SUPREME COURT JUDGMENT
delivered on Tuesday, May 31, 2022

Case 134/2018

(1st section)

Ministry of Defense

(Attorney Peter Biering)

v.

Inge Genefke & Bent Sørensen Antitortur Støttefond as representative for Appellant 1, formerly Applicant 1, Appellant 2, formerly Applicant 2,

Respondent 3, formerly Applicant 3,

Respondent 4, formerly Applicant 4,

The heirs of Respondent 5, formerly Claimant 5,

Respondent 6, formerly Claimant 7,

Defendant 7, formerly Applicant 8,

Defendant 8, formerly Applicant 9,

Defendant 9, formerly Applicant 10,

Respondent 10, former Applicant 12,

Respondent 11, former Applicant 13,

Respondent 12, former Applicant 14,

Respondent 13, former Applicant 15,

Respondent 14, former Applicant 17,

Respondent 15, former Applicant 18,

Respondent 16, former Applicant 19,

Respondent 17, former Applicant 20,

and

Defendant 18, formerly Plaintiff 21

(Janus Fürst, attorney at law, court appointed)

and

Case 141/2018

Appellant 1, formerly Applicant 6,
Appellant 2, formerly Applicant 11,
Inge Genefke & Bent Sørensen's Antitorture Support Fund as representative of Appellant 3, formerly Plaintiff 16,
Appellant 4, formerly Applicant 22
and
Appellant 5, formerly Applicant 23 (Janus
Fürst, lawyer, acting for all) v
Ministry of Defense
(Attorney Peter Biering)

In a previous instance, a judgment was handed down by the 24th division of the Eastern High Court on June 15, 2018 (B-3448-14).

Seven judges have participated in the judgment: Vibeke Rønne, Henrik Waaben, Michael Rekling, Lars Hjortnæs, Jan Schans Christensen, Kurt Rasmussen and Jørgen Steen Sørensen.

Claims

In *Case 134/2018,* the appellant, the Ministry of Defense, has claimed against all respondents for exemption from payment of compensation.

Defendants Appellee 2, formerly Applicant 2, Appellee 3, formerly Applicant 3, Appellee 4, formerly Applicant 4, the heirs of Appellee 5, formerly Applicant 5, Appellee 6, formerly Applicant 7, Appellee 7, formerly Applicant 8, Defendant 8, formerly Applicant 9, Defendant 9, formerly Applicant 10, Defendant 10, former Applicant 12, Defendant 11, former Applicant 13, Defendant 12, former Applicant 14, Defendant 13, former Applicant 15, Defendant 14, former Applicant 17, Defendant 15, former Applicant 18, Respondent 16, formerly Applicant 19, Respondent 17, formerly Applicant 20 and Defendant 18, formerly Plaintiff 21, has claimed that the Ministry of Defense must pay each of them DKK 60,001 with interest from the commencement of the case.

Respondent Inge Genefke & Bent Sørensen's Antitortur Støttefond as representative of Respondent 1, formerly Applicant 1, claims that the case should be dismissed, alternatively that The Ministry of Defense shall pay DKK 120,001, or alternatively a smaller amount, with specified interest, and that the Ministry of Defense shall acknowledge that it has a duty to initiate an effective, official, independent and separate investigation into whether Appellant 1, formerly Plaintiff 1, as a result of the Ministry of Defense's acts and/or omissions, has been subjected to torture or inhuman or degrading treatment or punishment in violation of Article 3, cf. Article 1 and Article 13 of the European Convention on Human Rights and Articles 12 and 13 of the UN Convention against Torture.

Against these claims, the Ministry of Defense has (in addition to acquittal for payment of compensation) claimed that the case should not be remanded and that the case should be upheld as far as the investigation of the case is concerned.

In *Case 141/2018*, the appellants Appellant 1, former Applicant 6, Appellant 2, former Applicant 11, Appellant 4, former Applicant 22 and Appellant 5, former Applicant 23 claim that the defendant, the Ministry of Defense, must pay each of them DKK 30,000 with interest from the commencement of the proceedings.

The Ministry of Defense has claimed confirmation.

The Appellant Inge Genefke & Bent Sørensen Antitortur Støttefond as representative of Appellant 3, formerly Plaintiff 16 has claimed dismissal, alternatively that the Ministry of Defense must pay DKK 120,001 with specified interest, and that the Ministry of Defence must acknowledge that it has a duty to initiate an effective, official, independent and separate investigation into whether Appellant 3, formerly Plaintiff 16, as a result of the Ministry of Defence's acts and/or omissions, has been subjected to torture or inhuman or degrading treatment or punishment in violation of Article 3, cf. Article 1, and Article 13 of the European Convention on Human Rights and Articles 12 and 13 of the UN Convention against Torture.

In response to these claims, the Ministry of Defense has claimed that the case should not be referred back and that the claims for payment of compensation and investigation of the case should be upheld.

Supplementary case presentation

UN Security Council Resolution no. 1546 of June 8, 2004 states, in addition to what appears from the High Court's judgment, among other things:

"The Security Council,

...

l . *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 authorization 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 po-litical 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 sov-
ereign 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. *Recognizes* that the multinational force will also assist in building the capability of the Iraqi security forces and institutions, through a program of recruitment, training, equipping, mentoring, and monitoring;"

The parties have submitted new documents to the Supreme Court, including case files from Danish and British defence authorities, news articles, results of foreign Iraq investigations and reports on conditions in Iraq, including in the period around Operation Green Desert on November 25, 2004.

Explanations

Witness 61, former Lawyer 1, Witness 62, Witness 63, Witness 64, Witness 65, Witness 66, Witness 67, former Minister of Defense, Witness 68, Witness 69 have testified before the Supreme Court,
former Journalist 3, Witness 70 and Witness 71. Supplementary statements have been given by Defendant 12, former Plaintiff 14, Appellant 1, former Plaintiff 6, Witness 8, Witness 54, Witness 14, Witness 26 and Witness 11.

Respondent 12, formerly Claimant 14, has further explained, inter alia, that for several reasons he would like to see the case starts all over again in the High Court. He would have liked to testify about more things. He only had about 1.5 hours to give his statement. It took time with interpretation, and I think there was also a break. The seemed halfway to wondering if the interpreter understood him. He comes from the southern part of Iraq, where there is a local dialect. He believes the interpreter was from Egypt, so there was a difference in the dialect. He would have liked to have followed the whole case in the High Court. He was present some of the days, but not all of them. He does not know why he was not allowed to be present on all days. He did not expect that he would not be allowed to attend the case. In particular, he thought it was important that he and his friends were allowed to explain themselves. "It takes a long time to explain and understand what happened to them. It is important for them to understand what is going on so that they can have confidence that it is a real trial. He experienced the case in the High Court as a spectacle because he was not treated as he should have been, partly because he would have liked to attend the case together with the others and their lawyer.

On November 25, 2004, he was sound asleep. Danish and Iraqi soldiers entered the takia. He is sure that there were Danish soldiers. The Danish soldiers were close to the door of his room, a few meters away. He remembers jumping up and opening the door to the area between the mosque and his room. Some of the soldiers knocking on the door were Danish soldiers. He woke up because of the loud sound of knocking on the doors. You get very affected by being woken up like that. It still affects him. He was scared and shocked. He had
didn't expect something like this to happen. When he saw that they were Danish soldiers, he was even more shocked. He tried to speak to the Danish forces in English to make it clear to them that they loved them and had no problems with them. He remembers

not if he talked to them for 2-3 minutes, but he tried to explain to them that they had no problem with them and that the soldiers knew them. The Danish soldiers knew that they liked them. The soldiers wouldn't accept it.

It is true that he was grabbed by someone. He was held from behind from the lower part of his neck and punched in the neck around his throat. He can feel the pain to this day. He was grabbed by a Danish and an Iraqi soldier and an interpreter. He was held by one soldier while another soldier gave the order. He believes that the Danish soldier gave the order. It was not a Danish soldier who grabbed him. When presented with a "medical report" which states "...while talking, two or three Danish soldiers grabbed my shoulders...", he explained that he honestly does not remember. He remembers seeing that there were Danish and Iraqi soldiers and an interpreter, but he doesn't remember the number of soldiers. He was shocked. He only remembers the Danish soldier who gave the order. It was as if he lost his mind when he was hit.

They dragged him out of the room and laid him in front of the takia. He was kicked. He doesn't remember how long he was on the ground. When he got up from the ground, he got into a vehicle, a "co-sta". He has no recollection of being anywhere other than on the ground before he was taken to the costa. It was very cold. He was shivering. He was wearing thin nightwear. He was kicked more than once. He was hit in the neck and on the hand while lying down. Those lying next to him were also hit. Appellant 5, formerly Plaintiff 23 was brain damaged and did not understand what was going on or what was being said to him. He is like a child without very good language. The soldiers kept telling him to lie down, but he didn't understand. They threw him on the ground and punched and kicked him many times.

He heard insults from the soldiers. They talked about their honor and their women. They were blamed for terrorism and things like that. It didn't come from the Danish soldiers. He thinks they were Iranian militiamen or Iraqis who had been living in Iran but had returned after the occupation. "Iranians had joined the Iraqi army. This was known to everyone.

He remembers the presence of Danish soldiers while he was lying on the ground with the others. They
Danish soldiers stood over their heads. He believes one of them stepped on his hand. There were Danish soldiers at all times during the period they were on the ground. There were also Danish military cars. He thinks that Danish soldiers shouted "fuck" and the like, but he is not sure. In

the High Court some of the soldiers explained the zip ties that were put around their hands. They were wrapped around them as if they were loose. They were tied so tightly that it hurt a lot.

It is correct that he has explained to the High Court that a Danish soldier pressed his hands into the asphalt with his footwear. He has been in Denmark for some time. There is a difference between the asphalt in Denmark and Iraq. The asphalt in Denmark is soft. The asphalt in front of the takia was very rough with small stones
i. It may well be true that in a medical report he described the surface as small stones. What he meant was that the asphalt was very rough. He does not remember how long he was lying on the asphalt. He can't say whether it was half an hour or a full hour.

They were not eight captives in the costa when they left the takia, as stated in the high court's rendition of his testimony. They were eight people from the takia, but there were more. When they left, was himself, Defendant 10, formerly Applicant 12, Defendant 11, formerly Applicant 13, Defendant 13, formerly Applicant 15, Appellant 3, formerly Applicant 16, Respondent 14, former Applicant 17, Respondent 15, former Applicant 18, Respondent 16, former Applicant 19, Respondent 17, former Applicant 20, Defendant 18, formerly Plaintiff 21, Appellant 4, formerly Plaintiff 22 and Appellant 5, formerly Plaintiff 23 in the costa. He knew that there had been eight of them in the takia. When they got into the car, the blindfold over his eyes had moved, perhaps because of the blows he received. He was therefore able to see a little before it was tied again. He remembers seeing the others sitting in the costa.

He saw that they tried to decapitate Defendant 15, formerly Plaintiff 18, with a large knife. They put the knife at his throat. He does not know if they were faking or if they actually wanted to cut his head off. Defendant 15, formerly Plaintiff 18 was accused of being an Al-Qaeda terrorist because he had long hair. He heard him being threatened while they were sitting in the Costa. The knife incident happened before they left. When he was sitting in the Costa, he did not see any Danish soldiers. Before they left, they were beaten. They were shouting and screaming. The Danish soldiers were close to the costa.
He didn't see them at the time, but he could hear them. They were talking among themselves. He didn't know if they were giving orders. He could hear someone speaking a language that was not Arabic. Based on this, he deduced that there were Danish soldiers near the costa. They were all beaten while sitting in the costa. There were constant beatings with abusive words against them and their women, even before they started driving. In his opinion, the Appellant received 11, formerly the Claimant 13, Defendant 15, formerly Plaintiff 18 and Defendant 13, formerly Plaintiff 15 the most beatings. He himself was not only beaten with empty Coke bottles, but with actual punches. He was beaten while they were driving towards the Military Base. He does not recall whether

he was also kicked while they were driving. He does not remember any Danish soldiers in the Costa. They were all beaten with bottles, cans, fists and slaps. It was during the whole trip.

They arrived at the military base. He had heard about the base, but he hadn't been there. The Iraqi soldiers were gone. They were greeted by Danish soldiers when they came out of the costa. The Iraqi forces were no longer involved. He talked to a Danish soldier about going to the toilet to pee, but he was not allowed. He knew it was a Danish soldier because they had a Danish flag and name on their uniform. He could recognize them by their language and they knew that the Danish soldiers were at that base. He saw 2-3 soldiers who were not wearing an official uniform. They were wearing a military green T-shirt and gray pants. There were many soldiers around him. He is aware of the explanations from Danish soldiers that they were not there, but he is sure that there were Danish soldiers on the base.

They were placed in rows on the ground. There was a dog in front of them and one behind them. It seemed like the soldier had no control over the dog, which was very anxiety-provoking. He remembers the soldier kissing the dog on the mouth.

They were taken to the costa by Iraqi soldiers. Danish soldiers received them at the military base and handled them, while Iraqi soldiers stayed in the background. The Iraqi soldiers were not no longer involved, but they were there. He remembers Iraqi soldiers drinking tea behind them.

He doesn't remember how long it took before they were taken for questioning in a tent. It may have been more or less than an hour, as he explained in the High Court. He was first taken to a tent where a soldier and an interpreter asked for his name. They spelled it wrong, which he told them. He doesn't remember if there was anyone else in the tent besides the soldier and the interpreter. Everyone was strip-searched, but he doesn't remember that. He was not searched in a way that he found offensive. He is aware that others have explained that they were searched in a way that they found offensive, but this has not happened to him.

He was then taken to another tent. He was put on the floor, where there were coins that resembled Danish coins. They were all over the floor. They were old Iraqi coins that were not could be of any use. He was not blindfolded when he was taken to the second tent. The blindfold was removed when they reached the military base. He was not blindfolded

as they sat in rows on the ground or in the first tent. His hands were not tied when he got to tent #2. They had been untied when they were taken out of the costa.

He was blindfolded. They lifted his T-shirt behind his back and up over his head. They tied his hands. He was taken to a car. When he was taken from the military base to Al-Shu'oon (Al-Jameat) prison, he didn't know where he was going. He was afraid he would die. He doesn't remember if he was beaten in the car or if others were beaten. He doesn't remember the trip. When they arrived, they were taken out of the car while being punched and kicked. They were taken into a room where they were on their knees facing the wall. He does not know if they were on their knees for two hours, as reported in his statement to the High Court. He perceived it as a long time. At no time did he hear Danish or English soldiers. He only heard Sol-Dats speaking broken Arabic. The dialect belonged mostly to people from Iran. He deduced from their way of speaking that they were not local Iraqis.

He was taken to a small room where he was beaten. His hands were tied behind his back and he was blindfolded. He ducked down. He was hit on his back with an object that felt like iron. They kept hitting his head and back. He was hit all over his body, but it hurt the most to be hit on his back with the object. He can still feel that he was beaten back then. He was not lifted off the ground, as some of the others have explained. He was lying on the ground.

He was then taken to a large hall. There were many others in the hall. It was not a nice place. They came in at night. They slept on the floor. It was cold. There was nothing for them to lie on. They slept with their backs to each other to keep warm. Standing up was not allowed. For the first few days, they were not given anything to eat or drink. Someone among them arranged for them to have something to eat and drink. It was very little and only later. It was Respondent 11, former Claimant 13, Respondent 13, former Claimant 15 or Respondent 14, formerly Plaintiff 17, who arranged for them to get some food from outside. He was questioned several times, but he doesn't remember the details.

He saw that Defendant 11, formerly Plaintiff 13, was being tortured. They took him, tortured him and brought him back. As they stood facing the wall, he could hear someone being tortured. He did not see the torture of Defendant 11, formerly Plaintiff 13, but they could hear him screaming. When he came back, he could not speak or move.

Those who were in the costa were also in the prison. Appellant 3, formerly Plaintiff 16 was there. He could hear him being tortured. Appellant 4, former Claimant 22 and Appellant 5, former Claimant 23 were also there. He has no doubt that they were tortured. All of them were. Appellant 10, former Claimant 12 was also subjected to torture. He did not see it, but he heard him. He remembers that Respondent 10, formerly Claimant 12 shouted that there was no god but god and Muhammad was the prophet of god every time he was beaten. It is used as a testimony that you are afraid to die or that you are trying to make it clear that you are a Muslim. He was blindfolded so he didn't see it, but he heard him shouting. It was in Al-Shu'oon prison.

It is true that he does not want to tell in detail what happened after he got out of prison in Al-Shu'oon because he has to go back to Iraq. He was released because his father paid a ransom. He was subsequently approached by a journalist who recorded a video of him and the wounds on his back.

Those living in the area around the takia had a different perception of them than they had before. They were seen as terrorists. Someone had taken over the takia to turn it into a Shiite mosque. The takia exists today because someone interfered and said that it should remain be a takia. But it turned into a place that was not well regarded. He couldn't explain to people that he was innocent and that he hadn't been in possession of a lot of weapons. He hasn't served in the military or carried a weapon. He hates people who carry guns. You could call him and the other Sufis as pacifists. It's a familiar description of them.

During the proceedings in the High Court, he and Respondent 11, formerly Claimant 13, spoke during a break with one of the Iraqi soldiers who spoke Arabic with an Iraqi accent. The soldier said that he was upset when he heard the truth about the situation. He kept apologizing and said that he didn't know what they were subjected to, but that it was his duty to testify in court.

After his release, his father and a friend drove him home. He went to the doctor a few days later. He was examined. The doctor found that he had a herniated disk in his spine. He doesn't remember if they talked about him having anxiety. He was not given any paperwork or documentation from the doctor. He was referred to physical therapy. He went to that, but he doesn't have any records of it. He had some light sources put on his back to relieve muscle tension. It didn't help. He also tried to heal himself with training and exercises. The anxiety started from the pre-first stroke he received when he had just woken up in the takia.

He spoke to Al Manarah newspaper just after he was released. He was approached by a journalist. He assumed that the journalist had also spoken to the others. He does not know how the journalist had found him.

He has difficulty remembering times and dates. He believes that it was sometime in 2011 that he realized that the Danish forces were responsible for what had happened to him. He was aware in 2004 that it was Danish soldiers who had been in the takia. He does not remember what he told the journalist from Al Manarah. Maybe he said what it says, and maybe he didn't. He was aware of where the Danish soldiers were. He did not approach them after he was released. He was not stupid. He didn't want to risk being imprisoned again. He didn't go to the Iraqi authorities either. He spoke to the newspaper, but he doesn't remember what he said.

The friends who told him that he could file a claim against the Danish authorities were the ones he knew from the case. He doesn't remember exactly who said it. It may have been in 2011 or 2012. It could also have been in 2010. If he had known before December 2012 that he could raise a claim, he would have done it. But at that time he didn't know because he was exposed to a lot of terrible things and he had a hard time during that period. He might have known at some point in 2011 or 2012, but he doesn't remember.

Appellant 1, formerly Applicant 6, has further explained, inter alia, that it is his opinion that their neighborhood was the target of an operation because they are Sunni Muslims. His family, Family Name, was furthermore, they were loyal to the then Iraqi government under the leadership of the President. They were not so loyal to President that they would participate in any illegality during the occupation. He and the other Iraqi parties have done nothing that would lead one to suspect them of being terrorists. It was enough that they were Sunni Muslims. In the period immediately after the war, there was a major conflict between Sunni Muslims and Iranian militias, among others. After the occupation, it was primarily Iranian militias that controlled the Basra area. The Iranian militias include Iraqis who were prisoners of war during the Iran-Iraq war. They were captured and trained by Iranians and then came back to Iraq. They also have Iranian citizenship. As he explained to the High Court, he felt lucky because he was not transferred to Al Shu'oon like the other Iraqi parties. Everyone in the city knew about Al Shu'oon. It was a detention center where people were tortured, killed or squeezed financially.

He underwent a forensic medical examination in Amman, Jordan. There was no cheating in the reports that were given. It is true that he has said in the interview with The Sun that could get papers done by Iraqi doctors. Many Iraqi doctors are corrupt. It is not Iraqi doctors who have examined him and the other Iraqi parties in this case. Of the forensic report on him states that they were photographed after a medical examination had been placed weapons in front of them to make it look like they were armed. It is not true that the weapons were placed in front of them. There was a pile about 20 meters away where the weapons were dropped off.

He remembers signing the contract of November 20, 2012 with Person 8. did not work for Person 8 and Leigh Day prior to entering into this contract. The collaboration lasted for approximately 1 year from the conclusion of the contract. He met Attorney, former Party Representative in late 2011. He is not sure of the month. He was not working for Person 8 and Leigh Day at this time. He is the one who arranged the meetings between the Lawyer, former Party Representative and the Iraqi parties in the case. He was critical of Leigh Day in the interview with The Sun. He does not have the same opinion of the Lawyer, former Party Representative. Leigh Day has disappointed him. Lawyer, former Party Representative is different.

Person 8 is Iraqi but also has British citizenship. Person 8 owns Orient Script Worldwide and also works for Leigh Day. When he said in the interview with The Sun that Person 8 is a "crook", it is because of something between him and Person 8. He does not want to say how he came to work for Person 8. He knows Respondent 1, formerly Claimant 1, who is his aunt's son. It is not true what Respondent 1, formerly Plaintiff 1 has testified in the High Court that Person 8 has assisted in bringing the case against the Danish authorities. Person 8 has only been involved in the case against the British authorities. The same applies to Person 14. He does not wish to comment on what he has explained in the interview with The Sun about the case against the British authorities.

When he contacted Lawyer, former Party Representative in 2011, he already knew the first group of Iraqi parties living in the houses at Target. He also knew two of the Iraqi parties from Target. He came into contact with the other Iraqi parties by, among other things, talking to these two parties. It is true that he helped gather and coordinate the cases before the High Court. Among other things, he had the task of keeping in touch with the lawyer, former Party Representative. He had to make sure that the personal

who had been subjected to poor treatment could file a lawsuit against the Danish authorities.

It was his own idea. He came up with the idea after reading an article on the website Iraqi Rabita, which is a website for Iraqis living in exile. The article said that you could contact a lawyer, a former Party Representative, if you had been subjected to torture by Danish soldiers. It was on this basis that he contacted Lawyer, former Party Representative, and he encouraged the other Iraqi parties to do the same.

He has received DKK 27,250 in fees from Lawyer, former Party Representative. This payment only covered expenses, including transportation expenses. He did not consider it as salary. It is stated in the district court judgment that he was paid "hourly wages", but in reality he was paid money for each job. He was the one who demanded money for his work. He didn't want to work for free. He submitted receipts and received money for tasks related to the case. He believes that the invoices he sent in connection with the remuneration for his work were split, so there were separate invoices for expenses and separate invoices for wages. He assumes that The invoices have been paid by IRCT and a Danish company.

It is true that he went to the takia to meet with the other Iraqi parties, as he has explained in the High Court. The purpose was to talk to them about whether they wanted to bring a claim against the Danish authorities. He did not do anything to persuade them to take legal action. He simply made them aware of the possibility. There was no need to persuade the other Iraqi parties to bring a claim against the Danish authorities. They believed they had a case themselves. As he said in the interview with The Sun: "... Besides you can travel to Istanbul, to Beirut as a journey, and all the expenses are covered", it is about the British case. The interview has nothing to do with the Danish case. You cannot compare the two cases. He has not spoken to the Iraqi parties in this case that they should leave Iraq. He has not promised them anything. He has only told them that he could help them file a case against the Danish authorities. He does not wish to comment on how he can know that the Iraqi parties in the Danish case have not exaggerated their descriptions of what has happened to them. He has not in this case told the Iraqi parties what to say. He asked them to tell what they thought had happened.

He can recognize his statement to the High Court that he investigated all the Iraqi parties and their credibility and in this connection received help from an officer in the Iraqi intelligence service. The Iraqi officer in question is named Person 43. The first group of the Iraqi parties he knew. They are his relatives and he therefore did not need to investigate their circumstances further. Regarding the second group, he asked the Iraqi officer to get the names of those who had been detained. He then met and talked to them. He already knew them because they came from the same town. One of them was Defendant 13, formerly Plaintiff 15, who was a nurse and a popular person in their town. Before he met with the other Iraqi parties, he spoke to the leader of the takia, who is called Person 44. It is true that there was a person who claimed to have been detained but was not. He found this out through the information provided by the Iraqi officer. He has also confirmed this by talking to one of the other Iraqi parties.

The interpreters used during the hearings in the High Court were not of such a high level. When interpreting for people coming from Iraq, an Iraqi interpreter is required. There may be special needs for interpretation due to the different dialects spoken in Iraq. He believes that he did not have enough time to explain himself during the hearings in the High Court. It was the lawyers who spoke most of the time. He would have liked to have had time to explain more details in the High Court, including what was shown in the images in the case. He has had the opportunity to explain this during the hearing in the Supreme Court.

Witness 61, former Lawyer 1, has explained, among other things, that he had been asked by the High Court to be a counsel for the Iraqis who had to give testimony. He had to record what he experienced. He believes that it was the high court that asked him to write the statement.

On the street in front of the embassy in Beirut, there were many guards. There were also guards all the way from the entrance to the embassy and up to the room where the interrogations were to take place. He perceived it as uncomfortable that there were guards. The reason why there are guards on the street is because there are a number of embassies and public buildings in this area. Further down the street there are offices belonging to the Lebanese government.

The chairs in the interview room were uncomfortable to sit in. Among other things, it is not comfortable to have to turn your body to look at the screen. It's not like a courtroom.

The Iraqis who had to testify were not given anything to eat during their stay in Lebanon, neither before nor during the interrogations. He generally remembers that they were all hungry, tired and exhausted. He recalls the incident where Respondent 8, former Claimant 9 and Respondent 9, former Claimant 10 were late for their flight in connection with the interrogation on January 31, 2018. They arrived at the hotel at approximately 2 a.m. He was not inside the hotel and does not know what Respondent 8, former Claimant 9 and Respondent 9, former Claimant 10 experienced inside the hotel. He simply dropped them off at the hotel. When they met again the next day in connection with the hearings, they complained that they had not slept well.

He remembers well the questioning of Respondent 16, formerly Claimant 19 on January 30, 2018. Respondent 16, formerly Claimant 19 did not immediately cry at the beginning of the interview. It was only when Respondent 16, formerly Claimant 19 was asked questions about what had happened. Respondent 16, formerly Claimant 19 started crying every time he tried to recall and was upset to be confronted with his memories. The interview had to be interrupted because Respondent 16, formerly Claimant 19 was feeling too unwell.
Respondent 16, formerly Claimant 19 would have liked to have been in Denmark to give evidence. He does not recall any suggestion being made that Respondent 16, formerly Claimant 19, could give a written statement.

There were technical problems with the video connection most of the time during the hearings. He disagrees with the High Court that the hearings were conducted with a satisfactory connection and without unintentional interruptions. He was present in the room and it was his perception that there was problems with the connection. The picture and sound were fuzzy. It wasn't just a one-off disconnection. There were multiple interruptions, and it happened in all the court hearings he attended. When he has written in a statement that the technical problems "affected the plaintiffs and their ex-pressions", he means that the Iraqi parties lost the thread during their testimonies because there were many interruptions. "When you are constantly interrupted, it affects how you can explain yourself. There were not interruptions all the time, but there were interruptions several times. The reason he did not make a remark about this at the time is because he had no right to do anything during the hearings.

He was not allowed to interfere. His role was to support the Iraqi parties and observe what was happening. If the parties had legal problems or questions, he could help, but he had no right to do anything during the interrogations themselves. In the statement, he wrote: "My role was told me to be to try to comfort the plaintiffs ... I was not to represent them in court meetings but to try to give them the impression that some body would be taking care of their de facto interests while being inside the embassy", explained

he that he had no role other than the one described here. When it states: "My role was told me to be...", it refers to what he was told by the High Court. He received a letter stating that the High Court wanted him to attend the hearings.

There were different interpreters at each hearing. He remembers that there was an Arabic interpreter who spoke with a Kurdish accent. He noticed and noted this. He doesn't understand Danish, but he could sense that the interpretation during the hearings was not good enough. There were questions that the Iraqi parties could not understand. On several occasions, it was necessary for the interpreters to repeat and rephrase questions from the lawyers before they could be translated and put to the parties. He disagrees with what the High Court has written about the parties and the interpreters being able to understand each other. It was both his and the parties' opinion that something may have been lost in the translations. The parties find it difficult to follow the hearings on a screen. It was the first time they participated in a video conference.

There is no particular reason why Defendant 15, former Plaintiff 18 and Defendant 18, formerly Plaintiff 21, is not mentioned in the declaration. He has merely noted in the statement what he could remember. It is his opinion that these two Iraqi parties have experienced the same as the others.

His remark in the final paragraph of the statement that what he experienced during the four hearings was "very far below standards that should be treated not with such less careful-ness than other civil individuals involved with the important judiciary process" is based on the fact that these were people who had been subjected to torture and wanted to explain themselves to a judge. They were not given the opportunity to do so, and that is not fair. In Lebanon, you have the right to testify in front of a judge. In this case, the Iraqi parties were not physically present at the trial, but were questioned in an embassy building. It was not like a real trial. When he refers to the parties as "torture victims" in this section of the statement, it is based on what the parties have told him.

Witness 26, then head of operations, has in a written statement to the Supreme Court answered the following questions, among others:

> "Question no. 9: It appears from the command basis, which you were the penholder on, that any Iraqi detainees were going to Camp Cambell. Did you think about what would happen to the detainees afterwards and where they would go?

> Answer: It was my understanding, a view shared by the officers involved in the planning, that any detainees would be transported to Camp Cambell and from there would be brought before a judge based on the evidence that would be collected during the operation. This is one of the reasons why we emphasized the importance of securing evidence in the
> with the planning, just as we demanded that the operation could only be carried out if there was a court order. It was my understanding that the detainees would
> remain in the custody of the security forces that had detained them. At no time before or during the operation was there any indication that the detainees would be handed over to security forces in Basra city."

Witness 26 has further explained, among other things, that in November 2004 he did not know about Al Jameat or the Serious Crimes Unit. He had no reason to be interested in these, as they had no relevance to the Danish task solution or security.

Witness 14, the battalion commander at the time, has also testified that in November 2004 he did not know about Al Jameat or the Serious Crimes Unit.

Witness 67, former Minister of Defence, has explained, among other things, that if the Danish Parliament had not recognized that there was a hard and tough culture in Iraq, they could not have sent forces out and let them stay in Iraq. For example, in December 2004, he informed the Foreign Policy Committee about a report from Witness 14, where the Danish forces had intervened when some arrested highway robbers were treated very harshly by Iraqi police. In doing so, he emphasized that it was a difficult mission and that it was a society that had a different attitude towards physical violence and how to treat each other than we have in this part of the world. The Danish forces could only detain people who posed a security threat to the Danish forces.

The Danish forces had a duty to intervene if they saw abuses being committed. After the transfer of power in the summer of 2004, the Iraqis had become masters in their own house, and Denmark had no jurisdiction. They intervened when they saw rough treatment, but there were also limits to how far they could go, as the Danish forces were there as guests. Jurisdiction implies that the people detained by the Iraqis were an Iraqi matter. The Danish forces could not raid Iraqi facilities based on a newspaper article. The whole purpose was to provide
power back to the Iraqis and mentor and support Iraqi police and military to behave properly and regain power in a country that was then in ruins.

When you send soldiers to a country, it is to improve conditions in that country. If you don't recognize that the model social democratic societies we send soldiers to are not

we can't send soldiers out. In the political environment, this was a known problem and recognized by those who voted for it. If Denmark is to have a set of rules that only applies to Danish soldiers, Denmark is uninteresting for other countries to cooperate with, and in the worst case scenario, Denmark will have partners that do not benefit the safety of Danish soldiers, Quite the opposite, in fact.

Witness 70, Chief of Defense, has explained, among other things, that he agrees with the High Court that it is demonstrated that in Operation Green Desert there was a risk that detained Iraqis could be subjected to inhumane treatment, because this is an inherent risk in all international operations. It also entails the risk that you may end up working with people who has previously carried out or will later carry out acts in violation of human rights. He comes to the opposite conclusion of the High Court, as that is the whole purpose of the Danish forces being there. The Danish forces are deployed to raise the minimum bar for human rights compliance.

Witness 71, former Chief of Defence, has explained, among other things, that the vast majority of the conflict areas where the Danish military has been deployed are characterized by the fact that the systems do not work, neither legal systems, police nor military, and in many cases there is no control of the human rights situation. If the Ministry of Defense becomes responsible for everything the Danish soldiers see and experience during deployments, it will be quite difficult to participate in these types of operations. If, for example, a Danish soldier observes human rights violations through violence or other means, it is standard practice for the soldier to intervene and stop it to the extent possible without endangering himself or others. If this is not possible, the soldier must report it to your supervising authority on site or, alternatively, at home in order to pursue it with the authorities or business partners. This is called the duty to report. In practice, it would probably not be possible to have a greater responsibility.

Additional legal basis

According to Article 1 of the European Convention on Human Rights, Member States shall guarantee to everyone within their jurisdiction the rights and freedoms set out in Section 1 of the Convention. The reference to Section 1 includes, inter alia, Article 3, which states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The European Court of Human Rights has taken a position on the extent of the States' jurisdiction, cf. Article 1 of the Convention, in, inter alia, the judgment of October 15, 2015 in case 43611/02 (Belozorov v. Russia and Ukraine). The case concerns a Ukrainian national (Alek-sandr Belozorov) who, at the request of the Russian authorities, was arrested at his apartment in Feodosiya in Ukraine during a police operation where both Russian and Ukrainian police were present. There were conflicting explanations as to whether Russian police had participated in the actual arrest and search of the apartment or had simply been present. Aleksandr Be-lozorov explained that the Russian police officers had participated in the arrest and search, while the Russian police officers explained that they had been present alone.

The question before the ECtHR was, inter alia, whether Aleksandr Belozorov had been subject to Russian (and not only Ukrainian) jurisdiction during the arrest. On this question, the Court stated (paragraphs 83-89):

> "83. The Court observes that the applicant's complaints about the search of his apart-ment in Feodisiya and his arrest and subsequent forced transfer to Russia were directed against both the Ukrainian and the Russian Governments.
>
> 84. The Court notes in this connection that member States must answer for any in-fringement of the rights and freedoms protected by the Convention committed against
> individuals placed under their "jurisdiction" . The exercise of jurisdiction is a necessary condition for a Contracting State being held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention.
>
> 85. The Court refers to its case-law to reiterate that the concept of "jurisdiction" for the purposes of Article 1 of the Convention is deemed to reflect the term's meaning in pub-lic international law (see Gentilhomme and Others v. France, nos. 48205/99, 48207/99 and 48209/99, § 20, judgment of 14 May 2002; Banković and Others v. Belgium and Others (dec.) [GC], no. 52207/99, §§ 59-61, ECHR 2001-XII; and Assanidze v. Geor-gia [GC], no. 71503/01, § 137, ECHR 2004-II).
>
> 86. The Court has previously held that from the standpoint of public international law, the words "within their jurisdiction" in Article 1 of the Convention must be understood to mean that a State's jurisdictional competence is primarily territorial (see Banković and Others v. Belgium and Others, cited above, § 59). At the same time, the Court in its case-law has recognized a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial bounda-ries. In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extraterrito-rially must be determined with reference to the particular facts (see Al-Skeini and Oth-ers v. the United Kingdom [GC], no. 55721/07, §§ 132-137, ECHR 2011).

87. These include the acts of diplomatic and consular agents, who are present on for-eign territory in accordance with provisions of international law; the acts of a State when, through the consent, invitation or acquiescence of the Government of a territory, it exercises all or some of the public powers normally to be exercised by that Govern-ment (see Banković and Others, cited above, § 71); and also in certain circumstances when, for example, 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 (see Öcalan v. Turkey [GC], no. 46221/99, § 91, ECHR 2005-IV).

88. Turning to the case at hand, the Court notes that it was not disputed between the parties that the impugned events took place on the territory of Ukraine and that through-out the relevant period and until he boarded a plane to Moscow on 4 November 2000, the applicant fell within the jurisdiction of that country. The Ukrainian Government did not deny (see paragraphs 18-21 and 24 above) that from the outset the Ukrainian offi-cials had been aware of the informal character of the Russian request for assistance, that the requested assistance would be unlawful under the Ukrainian law (see paragraph 18 above), and that it would fall outside the scope of their treaty obligations under the Minsk Convention (see paragraphs 12, 18-20 and 33 above, and, by contrast, Stephens v. Malta (no. 1), no. 11956/07, §§ 50-54, 21 April 2009). Furthermore, it is clear that the Ukrainian authorities had a choice to refuse the request, but that they decided to car-ry on with the operation. Moreover, despite the presence of the Russian officials in Feodosiya and their alleged participation in the events of 3-4 November 2000, there is no indication in the case-file that the Ukrainian authorities were not in control through-out all of the episodes, including the applicant's arrest (see paragraphs 18 and 33), the search of his home (see paragraph 11, 18 and 33), his subsequent overnight detention in the police station (see paragraph 33) and the transfer to the airport and through the air-port security checks (see paragraph 33 above).

89. In view of these factual circumstances, the Court considers that the events of 3 and 4 November 2000 in Feodosiya fell exclusively within the jurisdiction of Ukraine."

Submitter

Regarding *limitation, the* Ministry of Defense has generally stated, among other things, that a possible claim for

compensation is time-barred. This follows from the rules in the Limitation Act, and in this connection there is no basis for applying the provision in section 14 on obstacles that are not due to limitation.

the holder's circumstances, cf. Bo von Eyben, Forældelse efter forældelsesloven af 2007, 2nd edition, 2019, p. 625.

It is not in itself contrary to the European Convention on Human Rights or other international obligations to apply national limitation rules to compensation claims brought in

due to alleged abuse, including torture, see UfR 2021.3257 H and UfR 2022.1707 H. A specific assessment must be made of whether it is proportionate in each individual case to consider the claim to be time-barred. The circumstances in the present case are comparable with the two highest

court judgments, and it is therefore not disproportionate to apply the Limitation Act in this case either. Thus, the Iraqi parties have not met their burden of proving that they have been subjected to an unlawful violation, as their explanations are unreliable. The so-called medical reports are prepared up to 10 years after the alleged incidents, and the medical assessments in the reports are uncritically based on the persons' own statements.

Regarding *jurisdiction,* it is a condition for compensation that the Iraqi parties have been under Danish jurisdiction, cf. Article 1 of the Human Rights Convention. The starting point is that a state is only bound by the convention when it acts within its own territory, and this starting point can only be deviated from in exceptional cases, cf. e.g. the European Court of Human Rights. Court of Human Rights' judgment of December 19, 2001 in case 52207/99 (Bankovic et al. v. Belgium et al.). There is no basis for deviation in the present case, cf. inter alia the Human Rights Court of Justice's judgment of October 15, 2015 in case 43611/02 (Belozorov v. Russia and Ukraine). The provision in section 18 of CPA Order no. 17 of June 27, 2004 is in this connection not binding for Danish courts in determining which substantive rules apply in the case and cannot be given significance.

Regarding the *basis of liability for the Ministry of Defense, the* starting point must be the rules of Danish law on the liability of public authorities, see UfR 2013.2696 H. The decisive factor is therefore whether the Danish forces, by participating in Operation Green Desert, contributed to the mistreatment of the Iraqi parties in Iraqi custody. Liability for contributing to a harmful act is conditional on having acted culpably, cf. UfR 2019.3990 H, and it was not culpable that the Danish forces decided to participate in the operation. They acted in full deliberation
The Danish Armed Forces are in accordance with their mandate according to UN Security Council Resolution no. 1546 of June 8, 2004, the Danish Parliament's resolution of June 2, 2004 and the Defense Command's directive of September 1, 2004 for DANCON/Iraq.

The Danish forces did not know and should not have known that the detainees were at real risk of being ill-treated. It also follows from the case law of the European Court of Human Rights Article 3 of the Convention that it is only contrary to the provision to extradite or surrender a person to a foreign state if it is shown on the basis of "appropriate evidence" that there are substantial grounds for believing that the extradition entails a real risk, see e.g. judgment of October 27, 2011 in case 37075/09 (Ahorugeze v. Sweden), paragraphs 84 and 87. The Iraqi parties have the burden of proof for this, and according to the

chair's practice, the examination of whether there is a real risk of violation must be based on a strict assessment. This assessment must be based partly on the general conditions in the country concerned and partly on whether specific individual circumstances indicate that the person concerned is at risk. There is no information in the case to support that there was a real risk for the Iraqi parties, either as a result of their individual circumstances or the general conditions in the area.

In addition, the Danish forces have not neglected any duty to act. The Danish forces quickly followed up on the articles in Al Manarah and took a number of immediate actions. The
In this context, it follows from the case law of the European Court of Human Rights that Article 3 of the Convention must be interpreted in such a way that the provision does not impose an impossible or disproportionate burden on the Member States, see e.g. judgment of October 23, 2014 in case 17239/13 (Mamazhonov v. Russia), paragraph 174.

There was no *causal link* between the Danish forces' participation in the operation and the alleged abuses, as the Danish participation was not a necessary condition for the Iraqi forces to carry out the operation. In any case, it was not a foreseeable consequence of the participation that abuses could occur.

With regard to the *duty to investigate*, the Ministry of Defense has never been obliged to investigate the Iraqi parties' allegations of abuse and torture, partly because they relate to Iraqi and British authorities' actions and therefore fall outside Danish jurisdiction, partly because the Iraqi parties' explanations of abuse are unreliable. The investigations that have already been conducted by, among others, the Danish Defense Auditor Corps and in connection with the Eastern High Court and the Supreme Court's handling of the case, are in any case sufficient in relation to the requirements of Article 3 of the Human Rights Convention and the UN Convention against Torture.

The case should not be *referred back to the High Court*, as the proceedings in the High Court have not been marred by material errors or deficiencies. There is no infringement of Human Rights Convention Article 6, among other things because the Iraqi parties themselves bear a significant part of the responsibility for the long case processing time. The Ministry of Defense has fully cooperated in informing the cases in accordance with the decisions made and has handed over material to the Iraqi parties following requests for access to documents.

Inge Genefke & Bent Sørensen's Antitorture Support Fund as agent for the Respondent 1, former Applicant 1 and Appellant 3, former Applicant 16, Respondent 2, former Applicant 2, Respondent 3, former Applicant 3, Respondent 4, former Applicant 4, the heirs of Respondent 5, former Applicant 5, Respondent 6, former Applicant 7, Respondent 7, formerly Applicant 8, Respondent 8, formerly Applicant 9, Defendant 9, former Applicant 10, Defendant 10, former Applicant 12, Defendant 11, former Applicant 13, Defendant 12, former Applicant 14, Defendant 13, former Applicant 15, Defendant 14, former Applicant 17, Defendant 15, former Applicant 18, Defendant 16, former Applicant 19, Defendant 17, formerly Applicant 20, Defendant 18, formerly Applicant 21, Appellant 1, formerly Applicant 6, Appellant 2, formerly Applicant 11, Appellant 4, formerly Applicant 22 and Appellant 5, formerly Applicant 23 have, with regard to *limitation,* generally stated, among other things, that there is no statute of limitations under the Limitation Act. Torture victims' claims against the Danish state cannot be time-barred, as they are not only financial claims, but also legal claims for redress, which are not subject to limitation. This also follows from the practice of the European Court of Human Rights, cf. e.g. judgment of April 9, 2002 in case 27601/95 (Toğcu v. Turkey), paragraphs 136-137. Victims of torture have the right to an effective remedy without time limit, cf. Articles 6 and 13 of the Human Rights Convention and Article 14 of the UN Convention against Torture. The Iraqi parties have been subjected to violations in the form of torture, as evidenced by their statements, the medical reports submitted and the articles in the Iraqi newspaper Al Manarah. There is no basis for setting aside the statements made.

It is not a condition for compensation that there is Danish *jurisdiction*. The Ministry of Defense has not indicated what such a condition is based on, and the prohibition against torture is absolute, so that it must be possible to prosecute torture committed by the Danish state, regardless of where the torture is committed. The practice of the European Court of Human Rights on jurisdiction, cf. Article 1 of the Convention, is therefore irrelevant.

Regarding the *responsibilities of* the *Ministry of Defense,* the Ministry is responsible for the Danish The Danish forces knew or should have known that there was insufficient basis for carrying out Operation Green Desert and that the Iraqi parties would, at least in all likelihood, be subjected to torture if they were captured. The participation of Danish forces in the operation was a prerequisite for the conduct of the operation, and the Danish forces - or forces under Danish control - participated in the detentions and the inhuman and degrading treatment of the Iraqi parties. In any event, the Danish forces enabled the detentions and at the same time failed to prevent the Iraqi forces from subjecting the Iraqi parties to torture. In this way, there has been a

violation of, among other things, Article 3 of the Human Rights Convention and the UN Convention against Torture, so that there is a right to compensation under section 26 of the Danish Liability for Damages Act.

It is irrelevant that Danish forces participated according to the principles of "coordinating authority". This term merely covers complicity under Danish tort law, and the extent of the Danish forces' participation in the operation was enough to establish a basis for liability. It is not a condition for liability that the Danish forces or the Ministry of Defense knew in concrete terms thatdetained persons would be subjected to torture, as negligence is sufficient. The Ministry of Defense had a duty to initiate checks on the Iraqi partner units prior to the operation, and if the Ministry has initiated such checks, it can be assumed that it has been fully aware of the risk that the Iraqi parties would be subjected to abuse in detention. If the Ministry of Defense has not initiated control, the Ministry is liable on this basis. Thus, in any event, the Ministry of Defense has committed unlawful violations against the Iraqi parties, which entitle them to compensation.

The Ministry of Defense has not fulfilled its *duty to investigate*, but has instead obstructed the *investigation* and thus covered up the case. The Danish authorities have thus been presented with information that provides fully sufficient grounds for assuming that torture has taken place. There is a heightened duty to investigate, and diplomatic guarantees are not an effective protection against the detention of persons whom the Ministry of Defense has detained or assisted in detaining, are subjected to torture. The Ministry of Defense has not timely made the necessary evidence gathering steps and therefore remains obliged to commission an independent and thorough investigation of whether the Danish forces have violated or contributed to the violation of the rights of the Iraqi parties, cf. the judgment of the European Court of Human Rights of February 16, 2021 in case 4871/2016 (Hanan v. Germany). This in itself justifies that the Iraqi parties are entitled to compensation, cf. Article 13 of the Convention on Human Rights.

There are grounds for *referring* the *case back to the High Court*, as the Iraqi parties did not receive a fair trial. Among other things, insufficient time was allocated for the main hearing, the interpretation was poor and inadequate, and the High Court cut off relevant evidence. There have also been extensive new procedural material for the Supreme Court, and the two-instance principle will be disregarded if the High Court is not given the opportunity to consider the new information. In addition, the Ministry of Defense has obstructed the practical implementation of the case and the Iraqi parties' participation in the court proceedings. As a result, the Iraqi parties have not obtained redress, and the

overall, there is a violation of Article 6 of the European Convention on Human Rights, which in itself justifies compensation.

As regards Appellant 1, formerly Plaintiff 1 and Appellant 3, formerly Plaintiff 16, compensation is not sufficient, and their cases should be referred back to the High Court. If the Supreme Court does not accept this, a new investigation of the case - in addition to awarding compensation - should be carried out.

Reasoning and result of the Supreme Court

1. Background and issues of the case

After the end of the war in Iraq in the spring of 2003, the country was occupied by international coalition forces and placed under the administration of the Coalition Provisional Authority (CPA). By agreement of November 15, 2003 between the CPA and the Iraqi Governing Council, it was decided that full sovereignty over Iraq would be handed over to an interim Iraqi government by June 30, 2004. The handover took place on June 28, 2004, making Iraq a sovereign state again from that date.

As part of the international coalition effort, Danish forces were deployed to Iraq from 2003 to 2007. The international coalition effort was generally based on UN Security Council resolutions. The basis for the presence of Danish forces in Iraq was primarily decisions made by the Danish Parliament in accordance with section 19(2) of the Danish Constitution on the use of armed force.

On November 25, 2004, at the request of Iraqi authorities, Danish and British military forces participated in an Iraqi search and arrest operation in Az Zubayr outside Basra (operation Green Desert). The Danish forces were tasked with forming an outer ring around houses where the Iraqi military and police were to detain suspected insurgents, as well as mentoring and monitor the Iraqi forces. The Iraqi parties in the present case have stated that during the detention and a subsequent screening at a British military base they were subjected to torture and other inhumane treatment by, among others, Danish forces, and that a number of them during a subsequent detention at the police station Al Jameat (also referred to as Al-Shu´oon) in Basra were subjected to similar treatment by an Iraqi special unit.

The main issues before the Supreme Court are whether the case should be remanded for a new hearing in the High Court, whether the Ministry of Defense must pay compensation for damages for tort as a result of assault, and whether there is a basis for accepting the claims for a new investigation of the case.

2. The proof result

In its judgment, the High Court has reviewed the evidence in the case and summarized its assessment of the evidence in a number of conclusions.

These conclusions state, among other things, that the Danish forces' decision to participate in Operation Green Desert was based on a customary military assessment and processing of the available intelligence information. Regarding the operation itself, it appears, among other things, that Danish forces did not have command of the Iraqi military and police forces, and that Danish forces did not participate in the detention of the Iraqi parties and, as a result, did not hand them over to the Iraqi forces. It also appears that neither Danish forces nor forces over which Danish forces had operational control subjected the Iraqi parties to inhumane treatment, and that Danish forces did not witness or overhear such treatment. Furthermore, it appears that Danish forces did not participate in the screening at the military base where a number of the Iraqi parties were handed over to Iraqi forces, nor were they in command of the British forces that completed the screening.

As regards the detention of the Iraqi parties in Al Jameat, the High Court has assumed that a number of them during the detention and partly during the prior transfer from The military base was subjected to inhumane treatment, including torture in the form of falanga and electric shocks. In this connection, the High Court has assumed that the Danish forces were not present in Al Jameat at any time.

Regarding the subsequent course of events, the High Court found, among other things, that on December 6, 2004, the Danish forces reported the article about abuse from the previous day in the Iraqi newspaper Al Manarah to the Army Operational Command as a "special incident" and at the same time submitted a account of the course of events. It is also assumed that Battalion Commander Witness 14, during a meeting, called on soldiers who, in connection with the operation, may have seen Iraqi security forces commit atrocities against civilians to come forward, and that no soldiers came forward with such information. In addition, it has been established, among other things, that Witness 14 on December 8, 2004

held a meeting with the heads of the Iraqi police special forces and Iraqi battalions, who stated that the Iraqi authorities were complying with Iraqi law.

Before the Supreme Court, the Ministry of Defense has argued, among other things, that it cannot be assumed that any of the Iraqi parties in connection with Operation Green Desert have been subjected to inhumane treatment, including in Al Jameat, and that their statements are unreliable. In contrast, the Iraqi parties have claimed that they have been subjected to inhumane treatment to a greater extent than established by the High Court.

There are - as also stated by the High Court - circumstances that raise doubts about the accuracy of the Iraqi parties' explanations. However, the High Court's evidentiary result is based on comprehensive evidence, including questioning of most of the Iraqi parties. The Supreme Court finds no basis for setting aside the result of the evidence, even after the evidence before the Supreme Court.

The Supreme Court then assumes that the 18 Iraqi parties to whom the High Court has awarded compensation were subjected to inhumane treatment during their transfer to and detention in Al Jameat as established in the High Court's judgment. The Supreme Court also relies on the other mentioned findings of evidence.

3. Repatriation

Inge Genefke & Bent Sørensen's Antitortur Støttefond as representative of Appellant 1, formerly Applicant 1 and Appellant 3, formerly Applicant 16 has requested that the case be referred back to the High Court for a new hearing. In support of this, the Foundation has put forward a number of arguments, including, among other things, that the High Court did not allocate sufficient time to the case, that relevant testimony was prevented, that the conditions under which the Iraqi parties gave evidence were discriminatory and not reassuring, and that new information has been presented to the Supreme Court, which the High Court should have the opportunity to consider.

The other Iraqi parties have not claimed remittal, but have argued that the aforementioned circumstances in themselves entitle them to compensation for damages.

The case has been heard by the High Court over 52 court days, and 76 persons have given evidence. It appears from the High Court's court book of October 19, 2017, that 32 court days were set aside for the Iraqi parties' presentation, party and witness statements and first procedural submissions. It also appears from the court books that the High Court has continuously considered a number of issues,

including the relevance of the requested testimony and the justifiability and appropriateness of the fact that some of the testimony was given via video link from the Danish Embassy in Beirut.

There is no basis to assume that the High Court's organization and handling of the case has been in violation of the Administration of Justice Act or relevant international law, including the European Convention on Human Rights Article 6 of the Convention on Human Rights. With regard to new documents before the Supreme Court, which to a large extent have been presented by the Iraqi parties, it is noted that the Supreme Court has considered these, cf. the rules of the Danish Administration of Justice Act on new information during appeal.

The Supreme Court then finds that there is no basis for referring the case back to the High Court with regard to Appellant 1, formerly Plaintiff 1, and Appellant 3, formerly Plaintiff 16, and that what has been stated in support of referral cannot justify that any of the Iraqi parties are entitled to compensation for damages.

4. Responsibilities for the Ministry of Defense

4.1. Delimitation

As a result of the result of the evidence in the case, cf. section 2 above, it cannot be assumed that Appellant 1, former Applicant 6, Appellant 2, former Applicant 11, Appellant 3, former Applicant 16, Appellant 4, former Applicant 22 and Appellant 5, former Applicant 23 have been subjected to the abuse they have testified about. Therefore, there is no basis for ordering the Ministry of Defense to pay compensation for damages to them.

The question is then whether there is a basis for ordering the Ministry of Defense to pay compensation for damages as a result of the abuses that, according to the evidence, have been committed against the other 18
Iraqi parties in connection with the transfer to and detention in Al Jameat.

4.2. Legal basis

According to section 26(1) of the Tort Liability Act, it is a condition for the Iraqi parties' right to compensation for damages that the Ministry of Defense is liable for an unlawful violation of their freedom, peace, honor or person. The condition is fulfilled if Danish forces or authorities, judged according to Danish tort law, are liable for such violations. The condition is also met if the Iraqi parties, judged in accordance with Article 41 of the European Convention on Human Rights, are entitled to compensation, see, inter alia, the Supreme Court's judgment of June 21, 2017 (UfR 2017.2929).

No previous case law has previously considered the liability of Danish authorities in a case such as the present one. The Supreme Court notes that the court's judgment of June 27, 2013 (UfR 2013.2696) on the handover during the international invasion of Afghanistan in 2002 of a person from Danish military forces to American forces concerns a case where Danish forces themselves had detained the person in question and had him in their custody. In contrast, in the The case at issue here is that Danish forces - after Iraq had once again become a sovereign state in June 2004 - at the request of the Iraqi authorities participated in an Iraqi police and military operation and did not at any time detain the Iraqi parties or in any other way have them in custody. Thus, the Danish forces did not have to decide on the surrender of persons to the Iraqi authorities and had fulfilled the task they were assigned in the operation, did not have operational control over which individuals the Iraqi authorities themselves took into custody.

The Supreme Court finds that section 18 of CPA Order No. 17 of June 27, 2004 (referred to in section 6.1 of the the court's judgment) is of no significance to the case. The provision refers to "the Sending State's laws, regulations and procedures", i.e. in this case to Danish law, and it is therefore irrelevant whether the provision, as stated by the Ministry of Defense, had the status of Iraqi law, which could only be invoked in Iraq, or whether the provision can also be invoked before Danish courts.

4.3. Assessment

At the time of Operation Green Desert, the presence of Danish forces in Iraq was based on the Danish Parliament's decision of June 2, 2004, to continue the Danish contribution to a multinational security force in Iraq. It appears from the preparatory work for this decision (Folketingsti-dende 2003-04, Appendix A, resolution no. B 213, p. 8521 ff.) that the security situation in Iraq was continuously deteriorating and that the Government considered it important that Denmark, together with the widest possible group of countries, continued to participate in a multinational security force in the country. It also appears that the Government emphasized that the security force was necessary to support and secure the international effort in Iraq, so that the long-term reconstruction of the country could take place and a political transition process could be implemented. Furthermore, the large number of armed attacks against, among others, the Iraqi civilian population only emphasized the need to continue a determined international effort, including broad international support participation in the multinational security force.

At that time, the international law basis for the international coalition effort in Iraq - and thus for the presence of Danish forces - was in particular UN Security Council Resolution No. 1546 of June 8, 2004. As stated by the High Court, the resolution states, among other things, that the interim Iraqi government had requested the continued presence of the multinational force in Iraq for the reconstruction of the country. The resolution further states that the Security Council "[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..." (Article 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 terror-ism..." (Article 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..." (Article 11) and "[r]ecognizes that the multinational force will also assist in building the capability of the Iraqi security forces and institu-tions, through a program of recruitment, training, equipping, mentoring, and monitoring;" (article 14).

The presence of the Danish forces in Iraq in November 2004 must be seen against the background that the international community as well as the Danish government and parliament wanted the forces' assistance to the interim Iraqi government in a situation where the security situation in Iraq had further deteriorated and where there was a need for a long-term reconstruction of the country, including a "security partnership" between the Iraqi government and the multinational forceIt must also be assumed - as explained to the Supreme Court by Witness 67, former Minister of Defense - that the government and the Danish Parliament were fully aware that there could be a hard and tough culture in, among others, the Iraqi police and military. The Danish forces must thus be considered to have been deployed with the knowledge of the Government and Parliament that, under the circumstances, it could be uncertain how, for example, suspected insurgents taken into custody by Iraqi forces would be treated.

By the Defence Command's directive of September 1, 2004 for DANCON/Iraq, it was decided that detained persons should be handed over to British - and not Iraqi - forces, and that Danish forces should be aware of whether Iraqi authorities were committing illegal acts, and if so, report it and seek to intervene as appropriate. It was also

earlier in the directive, it was assumed that when carrying out tasks in cooperation with Iraqi security forces and police, where Iraqi authorities carried out detention or arrest, the arrest was to be regarded as an independent Iraqi arrest and thus not as a transfer of detainees from Danish forces to Iraqi authorities.

The Supreme Court finds that the fact that Danish forces do not themselves detain individuals and hand them over to another country's authorities cannot, according to Danish tort law, exempt Danish authorities from any responsibility for the treatment of the persons concerned by foreign authorities. Even in cases where Danish forces only support the detention of e.g. suspected rebels by the authorities of another country, Danish forces may thus have such specific and actual knowledge or presumption that they will be subjected to inhumane treatment that it would be an unlawful violation to contribute in this way to the country in question obtaining custody of the persons concerned. The limit for when such knowledge or presumption exists must be determined taking into account, among other things, that the government and the Danish Parliament are not effectively prevented from in accordance with section 19(2) of the Danish Constitution and decisions in the international community to deploy Danish forces to countries where there is a particular need for assistance for stabilization and reconstruction. In this connection, it must be included that Danish forces - as also explained to the Supreme Court by Witness 71 - in such cases will often have to be deployed in conflict areas where neither the legal system, military nor police are functioning, and where in many cases the human rights situation is not under control.

According to the evidence, it must be assumed that the Danish forces' decision to participate in Operation Green Desert on November 25, 2004, was in accordance with the mandate according to the Danish Parliament's resolution of June 2, 2004, and Security Council Resolution no. 1546 of June 8, 2004, and that the same applies to the manner in which the operation was carried out and executed. It must also be assumed that the Danish forces had no knowledge of Al Jameat and thus did not know that the Iraqi parties were to be transferred there, just as it must be assumed that the Danish forces had no other concrete and actual reason to believe that the Iraqi parties would be subjected to abuse. Against this background - and after what has been stated above - the Supreme Court finds that neither the Danish forces nor other Danish authorities had grounds for such a presumption that the Iraqi parties would be subjected to inhumane treatment that these parties, judged according to Danish tort law, have been subjected to an unlawful violation by Danish forces.

The question is whether a different result follows from the European Convention on Human Rights.

According to Article 1 of the Convention on Human Rights, Member States shall guarantee to everyone within their jurisdiction the rights and freedoms set out in Section 1 of the Convention. According to 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 over Iraq had been handed over to the interim Iraqi government. As stated in section 2 above, Danish forces did not command the Iraqi military and police forces, and the Danish forces did not detain the Iraqi parties, did not hand them over to Iraqi forces, did not otherwise have them in custody and, according to the task they were assigned in the operation, did not have operational control over who the Iraqi forces themselves detained. The Supreme Court finds that it must also be assumed that the Iraqi forces had full control of the operation.

Under these circumstances, the Supreme Court finds that the Danish authorities did not at any time have jurisdiction over the Iraqi parties, cf. the European Convention on Human Rights Court of Justice's judgment of October 15, 2015 in case 43611/02 (Belozorov v. Russia and Ukraine), paragraphs 83-89. On this basis alone, the Supreme Court finds that the Danish authorities have not violated Article 3 of the Convention.

In particular, it should be noted that after the articles about abuses in the newspaper Al Manarah, Battalion Commander Witness 14 called on soldiers who may have seen Iraqi security forces commit abuses against civilians to come forward. He also held meetings with, among others, heads of the Iraqi police special forces and Iraqi battalions, where he brought up the articles and, after his testimony to the High Court, explained to them the laws of war. The assaults on the Iraqi parties took place at an Iraqi police station in the British area of responsibility after British forces had handed them over to Iraqi authorities. At least in these circumstances, the Supreme Court finds that there was no duty to take further action, nor can this course of events justify a claim for compensation for damages.

5. Statute of limitations

As stated, there is no unlawful violation of the Iraqi parties by the Danish authorities that can justify a claim for compensation for damages.

As a result, no question of limitation arises, and the Supreme Court therefore does not address the High Court's ruling of August 22, 2016 (UfR 2016.3929), according to which claims for compensation are not time-barred.

6. New investigation of the case

Inge Genefke & Bent Sørensen's Antitorture Support Fund as agent for the Respondent 1, former Plaintiff 1 and Appellant 3, former Plaintiff 16 have alleged that the Ministry of Defense must acknowledge that it has a duty to initiate an effective, official, independent and separate investigation into whether Defendant 1, former Plaintiff 1 and Appellant 3, former Plaintiff 16 have been subjected to torture or inhuman or degrading treatment or punishment as a result of Acts and/or omissions by the Ministry of Defense, cf. Articles 1, 3 and 13 of the European Convention on Human Rights and Articles 12 and 13 of the UN Convention against Torture.

The other Iraqi parties have not claimed the initiation of a new investigation, but have argued that the fact that the Ministry of Defense has not initiated such an investigation in itself entitles them to compensation for damages.

It follows from the case law of the European Court of Human Rights that the state has a duty to conduct an effective investigation of an arguable claim ("credible claim" or "credible complaint") dible assertion") of violation of Article 3 of the Human Rights Convention, cf. i.a. judgment of March 24, 2011, Case No 23458/02 (Giuliani and Gaggio v Italy), paragraph 302, and judgment of January 26, 2021, Case Nos 73313/17 and 20143/19 (Zličić v Serbia), paragraph 103.

On three occasions - in 2010-2011, 2012-2014 and 2015-2016 - the Danish Defense Auditor Corps has investigated the case in question with the aim of assessing whether there was a basis for criminal prosecution. In addition, the High Court and the Supreme Court's handling of the case has involved extensive investigations.

The Supreme Court finds that investigations of the case have already been carried out that meet the requirements of Article 3 of the Convention on Human Rights. As a result, there are no grounds for

basis for upholding the claims for a new investigation. Nor can the arguments put forward in support of those claims justify the award of damages to any of the Iraqi parties.

7. Conclusion

The cases are not to be referred back to the High Court.

In case 134/2018, the Supreme Court upholds the Ministry of Defense's claim for acquittal for payment of compensation.

Furthermore, the Supreme Court upholds the judgment. This means that the Ministry of Defense does not have to pay compensation to the Iraqi parties in case 141/2018, and that the claims for a new investigation of the case are not upheld.

8. Legal costs

Legal costs before the High Court and the Supreme Court have been determined to cover legal fees of DKK 9 million, court fees before the Supreme Court of DKK 6,000 and disbursements in connection with the examination of witnesses before the Supreme Court of DKK 4,796.85, a total of DKK 9,010,796.85. In determining the costs to cover legal expenses, the Supreme Court has emphasized in particular the scope and nature of the case, including the scope of the legal work.

Before the High Court, all Iraqi parties had free legal aid for a claim of DKK 60,001, i.e. half of the claims submitted. Inge Genefke & Bent Sørensen Antitortur Støttefond as representative for Appellant 1, formerly Plaintiff 1 and Appellant 3, formerly Plaintiff 16 had, however, waived free legal aid. The High Court ordered Inge Genefke & Bent Sørensen's Antitorture Support Fund as the representative of Appellant 3, formerly Plaintiff 16, to pay DKK 187,500 in legal costs, while the other Iraqi parties, who were unsuccessful in the High Court, were ordered to pay DKK 46,875 each.

Before the Supreme Court, Appellant 1, formerly Plaintiff 1 and Appellant 3, formerly Plaintiff 16 have free legal aid for a claim of DKK 30,000. The other Iraqi parties have free legal aid for the claims that they have closed down.

The Supreme Court then finds that Inge Genefke & Bent Sørensen Antitortur Støttefond as manager for Appellant 1, formerly Plaintiff 1 and Appellant 3, formerly Plaintiff 16 must pay legal costs for the High Court with a total of DKK 375,000 and for the Supreme Court with a total of DKK 187,500. The Supreme Court finally

furthermore, that each of the other Iraqi parties must pay legal costs of DKK 46,875 before the High Court.

Otherwise, the legal costs shall be borne by the state treasury.

For it is known to be right:

The cases are not referred back to the High Court.

In case 134/2018, the Ministry of Defense is acquitted of payment of

compensation. Otherwise, the judgment of the High Court is upheld.

As costs before the High Court and the Supreme Court, Inge Genefke & Bent Sørensen's Antitortur Støttefond as agent for Appellant 1, formerly Plaintiff 1, and Appellant 3, formerly Plaintiff 16, must pay DKK 562,500 to the Ministry of Defense.

The costs of the proceedings before the High Court shall be paid by Defendant 2, formerly Plaintiff 2, Respondent 3, formerly Applicant 3, Respondent 4, formerly Applicant 4, the heirs of Respondent 5, formerly Applicant 5, Respondent 6, formerly Applicant 7, Respondent 7, formerly Applicant 8, Respondent 8, formerly Applicant 9, Defendant 9, former Applicant 10, Defendant 10, former Applicant 12, Defendant 11, former Applicant 13, Defendant 12, former Applicant 14, Defendant 13, former Applicant 15, Defendant 14, former Applicant 17, Defendant 15, former Applicant 18, Defendant 16, former Applicant 19, Respondent 17, formerly Applicant 20, Respondent 18, formerly Applicant 21, Appellant 1, formerly Applicant 6, Appellant 2, formerly Applicant 11, Appellant 4, formerly Applicant 22 and Appellant 5, formerly Applicant 23 each pay DKK 46,875 to the Ministry of Defense.

In costs before the High Court and the Supreme Court, the Treasury must pay DKK 7,463,921.85 to the Ministry of Defense.

The ordered costs shall be paid within 14 days of the delivery of this Supreme Court judgment and shall bear interest in accordance with section 8a of the Interest Act.