

July 2011

Al-Skeini and Others v. the United Kingdom [GC] - 55721/07

Judgment 7.7.2011 [GC]

Article 1

Jurisdiction of states

Territorial jurisdiction in relation to the alleged killing of Iraqi nationals by members of the British Armed Forces in Iraq

Article 2

Article 2-1

Effective investigation

Failure to hold fully independent and effective investigation into deaths of Iraqi nationals during occupation of southern Iraq by British Armed Forces: *violation*

Facts – On 20 March 2003 armed forces of the United States of America, the United Kingdom and their coalition partners 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 United States and the United Kingdom became occupying powers. They created the Coalition Provisional Authority "to exercise powers of government temporarily". These powers included 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. The occupation came to an end on 28 June 2004, when full authority for governing Iraq passed to the Interim Iraqi Government and the Coalition Provisional Authority ceased to exist.

During the occupation, the United Kingdom had command of the military division – Multinational Division (South East) – which included the province of Al-Basra. From 1 May 2003 onwards the British forces in Al-Basra province took responsibility for maintaining security and supporting the civil administration. The applicants were close relatives of six Iraqi nationals who were killed in Basra 2003 during this period of occupation.

The first, second and fourth applicants' relatives received fatal gunshot wounds when British soldiers opened fire allegedly believing themselves to be under attack or at immediate risk. The third applicant's wife was killed after allegedly being caught in crossfire during a firefight between a British patrol and unknown gunmen. In each of these four cases, it was decided – in the first three instances by the soldiers' commanding officers and, in the case of the fourth applicant, by the Royal Military Police Special Investigation Branch (SIB) – that the incident fell within the British forces Rules of Engagement* and that no further investigation was required.

The fifth applicant's son was beaten by British soldiers who suspected him of looting and was forced into a river, where he drowned. Although the SIB opened an investigation and four soldiers were tried at a court martial for manslaughter, they were acquitted when the key prosecution witness was unable to identify them.

The sixth applicant's son, Baha Mousa, died of asphyxiation at a British military base, with multiple injuries on his body. The SIB was immediately called in to investigate. The sixth applicant brought civil proceedings against the Ministry of Defence, which ended in July 2008 with a formal and public acknowledgement of liability and the payment of GBP 575,000 in compensation. The minister announced that there would be a public inquiry into Baha Mousa's death.

In 2004 the Secretary of State for Defence decided not to conduct independent inquiries into the six deaths, and not to accept liability or pay compensation. The applicants sought judicial review of that decision. The case ultimately came before the House of Lords, which accepted that Baha Mousa's case fell within the UK's jurisdiction as the ill-treatment had occurred within a British military base. That case was therefore remitted to a first-instance court for reconsideration of the question whether there had been an adequate investigation into his death. As regards the other deaths, the House of Lords considered itself bound by the European Court's decision in *Banković and Others v. Belgium and Others* ((dec.) [GC], no. 52207/99, 12 December 2001) to find that the UK did not have jurisdiction.

Law – Article 1 (territorial jurisdiction): A Contracting State's obligation to secure the Convention rights and freedoms was confined to persons within its "jurisdiction", a primarily territorial concept. Acts performed or producing effects outside the State's territory could constitute an exercise of jurisdiction only in exceptional circumstances. The Court's case-law indicated that such circumstances could exist where State agents exercised authority and control over an individual outside the territory. Into this category fell the acts of diplomatic and consular agents, the exercise of extra-territorial public powers with the consent, at the invitation or with the acquiescence of the foreign government concerned or, lastly, the use of force by State agents extra-territorially to bring an individual under their control. Exceptional circumstances could also arise when, as a consequence of lawful or unlawful military action, a Contracting State exercised effective control of an area outside the national territory either directly, through its own armed forces, or through a subordinate local administration.

In the applicants' case, following the removal from power of the Ba'ath regime and until the accession of the Interim Iraqi Government, the United Kingdom (together with the United States) had assumed in Iraq the exercise of some of the public powers normally exercised by a sovereign government. In particular, it had assumed authority and responsibility for the maintenance of security in South East Iraq. In these exceptional circumstances, the United Kingdom had, through its soldiers engaged in security operations in Basra during the period in question, exercised authority and control over individuals killed in the course of such security operations. All the applicants' relatives had died during the relevant period. With the exception of the third applicant's wife, it was not disputed that their deaths were caused by the acts of British soldiers during the course of or contiguous to security operations in Basra City. There was thus a jurisdictional link in their cases. Although it was not known which side had fired the bullet that had resulted in the death of the third applicant's wife, she had died in the course of a United Kingdom security operation when British soldiers carried out a patrol

in the vicinity of the third applicant's home and joined in the fatal exchange of fire, so there was a jurisdictional link in her case also.

Conclusion: within the jurisdiction (unanimously).

Article 2 (*procedural aspect*): The procedural duty under Article 2 had to be applied realistically to take account of the practical problems faced by investigators in a foreign and hostile region in the immediate aftermath of invasion and war. 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.

It was clear that the investigations into the shooting of the first, second and third applicants' relatives had failed to meet the requirements of Article 2, since the investigation process had remained entirely within the military chain of command and been limited to taking statements from the soldiers involved. Likewise, although there had been an SIB investigation into the deaths of the fourth applicant's brother and the fifth applicant's son, that was not sufficient to comply with the requirements of Article 2, since the SIB was not, during the relevant period, operationally independent**. In addition, there had been a high risk of contaminated and unreliable evidence in the fourth applicant's case owing to lengthy delays in having key witnesses interviewed by a fully independent investigator. Indeed, certain alleged eye witnesses did not appear to have been interviewed by a fully independent investigator at all. The effectiveness of the investigation into the fifth applicant's son's death also appeared to have been seriously undermined by lengthy delays that had resulted in some of the soldiers accused of involvement becoming untraceable. Added to which, the narrow focus of the criminal proceedings had been inadequate: in the particular circumstances of the case, in which there appeared to be at least prima facie evidence that the applicant's minor son had drowned as a result of mistreatment while in the custody of British soldiers assisting the Iraqi police to combat looting, Article 2 required an independent examination, accessible to the victim's family and the public, of the broader issues of State responsibility for the death, including the instructions, training and supervision given to soldiers undertaking tasks such as this in the aftermath of the invasion. 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. Accordingly, the respondent State had failed to carry out an effective investigation into the deaths of the relatives of the first five applicants.

Conclusion: violation (unanimously).

Article 41: EUR 17,000 each to the first five applicants in respect of non-pecuniary damage.

(See also *Al-Jedda v. the United Kingdom* [GC], no. 27021/08, 7 July 2011, Information Note no. 143)

* The Rules of Engagement stipulated, among other things, that firearms should 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.

** Any investigation commenced by the SIB on its own initiative could be closed at the request of the military chain of command. On conclusion of the

investigation, the SIB's report was sent to the commanding officer, who would then decide whether or not to refer the case to the prosecuting authority.

© Council of Europe/European Court of Human Rights
This summary by the Registry does not bind the Court.

Click here for the [Case-Law Information Notes](#)