fact that Baha Mousa had been killed on a British military base brought him within such an exception. However, the United Kingdom was not required to apply the Convention in respect of the other applicants' relatives. The court found that there had been a breach of the investigative duty under Articles 2 and 3 of the Convention concerning Baha Mousa since, by July 2004, some 10 months after the killing, the results of the investigation were unknown and inconclusive.

All appeals to the Court of Appeal were dismissed on 21 December 2005, because the Court of Appeal did not find that the deaths, except that of Baha Mousa, fell within United Kingdom jurisdiction. The Court of Appeal commented, however, that, if international standards were to be observed, the Royal Military Police, including the SIB, had to be made fully operationally independent from the military chain of command when investigating the alleged killing of civilians by British forces.

On 13 June 2007 the majority of the House of Lords found that, except in respect of Baha Mousa, the United Kingdom did not have jurisdiction over the victims' deaths. The Secretary of State had already accepted that Baha Mousa's death fell within the United Kingdom's jurisdiction under the Convention.

On 25 January 2008 the Ministry of Defence published the Aitken Report concerning six cases of alleged deliberate abuse and killing of Iraqi civilians, including the deaths of the fifth and sixth applicants' sons. The report criticised the lack of a more immediate, effective system for referring important information to those with the capacity to analyse it and delays in the time it had taken to resolve some of the cases.

Complaints, procedure and composition of the Court

The applicants alleged that their relatives were within the jurisdiction of the United Kingdom under Article 1 (obligation to respect human rights) of the Convention when they were killed through the acts of the British armed forces. They complained under Article 2 (right to life) and, in the case of the sixth applicant Article 3 (prohibition of inhuman and or degrading treatment), about the failure to carry out a full and independent investigation into the circumstances of each death.

The application was lodged with the Court on 11 December 2007. On 19 January 2010 the Chamber relinquished jurisdiction in favour of the Grand Chamber, and on 9 June 2010 a public [hearing](#) was held in the Human Rights building in Strasbourg (webcast available).

Judgment was given by the Grand Chamber of 17, composed as follows:

Jean-Paul **Costa** (France), *President*,
Christos **Rozakis** (Greece),
Nicolas **Bratza** (the United Kingdom),
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Dean **Spielmann** (Luxembourg),
Giovanni **Bonello** (Malta),
Elisabeth **Steiner** (Austria),
Lech **Garlicki** (Poland),
Ljiljana **Mijović** (Bosnia and Herzegovina),
David Thór **Björgvinsson** (Iceland),
Isabelle **Berro-Lefèvre** (Monaco),
George **Nicolaou** (Cyprus),
Luis **López Guerra** (Spain),
Ledi **Bianku** (Albania),
Ann **Power** (Ireland),
Mihai **Poalelungi** (Moldova), *Judges*,

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

Decision of the Court

Article 1

The principal issue in the case was whether the European Convention on Human Rights applied in respect of the killing of Iraqi civilians in Iraq by British soldiers between May and November 2003. The Court had to decide whether the applicants' relatives fell within the "jurisdiction" of the United Kingdom within the meaning of Article 1 of the Convention.

The Court referred to its previous case-law in which it held that a State is normally required to apply the Convention only within its own territory. An extra-territorial act would fall within the State's jurisdiction under the Convention only in exceptional circumstances. One such exception established in the Court's case-law was when a State bound by the Convention exercised public powers on the territory of another State.

In today's case, following the removal from power of the Ba'ath regime and until the accession of the Iraqi Interim Government, the United Kingdom (together with the United States) assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government. In particular, the United Kingdom assumed authority and responsibility for the maintenance of security in South East Iraq. In those exceptional circumstances, a jurisdictional link existed between the United Kingdom and individuals killed in the course of security operations carried out by British soldiers during the period May 2003 to June 2004. Since the applicants' relatives were killed in the course of United Kingdom security operations during that period, the United Kingdom was required to carry out an investigation into their deaths.

Article 2 (effective investigation)

The applicants complained that the UK Government had not fulfilled its duty to carry out an effective investigation into their relatives' deaths.

The Court referred to its previous case law that the obligation to protect life required that there should be an effective official investigation when individuals had been killed as a result of the use of force by State agents.

The Court took into account the practical problems caused to the investigatory authorities by the fact that the United Kingdom was an occupying power in a foreign and hostile region in the immediate aftermath of invasion and war. Those practical problems included a breakdown in the civil infrastructure, leading to shortages of local pathologists and facilities for autopsies; the scope for linguistic and cultural misunderstandings between the occupiers and the local population; and the danger inherent in any activity in Iraq at that time. In those circumstances the procedural duty under Article 2 had to be applied realistically, to take account of specific problems faced by investigators.

Nonetheless, the fact that the United Kingdom was in occupation also entailed that, if any investigation into acts allegedly committed by British soldiers was to be effective, it was particularly important that the investigating authority was, and was seen to be, operationally independent of the military chain of command.

It was not at issue in the first, second and fourth applicants' cases that their relatives were shot by British soldiers, whose identities were known. The question was whether in each case the soldier fired in conformity with the Rules of Engagement. In respect of the third applicant, Article 2 required an investigation to determine the circumstances of the shooting, including whether appropriate steps were taken to safeguard civilians in the vicinity. As regards the fifth applicant's son, it needed to be determined whether British soldiers had, as alleged, beaten the boy and forced him into the river. In each case eye-witness testimony was crucial. It was therefore essential that, as quickly after the event as possible, the military witnesses, and in particular the alleged perpetrators, should have been questioned by an expert and fully independent investigator. Similarly, every effort should have been taken to identify Iraqi eye witnesses and to persuade them that they would not place themselves at risk by coming forward and giving information and that their evidence would be treated seriously and acted upon without delay.

It was clear that the investigations into the shooting of the first, second and third applicants' relatives failed to meet the requirements of Article 2, since the investigation process remained entirely within the military chain of command and was limited to taking statements from the soldiers involved.

As regards the other applicants, although there was an SIB investigation into the death of the fourth applicant's brother and the fifth applicant's son, the Court did not consider that that was sufficient to comply with the requirements of Article 2, since (as the Court of Appeal also found) the SIB was not, during the relevant period, operationally independent from the military chain of command.

In contrast, a full, public inquiry was nearing completion into the circumstances of Baha Mousa's death. In the light of that inquiry, the sixth applicant was no longer a victim of any breach of the procedural obligation under Article 2.

In conclusion, the Court found a violation of Article 2 concerning the lack of an effective investigation into the deaths of the relatives of the first, second, third, fourth and fifth applicants.

Article 41

Under Article 41 (just satisfaction), the Court held that the United Kingdom was to pay the first five applicants 17,000 euros (EUR), each, in respect of non-pecuniary damage and EUR 50,000, jointly, in respect of costs and expenses.

Separate opinion

Judges Rozakis and Bonello expressed concurring opinions which are annexed to the judgment.

The judgment is available in English and French.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Emma Hellyer (tel: + 33 3 90 21 42 15)

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

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Frédéric Dolt (tel: + 33 3 90 21 53 39)

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

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.