



JUDICIARY OF
ENGLAND AND WALES

PRESS SUMMARY

In the High Court of Justice
Queen's Bench Division

Mr Justice Leggatt

Alseran and Others v Ministry of Defence [2017] EWHC 3289 (QB)

Judgment given: 14 December 2017

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. The judgment is publicly available on [BAILII - England and Wales High Court \(Queen's Bench Division\) Decisions](http://www.judiciary.gov.uk) and <http://www.judiciary.gov.uk>.

Background

The invasion of Iraq by a coalition of armed forces, led by the United States and including a large force from the United Kingdom, began on 20 March 2003. By 5 April 2003 British troops had captured Basra and by 9 April 2003 US troops had gained control of Baghdad. Major combat operations were formally declared complete on 1 May 2003. The coalition powers occupied Iraq until 28 June 2004, when sovereign authority was transferred to a new interim Iraqi government. British forces remained in Iraq as part of a multi-national force operating under a mandate from the UN Security Council and withdrew after the mandate expired on 31 December 2008.

The litigation

In total, 967 claims have been issued by the solicitors Leigh Day on behalf of Iraqi citizens who allege that they were unlawfully imprisoned and ill-treated (or in a few cases that their next-of-kin was unlawfully killed) by British armed forces and who are claiming compensation from the Ministry of Defence ("MOD"). 331 of the claims have been settled, 4 have been discontinued or struck out and 632 remain unresolved.

This judgment follows the first full trials of these claims in which the claimants themselves and other witnesses have testified in an English courtroom. Four cases have been tried as lead cases. There is no assumption that these four cases are representative of others, but the conclusions reached on the legal issues and some of the factual issues raised are likely to affect many of the remaining cases in the litigation.

The claims have been advanced on two legal bases. The first is the general law of tort under which a person who has suffered injury as a result of a civil wrong can claim damages from the wrongdoer. Because the relevant events occurred in Iraq, the Iraqi law of tort is applicable to these claims. But the claims are subject to a doctrine known as Crown act of state which (in broad terms) precludes the court from passing judgment on a claim in tort arising out of an act done with the authority of the British government in the conduct of a military operation abroad.

The second legal basis for the claims is the Human Rights Act 1998, which makes a breach of the European Convention on Human Rights (the Convention) by a UK public authority unlawful as a matter of UK domestic law and gives the victim a potential claim for damages.

Summary of conclusions

The claims made and main conclusions reached in the four lead cases are as follows.

Alseran

Kamil Najim Abdullah Alseran, aged 22 at the time, was captured in his home at the end of March 2003 during the advance on Basra by British forces. Following his capture he was taken to a temporary camp which was used as a prisoner collection point. Mr Alseran has alleged that the conditions in which he was held at this camp were inhuman and that he was assaulted by British soldiers who made the prisoners lie face down on the ground and ran over their backs. The MOD has disputed these allegations and also required Mr Alseran to prove that the soldiers who captured and allegedly assaulted him were British (and not US) soldiers. From the temporary camp Mr Alseran was taken to a prisoner of war internment facility near the port of Umm Qasr which became known as Camp Bucca, where he was interned for several weeks before being released.

The psychiatrists who gave expert evidence agreed that Mr Alseran still suffers from anxiety, depression and traumatic symptoms as result of his experiences at the hands of coalition forces. As well as complaining of ill-treatment, Mr Alseran claimed that his detention was unlawful.

The main conclusions reached in this case are, in summary:

- 1) British forces captured Mr Alseran on 30 March 2003 and were responsible for detaining him until he was released on 7 May 2003.
- 2) As a person found in a battle zone, it was lawful under the law of armed conflict (now known as international humanitarian law) for British forces to capture Mr Alseran and evacuate him from the area for reasons of security. But there was no legal basis in international or national law for his subsequent internment at Camp Bucca.
- 3) On the balance of probability Mr Alseran's allegation that, following his capture, he (and other prisoners) were assaulted by soldiers running over their backs is true. The MOD was liable in tort for this conduct which was also inhuman and degrading treatment in breach of article 3 of the Convention.
- 4) The conditions in which Mr Alseran was detained at the temporary camp and at Camp Bucca were harsh but did not amount to inhuman treatment.
- 5) The system for review of detention at Camp Bucca was flawed because the approach adopted was to treat an individual who claimed to be a civilian (such as Mr Alseran) as a prisoner of war unless there was no doubt that the person was a civilian. That approach was based on a wrong understanding by the MOD of the Geneva Conventions. The correct approach would have been to consider whether there was evidence that the individual claiming civilian status was a combatant or had taken part in hostilities. If – as in Mr Alseran's case – there was no such evidence, then there was no power to intern him, whether as a prisoner of war or as a civilian internee. Had the correct test been applied, Mr Alseran should and probably would have been released by 10 April 2003.
- 6) Because it was contrary to international humanitarian law, Mr Alseran's detention between 10 April and 7 May 2003 violated article 5 of the Convention and also gave rise to liability in tort (as the British government did not authorise detention which was in breach of the Geneva Conventions and the Human Rights Act).

- 7) In circumstances where Mr Alseran did not begin proceedings in England until March 2013, his claims in tort are time-barred, but his claims under the Human Rights Act are not.
- 8) Mr Alseran is awarded damages under the Human Rights Act for (i) the ill-treatment following his capture, in a sum of £10,000, and (ii) his unlawful detention for 27 days, in a sum of £2,700.

MRE and KSU

When the war began, MRE and KSU were serving on a merchant ship which was moored in the Khawr az Zubayr waterway north of Umm Qasr. MRE was 37 years old and was employed as an engineer on the ship. KSU was 27 years old and was employed as a guard. On the evening of 24 March 2003 their ship was boarded by coalition forces and the four crew members including MRE and KSU were captured. They were taken by boat a long way out to sea to a large warship on which they were held overnight. The claimants allege, and it was not disputed at the trial, that on arrival at this ship they were forced to strip naked and subjected to an intrusive physical inspection which involved sexual humiliation. KSU was also burnt on the buttock with a lit cigarette. A major issue at the trial was whether the soldiers who captured the claimants and mistreated them on the warship were British soldiers.

The following morning MRE and KSU were taken back by boat to Umm Qasr port and from there by road to Camp Bucca, where they were interned. It was not disputed by the MOD that the soldiers who met them when they disembarked and transported them in a Land Rover to Camp Bucca were British soldiers. It was also not disputed at the trial that for the duration of this journey the claimants were hooded with sandbags. But allegations that MRE was struck on the head with a rifle butt on the dock at Umm Qasr and was later kicked in the knee by a soldier while detained at Camp Bucca were denied.

The psychiatrists who gave expert evidence agreed that both MRE and KSU still suffer from post-traumatic stress disorder as result of their experiences at the hands of coalition forces.

The main conclusions reached in these cases are, in summary:

- 1) Although the claimants' allegations that they were mistreated at the time of their capture and on the large warship are true, they have failed to prove that the soldiers who captured and mistreated them were British.
- 2) It is, however, clear that from when they disembarked at Umm Qasr port on 25 March 2003 until their release from Camp Bucca, which occurred on 10 April 2003, MRE and KSU were in the custody of British forces who were responsible for their detention throughout that time.
- 3) The hooding of the claimants with sandbags during their transportation to Camp Bucca was inhuman and degrading and violated article 3 of the Convention as well as amounting to an assault. MRE also suffered an eye injury caused when a small shard of glass or other sharp object inside the sandbag covering his head entered his eye.
- 4) MRE was struck on the head on the dock at Umm Qasr and later kicked in the knee by a British soldier while detained at Camp Bucca, as alleged. As a result of the blow to his head, MRE has since suffered from migraine headaches, migraine-related balance disorder, visual vertigo and a central auditory processing disorder. The kick to his knee caused swelling but was not a serious injury. Both incidents were assaults giving rise to liability in tort and the first also constituted inhuman treatment which violated article 3 of the Convention.

- 5) As in the case of Mr Alseran, the conditions in which MRE and KSU were detained at Camp Bucca were harsh but did not amount to inhuman treatment.
- 6) The claimants were entitled under international humanitarian law and article 5 of the Convention to have their cases assessed and a decision whether to intern or release them made promptly following their arrival at Camp Bucca on 25 March 2003. Making all due allowance for the wartime conditions, such an assessment should have taken place within, at most, ten days of their internment. Their cases were not considered, however, until 10 April 2003 – when the decision was made to release them. In the result, they were unlawfully detained for six days. Their detention during this period violated article 5 of the Convention and also gave rise to a claim in tort (as the British government did not authorise detention which was in breach of international humanitarian law and the Human Rights Act).
- 7) In circumstances where MRE and KSU did not begin proceedings in England until December 2013, their claims in tort are time-barred, but their claims under the Human Rights Act are not.
- 8) Accordingly, the claims which succeed are those under the Human Rights Act based on:
(a) the hooding of MRE and KSU, for which they are each awarded damages of £10,000; (b) an eye injury sustained by MRE as a result of the hooding, for which he is awarded additional damages of £1,000; (c) the blow struck to MRE's head, for which he is awarded general damages of £15,000 together with £1,440 for the cost of medical treatment; and (d) six days of unlawful imprisonment, for which MRE and KSU are each awarded damages of £600.

Al-Waheed

Abd Ali Hameed Ali Al-Waheed was arrested in a house raid carried out by British soldiers in Basra city on the night of 11/12 February 2007. He was 53 years old at the time and had recently remarried. The soldiers who raided the house were looking for his brother-in-law, Ali Jaleel, who was suspected of involvement in terrorist activities. Ali Jaleel was out but a partly assembled IED and a large quantity of explosives were found in the house.

On his arrest, Mr Al-Waheed was taken first to the Brigade Processing Facility at Basra Airport and, from there, to the Divisional Temporary Detention Facility at Shaibah, where he was interned. He alleged that at the time of his arrest and during the journey to Basra Airport he was systematically beaten and tortured by soldiers and that at Basra Airport and during the first 13 days of his internment at Shaibah he was subjected to multiple forms of inhuman and degrading treatment. He further alleged that his internment was unlawful for the whole, or alternatively part, of the period for which he was interned until his release on 28 March 2007.

The expert psychiatrists agreed that, when they examined Mr Al-Waheed in April 2016, he was suffering from post-traumatic stress disorder and depression with significant anxiety symptoms. They also agreed that Mr Al-Waheed's mental health problems and the multiple physical symptoms from which he also suffers, including lower back pain and joint pains, are inter-related and cause him significant impairment.

The main conclusions reached in this case are, in summary:

- 1) Mr Al-Waheed's allegations of mistreatment are greatly exaggerated. Nevertheless, there is contemporaneous medical evidence which shows that between the time of his arrest and his arrival at the Basra Airport base he was beaten on the upper back and arms (probably with rifle butts); he was also punched in the face by British soldiers and suffered a painful finger injury.

- 2) In addition to this assault, Mr Al-Waheed was subjected to the following practices which were routinely used at the relevant time in handling prisoners, but which amounted to inhuman and degrading treatment:
 - a) “harsh” interrogation, which involved a deliberate attempt to humiliate the detainee by insulting and shouting personal abuse at him;
 - b) being deliberately deprived of sleep for the purpose of interrogation during the first day and a half of his detention; and
 - c) complete deprivation of sight and hearing by being made to wear blacked out goggles and ear defenders for most of the first 12 hours following his arrest and thereafter whenever he was taken out of his cell while undergoing interrogation during the first 13 days of his detention.

Mr Al-Waheed’s other complaints about the conditions of his detention have not been made out.

- 3) Although British forces had no power under Iraqi law to intern people, they had such a power under international law at the relevant time as a result of United Nations Security Council Resolution 1546 which authorised internment where this was necessary for imperative reasons of security. On this basis it was lawful for British forces to arrest Mr Al-Waheed, as there were reasonable grounds for suspicion that he may have been involved in bomb-making and was therefore a threat to security. However, following extensive interrogation, the review committee decided on 22 February 2007 that he had no connection with his brother-in-law’s activities and did not pose a threat to security and should therefore be released. That decision was revoked the next day for reasons which do not stand scrutiny. In consequence, Mr Al-Waheed was detained without any legal basis from 23 February 2007 until he was ultimately released on 28 March 2007, a period of 33 days. His detention during this period violated article 5 of the Convention and also gave rise to a claim in tort (as the British government did not authorise detention which was contrary to international law and the Human Rights Act)
- 4) In circumstances where Mr Al-Waheed did not begin proceedings in England until March 2013, his claims in tort are time-barred, but his claims under the Human Rights Act are not.
- 5) Mr Al-Waheed is awarded damages under the Human Rights Act in the following amounts: (i) £15,000 in respect of the beating which he suffered after his arrest; (ii) £15,000 in respect of the further inhuman and degrading treatment which he suffered encompassing harsh interrogation, being deprived of sleep and being deprived of sight and hearing; and (iii) £3,300 in respect of his unlawful detention for 33 days.