



*Seeking Reparation for Torture Survivors*

## **Law Lords Hearing in the Matter of Al Skeini and others v Secretary of State for Defence**

Hearing Dates: 17-19 and 23-25 April

Where: Appellate Committee of House of Lords

### **QUESTIONS AND ANSWERS**

#### **I. Who are the parties to the case?**

Al Skeini and others v. SSD, an appeal and cross-appeal before the Appellate Committee of the House of Lords (Law Lords) was initially brought on behalf of the family members of Iraqi civilians who were killed in Iraq at the hands of British soldiers. Six cases were selected as test cases to be considered by the Court, these relate to the deaths of the following individuals:

1. **Hazim Jum'aa Gatteh Al-Skeini**
2. **Hannan Mahaibas Saeed Shmailawi**
3. **Muhammad Abdul Ridha Salim**
4. **Waleed Fayayi Muzban**
5. **Raid Hadi Sabir Al Musawi**
6. **Baha Mousa**

The case is brought against the Secretary of State for the Defence.

#### **II. Why is this case important?**

This case is important because it deals with the limits and laws applicable to British troops when they are abroad. The UK agreed to be bound by the European Convention of Human Rights - is it right for it to do abroad what it has agreed not to do at home? Should the victims of such abuses not have the right to justice just as other victims have such rights?

This case is so important that eleven national and international organizations decided to intervene to defend the legal principles involved.

#### **III. Why these Six Cases?**

These six are test cases. After the main jurisdictional issue is decided (whether the European Convention on Human Rights (ECHR) and the Human Rights Act (HRA) applied in Iraq during occupation to the variety of contexts of killings), there are about 30 further related cases that may potentially be brought before the Courts.

#### **IV. What is the Al Skeini case about?**

The Law Lords will consider whether the UK was obliged to conduct a prompt, independent and impartial investigation into the deaths of each of the above-mentioned Iraqi civilian to give full effect to the rights to life and to be protected from torture or other ill-treatment. If the case is decided in favour of the applicants it will force the Government to rethink how deaths caused by British forces in similar circumstances are investigated.

#### **V. Jurisdictional Issues**

The Law Lords will consider whether the UK's obligations under the European Convention on Human Rights (ECHR) and Human Rights Act 1998 (HRA) were applicable to the conduct of British troops that resulted in these deaths.

This is a complex issue. Article 1 of the European Convention states that parties must 'secure to everyone within their jurisdiction the rights,' defined in the convention. Generally this means within the territory of a member state. However, in certain exceptional circumstances the convention might apply extraterritorially outside the territory of member states.

#### **V(a) What is the argument of the claimants? (family members of Iraqi civilians killed)**

The applicants argue that because British personnel were exercising authority and control over Iraqi citizens they must respect their obligations under the ECHR. They also argue that because the British were 'in effective control' of southern Iraq at the relevant time, their actions within Iraq must be seen as within British jurisdiction.

#### **V(b) What is the argument of the Secretary of Defence?**

The Secretary of State argues:

- The ECHR was not designed to be applied in Iraq even with respect to the acts of British armed forces
- Any 'extra-territorial' application of the ECHR requires exceptional justification
- It accepts that in a case of detention in a British controlled and run military detention facility, it can be said that the UK was in 'effective control' for the purposes of Article 1 of the ECHR, and therefore, in respect of the case of Baha Mousa and him alone, the ECHR can be said to apply.
- The Human Rights Act does not apply to any of the cases.

#### **VI. What rights are at stake?**

The right to life under article 2 of the European Convention and the right to be free from torture, inhuman or degrading treatment or punishment under article 3 are both at stake.

Both these rights require that the competent authorities conduct an effective investigation into allegations of breaches of the Convention rights (the killings and the said torture). The caselaw of the European Court of Human Rights has explained at great lengths the nature of this investigative obligation, including on issues relating to:

- the independence and impartiality of the investigation;
- the thoroughness and completeness of the investigation and whether the way in which the investigation was conducted was capable at arriving at the truth;
- the timeliness of the investigation.

**VII. How is the Al Skeini case related to the recent Court Martial in Bulford regarding Baha Mousa?**

The Court Martial, a criminal case, was the result of an investigation by the military police into Baha Mousa's death.

The Court Martial related to seven Queen's Lancashire Regiment (QLR) soldiers, one of whom was charged with his manslaughter. Corporal Payne, who at the commencement of the court martial pleaded guilty to a separate charge of inhumane treatment, was acquitted of the manslaughter count. Two officers and an NCO charged with negligently performing a duty have all been cleared, as has a sergeant accused of common assault and two others of inhumane treatment. Corporal Payne was also acquitted of perverting the course of justice. Thus seven men faced a total of nine charges, and eight of these charges were dismissed.

The Al Skeini case was brought by family members of victims who alleged that the investigations into the deaths were woefully inadequate. The fact of the Court Martial which sought to prosecute individuals in respect of the events surrounding Baha Mousa's death, demonstrates that an 'investigation' would have taken place but does very little to demonstrate that the investigation was adequate, effective or impartial. See REDRESS' statement issued after the conclusion of the Court Martial, here:

[http://www.redress.org/news/Press%20Release\\_Mousa%20Case%2014%20March%2007.pdf](http://www.redress.org/news/Press%20Release_Mousa%20Case%2014%20March%2007.pdf)]