



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ABDULAAL NASER AND OTHERS v. DENMARK

(Application no. 46571/22)

JUDGMENT

Art 1 • Jurisdiction of States • Art 3 (substantive) • Lack of jurisdiction for alleged ill-treatment of twenty-one Iraqi nationals in 2004 by Danish soldiers who were part of the United Nations authorised multinational military force in Iraq, after its sovereignty was transferred to the interim government, during a search and arrest operation • Applicants not under the respondent State's control • Domestic courts' conclusions that the Iraqi forces had full control of the operation and the Danish forces had not participated in the applicants' detention or subjected them to inhuman treatment based on a detailed and thorough assessment and extensive evidence • Applicants' failure to substantiate any elements or shortcomings in those findings • Failure to identify specific evidence showing Danish forces exercised public powers of a sovereign government or control over the applicants by using force • Art 3 (procedural) • No indication, even if there existed special features at the time bringing the applicants within the respondent State's jurisdiction, of a lack of an effective investigation

Art 6 § 1 (civil) • Domestic proceedings concerning applicants' compensation claim for alleged ill-treatment fair • Applicants granted free legal aid and represented by counsel throughout • Access to court at two levels of jurisdiction • Adversarial and equality of arms principles complied with

Prepared by the Registry. Does not bind the Court.

STRASBOURG

21 October 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Abdulaal Naser and Others v. Denmark,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lado Chanturia, *President*,

Faris Vehabović,

Lorraine Schembri Orland,

Anja Seibert-Fohr,

Ana Maria Guerra Martins,

Anne Louise Bormann,

András Jakab, *judges*,

and Simon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 46571/22) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 29 and 30 September 2022, respectively. The twenty-one applicants are all Iraqi nationals, and their further personal details are set out in the Annex to this judgment;

the decision to give notice to the Danish Government (“the Government”) of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Governments of Norway and France, which were granted leave to intervene by the President of the Section under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court;

Having deliberated in private on 1 July and 23 September 2025,

Delivers the following judgment, which was adopted on that last-mentioned date:

INTRODUCTION

1. The present case concerns twenty-one Iraqi nationals, who complained that they had been subjected to treatment contrary to Article 3 of the Convention by Danish soldiers in Iraq around 25 November 2004. They also relied on Articles 1, 6 and 13 of the Convention.

THE FACTS

2. The applicants’ details are set out in the appended table. They were represented by Mr Tyge Trier, a lawyer practising in Copenhagen.

3. The Government were represented by their Agent, Ms Vibeke Pasternak Jørgensen, of the Ministry of Foreign Affairs, and their co-Agent, Ms Nina Holst-Christensen, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. BASIS FOR THE PRESENCE OF DANISH FORCES IN IRAQ

5. After the war in Iraq had ended in the spring of 2003, the country was occupied by international coalition forces and came under the administration of the Coalition Provisional Authority (hereinafter “the CPA”). Its authority in Iraq was provisionally accepted by United Nations (hereinafter “the UN”) Security Council Resolution 1483 (2003), paragraph 4, and Resolution 1511 (2003), adopted under chapter VII of the UN Charter.

6. On 15 November 2003 the CPA and the Iraqi Governing Council agreed that full sovereignty over Iraq should be transferred to an interim Iraqi government no later than 30 June 2004. The transfer took place on 28 June 2004, making Iraq a sovereign state again as from that date.

7. According to UN Security Council Resolution 1546 of 8 June 2004 (see paragraph 65 below) that the Iraqi Prime Minister had requested the continued presence of the multinational security force in Iraq for the purpose of rebuilding the country. The Resolution laid down a general framework for the continued presence of international coalition forces in Iraq after the planned transfer of power to an interim government and it authorised the multinational military force to take all necessary measures, including the use of armed force, to maintain stability and security in Iraq and to deter and prevent terrorism (paragraphs 8-11 of the Resolution). It further appeared that the Security Council recognised that the multinational force would also assist in building the capacity of the Iraqi security forces through, *inter alia*, a programme of mentoring and monitoring (paragraph 14 of the Resolution).

8. Denmark contributed to the international coalition efforts by deploying Danish forces to Iraq from 2003 to 2007. Following UN Resolution 1546 (see paragraph 65 below) and pursuant to section 19(2) of the Danish Constitution on the use of armed force, the Danish Parliament adopted Parliamentary Resolution B 42 on 25 November 2004. This approved a six-month extension of the deployment of Danish forces. That deployment was made within the scope of UN Resolution 1546 and implemented through Defence Command Denmark’s directive of 1 September 2004 on DANCON/Iraq with schedules, which set out rules for the performance of tasks by the Danish battalion and the Danish forces during their deployment. The directive 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. At the same time, the directive established that, if the Iraqi authorities were to detain or arrest persons in connection with the performance of tasks in cooperation with Iraqi security forces and police, those arrests should be considered to be independent Iraqi arrests and therefore not a surrender of detainees by the Danish forces to the Iraqi authorities.

II. OPERATION GREEN DESERT

9. On 25 November 2004, at the request of the Iraqi authorities, Danish and British military forces participated in an Iraqi search and arrest operation (called Operation Green Desert, hereinafter “the Operation”) in Az Zubayr, outside Basra.

10. On 31 May 2022 the Danish Supreme Court (*Højesteret*) (see paragraphs 48-51 below) found that the tasks of the Danish forces included forming an outer perimeter around, *inter alia*, houses where Iraqi military and police (also referred to as the Iraqi National Guard (ING) and the Tactical Support Unit (TSU)) were to detain suspected insurgents, as well as mentoring and monitoring the Iraqi forces. The legal basis for the presence of Danish forces in Iraq did not cover their taking part in detaining Iraqi prisoners or surrendering them to the Iraqi forces. The Supreme Court found:

“... As to the operation itself, it appears (*det fremgår*) that Danish forces did not have command of the Iraqi military and police forces, nor did Danish forces participate in the detention of the Iraqi parties [the applicants], and consequently they did not surrender them to the Iraqi forces either.

...

In Defence Command Denmark’s directive of 1 September 2004 on DANCON/Iraq, it was decided that detainees were to be surrendered to the British, and not the Iraqi, forces, and that Danish forces should be on the alert for any unlawful acts committed by the Iraqi authorities and report any such acts and, depending on the circumstances, seek to intervene. At the same time, it was provided in the directive that, in connection with the performance of tasks in cooperation with Iraqi security forces and police where the Iraqi authorities were to detain or arrest persons, any such arrest should be considered an independent Iraqi arrest and therefore not a surrender of detainees from Danish forces to Iraqi authorities.”

11. Reports beginning with one on the implementation of the Operation indicated that the Iraqi security forces arrested and detained a total of 36 persons. The Supreme Court found that the Danish forces had not detained any Iraqi prisoners or surrendered such prisoners to the Iraqi police or to British forces.

12. The applicants maintained, however, that during their detention and a subsequent screening at a British military base (Shaiba Log Base) they were subjected to torture and other inhuman treatment by, *inter alia*, Danish forces and that during their subsequent detention at the police station Al Jameat (also referred to as Al Shu’oon) in Basra several of them were subjected to similar treatment by an Iraqi special unit.

13. On 5 December 2004 a local newspaper (*Al Manarah*) published a news article which included interviews with two of the applicants in which Danish forces were accused of having inflicted torture in concert with the Iraqi security forces or of having witnessed captives being subjected to torture without intervening. The article gave accounts of inhuman treatment during detention.

14. On 6 December 2004, the Danish forces notified the Army Operations Command Denmark (*Hærens Operative Kommando*) of the article, labelling it a “special incident”, and submitted a report on the events. The report was forwarded to Defence Command Denmark (FKO) and to, *inter alios*, the Danish Ministry of Defence (*Forsvarsministeriet*) the same day. The report described how the operation had been carried out and that no Danish personnel had any contact with the Iraqi prisoners during their arrest and subsequent detention. Defence Command Denmark prepared reports on 7 and 8 December 2004 on the alleged violations. According to the report of 8 December 2004 it had not been possible to get information about the detained persons from Iraqi authorities as Iraqi Security Forces maintained that this is an internal Iraqi matter. Moreover, at a meeting with the soldiers, the then Battalion Commander encouraged his soldiers to come forward if they had witnessed Iraqi security forces subjecting civilians to ill-treatment during the Operation. No soldiers came forward with any such information. On 8 December 2004, the then Battalion Commander held a meeting with, *inter alia*, the commanders of the Iraqi special police force and two Iraqi battalions, who informed him that they were observing Iraqi law.

III. THE INVESTIGATIONS AFTER OPERATION GREEN DESERT

15. On 9 December 2010 the Ministry of Defence asked the Danish Military Prosecution Service (*Forsvarets Auditørkorps*) (hereinafter “the MPS”) to investigate allegations by a Danish television channel that Danish forces had witnessed the ill-treatment of one or more detained persons during the Operation.

16. In its investigation report of 28 February 2011 the MPS concluded that the Danish battalion had received no formal reports of the alleged incidents, that it was unlikely that Danish forces had conducted body searches or rectal searches and that there was no presumption that any such searches would independently have constituted criminal offences.

17. In October 2012 the MPS initiated a new investigation following the publication of video material which was alleged to be evidence of the incident during the Operation on which the first investigation had been based. Forty-eight persons were interviewed as part of the investigation.

18. On 13 January 2014, the investigation was discontinued as all avenues appeared to have been exhausted and it could not reasonably be inferred that a criminal offence liable to prosecution by the MPS had been committed.

19. On the basis of a series of articles in a Danish newspaper, the MPS decided in July 2015 to begin another investigation into the conduct of Danish soldiers deployed in Iraq. The issue was whether in handling and recording information about Iraqi prisoners the Danish soldiers had complied with international conventions and obligations as well as domestic directives. The

remit of the investigation included assessing whether there should be a criminal investigation.

20. On 22 August 2016, the MPS decided to discontinue the investigation as it did not appear that any criminal offences had been committed.

IV. THE FIRST SET OF PROCEEDINGS (2011-2014)

21. In the period between September 2011 and December 2012, the applicants brought five separate actions against the Ministry of Defence in the Copenhagen City Court (*Københavns Byret*). They claimed, *inter alia*, compensation for injury to dignity, feelings or self-respect caused by alleged offensive and unlawful treatment on 25 November 2004, when they were detained by Danish forces in Iraq and surrendered to the Iraqi police, in whose custody they were allegedly subjected to torture and other inhuman or degrading treatment.

22. The cases were referred to the Eastern High Court (*Østre Landsret*) (hereinafter “the High Court”) between 25 October 2011 and 31 January 2013. The cases were later joined by the High Court. On 23 December 2013, the High Court dismissed the proceedings because the applicants and their counsel had failed to attend a preliminary hearing on 20 December 2013.

23. On 11 April 2014, with leave from the Appeals Permission Board (*Procesbevillingsnævnet*), the applicants appealed against that decision to the Supreme Court.

24. On 24 October 2014, the Supreme Court upheld the decision, stating that it appeared clearly from the High Court summons for the court hearing that the High Court could dismiss the proceedings if the parties failed to appear, and that it was clear from the communications between counsel and the High Court prior to the preliminary hearing that counsel was still representing the applicants. Counsel had had no lawful excuse for failing to appear and had not made an innocent mistake but had made a deliberate choice.

V. THE SECOND SET OF PROCEEDINGS (2014-2022)

25. On 24 October 2014, the applicants brought a new action against the Ministry of Defence in the Copenhagen City Court, claiming compensation for injury to their dignity, feelings and self-respect.

A. The High Court

26. On 16 December 2014 the case was referred to the High Court, which decided on 9 November 2015 that the issue of whether the applicants’ claim for compensation for injury to dignity, feelings and self-respect was time-

barred or should be tried separately. The limitation issue was heard by the High Court on 14, 15, 17 and 22 June 2016.

27. On 22 August 2016 the High Court delivered its decision that the period of limitation had not expired in respect of the applicants' claim for compensation for the injury to their dignity, feelings or self-respect suffered when they were detained in November 2004. The decision was not appealed against.

28. On 6 September 2016 the High Court resumed the pre-trial proceedings in order to examine the issue of compensation for injury to dignity, feelings or self-respect. In addition to the comprehensive case summaries submitted by both parties for the trial hearing in June 2016, the applicants filed a total of 40 pleadings in the pre-trial proceedings. The Ministry of Defence filed 25 pleadings. During the pre-trial proceedings, the High Court considered a number of procedural issues and applications, including on the use of medical certificates, the production of evidence, the examination of witnesses, the examination of parties via video link, scheduling of the trial, the withdrawal of the applicants' counsel, free legal aid and the impartiality of judges.

29. On 15 June 2018, in a judgment which ran to 818 pages, the High Court found partly in favour of eighteen of the plaintiffs (that is, seventeen of the applicants, namely nos. 1-5, 7-10, 12-14 and 16-20 in the table attached to the present judgment) and awarded each of them 30,000 Danish kroner (equivalent to approximately 4,000 euros). The High Court found against five of the plaintiffs (including four of the applicants, that is, nos. 6, 11, 15 and 21 in the table attached to the present judgment) because they had failed to substantiate having been subjected to torture or other inhuman treatment while in Iraqi custody.

30. Based on the evidence produced, the High Court found that the Danish forces had neither detained, transported, surrendered, screened or ill-treated the applicants, nor had they witnessed any ill-treatment of the applicants that would give rise to liability to pay compensation. The High Court further found that the operation had been led by the Iraqi Government; that the role of the Danish forces had been limited to forming an outer perimeter around Basra in order to prevent escape and that they had complied with this mandate; and that British forces had been responsible for the arrest and detention of the plaintiffs, either at a military base run by the British forces or by transporting the prisoners to a prison in Basra controlled by the Iraqi military or police. The High Court found no basis for criticising the planning and execution of the military operation.

31. Nevertheless, the High Court found that the said seventeen applicants had been subjected to inhuman treatment either during their detention at or during their transfer to the police station of Al Jameat, which was controlled by the Iraqi Government, and that the Danish forces should have known that there was a general risk that people there might be subjected to inhuman

treatment. In that respect, the High Court referred to section 18 of CPA Order No. 17 of 27 June 2004 on the treatment of civilian claims for compensation raised against the coalition forces. It held that this gave it jurisdiction, since it included a provision on governing law and jurisdiction which enabled the applicants to bring their claim before the Danish authorities under Danish law. The High Court further found that that provision would not serve its purpose if the right to compensation were subject to the condition that the incidents had occurred within Danish jurisdiction within the meaning of Article 1 of the Convention.

32. In so far as relevant to the applicants' complaints, the High Court's findings were as set out below.

33. Regarding the applicants' claim that the Danish forces had command or control over the Iraqi security forces, the High Court found that the Danish soldiers and military police (hereinafter "MP") had merely monitored and mentored the Iraqis in accordance with the Danish mandate in Iraq and the operation directive. Its finding was as follows:

"6.2.10 Events during Operation Green Desert on 25 November 2004

6.2.10.1 Initial observations on the evidence

A number of [applicants] have stated that they were detained during Operation Green Desert at the target areas Cyan 1 and Cyan 4, Danish soldiers detained them or assisted in their detention, beat them while they were detained or witnessed beatings by the Iraqi security forces and later took part in or witnessed offensive body-searches of an intimate nature at the Shaiba Log Base.

On essential points, the statements made by [the applicants] on this subject conflict with the extensive and credible evidence on the planning of the operation and the order given, which is described above, and the actual implementation of the operation, which is described below.

The High Court finds that the basis for the command of the Operation laid down in detail the tasks to be performed by the Danish soldiers, including the MPs. It appears from the details above on the findings of fact made on the basis of the evidence that those tasks involved neither the Danish soldiers making arrests nor their taking part in the screening of detainees at the Shaiba Log Base. A very considerable number of soldiers have given evidence to the High Court about the Operation. They have described in detail the tasks performed to form an outer perimeter, which meant that the soldiers had to stay in their places relative to one another to secure the target areas. The six MPs who gave evidence before the High Court have also dismissed [the applicants'] statements and provided further details about their participation in the 'search and arrest' tasks being carried out at Cyan 1 and Cyan 4. Moreover, the soldiers and MPs have provided details about the performance of the tasks involved in dealing with detainees. None of them has corroborated [the applicants'] statements and, when asked directly, a significant share of those military witnesses have dismissed [the applicant's] statements.

In addition, [the applicant's] statements about the course of events up until the conclusion of screenings at the Shaiba Log Base are inconsistent on essential points with the statements reproduced in their 'medical reports' prepared for their medical examinations in 2011, 2012 and 2014, in which the events described revolved primarily

around British soldiers. In the cases of [applicants nos. 1 and 9 in the table attached to the present judgment], that also applies to the information on the claim form filed against the British Ministry of Defence at the end of 2011. Finally, the statements provided by [some of the applicants] are the result of a process in which [applicant no. 6], who has received payments from one of [the applicants'] two lawyers, has to a great extent handled the coordination of these applications and so on, which may have contributed to distorted and incorrect memories within the group of [applicants], including as a result of the fact that several of [the applicants] have been shown the video recording from Cyan 4. The High Court's concern in this respect is reinforced by the statement given by [applicant no. 6] to the British newspaper *The Sun* and to the High Court that he has received considerable sums and has encouraged others to make exaggerated and false accusations against British soldiers in a large number of cases against the British Ministry of Defence. It is further observed in this respect that, on the basis of the evidence given by [the applicants], the High Court finds that many, and possibly all, of [the applicants] have brought cases against the British Ministry of Defence claiming compensation following Operation Green Desert and that multiple [applicants] have refused to provide further details about it.

Against that background, no or very little evidential weight is given to the evidence of [the applicants] about events during Operation Green Desert and until the conclusion of the screening at the Shaiba Log Base."

...

"6.2.10.5 Common [finding] on events at Cyan 1 and 4

For both target areas, Cyan 1 and 4, there is - despite the statements of [the applicants] - no basis for concluding that the Danish forces had command or control over the Iraqi security forces, only that the Danish soldiers and MP merely monitored and mentored the Iraqis in accordance with the Danish mandate in Iraq and the operation directive".

...

"6.3.2 Liability for the treatment of [the applicants] by Iraqi forces during the Operation

It has not been proved who was headbutted at Cyan 1 or on whom "blows" were inflicted as they entered the white minivan at Cyan 4, and the High Court finds that there is no basis to find the Ministry of Defence responsible for that. The High Court finds with reference to the remarks above, see paragraph 6.2.10 on the events of Operation Green Desert, that it has not been proved that the Danish soldiers witnessed or overheard assaults or violations of the Plaintiffs during the operation. The Ministry of Defence therefore does not bear responsibility for the treatment of [the applicants] by the Iraqi security forces."

34. Video footage of three incidents was presented and examined in the High Court proceedings, and numerous witnesses gave evidence. The High Court stated:

"6.2.10.4 The course of events at Cyan 4

Some of the course of events at Cyan 4 is documented in the video footage that the acting commander of the intelligence section [witness 21] recorded. The video footage includes three incidents, which have been brought up during the presentation of evidence. First, shortly after the operation began, a detained Iraqi is shown being led to a waiting minivan by the Iraqi security forces. The detained man is bent forward while

being led, possibly with something covering his head and seemingly with something hard gripping his neck.

Two Danish MPs, who took part in operations at Cyan 4, a military police commanding officer [witness 54] and [witness 55], have given evidence that in Denmark you would handcuff an arrested person and lead him by the arms. [Witness 54] has further given evidence that if you do not have handcuffs, you would use an arm grip. According to the evidence of [witness 54], the method used in this case is, however, not unusual around the world.

Later (at 19:12) in the video footage, which is dark and unclear, [during the second incident] a person from the Iraqi security forces is seen outside the takia, first apparently kicking a detained Iraqi on his behind or stepping on him and afterwards stepping on him again. The recording was made from a distance, and it is uncertain what preceded those events. The Danish soldier [witness 53] who as he recalled was the one closest to them saw the incident itself. He remembered that British soldiers who were next to the detained Iraqi had intervened, but he did not see what gave rise to this. He had perceived it to be the pacification of a detainee, and did not consider that unnecessary force had been used. The other Danish soldiers close to the incident who gave evidence before the High Court had no memory of having seen the incident. On the video footage, a platoon commander [witness 49] is also seen apparently looking towards the wall where the detainees had been put and where the incident took place, but apparently does not react to what is happening. As stated above, the video was taken by [witness 21], and it would have been natural if he – given that he has explained that he was supporting the camera on his shoulder – had himself also looked in the direction of the wall and the detainees. Both have given evidence that they did not take any notice of the incident. The video of that incident has also been shown to several of the military witnesses for their assessment of the events.

The third incident is a few minutes later in which you hear the commander of the reconnaissance squadron [witness 47] saying: “have you seen, they are really getting some blows” (*“har du set, de får bare nogle hug”*). It is not apparent from the video footage who [witness 47] is talking to or what he is referring to, but the witness has given evidence that he was talking to [witness 21] and that he was talking about the Iraqis being beaten up while they were being put into a vehicle. The witness elaborated on his remark, saying that he had been referring to the handling of detainees while they were being put into the waiting bus, and that it was more a manner of speaking than a description of actual facts.

The High Court finds that the first two incidents are not relevant to this case. In respect of the first incident concerning an Iraqi detainee who was led by a hand grip on his neck, the High Court finds – on the basis of the video footage and the MPs evidence on the issue – that the incident – considering the circumstances – does not show an unnecessary use of force. The same applies to the second incident, in front of the takia, where there is also uncertainty about what is seen on the video footage and what preceded that.

Although the third incident is not supported by video footage, the High Court finds – based on what was said by [witness 47] “have you seen, they are really getting some blows” – that it must be concluded that the Iraqi security forces handled at least some of the Iraqi detainees heavy-handedly when they were being led into the Iraqi minivan, and that conclusion is also supported by the evidence of [witness 18]. The way his evidence was presented did not make it clear which detained Iraqis [witness 47] was talking about.”

35. Regarding the applicants' claim that video footage from another camera could have brought forward substantial new evidence, the High Court stated:

6.2.10.4 The course of events at Cyan 4

...

"In [witness 21's] video-recording one more operating video camera is seen, which appears to be carried by a Danish soldier. The way the evidence was presented to the High Court did not clarify who carried that camera. The video recorded by the soldier was unsuccessfully sought from the archives of the Danish Defence Forces, and so it has not been shown in these proceedings. The High Court has not attributed any significance to that issue in its assessment of the case, as no other circumstances have been raised that would have changed the court's view of the evidence or would have given any reason to take it that such video footage could have brought forward any substantial new evidence."

The High Court also addressed this issue under the heading "6.5. The applicants' first claim under Article 6 of the Convention" (see paragraph 40 below).

36. More than 50 military witnesses gave evidence in the High Court about the Operation and the role of the Danish forces. This included the Chief of Defence, J.H., (pages 399 to 405 of the High Court judgment); Battalion Commander J.D. (pages 425 to 445); and Tactical Operation Center (TOC) Officer A.S. (pages 467 to 470). A.S. had been in the TOC during the Operation. He was questioned about, among other things, a statement that he had given on 12 August 2013 to the MPS about the use of cameras and the transport of the arrested Iraqis to the Shaiba Log Base.

37. A Post Operation Report of 29 November 2004, signed by VK, was filed during the proceedings. It contained a passage stating, "Final preparations ... Due to last minute changes DANBN was forced to become involved in the search and arrest phase itself". VK gave evidence during the proceedings (pages 524 to 53 of the High Court judgment). He explained that, among other things, the last-minute change referred to the fact that "the battalion had been allocated British search teams and scene of crime officers, who had to enter the target areas. The Iraqis were cross about that because they felt that the Danish did not trust them to do it properly".

38. During the proceedings in the High Court it came to light that the applicants had filed similar claims against the British Ministry of Defence and that in 2018 applicant no. 6 had given an interview to the Sun newspaper about cases brought by Iraqis against the British Ministry of Defence. Extracts from a video-recording of the interview were shown during the High Court proceedings. Moreover, in an article in the Daily Mail newspaper of 14 February 2018 that was put in evidence in the High Court, his statements were reproduced. They included the following:

ABDULAAL NASER AND OTHERS v. DENMARK JUDGMENT

“It was a racket, all of it”: Iraqi refugee admits faking hundreds of compensation claims against British troops – and was paid £1.6 m in commission by shamed law firm for it

- Basim Al-Sadoon [cover name for applicant no. 6], 37, said his office aimed at winning payouts from the [Ministry of Defence]

- He ran office in Basra, Iraq where he handled accusations against British Army

- They exaggerated claims, produced bogus papers and falsely accused soldiers

...

An Iraqi refugee has admitted arranging hundreds of fake abuse claims against British soldiers in Iraq.

Basim Al-Sadoon, 37, said the racket he was involved in was aimed at winning payouts from the Ministry of Defence.

Mr Al-Sadoon ran an office in Basra where he handled accusations made by locals against the British Army.

He said clients exaggerated claims, produced bogus paperwork and falsely accused soldiers of wrongdoing.

“It was a racket, all of it” he told The Sun. “All these people cared about was money. It was like a claims factory, and it didn’t matter if the claims were true or false.”

Mr Al-Sadoon was hired by UK-based Iraqi Y. Mr Y, 59, was paid £1.6 million in 2009 for passing clients to UK law firm He also received £500 from disgraced lawyer ... for every claimant he secured.

Mr Al-Sadoon said he helped to find more than 300 clients.

He said: “It was all about money – people exaggerating sometimes what they see”.

He blamed the British legal system “for making it so easy.

[the UK law firm] denied wrongdoing and said the firm had no knowledge of the scheme and pledged to take action if claims were found to be without merit.

Mr Al-Sadoon said many clients obtained forged documents from Iraqi officials. He said: “People were bringing papers randomly – there were no specific standards to accept cases. You can collect some case elements.

“After that you start your story. If you have an old spot on your body from old torture, you can use it as evidence against [the Ministry of Defence].

“If you get a slap in the face, you can say it was stick or a gun. If you have been jailed for 24 hours, you’ll say they put me in a very bad place – I have psychiatric problems. In Iraq it’s easy to get doctors’ papers backing claims.

“Doctors for cash can give you many reports. Claims were exaggerated to make money.

Mr Al-Sadoon, who lives in Denmark, lodged his own fake claim against British soldiers through [the UK law firm]. He said he would now withdraw the case.”

39. During the proceedings in the High Court applicant no. 6 gave evidence about this issue and confirmed the statements that had been

reproduced in the newspaper in 2018 (the High Court judgment pages 298 to 306).

40. In the High Court the applicants also relied on Article 6 of the Convention. Their complaints were dismissed for the following reasons:

“6.5 [The applicants’] first claim under Article 6 of the Convention

[The applicants’] first claim concerning alleged violations of Article 6 of the European Convention on Human Rights predominantly relates to the case management of the High Court proceedings. The Ministry of Defence is not the proper defendant in claims for compensation or damages brought on that basis.

Moreover, [the applicants] have failed to substantiate their claim that the Ministry of Defence violated Article 6 of the European Convention on Human Rights by its conduct of those proceedings and its contribution to bringing out the facts of the case. The High Court finds it appropriate to make the following elaborative observations in that respect:

The actions of the Ministry of Defence did not result in a failure to process the case within a reasonable time. Regardless of the nature of a case, the procedural requests made by the Ministry of Defence would be within the scope of the framework for sufficiently attending to the interests of a party. It is also observed in this respect that the dismissal of the original proceedings by order of the High Court on 23 December 2013 as upheld by order of the Supreme Court on 24 October 2014 was solely attributable to the actions of [the applicants]. As to the Ministry of Defence’s redaction of information in the documentary evidence with reference to national security, relations with foreign states and consideration for the life or health of third parties, the High Court finds that it is not contrary to Article 6 of the European Convention on Human Rights to safeguard those interests during court proceedings, the statutory basis of which is section 298(1), read with section 169(1) and section 169(2), of the Administration of Justice Act. The High Court observes in that respect that that redaction did not mean that [the applicants] were unable to set out their claims appropriately, given that they were able to carry out extensive examination and cross-examinations of the military witnesses.

As for the information previously stated in one of the Ministry of Defence’s pleadings, namely that no images or sound were recorded during Operation Green Desert, it is observed that the High Court found on the basis of the evidence it heard, see paragraph 6.2.9.2. above, that [J.D.] had not ordered the use of video cameras and that he was not shown the recording from Cyan 4 after Operation Green Desert, see paragraph 6.2.11. It is further observed that according to the information on file, including the evidence given by [L.M.] ..., who was Deputy Head of the Management Secretariat of the Army Operational Command in 2012, a search of the archives of the Danish Defence Forces for video recordings from the Operation had revealed no such recordings. On that basis, the High Court does not find it proved that the Ministry of Defence maliciously provided false information on the subject.

As to the information provided by the Ministry of Defence during the proceedings that Frago 284, Amendment 1, is the most recent written order from [J.D.] concerning Operation Green Desert, the court refers to the observations on the findings of fact based on the evidence concerning the basis for command.

The High Court therefore finds that the information provided by the Ministry of Defence was not misleading.

On that basis, the High Court dismisses in their entirety the elements of [the applicants'] first claim that concern violations of Article 6 of the European Convention on Human Rights.

6.6 [The applicants'] second claim

[The applicants'] second claim concerns a [request] that the Ministry of Defence be ordered to initiate a new investigation, after the deliberations in the present case, of the circumstances that were subject of the High Court's examination of the applicant's first claim relating to torture and other inhuman treatment [committed] in Iraq.

[The applicants'] first claim was considered under the civil procedure rules giving the parties a right to seek disclosure of evidence in the form of, *inter alia*, documentary evidence, to seek expert evidence from the Medico-Legal Council, and to examine the parties and witnesses. All [the applicants] except applicant nos. 1 and 15, who waived their right to free legal assistance during the proceedings, have been granted free legal assistance for the original compensation claim. The proceedings lasted fifty-two court days, and seventy-six persons, including the vast majority of [the applicants], a considerable number of military witnesses as well as the psychologist and three of the four medical doctors who examined [the applicants], gave evidence. Moreover, questions have been put to the Medico-Legal Council.

Against that background, and taking into account the High Court's findings of fact, a new investigation initiated by the Ministry of Defence is not likely to bring out any new information of essential importance to the determination of what happened during and after Operation Green Desert almost 14 years ago or whether the Danish authorities bore any responsibility for those events.

The High Court therefore finds that [the applicants] do not have the necessary legal interest in the adjudication of their second claim, and the claim is therefore dismissed."

41. In so far as relevant to the applicants' complaints, it appears from court records that various procedural issues were dealt with by the High Court, including the following.

42. The applicants were granted free legal aid for their compensation claim, including coverage of travel expenses limited to five days to give evidence in the domestic courts. The High Court specified that the applicants had the right to be present during the entire trial but that expenses in that connection would not be covered by free legal aid. The decision on the scope of the free legal aid was discussed several times, but upheld by the High Court.

43. The oral proceedings before the High Court commenced on 7 November 2017 and ended on 8 May 2018. During this period, fifty-two court days were scheduled for the proceedings, thirty-two of which were reserved for the applicants' opening statement, the evidence of the parties and witnesses, and the applicants' closing statement. Seventy-six persons gave evidence at the trial.

44. Three applicants, who had been granted a visa for the purpose, were heard by the High Court on 12 and 13 December 2017. On 16 January 2018, the High Court decided to take evidence by videolink under section 174 (2) of the Administration Act (see paragraph 61 below) after two of the applicants applied for asylum during their stay in Denmark. The High Court found it

appropriate that two particular applicants who had declared themselves spokespersons for the other applicants should be heard, as well as one applicant who was already in Denmark. The remaining applicants living abroad who had asked to be heard gave their evidence by videolink, seven at the Danish Embassy in Beirut Lebanon, one in Australia, one in Saudi Arabia and one in New York. Evidence given by videolink at the Danish Embassy in Beirut took place from 30 January to 1 February 2018. A Lebanese lawyer, B., appointed to assist the applicants at their request, and a representative from the High Court were present. The applicants' lawyer was present in the High Court, as were translators. I, who represented two of the applicants, complained in a letter to the High Court of 15 February 2018 that, among other things, some of the evidence had to be presented by videolink. In total, sixteen applicants gave evidence in the High Court, six of them directly (including the two applicants who were spokespersons on behalf of them all) and ten via videolink. A further applicant submitted a written statement.

45. The High Court took decisions on what evidence would be presented. On 25 January 2017, it granted, to a large extent, the applicants' request for disclosure of various documents and ordered the Ministry of Defence to search for and produce additional documents. On 21 July 2017 the High Court noted that the Ministry of Defence had made fewer redactions, and that the documents were produced in a form in which primarily names had been redacted. Further, in an overview of exhibits the Ministry of Defence had described the information that had been redacted. The High Court did allow for a certain amount of withholding and redaction of military documents in the interests of national security, relations with foreign states and the lives and health of third parties. Thus, the High Court dismissed the applicants' request for disclosure on 21 July 2017 saying, among other things: "...the High Court finds that there is no basis for dismissing the assessment made by the Ministry of Defence according to which the [specific] redacted information cannot be disclosed, see the third sentence of section 169(2) of the Administration of Justice Act. Accordingly, as regards the redacted information, a disclosure order cannot be issued, see section 298, read with the third sentence of section 169(2), of the Administration of Justice Act ... Taking into account the very limited redaction of information made by the Ministry of Defence and the volume and contents of the other documents produced, Article 6 § 1 of the European Convention and the submission made by the applicants regarding Denmark's international obligations cannot lead to a different conclusion." The applicants also asked for specific information from the Ministry of Defence about, *inter alia*, the Iraqi police's treatment of detained persons, conditions in prisons and at police stations in Iraq and reports from Danish military personnel. On 2 October 2017 the High Court found that the Danish military reports could be relevant, but it limited disclosure so that thirty-one documents comprising a total of 142 pages were provided.

B. The Supreme Court

46. On 29 June 2018, the Ministry of Defence and applicants nos. 6, 11, 15 and 21 appealed against the judgment to the Supreme Court.

47. The pretrial proceedings lasted from the autumn of 2018 to May 2022. During them, the parties filed several pleadings and the Supreme Court considered various procedural issues and applications from the applicants.

48. On 31 May 2022 the Supreme Court dismissed the claims against the Ministry of Defence of seventeen of the applicants (out of eighteen plaintiffs) and upheld the High Court's judgment in respect of applicants nos. 6, 11, 15 and 21 (see paragraph 29 above), four of the five plaintiffs who were not granted compensation by the High Court.

49. The Supreme Court agreed with the High Court's findings of fact, including that the Danish forces had not had command of the Iraqi military and police forces and that the Danish forces had not participated in the detention of the applicants, and consequently had not surrendered them to the Iraqi forces. Moreover, neither the Danish forces nor forces over which the Danish forces had exercised operational control had subjected the applicants to inhuman treatment, nor had Danish forces witnessed or overheard such treatment. The Danish forces had not participated in the screening at the Shaiba Log Base, where a number of the applicants had been surrendered to Iraqi forces, nor had they been in command of the British forces conducting the screening. Finally, the Danish forces had not at any time been present in Al Jameat.

50. Based on those findings, the Supreme Court found that Denmark had no jurisdiction over the applicants within the meaning of Article 1 of the Convention, and that therefore there had been no breach of Article 3 of the Convention. Moreover, the relevant Danish forces had had no knowledge of the detention facility in Al Jameat in question; they were not aware that some of the Iraqi detainees would be transferred there, and they had no specific or substantial information or reason to think that the Iraqi detainees, including some of the applicants, would be subjected to treatment contrary to Article 3 of the Convention. The Supreme Court also dismissed the complaints under Article 6 of the Convention.

51. The Supreme Court gave the following reasons for its decision:

“1. Background to and subject-matter of the case

After the war in Iraq ended in the spring of 2003, the country was occupied by international coalition forces and came under administration of the Coalition Provisional Authority (CPA). By an agreement of 15 November 2003 between the CPA and the Iraqi Governing Council, it was decided that full sovereignty of Iraq should be transferred to an interim Iraqi government on or before 30 June 2004.

The transfer took place on 28 June 2004, making Iraq once again a sovereign state as from that date.

As part of the international coalition efforts, Danish forces were deployed to Iraq between 2003 and 2007. The international coalition efforts were generally based on UN Security Council resolutions. The basis of the presence of Danish forces in Iraq was, first and foremost, resolutions on the use of armed force made by the Danish Parliament pursuant to section 19(2) of the Danish Constitution.

At the request of the Iraqi authorities, Danish and British military forces participated in an Iraqi ‘search and arrest operation’ on 25 November 2004 in Az Zubayr, outside Basra (Operation Green Desert). The tasks of the Danish forces were to form an outer perimeter around, *inter alia*, houses where Iraqi military and police were to detain suspected insurgents and to mentor and monitor the Iraqi forces. The Iraqi parties involved in the present case have stated that while they were detained and subsequently screened on a British military base (Shaiba Log Base) they were subjected to torture and other inhuman treatment by, *inter alios*, Danish forces, and that several of them were subjected to similar treatment by an Iraqi special unit during their subsequent detention at the police station of Al Jameat (also referred to as Al-Shu’oon) in Basra.

The main issues to be considered by the Supreme Court are whether the case should be remitted to the High Court for rehearing; whether the Ministry of Defence is liable to pay compensation for injury to dignity, feelings or self-respect because of ill-treatment; and whether there is a basis for allowing the claims for a new investigation of the matter.

2. Findings of fact

In its judgment, the High Court examined the evidence in the case and summarised its findings of fact in a number of conclusions.

It appears (*fremgår*) from those conclusions, *inter alia*, that the decision made by the Danish forces to participate in Operation Green Desert was based on a standard military assessment and the processing of the intelligence available. As to the operation itself, it appears that the Danish forces were not in command of the Iraqi military and police forces and the Danish forces did not participate in the detention of the Iraqi parties, and consequently they also did not surrender them to the Iraqi forces.

It also appears that neither the Danish forces nor forces over which the Danish forces exercised operational control subjected the Iraqi parties to inhuman treatment and that the Danish forces did not witness or overhear such treatment. In addition, it appears that the Danish forces did not participate in the screening at the Shaiba Log Base, where a number of the Iraqi [applicants] were surrendered to Iraqi forces, nor were they in command of the British forces conducting the screening.

With respect to the Iraqi [applicants’] detention in Al Jameat, the High Court found that while they were detained and on occasion during their prior transfer from the Shaiba Log Base, a number of them were subjected to inhuman treatment, including torture with falanga and electric shocks. In that connection, the High Court found that the Danish forces had not been present in Al Jameat at any time.

With respect to the subsequent course of events, the High Court found, *inter alia*, that on 6 December 2004 the Danish forces had reported the article on ill-treatment published on the previous day in the Iraqi newspaper Al Manarah to the Army Operations Command Denmark, flagging it up as a ‘special incident’ and that at the same time they had also filed a report on events generally. It was also found that, at a briefing, AI, a Battalion Commander, had encouraged any soldiers who might have seen Iraqi security forces ill-treat civilians in connection with the operation to come forward, and that no soldiers had come forward with any such information. In addition, it was found that AI had held a meeting on 8 December 2004 with the commanders of the Iraqi

special police forces and Iraqi battalions, who had informed him that the Iraqi authorities observed Iraqi law.

The Ministry of Defence told the Supreme Court, *inter alia*, that it did not accept that any of the Iraqi [applicants] had been subjected to inhuman treatment in connection with Operation Green Desert, including in Al Jameat, and that their statements lacked credibility. The Iraqi [applicants] responded by asserting that they had been subjected to more severe inhuman treatment than that found by the High Court.

As the High Court also said, there are circumstances that raise doubts as to the correctness of the statements made by the Iraqi [applicants]. The High Court's findings of fact are, however, based on comprehensive evidence, including examinations of most of the Iraqi [applicants]. The Supreme Court finds no basis for disregarding the High Court's findings of fact, including when the evidence produced to the Supreme Court is taken into account.

The Supreme Court therefore finds that the eighteen Iraqi plaintiffs [including the seventeen applicants] awarded compensation by the High Court were subjected to inhuman treatment when they were transferred to and detained in Al Jameat, as established in the High Court judgment. The Supreme Court also agrees with the other findings of fact made by the High Court.

3. Remittal [to the High Court]

The I and B Anti-Torture Support Foundation, speaking for [applicants nos. 1 and 15], has applied for the case to be remitted to the High Court for a rehearing. In support of that claim, the Foundation has submitted, *inter alia*, that the High Court failed to allocate sufficient time for the case; that relevant witnesses were excluded; that the conditions under which the Iraqi [applicants] gave evidence were discriminatory and inadequate; and that fresh evidence has been presented to the Supreme Court which the High Court should be allowed the opportunity to consider.

The other Iraqi [applicants] have not asked for the case to be remitted, but they have submitted that the circumstances showed that they should be awarded compensation for injury to their dignity, feelings and self-respect.

The High Court proceedings lasted fifty-two court days, and seventy-six persons gave evidence. It appears from the court records of the High Court of 19 October 2017 that thirty-two court days were allocated to the Iraqi [applicants'] opening speeches, the evidence of the plaintiffs and witnesses, and the first closing argument.

It also appears from the court records that the High Court considered a number of issues throughout, including the relevance of the witness evidence and the soundness and adequacy of evidence which was given in part via a videolink from the Danish Embassy in Beirut.

There is no basis for finding that the High Court's scheduling and processing of the case were in breach of the Administration of Justice Act or the relevant international law, including Article 6 of the European Convention on Human Rights. As to the fresh exhibits presented to the Supreme Court, most of which were presented by the Iraqi [applicants], the Supreme Court considered those exhibits under the rules of the Administration of Justice Act on fresh evidence in appeals.

The Supreme Court therefore finds that there is no basis for remitting the case to the High Court as concerns [applicants nos. 1 and 15] and that the submissions made in support of remittal cannot justify awarding compensation for injury to dignity, feelings or self-respect to either of the Iraqi [applicants].

4. The basis of the claims against the Ministry of Defence

4.1. Scope

Given the findings of fact in the case, see paragraph 2 above, it cannot be found that [5 plaintiffs, including applicants nos. 6, 11, 15 and 21] were subjected to the ill-treatment described in their statements. There is therefore no basis for ordering the Ministry of Defence to pay compensation to them for injury to their dignity, feelings or self-respect.

The issue is now whether there is in those findings of fact a basis for ordering the Ministry of Defence to pay compensation for injury to their dignity, feelings or self-respect because of the ill-treatment of the other eighteen Iraqi plaintiffs [including the seventeen applicants] when they were being transferred to Al Jameat and while they were detained there.

4.2. Legal basis

Under section 26(1) of the Liability and Compensation Act, the Iraqi [applicants] can only be entitled to compensation for injury to their dignity, feelings or self-respect if the Ministry of Defence is liable for an unlawful violation of their freedom, peace, honour or person. That condition is satisfied if the Danish forces or authorities are liable for any such violation under Danish tort law. The condition is also satisfied if the Iraqi [applicants] are entitled to compensation under Article 41 of the European Convention on Human Rights, see the Supreme Court judgment of 21 June 2017 published on page 2929 of the Danish Weekly Law Reports for 2017.

As to case law, the liability of the Danish authorities has not previously been determined in a case such as the present case. In this connection, the Supreme Court observes that its judgment of 27 June 2013, published on page 2696 of the Danish Weekly Law Reports for 2013, concerned the surrender of a person by the Danish military forces to American forces during the international invasion of Afghanistan in 2002 after Danish forces had detained the relevant person themselves and held him in custody, By contrast, in the present case Danish forces participated, at the request of the Iraqi authorities after Iraq had once again become a sovereign state in June 2004, in an Iraqi police and military operation, and at no point did the Danish forces detain Iraqis or otherwise hold them in custody. The Danish forces were therefore not able to surrender persons to the Iraqi authorities, and after they had completed the task that they had been assigned in the operation, they had no operative control of what persons the Iraqi authorities themselves took into custody.

The Supreme Court finds that section 18 of CPA Order No. 17 of 27 June 2004 (referred to in paragraph 6.1 of the High Court judgment) has no bearing on the case at hand. The provision refers to 'the Sending State's laws, regulations and procedures', so in the present case to Danish law, and it is therefore without significance whether the provision had the status of Iraqi law, as stated by the Ministry of Defence, and could only be relied upon in Iraq or whether the provision could also be relied upon in the Danish courts.

4.3. Assessment

At the time of Operation Green Desert, the presence of Danish forces in Iraq was generally based on the Danish Parliament's resolution of 2 June 2004 that Denmark would continue to contribute to a multinational security force in Iraq. It appears from the preparatory notes to that resolution (the Official Report of Parliamentary Proceedings, 2003-04, Addendum A, Proposed Resolution No. B 213, pp. 8521ff) that the security situation in Iraq was continuing to deteriorate and that the Government

found it important for Denmark to continue to participate in a multinational security force in that country together with the widest possible group of other countries. It also appears that the Government emphasised the necessity for the security force to support and secure the international effort in Iraq to facilitate the long-term reconstruction of the country and a political transition process. Further, it appears that the large number of armed attacks against, *inter alios*, Iraqi civilians only emphasised the need to continue determined international efforts, including broadly based international participation in the multinational security force.

At the relevant time, the international law basis for the international coalition efforts in Iraq, and therefore for the presence there of Danish forces, was principally UN Security Council Resolution No. 1546 of 8 June 2004. As pointed out by the High Court, it appears from the Resolution, *inter alia*, that the interim Iraqi government had requested the continued presence of multinational forces in Iraq for the purpose of rebuilding the country. The Resolution of the Security Council also stated that it '[w]elcomes ongoing efforts by the incoming Interim Government of Iraq to develop Iraqi security, forces including the Iraqi armed forces [...] operating under the authority of the Interim Government of Iraq ...' (paragraph 8), '[d]ecides that the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with ... the Iraqi request for the continued presence of the multinational force and setting out its tasks, including by preventing and deterring terrorism ...' (paragraph 10), '[w]elcomes ... that arrangements are being put in place to establish a security partnership between the sovereign Government of Iraq and the multinational force and to ensure coordination between the two ...' (paragraph 11) and '[r]ecognises that the multinational force will also assist in building the capability of the Iraqi security forces and institutions, through a programme of recruitment, training, equipping, mentoring, and monitoring' (paragraph 14).

The presence of the Danish forces in Iraq in November 2004 must therefore be viewed against the background of a desire by both the international community and the Danish Government and Parliament for the forces to assist the interim Iraqi government in a situation where the security situation in Iraq had deteriorated further, and where there was a need for the long-term reconstruction of the country, including through a 'security partnership' between the Iraqi government and the multinational forces.

As stated by AB, then Minister of Defence, to the Supreme Court, it was clear that the Government and Parliament were fully aware that the relation among, *inter alios*, the Iraqi police, and military might be rough and unyielding. The Danish forces must therefore be deemed to have been deployed by a Government and a Parliament that were aware that, in the circumstances, there was uncertainty as to how, for example, suspected insurgents detained by Iraqi forces would be treated.

In the directive of Defence Command Denmark of 1 September 2004 on DANCON/Iraq, it was decided that detainees were to be surrendered to British, and not Iraqi, forces, and that Danish forces should be on the alert for any unlawful acts committed by the Iraqi authorities and report any such acts and, depending on the circumstances, seek to intervene. At the same time, it was assumed in the directive that, in connection with the performance of tasks in cooperation with Iraqi security forces and police where the Iraqi authorities were to detain or arrest persons, any such arrest should be considered an independent Iraqi arrest and therefore not a surrender of detainees from Danish forces to Iraqi authorities.

The Supreme Court finds that even though the Danish forces did not themselves detain those individuals or surrender them to the authorities of another country, that situation cannot exempt the Danish authorities from any liability in Danish tort law for the

treatment of those individuals by foreign authorities. Also, where Danish forces have merely supported the detention by another country's authorities of, for example, suspected insurgents, those Danish forces may possess specific and actual knowledge or be presumed to know that the individuals in question will be subjected to inhuman treatment [and] that it would be an offence to contribute in that way to the country obtaining custody of the individuals concerned.

The threshold for that knowledge or presumption must be determined having regard to, *inter alia*, ensuring that the Government and Parliament are not *de facto* prevented from deploying Danish forces in accordance with section 19(2) of the Constitution and international resolutions to countries with a particular need for assistance in stabilisation and reconstruction. In this connection it should be taken into account that, as AF stated to the Supreme Court, it will often be necessary in such cases to deploy Danish forces to conflict areas where neither the legal system nor the military or the police are functioning, and where the human rights situation is often not under control.

On the basis of the evidence produced, the Supreme Court finds that the decision of the Danish forces to participate in Operation Green Desert on 25 November 2004 was in accordance with the mandate under which the forces had been deployed on the basis of the Parliamentary resolution of 2 June 2004 and UN Security Council Resolution No. 1546 of 8 June 2004, and that the same applies to the way in which the operation was conducted and implemented. The Supreme Court also finds that the Danish forces had no knowledge of Al Jameat, including no knowledge of the plan to surrender Iraqis to Al Jameat, and the Supreme Court further finds that the Danish forces did not otherwise have any specific reason to believe that the Iraqi [applicants] would be subjected to ill-treatment. Therefore, on the basis of the findings above, the Supreme Court finds that neither the Danish forces nor any other Danish authorities had any reason to believe that the Iraqis would be subjected to inhuman treatment that would lead to the conclusion that under Danish law of torts those parties had been subjected to an offence committed by the Danish forces.

The issue is now whether an assessment based on the European Convention on Human Rights would provide a different outcome.

Under Article 1 of the European Convention on Human Rights, the Contracting Parties "shall secure to everyone within their jurisdiction" the rights and freedoms defined in Section 1 of the Convention.

Under Article 3 of the Convention, "no one shall be subjected to torture or to inhuman or degrading treatment or punishment".

Operation Green Desert took place after sovereignty of Iraq had been transferred to the interim Iraqi government.

As stated in paragraph 2 above, Danish forces did not have command over the Iraqi military and police forces; the Danish forces did not detain the Iraqis and thus did not surrender them to Iraqi forces, nor did they take them into their custody, and following the task that they had been assigned for the operation, they exercised no operational control as to what persons were taken into custody by the Iraqi forces. The Supreme Court further finds that the Iraqi forces had full control of the operation.

Given those circumstances, the Supreme Court finds that at no point did Danish authorities have jurisdiction over the Iraqis, see in this connection paras 83-89 of the judgment delivered by European Court of Human Rights on 15 October 2015 in *Belozorov v. Russia and Ukraine* (application no. 43611/02). Even for that reason alone, the Supreme Court would find that the Danish authorities had not violated Article 3 of the Convention.

Particularly as concerns the subsequent course of events, it is observed that after the articles on ill-treatment had been published in the Al Manarah newspaper, AI, the Battalion Commander, encouraged soldiers who might have seen Iraqi security forces ill-treating civilians to come forward. He also held a meeting with, *inter alios*, the chiefs of the Iraqi special police forces and the Iraqi battalions, at which he discussed the articles and, according to his statement to the High Court, explained to them the rules of war. The ill-treatment of the Iraqi parties took place at an Iraqi police station in an area under British command after the British forces had surrendered them to Iraqi authorities. At least in those circumstances, the Supreme Court finds that there was no duty to launch further initiatives and that this course of events cannot justify a claim for compensation for injury to dignity, feelings or self-respect either.

5. Limitation

As mentioned, no illegal offence has been committed by Danish authorities against the Iraqi [applicants] that may justify a claim for compensation for injury to dignity, feelings or self-respect.

Consequently, the issue of limitation does not become relevant, and the Supreme Court therefore refrains from considering the High Court order of 22 August 2016 published on page 3929 of the Danish Weekly Law Reports for 2016, according to which claims for compensation are not barred by limitation.

6. New investigation

The I and B Anti-Torture Support Foundation, acting for [applicants nos. 1 and 15] has applied for the Ministry of Defence to be ordered to acknowledge its duty to initiate an effective, official, independent and separate investigation of whether, as a result of the acts and/or omissions of the Ministry of Defence, [applicants nos. 1 and 15] have been subjected to torture or inhuman or degrading treatment or punishment, see Articles 1, 3 and 13 of the European Convention on Human Rights and Articles 12 and 13 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The other Iraqi [applicants] have not applied for a new investigation to be initiated, but have submitted that because the Ministry of Defence did not initiate an investigation itself they are entitled to compensation for injury to their dignity, feelings or self-respect.

The case-law of the European Court of Human Rights requires States to carry out an effective investigation of reasonably justified complaints ('arguable claim' or 'credible assertion') of violations of Article 3 of the European Convention on Human Rights, see, *inter alia*, paragraph 302 of the judgment delivered on 24 March 2011 in *Giuliani and Gaggio v. Italy* (application No. 23458/02) and paragraph 103 of the judgment delivered on 26 January 2021 in *Zličić v. Serbia* (applications Nos 73313/17 and 20143/19).

The Military Prosecution Service investigated this case on three occasions, in 2010-2011, 2012-2014 and 2015-2016, with the purpose of assessing whether there was a basis for instituting criminal proceedings. In addition, the proceedings in the High Court and the Supreme Court have involved extensive investigative efforts.

Consequently, the Supreme Court finds that investigations which meet the requirements of Article 3 of the European Convention on Human Rights have already been conducted. On those grounds, there is no basis for ordering a new investigation. Nor can the submissions made in support of the application for a new investigation justify awarding any of the Iraqi [applicants] compensation for injury to their dignity, feelings or self-respect.

7. Findings

The cases will not be remitted to the High Court.

In case No. 134/2018, the Supreme Court agrees with the Ministry of Defence and dismisses the claim for compensation.

The Supreme Court upholds the rest of the judgment. This means that in case No. 141/2018, the Ministry of Defence will not be ordered to pay compensation to the Iraqi parties and that the applications for a new investigation of the matter are dismissed.

8. Legal costs

...

Held:

The cases are not remitted to the High Court.

As concerns case No. 134/2018, the Supreme Court dismisses the claim for compensation brought against the Ministry of Defence.

The High Court judgment is otherwise upheld.”

52. In so far as relevant to the applicants’ complaints, the court records showed that various procedural issues were dealt with by the Supreme Court, including the following.

53. The applicants were granted free legal aid.

54. Eighteen persons gave evidence in the Supreme Court, and additional written evidence was filed, including documents from Danish and British defence authorities, news articles, findings from international investigations in Iraq, and reports on conditions in Iraq.

55. In a letter of 4 April 2019 to the Supreme Court, the Lebanese lawyer B, who had been present in Beirut, stated that when giving evidence to the High Court by videolink (see paragraph 44 above) his overall impression was that the applicants were very disappointed that they could not give evidence before the Supreme Court in Denmark and that it was humiliating for them to give their evidence at the Embassy of their opponent. He also stated that some of the applicants were very tired after making the journey there, had problems understanding the questions put to them and the translators, and that in his view standards had been below expectations.

56. On 29 November 2019 the Supreme Court decided that the two applicants living in Denmark could give evidence before it but that the applicant living abroad could give evidence by videolink. It was arranged that the videolink would be set up at a so-called Control Risks’ facilities in Iraq. The applicants refused those arrangements and the Supreme Court therefore recorded on 25 January 2021 that besides the two applicants who would appear in person, none of them wished to give evidence.

57. The oral hearing took place over six days in May 2022.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

58. Section 152a of the Administration of Justice Act, concerning the scheduling of trials within a reasonable time, reads as follows:

“Either party may demand that the court schedule the date and time of a trial if that is necessary to meet the requirement in Article 6 of the European Convention on Human Rights of a hearing within a reasonable time.”

59. Section 152a of the Administration of Justice Act was adopted by Parliament by Act No. 538 of 8 June 2006 amending the Administration of Justice Act and Various Other Acts (Police and Justice Reform) (*lov nr. 538 af 8. juni 2006 om ændring af retsplejeloven og forskellige andre love (Politio- og domstolsreform)*). In the preparatory notes to section 152a the issues were described as follows:

“The purpose of the proposed provision on scheduling of a date and time of the trial is to specify the parties’ possible responses in the event of violation or risk of violation of the right to a hearing within a reasonable time under Article 6 of the European Convention on Human Rights. Accordingly, the purpose is to clarify that the parties have access to an effective remedy in accordance with Article 13 of the European Convention on Human Rights by having the right to demand that the court schedule the date and time of the trial if that is necessary to prevent violation of the right to a hearing within a reasonable time or to bring an end to a violation that has already occurred. ...

The power ... is conferred on “a party”, that is, any party to civil proceedings

The proposed provision will require a court to list a trial for a certain time and date when so requested by either party if that is necessary to meet the requirement in Article 6 of the European Convention on Human Rights of a hearing within a reasonable time, that is, where there is a risk of violation of the right to a hearing within a reasonable time. The provision also applies in the event that a violation of the right to a hearing within a reasonable time has already occurred as the listing of the trial for a certain date and time would then serve the purpose of bringing an end to the violation.”

60. Section 152a of the Administration of Justice Act was relied on in a case before the Western High Court (*Vestre Landsret*) which issued a decision on 22 May 2018 (see case no. S-0661-18, published at page 905 of the Criminal Law Reports for 2018). Two defendants had been charged with offences under the gambling legislation. The defendants had complained about a decision by the District Court to postpone the listing of the trial until a ruling had been obtained on a preliminary matter. They referred to the length of time the proceedings were taking and asked for the trial to be listed in accordance with section 152a of the Administration of Justice Act. The Western High Court agreed to their request, but by listing a preliminary hearing at which the trial itself would be listed. The Western High Court held that the District Court should not have postponed the listing of the trial because, *inter alia*, the proceedings had already been going on for a very long

time, and therefore given the provisions of section 843a of the Administration of Justice Act steps must be taken to list the trial.

61. The relevant provisions regarding the use of telecommunications read as follows:

Section 174(2)

“The court may decide that a witness is to give evidence by means of telecommunications with live images if it deems that expedient and justifiable, including where particular considerations for the witness make it appropriate. The witness will be summoned to appear at a specified location, see section 192.”

Section 192(6)

“The court may allow a witness staying abroad to give evidence by means of telecommunications with live images if it deems it feasible for the evidence to be given in a setting as proper as that of evidence given under the rules in subsection (2).”

62. Section 305 of the Administration of Justice Act, regarding the examination of parties, reads as follows:

“The rules on witnesses in Part 18, except for sections 178, 182 and 188, otherwise apply to the examination of parties, with the necessary modifications.”

63. The relevant provisions regarding the exclusion of witnesses read as follows:

Section 169

“(1) A civil servant or other person acting under a public duty or in a similar function may not be required to give evidence as a witness on matters of which he or she is subject to a duty of confidentiality in the general public interest without consent from the relevant authority. Where the witness concerned is a member of parliament, consent from the Speaker of Parliament and the relevant Minister is required.

(2) Where consent is withheld, the court may order the relevant authority to give an account to the court of the reasons for withholding consent if the evidence of the witness is deemed essential to the outcome of the proceedings. Where the court still finds that regard for confidentiality must yield to the need to hear evidence in the case, the court may decide that the witness must give evidence. This does not apply where the reason given for withholding consent is the interests of national security, relations with foreign states or the lives and health of third parties.”

64. Section 298(1) of the Administration of Justice Act, regarding the procedural duty of parties to produce documents, reads as follows:

“At the request of either party, the court may order the opposing party to produce documents in his or her possession, power and control and on which the party intends to rely during the proceedings, unless production will disclose information about matters that he or she would be excluded or exempted from giving evidence about as a witness, see sections 169-172.”

II. RELEVANT INTERNATIONAL LAW MATERIAL

65. In so far as relevant, the United Nations Security Council Resolution number 1546 of 8 June 2004 (S/RES/1546 (2004)), reads as follows:

“*The Security Council,*

...

1. *Endorses* the formation of a sovereign Interim Government of Iraq, as presented on 1 June 2004, which will assume full responsibility and authority by 30 June 2004 for governing Iraq while refraining from taking any actions affecting Iraq’s destiny beyond the limited interim period until an elected Transitional Government of Iraq assumes office;

...

8. *Welcomes* ongoing efforts by the incoming Interim Government of Iraq to develop Iraqi security forces including the Iraqi armed forces (hereinafter referred to as “Iraqi security forces”), operating under the authority of the Interim Government of Iraq and its successors, which will progressively play a greater role and ultimately assume full responsibility for the maintenance of security and stability in Iraq;

9. *Notes* that the presence of the multinational force in Iraq is at the request of the incoming Interim Government of Iraq and therefore *reaffirms* the authorisation for the multinational force under unified command established under resolution 1511 (2003), having regard to the letters annexed to this resolution;

10. *Decides* that the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to this resolution expressing, *inter alia*, the Iraqi request for the continued presence of the multinational force and setting out its tasks, including by preventing and deterring terrorism, so that, *inter alia*, the United Nations can fulfil its role in assisting the Iraqi people as outlined in paragraph seven above and the Iraqi people can implement freely and without intimidation the timetable and programme for the political process and benefit from reconstruction and rehabilitation activities;

11. *Welcomes*, in this regard, the letters annexed to this resolution stating, *inter alia*, that arrangements are being put in place to establish a security partnership between the sovereign Government of Iraq and the multinational force and to ensure coordination between the two, and *notes also* in this regard that Iraqi security forces are responsible to appropriate Iraqi ministers, that the Government of Iraq has authority to commit Iraqi security forces to the multinational force to engage in operations with it, and that the security structures described in the letters will serve as the fora for the Government of Iraq and the multinational force to reach agreement on the full range of fundamental security and policy issues, including policy on sensitive offensive operations, and will ensure full partnership between Iraqi security forces and the multinational force, through close coordination and consultation;

...

14. *Recognises* that the multinational force will also assist in building the capability of the Iraqi security forces and institutions, through a programme of recruitment, training, equipping, mentoring, and monitoring; ...”

THE LAW

I. ALLEGED VIOLATION OF THE SUBSTANTIVE ASPECT OF ARTICLE 3 OF THE CONVENTION

66. The applicants complained that they had been subjected to treatment contrary to Article 3 of the Convention in connection with Operation Green Desert (“the Operation”) in Iraq, and that the Danish State was liable because the applicants fell within the extraterritorial jurisdiction of Denmark. The relevant Articles read as follows:

Article 1

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention.”

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Arguments before the Court

1. The Government

67. The Government disputed the admissibility of the complaint on the grounds that the applicants had not been within the jurisdiction of the respondent Contracting Party within the meaning of Article 1 of the Convention. Moreover, the complaint was manifestly ill-founded.

68. The Government observed that the High Court and the Supreme Court had carried out very thorough analyses, based on comprehensive evidence, and both levels of court had been led to the conclusion that, as to the Operation itself, the Danish forces had not been in command of the Iraqi military and police forces, nor had they participated in the detention of the applicants, and consequently they also had not surrendered the detainees to the Iraqi forces. Moreover, neither Danish forces nor forces over which the Danish forces exercised operational control had subjected the applicants to inhuman treatment, and the Danish forces did not witness or overhear such treatment. The Danish forces had not participated in the screening at the Shaiba Log Base, where a number of the applicants were surrendered to Iraqi forces, nor had they been in command of the British forces conducting the screening. Lastly, Danish forces had not been present in Al Jameat at any time.

69. The Supreme Court also found that both the decision to participate in the Operation and the way in which the Operation was conducted and implemented were in accordance with the mandate of the Danish forces, that the Danish forces had had no knowledge of Al Jameat nor any knowledge

that the applicants were to be surrendered to Al Jameat, and that the Danish forces did not otherwise have any reason to believe that the applicants would be subjected to ill-treatment.

70. The Supreme Court then considered the Court's case-law and concluded that the Danish authorities had not at any point exercised jurisdiction over the applicants within the meaning of Article 1 of the Convention.

71. The Government observed that the applicants' own statements in the domestic proceedings, the Post Operation Report, the video footage, the newspaper article of 5 December 2004, and other specific evidence relied on by the applicants in support of their case formed only a part of the extensive evidence, all of which had been considered in detail during the domestic proceedings and had been assessed and scrutinised by the High Court and the Supreme Court.

72. More specifically, the Government pointed out that among other things both courts had had doubts as to the correctness of the applicants' statements (see paragraph 33 and 51 above). The High Court observed in particular that the statements made by the applicants conflicted in material respects with the extensive and credible evidence on the planning of the operation, the order given, and the actual implementation of the operation. In addition, the applicant's statements about the course of events up until the screenings at the Shaiba Log Base were not consistent on essential points with the statements reproduced in the medical reports prepared for their medical examinations in 2011, 2012 and 2014. Lastly, the statements made by some of the applicants were the result of a process in which applicant no. 6, who had received considerable sums by way of payment, had to a great extent handled the coordination, which could have contributed to distorted and incorrect memories within the group of applicants. The High Court's concern was reinforced by the statement made by applicant no. 6 that he had encouraged others to exaggerate and to make false accusations against British soldiers in a large number of cases against the British Ministry of Defence. The High Court found that many and possibly all of the applicants had already brought cases against the British Ministry of Defence claiming compensation following Operation Green Desert and that multiple applicants had refused to provide further details about that fact to the High Court.

73. The Government also observed that the video footage presented during the domestic proceedings had been intensely scrutinised and assessed by the domestic courts (see paragraph 34 above) and found irrelevant to the case. The domestic courts further dismissed the applicants' claim that there existed unrepresented video footage which could have brought substantial new evidence to the case (see paragraphs 35 and 40 above).

2. *The applicants*

74. The applicants maintained that on 25 November 2004, in Basra, Iraq, in the areas of Cyan 1 and Cyan 4, they were captured and subsequently subjected to torture and inhumane and degrading treatment by Iraqi, British, and Danish forces. They were then handed over to the Iraqi forces and transported to the Shaibah Log Base for screening, and later subjected to interrogation and imprisonment in the Al-Shu'oon and Al-Jameat prison, where they were subjected to further torture and inhumane and degrading treatment. This continued until 6 December 2004, and for some applicants until February 2005.

75. The applicants stated from the outset that both the High Court and the Supreme Court had found that eighteen of the original twenty-three plaintiffs in the domestic proceedings had been subjected to inhuman treatment.

76. The applicants claimed that the Operation had been carried out under the control of the Danish forces, since it was their role to educate and train the Iraqi forces, and they were directly involved in the particular operation in which the applicants were detained. There were also special features showing that the Danish forces had exercised some of the public powers which would normally have been exercised by the Iraqi government and that therefore a *de facto* judicial link had been created, including “as an element of proximity” (see paragraph 117 below). Further, the Danish forces knew or should have known that the Iraqi forces used torture and inhumane methods on prisoners. At the time there was a particular risk of torture and ill-treatment by the Iraqi police and security forces, including in the Basra region, as evidenced by the evidence given before the High Court and the Supreme Court. Although the original intention and plan might have been that the Danish forces were not to take part in the detention of Iraqi prisoners or surrender them to the Iraqi forces, this was therefore substantially departed from.

77. The direct involvement of the Danish forces was demonstrated by a range of evidence including statements made by the applicants and by military staff who had been on the ground.

78. Several applicants explained that they had a clear impression that the Operation was carried out under Danish command. Some applicants also gave evidence that Danish forces had participated actively in their arrest, and were present during interrogations which had taken place in a tent at Shaibah Log Base in the area of the British military camp, where several victims were subjected to inhuman and degrading treatment during searches.

79. Moreover, a Post Operation Report (see paragraph 37 above) stated “Final preparations” ... Due to last minute changes DANBN was forced to become involved in the search and arrest phase itself”.

80. Video footage from the Operation documented Danish military staff and a Danish vehicle in the inner ring during the Operation, and showed that during the applicants’ arrest violence was used by Iraqi forces, while an individual soldier was heard stating in Danish: “have you seen that, they are

really getting some blows” (see paragraph 34 above). That language and footage corresponded to the statement in the above-mentioned Post Operation Report. There was also video footage, which was not presented by the Ministry of Defence and which could have amounted to substantial new evidence.

81. The applicants also alleged, without reference to any specific wording or context, that the direct involvement of the Danish forces was supported by the statements of Battalion Commander J.D. and Chief of Defence J.H. and a statement made by TOC Officer A.S. on 5 November 2012 [sic] (see paragraph 36 above).

82. The applicants further stated that on 5 December 2004 the Al Manarah newspaper had published an article containing descriptions of Danish forces either being involved in torture or having observed torture without intervening (see paragraph 13 above).

83. Lastly, the applicants contended that there was jurisdiction for the purpose of Article 1, since the Danish investigating or judicial authorities had instituted their own criminal investigation or proceedings about the ill-treatment, which had occurred outside the ordinary jurisdiction of that State. Even if there had been no such investigation or proceedings, a jurisdictional link was established by the special features of the present case.

84. In respect of the Danish forces’ alleged liability under Danish Tort Law the applicants referred to the findings of the High Court.

3. The intervening Governments

85. The French Government underlined the importance of ensuring that Contracting States can be certain of the extent of their obligations under Article 1 of the Convention when conducting military operations abroad, in particular, when those operations are conducted in coalition, since such operations may raise complex questions of the division of roles.

86. Regarding the territorial concept of jurisdiction, they submitted, among other things, that the mere presence of the armed forces of a Contracting State in a specific area of a territory for the sole purpose of conducting a security operation cannot be equated with effective State control in that area.

87. They contended that in a joint or coalition operation it could not be enough to establish jurisdiction under its personal concept that a contracting State exercised public powers in the form of maintaining security in a particular zone. It would need to be established, among other things, that the individuals concerned were subject to the effective authority of officials of the Contracting State and that they exercised control during authorised operations

- (i) planned and conducted exclusively by its agents;
- (ii) conducted under the authority and control of its agents; or
- (iii) consequent on the use of force carried out exclusively by its agents.

In the event of arrest or detention in the course of a coalition operation, it would therefore not be possible to conclude that jurisdiction was exercised by a State whose agents did not effectively have control of the individual.

88. The Norwegian Government referred to the Court’s case-law under Article 1 of the Convention and the general principle of territoriality and submitted that where domestic authorities are in control of an operation, the presence and participation of individuals from a foreign Contracting State cannot in itself give rise to exercise of jurisdiction outside that State’s territorial boundaries. Instead, the State has jurisdiction only within its own territory.

89. Moreover, where there are no specific acts of violence involving an element of proximity, an alleged violation of the Convention consisting of acts or omissions by individuals from multiple States should be attributed exclusively to the local authorities if they were

- (i) aware of the situation in which the alleged violation occurred;
- (ii) participated in that event voluntarily; and
- (iii) were in control throughout the event.

In such cases, the foreign Contracting State does not exercise a sufficient degree of “physical power and control over the person in question” (in this respect the Norwegian Government referred to *Al-Skeini and Others v. the United Kingdom* [GC], no.55721/07, § 136, ECHR 2011) for establishing extraterritorial jurisdiction.

B. The Court’s assessment

1. Applicable principles

90. Under Article 1 of the Convention, the High Contracting Parties undertake to “secure to everyone within their jurisdiction” the rights and freedoms set out in the Convention. It follows that all of those within the territory of a Convention State enjoy the Convention rights and freedoms and that the responsibility for fulfilling the Article 1 obligation falls, in principle, on the territorial State. This gives rise to two presumptions: that a State exercises jurisdiction normally throughout its territory; and that a State does not exercise its jurisdiction outside its territory. However, either or both of these presumptions may be rebutted in exceptional cases (see *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, § 553, 30 November 2022).

91. One exception to the principle that jurisdiction under Article 1 is limited to a State’s own territory occurs when, following lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory (see *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 187, 14 September 2022). The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through

the Contracting State's own armed forces, or through a subordinate local administration see *Al-Skeini and Others*, cited above, § 138 and *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 106, ECHR 2012 (extracts)). The State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights (see *Al-Skeini and Others*, cited above, § 138; see also *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, § 179, 29 January 2019).

92. It is a question of fact whether a Contracting State exercises effective control over an area outside its own territory. In determining whether effective control exists, the Court will primarily have reference to the strength of the State's military presence in the area. Other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region (see *Al-Skeini and Others*, cited above, § 139, and the references therein).

93. The Court has also recognised in its case-law that, as an exception to the principle of territoriality, a Contracting State's jurisdiction under Article 1 may extend to acts of its authorities which produce effects outside its own territory. Firstly, the acts of diplomatic and consular agents, who are present on foreign territory in accordance with provisions of international law, may amount to an exercise of jurisdiction when these agents exert authority and control over others. Secondly, the Court has recognised the exercise of extraterritorial jurisdiction by a Contracting State when, through the consent, invitation or acquiescence of the government of that territory, it exercises all or some of the public powers normally to be exercised by that government. Thus, where, in accordance with custom, treaty or other agreement, authorities of the Contracting State carry out executive or judicial functions on the territory of another State, the Contracting State may be responsible for breaches of the Convention thereby incurred, as long as the acts in question are attributable to it rather than to the territorial State. In addition, in certain circumstances, the use of force by a State's agents operating outside its territory may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction. It is clear that, whenever the State, through its agents, exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual. In this sense, therefore, the Convention rights can be "divided and tailored" (see *Al-Skeini and Others*, cited above, §§ 133-37 and the references therein; see also *Georgia v. Russia (II)* [GC], no. 38263/08, § 114, 21 January 2021, and *H.F. and Others v. France*, cited above, § 186).

94. Specific circumstances of a procedural nature have been used to justify the application of the Convention in relation to events which occurred outside the respondent State's territory (see *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, § 107, 5 May 2020). In the *M.N. and Others* decision, cited above, § 123, the Court explained that the mere fact that an applicant had brought proceedings in a State Party with which he or she had no connecting tie could not suffice to establish that State's jurisdiction over him or her. To find otherwise would amount to enshrining a near-universal application of the Convention on the basis of the unilateral choices of any individual, regardless of where in the world that individual might be, and therefore to create an unlimited obligation on the Contracting States to allow entry to an individual who might be at risk of ill-treatment contrary to the Convention outside their jurisdiction. However, even though the extraterritorial nature of the events alleged to have been at the origin of an action may have an effect on the applicability of Article 6 and the final outcome of the proceedings, it cannot under any circumstances affect the jurisdiction *ratione loci* and *ratione personae* of the State concerned. If civil proceedings are brought in the domestic courts, the State is required by Article 1 of the Convention to secure in those proceedings respect for the rights protected by Article 6. The Court considers that, once a person brings a civil action in the courts or tribunals of a State, there indisputably exists, without prejudice to the outcome of the proceedings, a "jurisdictional link" for the purposes of Article 1 (see *H.F. and Others v. France*, cited above, § 188, see also *Markovic and Others v. Italy* [GC], no. 1398/03, § 54, ECHR 2006-XIV).

95. In *Güzelyurtlu and Others* (cited above) and *Hanan v. Germany* [GC], no. 4871/16, 16 February 2021, both concerning death which had occurred outside the territory of the Contracting State, the Court examined whether a "jurisdictional link" within the meaning of Article 1 of the Convention existed in respect of the procedural obligation under Article 2 of the Convention. It stated, among other things, that although the procedural obligation under Article 2 of the Convention will in principle only be triggered for the Contracting States under whose jurisdiction the deceased was to be found at the time of death, "special features" in a given case may justify a departure from this approach (*Güzelyurtlu and Others*, § 190, and *Hanan*, § 142, both cited above). However, it does not follow from the mere establishment of a jurisdictional link in relation to the procedural obligation under Article 2 that the substantive act falls within the jurisdiction of the Contracting State or is attributable to that State (*ibid.*, § 143). In the Court's view these principles can equally apply to the procedural obligations under Article 3 of the Convention, which are relied on in the present case.

2. *Application of the above principles to the facts of the case*

96. The Court observes from the outset that the applicants did not maintain that they were within the jurisdiction of the Danish State because the Danish forces had effective military control in Iraq or because of the basis and mandate for their presence there. It is common ground that the events giving rise to the present case took place after 28 June 2004, when sovereignty of Iraq had been transferred to the interim Iraqi government (see paragraph 6 above), and that UN Security Council Resolution 1546 of 8 June 2004 (see paragraph 65 above) laid down the general framework for the continued presence of international coalition forces in Iraq after the planned transfer of power to an interim government and authorised the multinational military force to take all necessary measures, including the use of armed force, to further the maintenance of stability and security in Iraq, including the prevention of terrorism. The Security Council recognised that the multinational force would also assist in building the capability of the Iraqi security forces through, *inter alia*, a programme of mentoring and monitoring (see paragraph 7 above). As part of the international coalition efforts, Danish forces were deployed in Iraq between 2003 and 2007. The Danish contribution was implemented through the directive of Defence Command Denmark of 1 September 2004 on DANCON/Iraq, which had schedules specifying the operational rules for the Danish battalion and the Danish forces during their deployment. The directive established that if the Iraqi authorities were to detain or arrest persons in connection with operations carried out in cooperation with Iraqi security forces and police, any such arrests should be considered independent Iraqi arrests and therefore not a surrender of detainees from Danish forces to Iraqi authorities (see paragraph 8 above).

97. The applicants claimed that they were within the jurisdiction of the Danish State due to the Operation itself which, they maintained, had been carried out under the control of the Danish forces, because it was their role to educate and train the Iraqi forces, and because they were directly involved in the particular operation within which the applicants were detained. Moreover, specific features of that operation allegedly showed that the Danish forces had exercised some of the public powers that were within the prerogative of the Iraqi government and that therefore a *de facto* judicial link had been created (see paragraph 76 above).

98. The Court will therefore proceed to examine whether, based on the facts, it is clear that the Danish State, through its agents, exercised control over the applicants (see, for example, *Al-Skeini and Others*, cited above, § 137).

99. The domestic courts found that the Danish forces were under the overall control of the Multi-National Division, which had delegated operational control to the British 4th Armoured Brigade in the Basra province, and that making the Danish responsible for the entire Basra province except the Shaiba area and the town of Basra, which was located in

the British area of responsibility, did not make the approximately 500 soldiers of the Danish battalion responsible for maintaining peace and order in the entire area. On the contrary, the tasks to be performed by the Danish battalion within its area of responsibility were defined first and foremost in the UN resolutions on which the mission was based and on the parliamentary resolutions and the directive of Defence Command Denmark on DANCON/Iraq on the basis of which the Danish battalion was to assist and support the Iraqi authorities in maintaining security and was to contribute to the education and training of the Iraqi military and the local police after the transfer of power to the interim Iraqi government. Those documents did not say or imply that the Danish battalion would assume the responsibility of maintaining security in its allocated area of responsibility in the same way as, for example, a sovereign State's own authorities.

100. The Supreme Court (see paragraph 51 above) found that the Iraqi authorities had asked the Danish and British military forces to participate in the Operation on 25 November 2004. The Danish forces were to form an outer perimeter around, *inter alia*, houses where Iraqi military and police were to detain suspected insurgents, as well as to mentor and monitor the Iraqi forces. The legal basis for the presence of the Danish forces in Iraq did not allow them to take part in the detention of Iraqi prisoners or the surrender of Iraqi prisoners to the Iraqi forces.

101. Extensive evidence was presented to the High Court and the Supreme Court, leading them both to conclude that the Iraqi forces had had full control of the Operation. More specifically, the Danish forces did not have command of the Iraqi military and police forces, no Danish forces had participated in the detention of the applicants, and consequently they had not surrendered the applicants to the Iraqi forces either. Moreover, neither Danish forces nor forces under their operational control had subjected the applicants to inhuman treatment.

102. In respect of the applicants' claim that it was the role of the Danish forces to educate and train the Iraqi forces, the High Court stated (see paragraph 33 above) "For both target areas, Cyan 1 and 4, there is – despite the statements of [the applicants] – no basis for concluding that the Danish forces had command or control over the Iraqi security forces; only that the Danish soldiers and MP merely monitored and mentored the Iraqis in accordance with the Danish mandate in Iraq and the operation directive." That finding was confirmed by the Supreme Court.

103. In respect of the applicants' claim that Danish forces had been directly involved in the particular operation during which the applicants were detained, the High Court and the Supreme Court examined numerous witness statements and documents and some video footage before concluding, as stated above, that the Danish forces had not participated in the detention of the applicants and nor had they or forces under their operational control

subjected the applicants to inhuman treatment (or witnessed or overheard such treatment).

104. Before the Court, the applicants maintained that the domestic courts had failed to take their statements into account (see paragraph 77 above). The Court notes in this respect that although both courts had found that eighteen of the twenty-three plaintiffs had been subjected to torture, they also found that there were circumstances raising doubts as to the correctness of the statements made by the applicants, and that to some extent those statements lacked credibility (see paragraphs 33 and 51 above). The High Court noted, in particular, that the applicants' statements conflicted on essential points with extensive and credible evidence about the planning of the operation, the order issued, and the actual implementation of the operation. In addition, the applicant's statements were not consistent on essential points with the statements reproduced in their medical reports from 2011, 2012 and 2014. The statements provided by some of the applicants were the result of a process in which applicant no. 6, who had received considerable payments, had to a great extent handled the coordination, and according to a statement he had given to a newspaper, he had encouraged others to exaggerate and to make false accusations against British soldiers in a large number of cases against the British Ministry of Defence (see paragraph 38 above). Lastly, the High Court found that many and possibly all of the applicants had already brought cases against the British Ministry of Defence claiming compensation for the Operation, and that multiple applicants had refused to provide further details about that to the High Court. Against that background, the High Court found that "no or very little evidential weight is given to the evidence given of [the applicants] about events during Operation Green Desert and until the conclusion of the screening at the Shaiba Log Base" (see paragraph 33 above). The Supreme Court confirmed that finding (see paragraph 51 above).

105. The applicants further maintained that the domestic courts had wrongly assessed specific evidence, such as a Post Operation Report of 29 November 2004 (see paragraph 37 above) which included the statement: "Final preparations ... Due to last minute changes DANBN was forced to become involved in the search and arrest phase itself.", video footage of three incidents (see paragraph 34 above), unrepresented video footage (see paragraphs 35 and 40 above), statements by Battalion Commander J.D. and Chief of Defence J.H. and a statement given by TOC Officer A.S. on 5 November 2012 [sic] (see paragraphs 36 and 81 above), and an article published in the Al Manarah newspaper on 5 December 2004 containing descriptions of Danish forces either being involved in torture or having observed torture without intervening (see paragraphs 13 and 82 above).

106. Having regard however to the very detailed and thorough assessments carried out by the High Court and the Supreme Court based on the extensive evidence presented to them, the Court finds that the applicants have failed to substantiate any elements or shortcomings which

could lead the Court to depart from the domestic courts' findings of facts (see, for example *Cestaro v. Italy*, no. 6884/11, § 164, 7 April 2015).

107. In particular, the applicants have failed to point to any specific evidence, showing that the Danish forces involved exercised some of the public powers normally to be exercised by a sovereign government (see, *a contrario*, *Al-Skeini and Others*, cited above, § 149) or exercised control over the applicants within the meaning of Article 1 of the Convention, by using force (see, for example, *Ukraine and the Netherlands v. Russia*, cited above, §§ 568-570), either by exercising physical power and control over the applicants during their arrest or that they carried out isolated and specific acts of violence involving an element of proximity (see, also, *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 and 3 others, § 353, 9 July 2025, and *a contrario*, *Belozorov v. Russia and Ukraine*, no. 43611/02, §§ 88-89, 15 October 2015). The Court finds reason to point out in this respect that even though the Danish forces carried out a role as mentor and monitor for the Iraqi forces and some of the Danish soldiers may have seen, for example, that “the Iraqi security forces had treated some of the detained Iraqis heavy-handedly” (see paragraph 34 above), such facts may have been relevant for the assessment by the domestic courts as to whether the Ministry of Defence was liable under Danish Tort Law, but they cannot lead to the conclusion that the Danish forces exercised control over the applicants within the meaning of Article 1 of the Convention.

108. In the light of the above, the Court is not satisfied that the applicants were within the jurisdiction of the respondent State for the purposes of Article 1 of the Convention.

109. It follows that the applicants' complaints under the substantive aspect of Article 3 of the Convention must be found incompatible *ratione personae* and therefore inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF THE PROCEDURAL ASPECT OF ARTICLE 3 OF THE CONVENTION

A. Arguments before the Court

110. The applicants submitted that there were “special features” triggering the procedural obligation under Article 3 of the Convention, and that the Danish authorities had failed to undertake an independent and adequate investigation of their detention and treatment. In particular, they submitted that the investigations were not carried out promptly, that the applicants were not involved, that the Danish authorities did not ensure that the investigation was independent, and that there were several flaws in the three investigations carried out by MPS in 2010, 2012 and 2015 (see paragraphs 15-20 above).

111. The Government contended that the Danish authorities were not under a duty to carry out an effective investigation into the applicants' claims of ill-treatment because they were not within the jurisdiction of Denmark. They referred to the findings of the High Court and the Supreme Court and maintained that the applicants' claims had been extensively and effectively investigated, first on 6 December 2004 (see paragraph 14 above), subsequently by the MPS on three separate occasions (see paragraphs 15-20 above), and lastly under the rules of civil procedure by two levels of court (see paragraphs 25-57 above). They pointed out that the MPS was an independent authority under the Ministry of Defence, independent from the Danish Defence and the military command structure.

B. The Court's assessment

112. The Court recalls that a criminal investigation into an alleged violation of Article 3 (or Article 2) of the Convention (see paragraph 95 above) committed outside the jurisdiction of the Member state initiating the investigation may establish a jurisdictional link bringing the procedural obligation imposed by Article 3 into effect, even in respect of a Member State with which the relevant persons have no connecting ties. In order to establish such a jurisdictional link, it must be established that "special features" exist (see *Hanan v. Germany* [GC], cited above, § 132, and *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], cited above, § 190). The mere fact that an applicant brings civil proceedings does not suffice to establish that State's jurisdiction over him or her (see paragraph 94 above).

113. In *Güzelyurtlu and Others* (cited above, § 190), the Court abstained from defining *in abstracto* which "special features" may trigger the existence of a jurisdictional link in relation to the procedural obligation to investigate under Article 2, since these features will necessarily depend on the particular circumstances of each case and may vary considerably from one case to the other. The case concerned the lack of an investigation into the killings of three Cypriot nationals of Turkish Cypriot origin in the Cypriot-Government controlled area of Cyprus, where the alleged killers had fled back to the "Turkish Republic of Northern Cyprus". The Court found that the facts that Northern Cyprus was considered under the effective control of Turkey for the purposes of the Convention, and that Cyprus was therefore prevented from pursuing its own criminal investigation in respect of the suspects, amounted to "special features", so that Turkey's jurisdiction under Article 1 of the Convention was established in respect of the complaint under the procedural limb of Article 2.

114. In *Hanan v. Germany* (cited above), concerning investigations carried out by the German authorities after the death of civilians in an airstrike in Afghanistan, ordered by a colonel of the German contingent of the International Security Assistance Force commanded by NATO, the Court

found that the fact that Germany retained exclusive jurisdiction over its troops in respect of serious crimes which it was obliged to investigate under international humanitarian law (because it concerned the individual criminal responsibility of members of the German armed forces for a potential war crime), and under domestic law, constituted “special features” which in their combination triggered the existence of a jurisdictional link for the purposes of Article 1 of the Convention in relation to the procedural obligation to investigate under Article 2.

115. In the present case, the applicants have not specified or further developed on the “special features” which in their view triggered the procedural obligation under Article 3 of the Convention.

116. Moreover, it was in dispute whether the applicants had at the time when the investigations were initiated an arguable claim that Danish forces had been involved in their ill-treatment on 25 November 2004. This is contrary to *Hanan v. Germany* where it was undisputed that civilians, including the applicant’s two sons, had been killed due to the actions of German soldiers. The Court notes that in this case after a careful examination of the applicants’ claims by the Danish courts it was in fact later found that the alleged ill-treatment by Danish soldiers had not taken place. The Court further notes that any duty to investigate would only concern ill-treatment carried out by Danish soldiers and not what may or may not have happened to the applicants when detained by British or Iraqi authorities outside the control of the Danish forces.

117. From the outset it is therefore doubtful whether the applicants were under the jurisdiction of the Danish State in respect of the procedural obligation under Article 3 of the Convention.

118. In any event, even if the applicants had been within the jurisdiction of the Danish State, the Court would find their complaints inadmissible for the following reasons.

119. It appears that although the applicants were released between 6 December 2004 and February 2005 (see paragraph 74 above) they did not lodge a complaint under Article 3 with any Danish authorities until they initiated civil proceedings against the Ministry of Defence in September 2011, that is, the first set of proceedings (see paragraph 21 above), which was dismissed by the Supreme Court on 24 October 2014 (see paragraph 24 above).

120. The applicants lodged their compensation claim in the City Court the same day in the second set of civil proceedings against the Ministry of Defence (see paragraph 25 above). This set of proceedings ended on 31 May 2022 when the Supreme Court gave its judgment (see paragraph 48 above).

121. Despite the lack of complaints by the applicants, the Danish authorities reacted to the article published in the Iraqi newspaper *Al Manarah* on 5 December 2004. That article reported that two of the applicants had accused the Danish forces of having tortured detainees or having witnessed

them being tortured without intervening (see paragraph 13 above). The Danish forces made a report the following day to the Army Operations Command Denmark describing how the operation had been carried out and that no Danish personnel had any contact with the Iraqi prisoners during their arrest and subsequent detention. The report was forwarded the same day to the Defence Command Denmark and the Ministry of Defence, which prepared reports on 7 and 8 December 2004 on the alleged violations (see paragraph 14 above). In addition, the Battalion Commander encouraged Danish soldiers to come forward if they had witnessed Iraqi security forces subjecting anyone to ill-treatment during the operation. No soldiers came forward with any such information. The Battalion Commander also held a meeting on 8 December 2004 with the commanders of the Iraqi forces who informed him that the Iraqi authorities observed Iraqi law (see paragraph 14 above). No criminal investigation was initiated at this time.

122. Subsequently, on the basis of information published in Danish media on possible ill-treatment, the MPS, which is an independent authority under the Ministry of Defence and independent from the Danish Defence Forces and the military command structure, conducted three separate investigations in 2010, 2012 and 2015 and found on all three occasions that there was no reason to bring charges against Danish soldiers as it could not reasonably be inferred that criminal offences had been committed (see paragraphs 15 to 22 above).

123. In the first investigation report of 28 February 2011, the MPS concluded that the Danish battalion had received no formal reports of the alleged incidents, that it was unlikely that Danish forces had conducted body searches and rectal searches and that there was no presumption that any such searches independently constituted criminal offences (see paragraph 16 above).

124. In the second report of 13 January 2014, based on, *inter alia*, video footage and testimonies from forty-eight persons (see paragraph 17 above), the investigation was discontinued since it could not reasonably be inferred that a criminal offence liable to be prosecuted by the MPS had been committed (see paragraph 18 above).

125. In the third report of 22 August 2016, the MPS decided to discontinue the investigation as it did not appear that criminal offences had been committed (see paragraph 20 above).

126. The domestic courts found in the civil proceedings that many, and possibly all, of the applicants had brought cases against the British Ministry of Defence claiming compensation for ill-treatment committed in the course of the operation (see paragraphs 33 and 51 above).

127. Before the domestic courts the applicants submitted that the Danish State had a procedural obligation to investigate their case, and requested either that the Ministry of Defence be ordered to initiate a new investigation, after the delivery of the judgment, or that the allegedly ineffective

investigation be taken into account in the amount of compensation to be granted see paragraph 51 above). They did not specifically raise the issue of whether they had been sufficiently involved, whether the Danish authorities had ensured that the investigation was independent, or whether there had been specific flaws in the three investigations carried out by MPS.

128. The High Court dismissed the applicants' request and found that a new investigation was unlikely to bring out any new information of essential importance to the determination of the course of events during and after the operation, which had been almost fourteen years previously, or to assessing how far the Danish authorities were responsible for those events. It observed in that respect that the applicants' complaint about ill-treatment had been considered under the civil procedure rules which gave parties access to the production of evidence in the form of, *inter alia*, documentary evidence, a report from the Medico-Legal Counsel, examination of the parties and examination of witnesses. The proceedings had lasted fifty-two court days, and seventy-six persons had given evidence, including the vast majority of the applicants and a considerable number of military witnesses as well as the psychologist and three of the four medical doctors who examined the applicants.

129. The Supreme Court observed that the MPS had investigated the case on three occasions, in 2010-2011, 2012-2014 and 2015-2016 to assess whether there was a basis for instituting criminal proceedings. In addition, the proceedings before the High Court and the Supreme Court had involved extensive investigative efforts. Consequently, it found that the investigations conducted had fulfilled the requirements under Article 3 of the Convention (see paragraph 51 above).

130. The Court notes in addition, that each time new information came to light about alleged ill-treatment of the detained persons during the Operation, whether via the media (see paragraphs 15 and 19 above) or by disclosure of new evidence (see paragraph 17 above), it immediately prompted an investigation or a re-investigation of the case, first by the Ministry of Defence (see paragraph 14 above) and subsequently three times by the MPS (see paragraphs 15-20 above). The Court also notes that Danish authorities had limited opportunities for investigating the alleged incidents as the applicants did not lodge a complaint, the only available information about their allegations came from newspaper articles and the Iraqi authorities were not willing to provide information about the applicants.

131. The foregoing considerations are sufficient to enable the Court to conclude that even if in 2004 there had existed special features bringing the applicants within the jurisdiction of the Danish State in respect of the procedural obligation of Article 3 of the Convention, and even if they had based on the information available in 2004 an arguable claim that they had been tortured by Danish soldiers, there would be no indication that the Danish authorities had failed to carry out an effective investigation as required by

Article 3 of the Convention or, as claimed by the applicants, that the investigation was flawed due to lack of promptness, involvement of the applicants, independence, or other shortcomings. The Court reiterates in this respect that the obligation to investigate is not an obligation of result, but of means (see, or example, *Al-Skeini and Others*, cited above, § 166).

132. It follows that this part of the application must be rejected as inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

133. The applicants complained that the proceedings before the domestic courts had been unfair, and had exceeded the reasonable-time requirement within the meaning of Article 6 § 1 of the Convention, which in so far as relevant reads:

“In the determination of his civil rights and obligations..., everyone is entitled to a fair ...hearing within a reasonable time by [a] tribunal...”

A. Admissibility

1. Arguments by the parties

134. The Government submitted that the complaint regarding the length of proceedings should be declared inadmissible for non-exhaustion of domestic remedies since the applicants had failed to avail themselves of the remedy set out in section 152a of the Administration of Justice Act (see paragraph 58 above), which was effective, adequate and accessible. They also submitted that the remainder of the complaints should be declared inadmissible for being manifestly ill-founded.

135. The applicants disagreed. They considered that the Government had failed to indicate when and how section 152a of the Administration of Justice Act should have been used. They added that the Government had not pointed to any civil cases where that provision had prevented an Article 6 § 1 violation.

2. The Court’s assessment

136. The Court notes that it is not in dispute between the parties that in respect of Article 6 of the Convention there was a jurisdictional link based on the civil action being brought by the applicants before the courts of the respondent State. The Courts agrees (see, paragraph 94 above, and for example, *Markovic and Others v. Italy* [GC], cited above, § 54; and *Couso Permuy v. Spain*, no. 2327/20, § 99, 25 July 2024. The Court reiterates that it is for the Contracting States to organise their judicial systems in such a way that their courts are able to guarantee the right of everyone to obtain a final decision on disputes concerning civil rights and obligations within a

reasonable time (see, among others, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 142, 29 November 2016). It would reaffirm the importance of administering justice without delays which might jeopardise its effectiveness and credibility (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 224, ECHR 2006-V).

137. The general principles concerning exhaustion of domestic remedies are summarised in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-145, 27 November 2023. The Court reiterates that remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are “effective” within the meaning of Article 13 of the Convention if they “[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred”. Article 13 therefore offers an alternative: a remedy is “effective” if it can be used either to expedite a decision by the courts dealing with the case or to provide the litigant with adequate redress for delays that have already occurred (see, among others, *Kudla v. Poland* [GC], no. 30210/96, §§ 157-59 ECHR-XI).

138. The Court observes that section 152a of the Administration of Justice Act was brought in by the Danish Parliament on 8 June 2006 specifically to provide a remedy in respect of claims about the length of the court proceedings. The preparatory notes (see paragraph 59 above) set out that “The purpose of the proposed provision on scheduling of a date and time of the trial is to specify the parties’ possible responses in the event of violation or risk of violation of the right to a hearing within a reasonable time under Article 6 of the European Convention on Human Rights. Accordingly, the purpose is to clarify that the parties have access to an effective remedy in accordance with Article 13 of the European Convention on Human Rights by having the right to demand that the court schedule the date and time of the trial if that is necessary to prevent violation of the right to a hearing within a reasonable time or to bring an end to a violation that has already occurred. ... The power ... is conferred on “a party”, that is, any party to civil proceedings...”.

139. The Court is therefore satisfied that the remedy was specifically designed to expedite proceedings and prevent them from becoming excessively lengthy, which must be considered “the most effective solution” “in so far as it hastens the decision by the court concerned” (see, for examples, *Scordino*, cited above, §§ 183-84 and *Marshall and Others v. Malta*, no. 79177/16, § 82, 11 February 2020). Moreover, the wording of the provision and the preparatory notes gave specific instructions as to when and how to use the remedy.

140. The Government have pointed to one criminal case (see paragraph 60 above) in which that remedy was used, in both the District Court and the High Court. The Court notes the applicants’ argument that no civil cases have been referred to (see paragraph 135 above), but it observes that the remedy

was clearly also aimed at parties to civil proceedings (see paragraphs 59 and 138 above).

141. It is undisputed that the applicants did not apply under section 152a of the Administration of Justice Act in the civil proceedings.

142. It follows that the applicants' complaint regarding the length of the proceedings must be declared inadmissible for failure to exhaust domestic remedies within the meaning of Article 35 (1) of the Convention.

143. The remainder of the complaints under Article 6 of the Convention are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Arguments by the parties

(a) The applicants

144. The applicants claimed that the Danish courts had obstructed their case to such an extent that it amounted to a hindrance of their right of access to court and a breach of the equality of arms principle.

145. They maintained that they had been prevented from presenting their evidence, and that in particular their evidence was either not heard (in the case of three of the applicants), or it was only heard via videolink, or their evidence was impaired. In this respect they referred to, *inter alia*, a letter of 15 February 2018 from the representative I to the High Court (see paragraph 44 above) and a letter of 4 April 2019 from the Lebanese lawyer B to the Supreme Court (see paragraph 55 above).

146. Moreover, the applicants complained that they had been *de facto* prevented from being present during the trial because they had not been granted free legal aid for this purpose. In addition, they had only been granted legal aid for a tort claim of 60.001 Danish Kroner (DKK) despite the fact that they would have been able to claim a higher amount under the Court's jurisprudence.

147. In the applicants' view, the High Court and the Supreme Court also failed to allocate sufficient time for the applicants' presentation of their cases.

148. Further, a substantial amount of evidence was withheld, redacted or summarised by the opponent, and the domestic courts failed to intervene to secure them access to this documentation.

149. The opponent, on the other hand, was allowed to submit excessively extensive evidence, for example by the High Court's decision of 2 October 2017 (see paragraph 45 above).

(b) The Government

150. The Government submitted that both the High Court and the Supreme Court had provided the applicants with an opportunity to be heard and had made several efforts to accommodate them, including by granting free legal aid to cover five days' travel expenses to give evidence in court (see paragraph 42 above). That only sixteen of the applicants had given evidence in the High Court was attributable to the applicants' own actions and those of their lawyers, and the applicants had refused to give evidence in the Supreme Court. In any event the interests of the applicants who were not heard had been sufficiently protected by the two applicants who had declared themselves spokespersons for them all. Lastly, the use of videolink did not place the applicants at a significant disadvantage, nor did it deprive them of a reasonable opportunity to present their case.

151. The Government observed that the High Court had expressly stated that the applicants had a right to be present during the entire trial, although travel expenses for it would not be covered by free legal aid (see paragraph 42 above). In any event, the applicants were represented by counsel during the trial proceedings at both instances.

152. The Government contended that the domestic courts did allocate sufficient time for the applicant's presentation of their case: for example, in the High Court approximately fifty court days were scheduled for the trial, thirty-two of which were reserved for the applicants (see paragraph 43 above).

153. The High Court allowed a certain amount of redaction of information and documents in the interests of national security, relations with foreign states and the lives and health of third parties under section 298(1), read with the third sentence of section 169 (2), of the Administration of Justice Act (see paragraphs 63 and 64 above). However, in its decision of 21 July 2017 (see paragraph 45 above), the High Court specifically dismissed the contention that the "very limited redaction of information" in this case, compared to the volume and contents of the other documents produced, was in breach of Article 6 of the Convention. The Government also referred to the High Court's finding under Article 6 in its judgment of 15 June 2018 (see paragraph 40 above).

154. The Government reiterated that the High Court's decision of 2 October 2017 to grant the Ministry of Defence additional evidence (see paragraph 45 *in fine* above) was a response to the applicants' own request for disclosure of information on the Iraqi police's treatment of detained persons, conditions in prisons and at police stations in Iraq as well as of reports from Danish military personnel, and that the High Court had specifically limited the evidence, so that only thirty-one documents comprising a total of 142 pages were submitted.

2. *The Court's assessment*

155. The Court reiterates that the right of access to a court was established as an aspect of the right to a fair hearing guaranteed by Article 6 § 1 of the Convention in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A. no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary exercise of power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his or her civil rights and obligations brought before a court (see *Grzęda v. Poland* [GC], no. 43572/18, § 342, 15 March 2022; see also *Zubac v. Croatia* [GC], no. 40160/12, § 76, 5 April 2018).

156. The Court reiterates that the adversarial principle and the principle of equality of arms, which are closely linked, are fundamental components of the concept of a “fair hearing” within the meaning of Article 6 § 1 of the Convention (see *Regner v. the Czech Republic* [GC], no. 35289/11, § 146, 19 September 2017). They require a “fair balance” between the parties: each party must be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent or opponents (see *Andrejeva v. Latvia* [GC], no. 55707/00, § 96, ECHR 2009). Moreover, the parties must be given the opportunity to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court’s decision (see *Kress v. France* [GC], no. 39594/98, §§ 65 and 74, ECHR 2001-VI).

157. However, the rights deriving from these principles are not absolute. The Court has already ruled, in a number of judgments, on the particular case in which precedence is given to superior national interests when denying a party fully adversarial proceedings. The Contracting States enjoy a certain margin of appreciation in this area. However, it is for the Court to determine in the last instance whether the requirements of the Convention have been complied with (see *Regner*, cited above, § 147, with further references).

158. The Court observes that the applicants told the Supreme Court, *inter alia*, “that the High Court failed to allocate sufficient time for the case; that relevant witnesses were excluded; that the conditions under which the Iraqi [applicants] gave evidence were discriminatory and inadequate; and that fresh evidence has been presented to the Supreme Court which the High Court should be allowed the opportunity to consider”. The Supreme Court found no basis for finding a breach Article 6 of the Convention. It observed that the proceedings in the High Court had taken up fifty-two court days, of which thirty-two had been allocated to the applicants’ opening speech, the evidence of the plaintiffs and witnesses, and the first closing argument; that seventy-six persons had given evidence (see paragraph 43 above); and that the High Court had continuously considered a number of issues, including whether

witness examinations requested were relevant and the soundness and adequacy of evidence given in part via a videolink from the Danish Embassy in Beirut. New exhibits had been produced to the Supreme Court, which had observed that most of them were presented by the applicants and had duly considered them (see paragraph 51 above). The Court sees no reason to question the Supreme Court's finding in this respect.

159. The Court also observes that the applicants were granted free legal aid for the High Court and the Supreme Court proceedings (see paragraphs 42 and 53 above) although for a lower claim that they had wanted to make, that they were represented throughout by counsel and by the two applicants who had declared that they had represented the other applicants in the compensation claim against the Ministry of Defence.

160. More importantly, the applicants have not pointed the Court to any decisions of the domestic courts refusing to allow the applicants to give evidence, nor have they specified what evidence they were allegedly prevented from submitting (apart from the statements of three applicants) or prevented from submitting in a timely manner.

161. The Court has previously found in various contexts that appearances by videolink are not necessarily problematic in themselves, as long as they serve a legitimate aim and the arrangements are compatible with the requirement of due process (see, for example and, *mutatis mutandis*, *Jallow v. Norway*, no. 36516/19, § 64, 2 December 2021 and the references cited therein).

162. There is also no automatic right under the Convention to be granted legal aid to commence civil proceedings and it is regarded as legitimate and proportionate to refuse to grant free legal aid or to restrict it depending on whether a claim is likely to be successful (see, *mutatis mutandis*, *M.A.K. and R.K. v. the United Kingdom*, nos. 45901/05 and 40146/06, §§ 43-44, 23 March 2010; *Laskowska v. Poland*, no. 77765/01, § 50-54, 13 March 2007; and *Steel and Morris v. the United Kingdom*, no. 68416/01 § 62, ECHR 2005-II). Although pursuing proceedings as a litigant in person may not be easy, the limited public funds available for civil actions makes it a necessary feature of a system of administration of justice. The manner in which it functions in a particular case may be shown not to have been arbitrary or disproportionate, or to have impinged on the essence of the right of access to a court (see, *Laskowska v. Poland*, cited above, § 52). In the present case, the applicants have not, in the Court's view, substantiated their assertion that not having access to free legal aid to cover their travel expenses to be present during the entire trial or that they were only granted legal aid for a tort claim of 60.001 DKK was arbitrary or disproportionate.

163. In the High Court the applicants also complained about the Ministry of Defence's redaction of information in the documentary evidence where it referred to matters of national security, relations with foreign states or considerations relating to the life or health of third parties. In its decision of

21 July 2017 (see paragraph 45 above), the High Court specifically dismissed the applicant's assertion that this "very limited redaction of information", compared to the volume and contents of the other documents produced, was in breach of Article 6 of the Convention. In its judgment of 15 June 2018 (see paragraph 40 above) it observed that the redaction referred to had not impaired the assessment of the applicants' claims, which had included the extensive examination and cross-examination of military witnesses. The High Court was also convinced that there was no video or sound footage from the operation which had not been disclosed by the Ministry of Defence. For those reasons, the High Court dismissed the applicants' complaints under Article 6 in their entirety. In so far as the applicants in words or substance complained that the High Court had allowed the Ministry of Defence to submit "excessively extensive evidence" (see paragraph 158 above), including in its decision of 2 October 2017 (see paragraph 45 *in fine* above), this complaint was dismissed by the High Court. On 31 May 2022 the Supreme Court found there was no basis for finding the High Court's process to have been in breach of the Administration of Justice Act or of international law, including Article 6 of the Convention. The Court finds no reason to question the domestic courts findings in this respect. In particular as regard the non-disclosure of certain information, the Court notes that it was primarily names that had been redacted, and that the Ministry of Defence had described the information that had been redacted (see paragraph 45 above). It also observes that it was the applicants, who, in civil proceedings, wanted access to large amounts of confidential information, which they hoped could prove that they had been subjected to treatment contrary to Article 3 of the Convention and not the State relying on information not made available to the defendants (*a contrario*, for example, *Regner*, cited above). In the Court's view, however, the applicants have failed to explain and substantiate, why or how this very limited redacted information was essential for their case. There are no elements indicating either, that the State, notably the Ministry of Defence "without good cause, prevented the applicants from gaining access to, or falsely denied the existence of, documents in its possession" (compare, for example, *McGinley and Egan v. the United Kingdom*, 9 June 1998, §§ 86-90, *Reports of Judgments and Decisions* 1998-III).

164. The Court does however find reason to add that the right to a fair trial in civil proceedings against government authorities may imply access to relevant documents that are in the possession of the administrative authorities if they may be of importance to the case, if necessary by using a formal procedure for the disclosure of documents (see for example, *McGinley and Egan v. the United Kingdom*, 9 June 1998, § 86-89, *Reports of Judgments and Decisions* 1998-III), but that the right to disclosure of relevant evidence is not absolute. The Court has recognised that the Contracting States enjoy a certain margin of appreciation when precedence is given to superior national interests when denying a party disclosure or discovery, as long as the restrictions do

not affect the very essence of the right to due process (see the case-law cited in paragraph 157 above and *Regner*, cited above, § 148).

165. The foregoing considerations are sufficient to enable the Court to conclude that the applicants were given access to a court, at two levels, for their civil compensation claim, and that the proceedings were fair within the meaning of Article 6 § 1 of the Convention, including that the adversarial principle and the principle of equality of arms were complied with.

166. There has accordingly been no violation of Article 6 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

167. The applicants complained lastly that in respect of their complaint under Article 3, they did not have an effective domestic remedy as required by Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

168. The Government disagreed.

169. The Court has already established that the applicants were not within the “jurisdiction” of the respondent State for the purposes of Article 1 of the Convention (see paragraph 108 above), and that even if the applicants had been within the jurisdiction of the Danish State in respect of the procedural obligation of Article 3 of the Convention, there would be no indication that the Danish authorities had failed to carry out an effective investigation as required by Article 3 of the Convention or, as claimed by the applicants, that the investigation was flawed due to lack of promptness, involvement of the applicants, independence, or other shortcomings (see paragraph 131 above).

170. Nevertheless, both the High Court and the Supreme Court examined and determined the applicants’ civil compensation claim, including their claim that there had been a breach of Article 3.

171. It follows that there existed no arguable claim under Article 13 of the Convention. This complaint is therefore incompatible *ratione materiae* and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 6 concerning lack of access to court and breach of the principle of the equality of arms, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 of the Convention.

ABDULAAL NASER AND OTHERS v. DENMARK JUDGMENT

Done in English, and notified in writing on 21 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simon Petrovski
Deputy Registrar

Lado Chanturia
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Schembri Orland is annexed to this judgment.

CONCURRING OPINION OF JUDGE SCHEMBRI ORLAND

1. I voted in favour of the conclusions reached in this judgment concerning Articles 3, 6 and 13. I thus agreed with the findings of inadmissibility *ratione personae* in respect of the applicants and of inadmissibility for lack of jurisdiction in respect of the respondent State's procedural obligations, under the substantive and procedural aspects of Article 3 of the Convention, respectively.

2. My comment is a procedural one, as the alleged violation of the procedural aspect should have been assessed on the basis of a threshold criterion, with a peremptory effect on the action if no jurisdictional link were found to subsist. The judgment, however, adopts an “even if” approach which assesses this part of the complaint on its merits, whilst leaving unanswered the question of the jurisdictional link based on the existence or otherwise of “special features” (see paragraph 131). Yet the assessment on the merits can only go forward once jurisdiction is established and the State's Article 1 obligations are triggered. Where there is no jurisdiction, the analysis need not go further.

3. This being premised, I agree that the facts of this case did not warrant a finding of a violation of Article 3.

APPENDIX

List of applicants:

Application no. 46571/22

No.	Applicant's Name	Year of birth	Nationality
1.	Munadhil ABDULAAL NASER	1960	Iraqi
2.	Raad ABDULHAMEER HAMED	1977	Iraqi
3.	Hamid ABDULSADA JABBAR	1979	Iraqi
4.	Bandar ALBARRAK	1960	Iraqi
5.	Malik AL-SADOON	1952	Iraqi
6.	Khalid GERTHAÁ AL-SAADOUN	1969	Iraqi
7.	Zuhair HABEEB ABBAS	1968	Iraqi
8.	Abdullreda HASAN ABDULLREDA	1958	Iraqi
9.	Qati HILAS ZGHAIR	1981	Iraqi
10.	Naji ISMAEL KAAYEM	1977	Iraqi
11.	Mutar KARHAB YOUSHA	1970	Danish
12.	Abdullah KHALAF IBRAHIM	1974	Iraqi
13.	Qais J. KHALED BRAK	1966	Iraqi
14.	Sulaiman MARZOR ATSHAN AL-BARRAK	1977	Iraqi
15.	Fawzi MEZAAL MWAZI MWAZI	1977	Iraqi
16.	Basim MOHAMED ATIAYAH	1979	Iraqi
17.	Khalid MOHAMMED SHAHEL	1978	Iraqi
18.	Dhurgam MUAYAD HASAN	1975	Iraqi
19.	Assad OTHMANN IMRAN	1978	Iraqi
20.	Abdulraheem QASIM MECHMAN	1962	Iraqi
21.	Shahel SABAH NAYEF ALI AL-JASHAATI	1976	Iraqi