

REDRESS

Seeking Reparation for Torture Survivors

APPEAL COURT UPHOLDS RULING IN BAHAMOUSA CASE

ROLE OF QUEEN'S LANCASHIRE REGIMENT IN VIOLENT DEATH OF IRAQI CIVILIAN MUST BE ADEQUATELY INVESTIGATED

PRESS STATEMENT

[LONDON, 21 December 2005]

REDRESS, the international NGO that represents torture survivors in the UK and abroad, and an intervenor in the case of *Al Skeini and Others v Secretary of State for Defence*, welcomes today's decision that the Government must conduct an effective investigation into the death of Baha Mousa, an Iraqi civilian allegedly tortured to death in British custody in south eastern Iraq in September 2003.

REDRESS intervened in this case to support the claimants' argument that misconduct of UK troops should not avoid proper scrutiny merely because it occurred outside of Europe.

Nothing can bring Baha Mousa back to life, but his family is entitled to know what happened and who is responsible, stated Carla Ferstman, REDRESS' Director. Justice must be done and seen to be done; this is a fundamental principle for any society that respects and upholds the rule of law.

Baha Mousa was not the only Iraqi civilian said to have been tortured and ill treated by UK troops. It is important that all such allegations are independently and effectively investigated. Such practices will only be eradicated once and for all if there are effective investigations.

This unanimous decision of the Court of Appeal recognised the extraterritorial application of the European Convention on Human Rights. British troops operating abroad that deliberately and effectively restrict someone's liberty, as in the case of Mousa, are required to uphold European Convention obligations. The fact that these actions took place in Iraq (outside of Europe) is of no consequence. Similar to the decision of the Divisional Court, the Court of Appeal distinguished the case of Mousa (death in custody) from the 5 other test cases, all of which related to killings of civilians during routine UK military street patrols.

The Court of Appeal also recognized that UK courts are indeed competent to hear the case. The Government had argued that the Human Rights Act was not applicable to the actions of UK forces abroad, and that in the case of Mousa, the only remedy of the family was in Strasbourg. On this point, Lord Justice Sedley stated: *"there would be something amiss if a prisoner in a British military prison ... had nevertheless no protection under legislation which was designed specifically to afford redress in our domestic courts for violations by the British state of people's Convention rights."*

The Court of Appeal recommended that further investigative proceedings be stayed pending the conclusion of court-martial proceedings currently facing seven UK soldiers arising from Mr. Mousa's detention and death.

BACKGROUND

All six claims in the test case arise out of the deaths of members of the civilian population in Basra between Aug 2003 – Nov 2003, after the end of official hostilities, during a period when the UK was an occupying power. The first 5 cases concerned fatalities that occurred while British troops were on street patrols in Basra. The 6th case, Baha Mousa's injuries and death occurred while he was being detained by British troops.

The Court of Appeal follows the decision of the Divisional Court, noting that the UK did not possess jurisdiction under Article 1 of the ECHR in relation to those killed in the first five incidents, and therefore that the appeals of the first five claimants are dismissed. Nonetheless, Lord Justice Brookes notes in relation to the investigation of these deaths that *"in short, no action was taken in two cases, and in two more a recommendation that further inquiries should be conducted was not accepted by senior officers. Only one of the five cases was referred to the APA, and it was eventually decided on counsel's advice not to prefer charges. The inadequacy of the immediate post-death investigation made the task of pursuing any useful inquiries six to nine months later more difficult in some of these cases than it might otherwise have been. It is to be hoped that deficiencies of this kind will be remedied in future."*

* * *

REDRESS intervened in this case together with the Advice Centre on Individual Rights in Europe (the AIRE Centre), in a joint written submission. Both organisations were represented, pro bono, by Keir Starmer QC, Richard Hermer and Azeem Suterwalla, all of Doughty Street Chambers, and Raju Bhatt of Bhatt Murphy Solicitors.

REDRESS was founded by a British torture survivor in 1992. Since then, it has consistently fought for the rights of torture survivors in the UK and abroad. It takes legal challenges on behalf of survivors, working to ensure that torturers are punished and that survivors and their families obtain remedies for their suffering. REDRESS cooperates with civil society groups around the world to eradicate the practice of torture once and for all and to ensure that survivors can move forward with their lives in dignity. It has intervened in several leading torture cases, including the recent House of Lord's **Case of A** on the inadmissibility of evidence obtained through torture. More information on our work is available on our website: www.redress.org

Press contacts: Kevin Laue (Kevin@redress.org)
Tel: 0207 793 1777; Fax: 0207 793 1719.