



Denmark had no jurisdiction in respect of complaints of ill-treatment during search and arrest operation in Iraq

The case of [Abdulaal Naser and Others v. Denmark](#) (application no. 46571/22) concerned a military search and arrest operation on 25 November 2004 in Az Zubayr, outside Basra (Iraq). Danish Military forces had participated in the operation at the request of the Iraqi authorities.

Investigations in Denmark into subsequent allegations of ill-treatment by Danish soldiers in connection with that operation were discontinued on the basis that no criminal offence had been committed. Civil proceedings for compensation instituted by the applicants, 21 Iraqi nationals, were ultimately unsuccessful, the Supreme Court finding that Denmark had no jurisdiction in respect of their complaints.

In today's **Chamber** judgment¹ in the case, the European Court of Human Rights held, unanimously, that the applicants' complaints under **Article 3 (prohibition of torture or inhuman or degrading treatment) were inadmissible** because the applicants had not been within Denmark's jurisdiction.

The Court also found that there had been **no violation of Article 6 (right to a fair trial)** of the European Convention on Human Rights. The applicants had been given access to a court at two levels of jurisdiction and those proceedings had been fair.

Principal facts

The applicants are 21 Iraqi nationals who were born between 1952 and 1981.

After the war in Iraq ended in the spring of 2003, a UN Security Council resolution laid down a general framework for the continued presence of the multinational security forces in Iraq. Denmark contributed to the continued presence of international coalition forces in Iraq from 2003 to 2007. The Danish domestic law required Danish forces to be on the alert for any unlawful acts committed by the Iraqi authorities and to report any such acts and, depending on the circumstances, to seek to intervene.

On 25 November 2004, at the request of the Iraqi authorities, Danish and British military forces participated in an Iraqi search and arrest operation in Az Zubayr, outside Basra. Reports indicate that the Iraqi security forces arrested and detained a total of 36 people.

Independent investigations into allegations of ill-treatment of detainees during that operation were carried out in 2010, 2012 and 2015 in Denmark and were discontinued on the basis that it did not appear that any criminal offences had been committed.

The applicants instituted a civil claim for compensation and in June 2018 the Eastern High Court (Østre Landsret) allowed the claim in part. It found that some of the applicants had been subjected to inhuman treatment during their transfer or detention at the Al Jameat police station. The court found that although the police station in question had been controlled by the Iraqi government,

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Danish forces ought to have known that there had been a general risk that people might be ill-treated there.

In May 2022 the Supreme Court upheld in part an appeal by the Ministry of Defence and dismissed the applicants' claims. The court agreed with the High Court's findings of fact, including that the Danish forces had not had command of the Iraqi military or police forces and had not participated in the detention of the applicants. Based on those findings the Supreme Court found that Denmark had no jurisdiction over the applicants within the meaning of the Convention and that therefore there had been no breach of Article 3 of the Convention. It also dismissed the applicants' complaints under Article 6.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 29 September 2022. Comments were submitted by the Governments of Norway and France, who had been granted leave to intervene by the President of the Section.

Relying on Article 3 (prohibition of torture or inhuman or degrading treatment) of the European Convention on Human Rights the applicants complained that they had been subjected to ill-treatment by Danish soldiers during the operation of 25 November 2004 and that the Danish State was liable under Article 1 (obligation to respect human rights) because the applicants fell within its extraterritorial jurisdiction. The applicants also complained of another breach of Article 3 because the Danish authorities had failed to undertake an independent and adequate investigation of their detention and treatment. Lastly, relying on Article 6 (right to a fair trial) the applicants complained that the proceedings before the domestic courts had been unfair and had exceeded the reasonable-time requirement.

Judgment was given by a Chamber of seven judges, composed as follows:

Lado **Chanturia** (Georgia), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Lorraine **Schembri Orland** (Malta),
Anja **Seibert-Fohr** (Germany),
Ana Maria **Guerra Martins** (Portugal),
Anne Louise **Bormann** (Denmark),
András **Jakab** (Austria),

and also Simeon **Petrovski**, *Deputy Section Registrar*.

Decision of the Court

[Article 3 \(prohibition of torture and inhuman or degrading treatment/investigation\)](#)

The Court had to determine whether the applicants fell under Denmark's jurisdiction under Article 1 of the Convention. Where a State, through its agents, exercised control and authority over an individual, and thus jurisdiction, the State was under an obligation under Article 1 to secure to that individual, rights and freedoms guaranteed under the Convention.

The Court examined whether, based on the facts, the Danish State, through its agents, had exercised control over the applicants. Having heard extensive evidence, both the High Court and the Supreme Court had concluded that the Iraqi forces had had full control of the operation. More specifically, no Danish forces had participated in the detention of the applicants. Moreover, neither Danish forces nor the forces under their operational control had subjected the applicants to inhuman treatment. Having regard to the very detailed and thorough assessments carried out by the High Court and the

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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.