



## Three-year internment of Iraqi civilian by British forces in Iraq violated the European Convention on Human Rights

In today's Grand Chamber judgment in the case **Al-Jedda v. the UK** (application no. 27021/08), which is final<sup>1</sup>, the European Court of Human Rights held, by a majority of sixteen to one, that there had been:

**A violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights.**<sup>2</sup>

The case concerned the internment of an Iraqi civilian for more than three years (2004-2007) in a detention centre in Basrah, Iraq, run by British forces.

The judgment was delivered today at a public hearing at the European Court of Human Rights, Strasbourg, shortly after 11 a.m.(local time).

### Principal facts

The applicant, Hilal Abdul-Razzaq Ali Al-Jedda, born in Iraq in 1957, is an Iraqi national who is currently living in Istanbul, Turkey.

Mr Al-Jedda played for the Iraqi basketball team until, following his refusal to join the ruling Ba'ath Party, he left Iraq in 1978 and lived in the United Arab Emirates and Pakistan. He moved to the United Kingdom (UK) in 1992, where he made a claim for asylum and was granted indefinite leave to remain. He was granted British nationality in June 2000.

In September 2004 Mr Al-Jedda and his four eldest children travelled from London to Iraq, via Dubai, where he was arrested and questioned by United Arab Emirates intelligence officers. He was released after 12 hours, permitting him and his children to continue their journey to Iraq, where they arrived on 28 September 2004. On 10 October 2004 United States (US) soldiers, apparently acting on information provided by the British intelligence services, arrested Mr Al-Jedda at his sister's house in Baghdad. He was taken to Basrah in a British military aircraft and then to the Sha'aibah Divisional Temporary Detention Facility in Basrah City, a detention centre run by British forces. He was interned there for over three years until 30 December 2007.

At that time, the Iraqi Interim Government was in power and the Multi-National Force, including British forces, remained in Iraq at the request of the Government and with the United Nations Security Council's (UNSC) authorisation.

Mr Al-Jedda's internment was maintained by the British authorities as being necessary for imperative reasons of security in Iraq. He was believed to have been personally

<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

<sup>2</sup> Article 5 § 1 of the Convention states: "... No-one shall be deprived of his liberty save in the following cases ..." and sets of, in subparagraphs (a) to (f), an exhaustive list of the circumstances in which detention may be allowed.

responsible for: recruiting terrorists outside Iraq to commit atrocities there; helping an identified terrorist explosives expert travel into Iraq; conspiring with that explosives expert to conduct attacks with improvised explosive devices against coalition forces near Fallujah and Baghdad; and conspiring with the explosives expert and members of an Islamist terrorist cell in the Gulf to smuggle high-tech detonation equipment into Iraq for use in attacks against coalition forces. The intelligence evidence supporting those allegations was not disclosed to him and no criminal charges were brought against him.

On 8 June 2005 Mr Al-Jedda brought a judicial review claim in the UK challenging the lawfulness of his continued detention and also the refusal of the UK Government to return him to the UK. The Government accepted that Mr Al-Jedda's detention did not fall within any of the permitted cases set out in Article 5 § 1 of the Convention. However, he contended that Article 5 § 1 did not apply, because the detention was authorised by UNSC Resolution 1546 and that, as a matter of international law, the effect of the Resolution was to displace Article 5.

The case was eventually decided by the House of Lords on 17 December 2007. The House of Lords, by a majority, rejected the UK Government's argument that the UN, and not the UK, was responsible for the internment under international law. The House of Lords also held, unanimously, that UNSC Resolution 1546 placed the UK under an obligation to intern individuals considered to threaten the security of Iraq and that, in accordance with Article 103 of the UN Charter, that obligation to the UNSC had to take primacy over the UK's obligation under the European Convention on Human Rights not to hold anyone in internment without charge.

On 14 December 2007 the Home Secretary signed an order depriving Mr Al-Jedda of British citizenship, claiming, among other things, that he had connections with violent Islamist groups, in Iraq and elsewhere, and had been responsible for recruiting terrorists outside Iraq and facilitating their travel and the smuggling of bomb parts into Iraq.

Mr Al-Jedda was released on 30 December 2007 and travelled to Turkey. He appealed unsuccessfully against the loss of his British citizenship. The Special Immigration Appeals Commission accepted on the basis of undisclosed evidence that he had helped a terrorist explosives expert travel to Iraq and conspired with him to smuggle explosives into Iraq and to attack coalition forces around Fallujah and Baghdad.

## Complaints, procedure and composition of the Court

The applicant complained that he was interned by UK armed forces in Iraq between 10 October 2004 and 30 December 2007, in breach of Article 5 § 1. The application was lodged with the European Court of Human Rights on 3 June 2008. On 19 January 2010 the Chamber dealing with the case relinquished jurisdiction in favour of the Grand Chamber, and on 9 June 2010 a public [hearing](#) was held in the Human Rights building in Strasbourg (webcast available).

Judgment was given by the Grand Chamber of 17, composed as follows:

Jean-Paul **Costa** (France), *President*,  
Christos **Rozakis** (Greece),  
Nicolas **Bratza** (the UK),  
Françoise **Tulkens** (Belgium),  
Josep **Casadevall** (Andorra),  
Dean **Spielmann** (Luxembourg),  
Giovanni **Bonello** (Malta),  
Elisabeth **Steiner** (Austria),  
Lech **Garlicki** (Poland),

Ljiljana **Mijović** (Bosnia and Herzegovina),  
David Thór **Björgvinsson** (Iceland),  
Isabelle **Berro-Lefèvre** (Monaco),  
George **Nicolaou** (Cyprus),  
Luis **López Guerra** (Spain),  
Ledi **Bianku** (Albania),  
Ann **Power** (Ireland),  
Mihai **Poalelungi** (Moldova), *Judges,*

and also Michael **O'Boyle**, *Deputy Registrar.*

## Decision of the Court

### Article 5 § 1

The Court referred to its well-established case-law that Article 5 § 1 contained a list of situations in which it might be justifiable to deprive a person of her or his liberty and that the list did not include internment or preventive detention where there was no intention to bring criminal charges within a reasonable time. Indeed, the UK Government did not claim that Mr Al-Jedda's internment was compatible with Article 5 § 1.

The Government maintained that his internment was attributable to the UN and not to the UK. The Court unanimously rejected that argument. It noted that, at the time of the invasion in March 2003, there was no UNSC resolution providing for the allocation of roles in Iraq if the existing regime was displaced. In May 2003 the US and the UK, having displaced the previous regime, assumed control over the provision of security in Iraq; the UN was allocated a role in providing humanitarian relief, supporting the reconstruction of Iraq and helping in the formation of an Iraqi interim government, but had no role as regards security. The Court did not consider that subsequent UNSC Resolutions altered that position. As the UNSC had neither effective control nor ultimate authority and control over the acts and omissions of troops within the Multi-National Force, Mr Al-Jedda's internment was not attributable to the UN. It took place within a detention facility in Basrah City, controlled exclusively by British forces. Mr Al-Jedda was therefore within the authority and control of the UK throughout. The Court therefore agreed with the majority of the House of Lords that Mr Al-Jedda's internment was attributable to the UK and that, while interned, he fell within the jurisdiction of the UK for the purposes of Article 1 of the Convention.

The Government's second argument was that UNSC Resolution 1546 created an obligation on the UK to use internment in Iraq and that, under Article 103 of the UN Charter,<sup>3</sup> that prevailed over the obligation not to use internment in Article 5 § 1.

However, the Court noted that the UN was created, not just to maintain international peace and security, but also to "achieve international cooperation in ... promoting and encouraging respect for human rights and fundamental freedoms". Article 24(2) of the Charter required the Security Council, in discharging its duties with respect to its primary responsibility for the maintenance of international peace and security, to "act in accordance with the Purposes and Principles of the United Nations". Against that background, the Court considered that, in interpreting the Security Council's resolutions, there had to be a presumption that the Security Council did not intend to impose any obligation on Member States to breach fundamental principles of human rights. In the event of any ambiguity in the terms of a UNSC Resolution, the Court had therefore to choose the interpretation which was most in harmony with the requirements of the

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<sup>3</sup> Article 103 of the UN Charter states: "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

European Convention on Human Rights and which avoided any conflict of obligations. In the light of the UN's important role in promoting and encouraging respect for human rights, the Court considered that it was to be expected that clear and explicit language would be used were the Security Council to intend States to take particular measures which would conflict with their obligations under international human rights law.

The Court noted that internment was not explicitly referred to in Resolution 1546, which authorised the Multi-National Force "to take all necessary measures to contribute to the maintenance of security and stability in Iraq". Internment was listed in a letter from United States Secretary of State Colin Powell annexed to the resolution, as an example of the "broad range of tasks" which the Multi-National Force was ready to undertake. In the Court's view, the terminology of the Resolution left open to the Member States within the Multi-National Force the choice of the means to be used to contribute to the maintenance of security and stability in Iraq. Moreover, in the Preamble to the Resolution, the commitment of all forces to act in accordance with international law was noted, and the Convention was part of international law. In the absence of clear provision to the contrary, the presumption had to be that the Security Council intended States within the Multi-National Force to contribute to the maintenance of security in Iraq while complying with their obligations under international human rights law.

Furthermore, it was difficult to reconcile the argument that Resolution 1546 placed an obligation on Member States to use internment with the objections repeatedly made by the UN Secretary General and the UN Assistance Mission for Iraq (UNAMI) to the use of internment by the Multi-National Force. Under Resolution 1546 the UNSC mandated both the Secretary General, through his Special Representative, and the UNAMI to "promote the protection of human rights ... in Iraq". In his quarterly reports throughout the period of Mr Al-Jedda's internment, the UN Secretary General repeatedly described the extent to which security internment was being used by the Multi-National Force as "a pressing human rights concern". UNAMI reported on the human rights situation every few months during the same period. It also repeatedly expressed concern at the large number of people being held in indefinite internment without judicial oversight.

In conclusion, the Court considered that UNSC Resolution 1546 authorised the UK to take measures to contribute to the maintenance of security and stability in Iraq. However, neither Resolution 1546 nor any other UNSC Resolution explicitly or implicitly required the UK to place an individual whom its authorities considered to constitute a risk to the security of Iraq into indefinite detention without charge. In those circumstances, in the absence of a binding obligation to use internment, there was no conflict between the UK's obligations under the UN Charter and its obligations under Article 5 § 1. Given that the provisions of Article 5 § 1 were not displaced and none of the grounds for detention set out in Article 5 § 1 applied, Mr Al-Jedda's detention was in violation of Article 5 § 1.

### Article 41

Under Article 41 (just satisfaction), the Court held that the UK was to pay the applicant 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 40,000 in respect of costs and expenses.

### Separate opinion

Judge Poalelungi expressed a dissenting opinion which is annexed to the judgment.

*The judgment is available in English and French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.