

REQUEST
to
The European Court of Human Rights
GRAND CHAMBER
REFERRAL OF JUDGMENT
delivered 21 October 2025,
appl. no. 46571/22

21 different individual Iraqi torture survivors in
Operation Green Desert. Against Denmark:

TABLE OF CONTENTS

1. INTRODUCTION	1
1.1 Brief overview from the true extent of national court records and hereto connected communication with the parties' representatives, the permanent private attorney of the government and the attorneys of the plaintiffs, etc. that have either not been available for the Court Chamber and the lawyer representing the applicants or ignored by the Chamber. The following core facts inter alia can be established:.....	1
2. EXCEPTIONALITY IN BRIEF:.....	3
3. BRIEF OVERVIEW ON THE GENERAL SERIOUS IMPACT:	6
3.1 General serious impact on the extent and scope of the protection consequences of the protection afforded by the convention, concerning <i>right to physical access</i> to oral hearings during the proceedings and whether some or all of the 23 plaintiffs must accept to participate systematically merely by video interviews. Can <i>immigration laws on visas</i> also be used to <i>deny an applicant those rights of access to justice?</i>.....	6
4. EFFICIENT ACCESS TO JUSTICE DENIED IN THESE CASES WITHIN THE DANISH JUDICIARY 2011-22.....	7
4.1. The court proceedings in 2011-2022 in brief chronological items. Not brought into daylight.....	7
4.2 Denial of the right of presence during the legal proceedings:.....	17
4.3 Total denial of legal aid from the beginning of the cases (2012) until 17 September 2015. Hereafter partly.....	19
4.4. Denial of equality of arms by systematic lack of fair balance during the lengthy judicial process:.....	20
4.5 Denial of the right to call witnesses:.....	20
4.6 Denial of access to documents:	23
4.6.1 Denial from 2012-17 by delays:	23
4.6.2 No due process on documents, neither in the two domestic courts nor during the Chamber process (2023-25)	25
5. EXCEPTIONALITY BY THE CHAMBER DELIVERY AND ITS DIRE CONSEQUENCES ON HUMAN RIGHTS LAW ON EFFICIENT ACCESS TO JUSTICE:.....	36
6. COMMENTS TO THE CHAMBER JUDGMENT BEARING REASONS POINT 158-164 OF THE JUDGMENT.....	63
7. THE EXORBITANT INEQUALITY IN RESOURCES PROVIDED BY THE DANISH STATE IN FAVOUR OF ITS OWN LEGAL REPRESENTATION WITH A PRIVATE LAW FIRM AND IN HUGE DISADVANTAGE TO THE WORK AND REPRESENTATION OF THE SIDE OF THE TORTURE SURVIVORS:.....	89
8. THE ESSENCE OF WHY REFERRAL TO THE GRAND CHAMBER IS NEEDED	94

ATTACHMENTS:

<u>No.</u>	<u>Date</u>	<u>Document</u>
GC1	09.11.15	Court records
GC2	22.08.16	Eastern High Court ruling
GC3	07.11.17	'Protest Opfordring'
GC4	01.09.17	Court records
GC5	.04	Istanbul Protocol Manual. Exhibits
GC6	25.05.25	Mr Tyge Trier's observations
GC7	24.11.04	Exhibit CÅ
GC8	29.11.04	Exhibit FT 'Search and arrests'
GC9	04.12.19	Court records with the testimony of Ismael Kaayem
GC10	11.01.18	Court records of 11 and 16 January 2018
GC11	17.09.13	Supreme Court ruling. No security payment.
GC12	11.01.18	Documents dated during the Eastern High Court oral hearings
GC13	11.04.18	The Ministry of Integration's refusal to grant visa to
GC14	29.11.04	Exhibit FT 'Search and arrests'
GC15		Documentation state's resources spent on parties
GC16	30.03.18	Answer from the Ministry of Justice about legal aid

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21 different individual Iraqi torture survivors in
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In accordance with art. 43 of the Convention and the Rules of Court, rule 73, the Court is requested to decide referral of the case to the Grand Chamber for fresh consideration concerning denial of access to justice, art. 6 of the Convention (with its connection to art. 3, 13 and 14), accepted by the Court Chamber within its reasons for the judgment, nos. 155-166, about Operation Green Desert, arrests, interrogation and incarceration 2004-05 in Basra, Iraq.

1. INTRODUCTION

1.1 Brief overview from the true extent of national court records and hereto connected communication with the parties' representatives, the permanent private attorney of the government and the attorneys of the plaintiffs, etc. that have either not been available for the Court Chamber and the lawyer¹ representing the applicants or ignored by the Chamber. The following core facts inter alia can be established:

- (1) 23 individual cases were filed between 13 December 2011 and 28 December 2012 by those civilians captured and arrested from their homes during the morning of 25 November 2004 (partly Sunni, target Cyan 1, partly Sufi, target Cyan 4) on the

¹ Cf. the lawyer of the applicants' observations of 2 September 2024 and 23 May 2025.

request of the Iraqi police (Shia). Later that day, after interrogation, all except one was brought to the notorious torture prison Al Shu'oon/Al Jameat. From there, they were freed with no charges at different times, some after 16 hours, some after 80 days.

- (2) The national Danish courts were under the responsibility according to art. 6 of the Convention (and the UN Convention against Torture (CAT)) dealing with 23 cases from 13 September 2011 until 31 May 2022.
- (3) The length cannot at any point be blamed on the torture survivors.
- (4) Legal aid was denied all the years until late 2015.
- (5) The legal strategy of the government can be identified to be 180 degrees in disconformity with obligations according to the set of norms ref. (2) by means of delay, denial, defence beyond normal limits and others. Some of those on purpose exhausting attempts resulted in defeats suffered by the government. In September 2013, the Supreme Court ruled that the 2012 request by the government that each of the plaintiffs should pay DKK40,000 (app. EUR5,000) as a security to the private attorney of the government and as a condition for not having those torture cases dismissed from the court trial, should be struck down. By means of that trick, a delay of 15 months was achieved by the government. The next serious delay happened due to the intervention also in 2012 by the government claiming that the cases should, prior to anything else, be dismissed, because of claimed prescription of the statute of limitations. That view was the reason brought up by the governmental authorities also for denying legal aid, ref. above (3). Since the Autumn of 2015, the preparatory advancement of all of the 23 cases were paralysed by the insistence of the government that the issue of prescription must be dealt with by a separate oral hearing and judgment before anything else could happen, which meant a delay of app. 11 months until the Eastern High Court in a comprehensive judgment (207 pages) ruled – not surprisingly – that according to the set of norms (the European Convention on Human Rights and its incorporation into national law plus the UN Convention against Torture) and the case-law connected to art. 3, 6 and 14, there could be no prescription. Thus, those unsuccessful attempts meant the delay of more than 2 years. Below, other attempts of delay and exhaustion are documented, resulting in more delays.
- (6) Key important documents from 2012-17 were kept hidden or only delivered with far-reaching redaction made on substantial paragraphs and chapters. The side of the plaintiffs was unsuccessful in making the court decide that those documents should be delivered by the government, until some decisions regarding access to documents at last were taken by the High Court in 2017. Some of the documents were, ostensibly on purpose, delayed in their delivery (just few days before the beginning of the hearings 7 November 2017), some never were delivered, and

some were continuously kept against the enlightenment of the facts of the case by extensive use of black ink, e.g. the key document to understand what happened, the military report on the operation, which the Danish courts have accepted to stay delivered kept unreadable by app. 95% throughout, including the proceedings in the Supreme Court that ended in May 2022.

- (7) Amongst other striking procedural handicaps imposed on the plaintiffs and their ability to examine and investigate the case (within the Danish judiciary system in civil cases even against the government, it is the obligation of the parties to bring about facts), there has been an exorbitant inequality in resources. Thus, the government has paid for its caretaking and legal representation the private governmental law firm DKK 37,515,117 as fees and DKK 757,974 in expenses, in total DKK 38,273,091, app. EUR5,100,000. The lawyers of the 23 plaintiffs, on the other hand, have been paid DKK 8,000,000 in fees and in expenses DKK 630,296, in total 8,630,296, app. EUR 1,155,000. The fee amounts above are not including VAT, which was included in the payment.
- (8) The plaintiffs themselves and their local witnesses were prevented from giving efficient testimony. A few of the plaintiffs gave their testimony under unacceptable conditions by different methods, amongst this at the level of the High Court and Supreme Court denied their elementary access to be physically present during the oral hearings and referred to go to give their **testimony via video** interviews within the premises of the government (embassies in the Middle East and other places) and private premises in the so-called Green Zone in Baghdad, which they for several reasons were strongly opposed to. This is in stark contrast to what must be and are the basic elementary rules for any civil plaintiff that has initiated his own case against some public authority. The **right to physical attendance** and appearance during the **physical court proceedings** of a case on issues regarding art. 3 is clearly even more evident as a way to obtain relevant and sufficient enlightenment of the case and thus the experience of justice to prevail in the interest of the individual and a democratic society. By means of **denials of visas, physical attendance was prevented**.

2. EXCEPTIONALITY IN BRIEF:

As documented and established in this application, the Chamber judgment affects case-law consistency regarding the Convention's art. 6, ref. art. 3 and 13. The case may be concerning development on whether civilian plaintiffs in the future **must accept to be deprived of physical attendance to physical oral proceedings, even to the extent that the modern technology use of video transmissions, not desired by**

the individual, becomes compulsory without choice as well as other issues about the **right to call** and hear witnesses, **obtain access to documents** by delivery from the opponent (or others) and other basic items can be denied or closely limited. Further to that, the case is suitable for clarifying the principles of that both in more general terms and in terms of how responsibly and efficiently to **deal with torture survivors or other precarious plaintiffs in a modern, democratic society**.

The need to reexamine the findings of the Chamber's endorsements of domestic courts in these human rights would the Chamber's judgment, written both in and between of the lines of especially nos. 158-163 (cf. below), regarding the up-to-date interpretation of art. 6, etc.

In this request, it is claimed that the Chamber judgment is showing a deplorable willingness to abstain from analysing and thus identifying the true nature of the litigation strategy employed and misused during the judicial proceedings from September 2011 until the Supreme Court judgment in May 2022, more than ten years largely by remiss by both of the national courts, now by the judgment of 21 October 2025 accepted by the Court Chamber, and in spite of the fact that no delay caused by the side of any of the plaintiffs has occurred. Even the Chamber itself seems to have adapted a method similar to the one misused by the national courts by severe abstractions and omissions concerning the facts, including important plain errors, cf. below.

A normalisation of such present injustice would cause the inherent consequences if that Chamber judgment delivery were to be the final outcome from the European Court of Human Rights on art. 6, in connection with art. 3 and 13, etc.

Efficient access to justice and its protection is a basic *Raison d'Être* within the human rights scheme, and of course not least in such 21 individual lawsuits that were within the field of art. 6 (found by the chamber to be inadmissible) that the first instance in its Eastern High Court ruling of 15 June 2018 in 18 of the cases found to be proven to the extent of inhumane treatment.

Any Contracting State by means of that judgment would, if it were to be the final, acquire and appropriate an art. 6 margin of appreciation allowing more than 10 years of denial of basic rights for plaintiffs in civil lawsuits and thus obstruction of justice as a method combined with several kinds of inequality of arms, further to the redacted operational reports etc., all in the possession of the government, but kept away from the enlightenment of the cases.

By reading the judgment to some extent, *prima facie* it does not appear this way, but merely by scratching some depths between the surface of errors and misrepresentations, it becomes evident that if that judgment of 21 October 2025 were

to be final, it would largely undermine core human rights and thus become a formula by which e.g. torture survivors efficiently would be hindered from access to justice.

The unsustainability of the judgment emerges when factual errors, omissions and misleading, misrepresentative writings disclosed beneath the seductive wordings are taken into account. Thus by its judgment, the Chamber has systematically and to an astonishing extent abstained from identifying by means of full access into the entirety of the chronology of court records and written communication the court and the lawyers plus between those, which would clearly undress the main component of the government's legal strategy, largely accepted by the national courts and the Chamber. By scrutinising the documents from all those more than 10 years, it can be established that none of the delays can seriously be blamed on the side of the applicants. When the Panel obtains access to the Danish court records and the communication with the attorneys, the Panel will be able to identify the strategy of holding back documents, attempts of exhausting by filling in irrelevant documents and so-called 'witnesses' accepted by the Danish courts, but without any first-hand knowledge of what happened at the scenes.

There are plenty of examples, e.g. insistence by the side of the government to hear in all app. 60 witnesses, of which app. 30 were neither at the scenes in Basra nor in Iraq during the operation. In the government's much-delayed written response dated 16 May 2012, a question made in the writ of the plaintiffs several months before about the existence of films from combat cameras used were answered by the **untruthful information that no cameras were used at the Operation Green Desert**. In October 2012, that was shown to be incorrect.

During the Panel's examination of this request, the Panel is asked to observe the arguments and documentations below.

3. BRIEF OVERVIEW ON THE GENERAL SERIOUS IMPACT:

3.1 General serious impact on the extent and scope of the protection consequences of the protection afforded by the convention, concerning right to physical access to oral hearings during the proceedings and whether some or all of the 23 plaintiffs must accept to participate systematically merely by video interviews. **Can immigration laws on visas also be used to deny an applicant those rights of access to justice?**

The applicants ask the Panel to observe and consider the following general items:

The mere fact that the case is factually complex is not a recent claim.

Rather, the Panel can observe that the exceptionality of the Chamber's judgment has to do with inter alia a **new legal issue concerning** whether it could be regarded to be consistent with art. 6 and the present case-law on access to justice that – for the first time – by means of the Chamber's judgment:

- Plaintiff individuals do **no longer have the right of access to physically attend the court proceedings**, where e.g. other parties, such as the government and especially witnesses called by **the government, psychically can attend**, thus giving that party possibly decisive advantages in presenting the case physically, whereas the opponent side is left in the outside.
- **Legal aid schemes do not need to sustain that access.**
- In spite of plaintiff protests, the plaintiffs' position in the court proceedings can be **limited to merely being heard by an digital interview (video)** at a distance and thus without the plaintiff lawyer at his or her side and thus **without access to listen to the attorneys' presentation of the case, statements from the Judge President, testimonies from witnesses and/or other plaintiffs, etc.**

Thus, the legal, political and social implications for future 'access to justice' are wide and extensive, since the video technology etc. in these cases are used as a drum roller and also misused as reason for no court room appearance.

That issue has to do with both the case-law development on new technology within the court process of access to justice and – at the same time – whether such new case-law authored by the Chamber can be allowed without the intervention of the Grand

Chamber, since it must be regarded as a departure from consistency with the existing interpretation of art. 6 on efficiency and fairness.

It must be very likely indeed that the question of whether the technology should allow quite revolting practical and psychological disadvantages for individuals could become new law within the Convention.

The applicants claim that such a huge change would be inconsistent with what should be regarded as a core protection, namely the right to appear in the court, to observe the court proceedings including listening to documents presented and testimonies, etc., and that is an issue for the Grand Chamber to decide.

Of course the issue comes to its full stake, when in the future the Court – as it is the case concerning art. 3 on torture etc. – where it is generally acknowledged, like in other personal and private cases that the true physical access to justice and experience to see justice prevail by its function, is a very important psychological and often even healing asset.

4. EFFICIENT ACCESS TO JUSTICE DENIED IN THESE CASES WITHIN THE DANISH JUDICIARY 2011-22.

The concealed factual errors, omissions and misleading writings in the construction of the presentation of relevant facts in the scope of the Chamber's judgment:

At the moment (January 2026), it cannot be established to which extent the misrepresentations derive from the severe problem that both the work by the Chamber as well as the work by the applicant's lawyer Mr Tyge Trier are both handicapped by the government still not delivering all of the documents². Consequently, the criticism put forth in this request against the content of the writings in the Chamber judgment must be to a certain extent understood under that reservation.

4.1. The court proceedings in 2011-2022 in brief chronological items. Not brought into daylight.

a. One first individual torture survivor filed his lawsuit in September 2011. Five more individuals filed their cases in December 2011, three more in March 2012 and

² Cf. the lawyer of the applicants' observations of 2 September 2024 and 23 May 2025.

two more in September 2012. Those 11 individual plaintiffs were all residents of a small suburb in Basra, mentioned as the military target Cyan 1. Later in 2012, the Eastern High Court decided to deal with those 11 individual cases under the same court registration no. On 25 November 2004, they were all arrested, interrogated and turned over to the Iraqi police militia (Shia) notorious torture prison Al Shu'oon/Al Jameat, except one who was not put into the torture prison,

b. Another group of individual torture survivors who were arrested in their suburban stayings within the military target Cyan 4 filed their individual cases in December 2012. On the same early morning, they were all captured, arrested, interrogated and turned over to the Iraqi police militia (Shia) notorious torture prison Al Shu'oon/Al Jameat.

c. After several months of delay, the government's attorney on 16 May 2012 submitted the government's reply in the three first cases to the plaintiffs in the lawsuit ref. a. above, by which it was inter alia claimed that the statute of limitations had expired. It was further claimed that the plaintiffs did not exist, their attorney did not possess powers-of-attorney etc. Also, it was claimed that no filming took place during Operation Green Desert, where no cameras were used by the Danish forces, purportedly.

In June of that year, the government asked the Eastern High Court to use a special rule in the Act on the Administration of the Judiciary (*retsplejeloven*) which is meant to give the court on their request under certain circumstances when a party initiating a civil lawsuit is a plaintiff living abroad, must pay a deposit to the side of the defendant concerning litigation expenses.

d. The Eastern High Court in June 2012 **decided to accept the request by the government and ruled that unless a plaintiff in security pays to the government DKK 40,000 as the government's security, all the cases would be dismissed.** That decision was contested by the plaintiffs and the Appeal Board (*Procesbevillingsnævnet*) was asked to allow that decision to be appealed to the Supreme Court. As a consequence, all of the cases including the cases mentioned above under b. were put into waiting the next app. **1 year and 3 months**, until:

e. The **Supreme Court ruling** on 17 September 2013 by which the request of the government and the decision of the Eastern High Court **was overturned and thus the 11 plaintiffs were freed from paying deposit to the government**, and the government accepted that the decision would also count for the group under b. above (12 plaintiffs)

f. Encouraged by the reasons of the Supreme Court ruling, legal aid applications were filed again, but **in spite of the Supreme Court ruling**, the Department of Civil Affairs (*Civilstyrelsen*) and the Appeals Permission Board (*Procesbevillingsnævnet*) on **11 November 2013 again denied legal aid**. (Much later, in September 2015 to be reversed into a grant of legal aid.)

The attorney for the then 23 plaintiffs concluded that it would be impossible to continue the work without legal aid and thus he wrote in a letter to the Eastern High Court on 18 December 2013 (as can be seen in a translated version in the government's exhibit A, p. 2):

'...the Plaintiffs cannot attend the court hearing in the cases on Friday, 20 December 2013 at 9.30 am for which they have been summoned because the Appeals Permission Board refused their application for free legal aid on 11 November 2013 and because the Plaintiffs cannot otherwise source the necessary funding.'

The attorney the following day, 19 December 2013, further wrote inter alia:

'My clients have most recently authorised me to continue my efforts to obtain free legal aid, and if free legal aid has not been granted by 20 December 2013 to lodge a complaint with the European Court of Human Rights and/or other international human rights bodies, such as the UN Committee against Torture. As a matter of form, I would like to draw the attention of the High Court to the fact that my clients are aware of the preliminary hearing, as also appears from the second paragraph of my letter mentioned above.'

(...)

Please be informed in pursuance of the second sentence of section 259(3) of the Administration of Justice Act and in pursuance of section 333(3) of the Administration of Justice Act that in case the High Court were to find, based on the information available, that a requirement of legal representation must be imposed on the Plaintiffs, see section 259 of the Administration of Justice Act and the Danish Act implementing the European Convention on Human Rights (lov om Den Europæiske Menneskerettighedskonvention), that at the request of the Plaintiffs, I am willing to be assigned as counsel in the cases to the extent that proceedings can continue before the Danish courts.'

The Plaintiffs have asked me to emphasise that in doing so, they have not finally decided whether and when they may want to lodge a complaint with the European Court of Human Rights, the UN Committee against Torture, etc.'

The mentioned section 333 in connection with section 259, is a second way of arranging legal aid. That is to say not through the system of the Department of Civil Affairs and the Appeals Permission Board, but in situations where, according to art. 259, a plaintiff is unable to be represented in a civil lawsuit made by the plaintiff on an important matter, then the court can decide to install a lawyer to work under legal aid, normally a lawyer suggested by the plaintiff. On the side of the applicants, it was expected that this second chance to obtain free legal aid, would be successful, since it was evident that the applicants in Iraq etc. could not conduct their cases themselves. Even if it can be read in the court records of the preparatory court meeting on 20 December 2013 that the attending attorney of the government expressed to the court that the opponent plaintiffs could not possibly act alone without professional legal representation. Astonishingly, those three High Court judges decided not to apply section 259 and to decide to dismiss the case because of the non-appearance at this preparatory court meeting. Here it must be added that it is **mandatory** to the use of section 259 that **no lawyer on the side of the plaintiff appears**, since the whole technique of section 259 is that the plaintiff is unable to bring about legal representation. So the non-appearance of the attorney was not a mistake, it was simply necessary to make it possible for the court to activate the use of section 259, which the court itself decided not to do and thus dismiss the cases instead.

Surprisingly, the Supreme Court upheld that decision of dismissal, when it ruled on the case on 24 October 2014.

By means of limited private support of getting the case back on track within the Danish Judiciary, the following happened:

All of the 23 individual cases were re-filed by a writ lodged on 24 October 2014, explaining that legal aid was continuously denied, but in order to maintain the charge of obtaining justice for the torture survivors by means of private funds enough resources were raised in order to lodge the writ, pay the court fee and thus hope for some way to continue with or without legal aid. However, without legal aid, it would not become possible. The lodged writ was as such accepted by the courts, which decided that the government should deliver a written answer (again).

g. The government delivers its written answer containing a number of procedural protests and maintaining, amongst others, the claim concerning the expiration of the statute of limitations.

h. In 2014, legal aid again denied.

i. Again legal aid was sought with the Ministry of Justice, Department of Civil Affairs (*Civilstyrelsen*), but rejected. With reference to the Supreme Court ruling of 7

September 2013 and the importance of the case on Danish military actions abroad on behalf of the plaintiffs letters were written to the Ministry of Justice on 5 December 2014 and 22 January 2015, both rejected by the Ministry of Justice on 30 March 2015, claiming that the cases' statute of limitations had expired.

j. Thus, from the side of the government (including the Ministry of Justice, Department of Civil Affairs and the Appeal Board), legal aid was denied and through the made decisions during the years, it is from the answers from the Department of Civil Affairs known that the reason was the argument about prescription of statute of limitations.

But on 9 November 2015 (attached as exhibit **GC1**), the court decided that a hearing should be during four full days in June 2016, which took place.

k. Eastern High Court ruling 22 August 2016: Amongst others, the claim concerning the expiration of the statute of limitations was rejected by the Eastern High Court whose judges in this case in their reasons stated amongst others the following: Eastern High Court Ruling 22 August 2016 (**GC2**). From the side of the plaintiffs, that arrangement was protested, since it was implied that the whole progress of the case would be put on hold and thus delayed, because the attorney of the government in November 2015 asked the court to schedule a separate oral hearing, which meant further delay, and it was argued by the side of the plaintiffs that a separate proceeding and separate decision would not be an accurate way to deal with the issue of prescription, because that issue would need to examine the case in the substance, especially concerning the mental and psychical damage that the plaintiffs were suffering from, according to the forensic reports acquired by internationally highly regarded forensic experts that had examined the plaintiffs in 2012, respectively 2014 and delivered the medical reports presented by the legal representation of the plaintiffs to the High Court and to the government. (those reports were by the government contested in the Spring of 2017, but approved of in 2017 the Danish Medico-Legal Council (*Retslægerådet*), which is the board of medical experts attached to the Judiciary in Denmark. After four days of legal proceedings in June 2016, the Eastern High Court delivered its findings on 22 August 2016 (**GC2**) (220 pages).

The High Court did not accept the objection concerning prescription due to statute of limitations as can be seen from the conclusion in the writ p. 206. The reasons are to be read from p. 195-206. The concluding reasoning states:

'Sammenfattende stemmer vi for at fremme sagen...'

So the attempt by the government to avoid the case because of its age was rejected.
The reasons are amongst others the following:

‘Som også anført af Højesteret i kendelse af 17. september 2013 (gengivet i UfR2013.3358) er der tale om en sag af helt særlig karakter, idet den angår den danske stats mulige ansvar for påstået tortur i forbindelse med, at dansk militær i Irak angiveligt deltog sammen med blandt andre irakiske sikkerheds- og politistyrker i tilbageholdelsen af et antal personer, der efterfølgende blev overgivet til irakisk politi.

Ved vurderingen af spørgsmålet om eventuel forældelse af sagsøgernes krav på godtgørelse har vi – som anført – uprøvet lagt til grund, at sagsøgerne kan have været udsat for tur eller anden umenneskelig og nedværdigende behandling eller straf i forbindelse med den angivelige tilbageholdelse af dem, der fandt sted i Az Zubayr i forbindelse med Operation Green Desert den 25. november 2004.

(...)

Det bemærkes, at den psykiske lidelse, som flere af sagsøgerne angiveligt lider af, kan have været medvirkende til, at deres krav på godtgørelse ikke er blevet fremsat inden for de almindelige forældelsesfrister, der følger af 1908-loven og forældelsesloven af 2007.

Hertil kommer, at fælles for sagsøgerne er, at de tilhører befolkningsgrupper, der bekender sig til sunnisme eller sufisme, og at de således var en del af et mindretal i Irak indeholdende fraktioner, der på tidspunktet for tilbageholdelserne og i en længere periode herefter var i opposition til regeringen i Irak, og at der i Irak har hersket ustabilitet og i perioder borgerkrigslignende tilstande.

(...)

Vi finder, at de anførte helt særlige forhold har udgjort sådanne hindringer omfattet af forældelseslovens §14, eller at der er grundlag for at anse forældelsesfristen for suspenderet i medfør af princippet i forældelseslovens §3, stk. 2.’

As also stated by the Supreme Court in its ruling of 17 September 2013 (reproduced in the Weekly Law Report UfR2013. 3358), this is a case of a very special nature, as it concerns the possible liability of the Danish state for alleged torture in connection with the Danish military in Iraq allegedly participating, together with, among others, Iraqi security and police forces, in the detention of a number of persons who were subsequently handed over to the Iraqi police.

In assessing the question of whether the plaintiffs' claims for compensation are time-barred, we have – as stated , we have assumed, without this having been proven, that the plaintiffs may have been subjected to torture or other inhuman and degrading treatment or punishment in connection with their alleged

detention in Az Zubayr in connection with Operation Green Desert on 25 November 2004.

(...)

It should be noted that the mental illness from which several of the applicants allegedly suffer may have contributed to their claims for compensation not being brought within the ordinary limitation periods under the 1908 Act and the Act on Statutes of Limitations of 2007.

In addition, the applicants have in common that they belong to population groups professing Sunni Islam or Sufism, and that they were thus part of a minority in Iraq comprising factions which, at the time of the detentions and for a long period thereafter, were in opposition to the government of Iraq, and that Iraq has been characterised by instability and, at times, civil war-like conditions.

(...)

We find that the exceptional circumstances cited have constituted such obstacles as referred to in section 14 of the Limitation Act, or that there are grounds for considering the limitation period to be suspended pursuant to the principle in section 3(2) of the Act on Statutes of Limitations.'

l. In September 2016, the attorney of the government communicated to the attorney of the plaintiffs the **government would abstain from making an appeal to the ruling of 22 august 2016** and soon hereafter, the lawyer of the plaintiff wrote to the Eastern High Court insisting that the cases must be decided on as soon as possible due to their age (then 5 years), meaning that the dates for the total hearing and proceedings of the case orally ought to be fixed at an appropriate time in the future. Details on that and the following months can be read below. Below, it can also be read how the case and its enlightenment was systematically hindered by objections from the government to come up with inter alia reports about Operation Green Desert, specifically concerning target Cyan 1 and Cyan 4 and by the blacked out documents that the government was obliged to deliver into the case. More the progress of the cases from September 2016 until August 2017 can be read below.

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m. On 1 September 2017, the Eastern High Court in its records wrote:

'Retsformanden bemærkede, at sagsøgerne naturligtvis har ret til at overvære hovedforhandlingen, hvortil der er reserveret retsdage i perioden fra den 7. november 2017 til den 8. maj 2018.'

(Translated into English)

The presiding judge noted that the plaintiffs of course has a right to be present during the oral hearings for which court dates have been reserved in the period from 7 November 2017 to 8 May 2018.

The Eastern High Court court records, of which few are available but all still in the possession of the government, however not delivered in spite of the requests made in 2024 and 2025 by the applicants' lawyer Mr Tyge Trier, it would be disclosed that that '*...right to be present during the oral hearings*' was taken away from the plaintiffs, cf. below.

In parallel, efforts made by the applicants to obtain access to further documents and to have the redactions removed were largely turned down by the Eastern High Court, as it would be legible if the court's records were available.

n. November 2017 – March 2018: A number of procedural rulings made by the Eastern High Court denying and/or limiting the access to the proceedings in disfavour of the plaintiff individuals and other issues, as can be seen below.

o. 7 November 2017: The plaintiffs' document '*Protest Opfordring*'. This document is attached (in the original and in a translated version) as **GC3**.

p. 8 May 2018: The Eastern High Court ends its oral hearing and states that the judgment will be pronounced later.

q. 15 June 2018: The Eastern High Court decides that the government must pay compensation to 18 of the then 23 torture survivors.

r. On 29 June 2018, the government appeals the 18 cases and the plaintiffs appeal further 5 cases so that 23 cases will be dealt with before the Supreme Court.

The torture survivors filed their **individual lawsuits** against the Danish government in 2011 and 2012, and as the first instance, the Eastern High Court of Denmark in 2012 decided to let the cases be examined and decided on together. During the years 2012-15, legal aid was sought with the governmental agencies the Department of Civil Affairs (*Civilstyrelsen*) and The Appeals Permission Board (*Procesbevillingsnævnet*), but denied the first four years until the seventh denial made by the Department of Civil Affairs upon appeal was overturned by the Appeals Permission Board on 17 September 2015.

As a consequence of the lack of legal aid and the resulting lack of resources to continue the, the plaintiff's attorney wrote a letter to The Eastern High Court containing communication that is referred above.

The Eastern High Court dismissed the case on 20 December 2013, refusing to allow the case to continue under the specific competence, ref. the Act on the Administration of the Judiciary (*retsplejeloven*) section 259. This decision was upheld by the Supreme Court on 24 October 2014. Hereafter by means of scarce private funds, the plaintiffs managed to obtain sufficient support to re-file the cases, and thus repeatedly apply for legal aid in order to be able to continue the case in its further preparatory stages and later during its oral hearings.

On 15 June 2018, the High Court delivered its judgment stating that 18 of the 23 victims under the responsibility of the Danish military had suffered inhumane treatment under Danish responsibility for compensation. In 5 cases, the government was acquitted. The government made an appeal on the 18 cases, and the applicants appealed the 5 cases so that all 23 cases were to be examined and judged by the Supreme Court.

As can be seen below, all off the objections from the side of the government on the enlightenment of the case was in general repeated. Astonishingly, the Supreme Court – like in the first instance, the High Court – accepted that the core judgment on the enlightenment of what happened in the targets Cyan 1 and Cyan 4 etc. (exhibit CÅ) by the Supreme Court were accepted to stay redacted. The attorney of the applicants before the Supreme Court, Mr Janus Fürst, was largely prevented from matching evidence work. Requests about further documents were largely, upon the objection from the attorney of the government, denied.

The combination of 'discount justice', meaning denial to the applicants to participate in oral hearings, including their own testimonies, were gradually more harshly decided by the Supreme Court under the scheme of forced video hearings in different places, hereunder in a private property in the Green Zone in Baghdad, which they – naturally – objected to participate in.

A huge amount of witness hearings requested by the counsel of the government were allowed by the Supreme Court, who rejected practically all of the witnesses that the applicants wanted. See below, where it is referred to that those denied witnesses were first-hand witnesses who were actually present and saw the arrest taking place at the applicants' homes in Cyan 1 and Cyan 4. But the Supreme Court allowed a huge number of witnesses, not first-hand, but mainly military individuals and others, who were not present at the arrests.

The limitation of access to justice in all aspects were made by use of evermore restrictive decisions on the Supreme Court's administration of resources within the legal aid scheme.

If the methods, findings and conclusion made by the Court by the judgment of the 21 October 2025 were to be the final result, when torture survivors or other civil plaintiffs are trying to obtain access to justice, concerning core requirements for court trials opposing governments are urging for justice, it is and should be the law within national judicial proceedings the following core requirements must be granted:

- Fair balance
- Reasonable opportunity to participate
- Access to information
- Adversarial process
- Procedural rights

In civil cases appearing as:

- Evidence and witnesses
- Expert evidence
- Legal aid
- Transparency

Henceforth, per the Chamber's judgment, any Member State will find means and recipes, now allowed to be denied. Such a decline in the case-law connected to the Convention should not happen without the interference of the Grand Chamber.

Thus, the judgment by means of its selective writing, selecting choice of facts and misleading wording of its findings in reality is accepting a striking denial of fundamental principles of the right to access to justice.

As will be shown below, especially the denials accepted by judgment can be identified within the following main categories, however in some of their substance partly overlapping.

As it is documented below, in the years 2024 and 2025 in the Chamber case, the lawyer of the applicants mainly in vain insisted on having full access to the court records and other documents from the ten years and nine months treatment of the cases within the Danish Judiciary. Even that was denied, and thus the ability, then

before the Chamber and still also to a great extent concerning this request for a panel decision to refer the case to the Grand Chamber, was greatly harmed.

However, in spite of those obstructions, the following can be stated:

4.2 Denial of the right of presence during the legal proceedings:

By definition, a civil lawsuit lodged by civil plaintiffs on the side of the plaintiffs has a kind of 'ownership' belonging to them in the sense that they have – naturally – the full right to attend, see and listen to anything happening during the whole process, and thus easy access to communicate directly with their attorney in connection with the court meetings at any point during the process. Likewise, the attorney has an easy access throughout to communicate with the client in connection with those proceedings. This must be regarded to be a core procedural and also human right in civil cases, which also serves the purpose of proper enlightenment of any information. Exemption from that is only lawful in very specific circumstances where rules concerning secrecy or necessity of keeping order in court room would make it mandatory or necessary that a plaintiff be denied to attend his or her own lawsuit in its proceedings. Thus, both the experience and the capacity to listen to what is said by the opponent, by witnesses or by the President of the Court during the proceedings is not only an understandable and useful circumstance. It is a necessity to understand what is going on and a necessity to have the opportunity to counter and refute any information etc. brought into the case by the opponent or by evidence by testimonies from others (the opponent and/or witnesses appearing in the proceedings), not outside, not as a bystander but as an individual present during all the proceedings.

Those basic human rights rules are not only beneficent to advance the enlightenment of the facts in order to optimise the capacity of the Court to reach just decisions, but also civilisational for any individual plaintiff person to experience justice to prevail.

Those considerations must be core human rights in any civil case and – of course – not least in favour of torture survivors who are claiming that they have been exposed to abuse, even life-threatening conditions in the notorious Al Shu'oon/Al Jameat Prison. (All except plaintiff 16 _____, no. 6 in the national court proceedings.)

It cannot be disputed that the law in Denmark on civil litigation, ref. the Act on the Administration of the Judiciary, *retsplejeloven*, explicitly in chapter 24 confirms the right of any plaintiff to participate in the court proceedings (para. 255 and more) and also reflected directly in the wording of para. 267, which states:

“Om end en part i øvrigt lader sin sag udføre ved en rettergangsfuldmægtig, er han dog ikke udelukket fra selv at ytre sig under den mundtlige forhandling, umiddelbart efter at hans rettergangsfuldmægtig har talt.”

(Regardless of whether a plaintiff or defendant party amongst others is entrusting the management of the case to a court representative, he is not precluded from **personally expressing himself during the oral proceedings**, just after his legal representative has spoken.)

From this, it can be observed that it is crystal clear that any plaintiff party has the full right to attend the court hearings, if he or she wants to.

It can be read in the transcripts from the national courts that the plaintiffs, when deciding to file their individual cases, that they would have that right to listen and effective possibility to be heard personally about their experiences and as captured individuals during Operation Green Desert.

In full conformity with that is the reference to the court records from 1 September 2017 (GC4):

“Retsformanden bemærkede, at sagsøgerne naturligvis har ret til at overvære hovedforhandlingen...”

This item is suppressed in the writing of the judgment of 21 October 2025.

Thus, the Eastern High Court confirms the above-mentioned to be present that the plaintiffs for several years had been aware of and which was presumed during all the preparations to be a basic condition for their caretaking as plaintiffs.

The above-mentioned statement from the chairman of the court during the preparatory meeting on 1 September 2017 was made, because during that meeting, the attorney of the government talking about the preparation of the coming oral hearings, suggested that instead of having the plaintiffs travel to Copenhagen in order to attend the hearings, including listening to other testimonies, giving their own testimonies and attending to the extent they may wish, the government's attorney found that they could just be interviewed by video someplace in the Middle East. That is why the chairman made that statement in full conformity with rules according to the Danish Act on the Administration of the Judiciary (*retsplejeloven*), chapter 24, para. 267 and others, cf. above.

Shockingly, and in spite of that, in the following months the Eastern High Court gave in to that video link strategy attempted by the council of the government, as can be seen from the following transcripts:

The documentation for that obstruction to the right of plaintiffs concerning also the right to give testimony to establish facts, etc., can be seen from the court records from the Eastern High Court.

4.3 Total denial of legal aid from the beginning of the cases (2012) until 17 September 2015. Hereafter partly.

For the plaintiffs, application for legal aid was sent to the governments department for legal aid, Justitsministeriet by Civilstyrelsen, which denied legal aid, as can be seen from below, with the reasons that this governmental board claimed that the case did not have the sufficient validity to bring up legal aid, because the board found that the claims and thus the cases could not be won because of the expiration of the statute of limitations:

In each case, an appeal was made to Procesbevillingsnævnet (The Appeals Permission Board) concerning legal aid which upheld all the denials, except for the last one by the Board's decision of 17 September 2015 by which legal aid was granted but merely partly.

The Civilstyrelsen in all of its denials was especially communicating the following reasons:

“Civilstyrelsen har herved lagt vægt på, at Deres eventuelle krav på godtgørelse for tort efter Civilstyrelsen opfattelse må anses for at være forældede.”

(Civilstyrelsen has given it importance that your claim in question to have compensation for tort according to the opinion of the Civilstyrelse is to be regarded to be prescribed invalid due to statute of limitations.)

The Appeal Board, Procesbevillingsnævnet, does not communicate reasons according to the law, and thus the Board's repeated cases of upholding are about its reasons not to be identified, but are most likely to be understood according to the Civilstyrelsen, except for last one on 17 September 2015, in which legal aid after four years (!) was finally granted.

<u>Application</u>	<u>Result</u>	<u>Appeal</u>
30 December 2011	Denied	Upheld
28 February 2013	Denied	Upheld
20 September 2013	Denied	Upheld
30. December 2014	Denied	Legal aid ³

³ The Appeals Permission Board finally on 17 September 2015 ruled against the governmental department, the Department of Civil Affairs.

4.4. Denial of equality of arms by systematic lack of fair balance during the lengthy judicial process:

As can be seen from above, the decision of whether legal aid should be granted or not is the competence of the Department of Civil Affairs and the Appeals Permission Board. When legal aid is granted, the entire administration of payment is in the hands of the courts working with the case.

Thus, the fee is decided on finally when the cases are closed. In huge and middle-sized cases, it is the practice that after a certain period, e.g. 6 months or longer, remuneration can be decided by the court. The above-mentioned section 334 (2) reads as follows:

§334, Stk. 2. Der tilkommer den beskikkede advokat et passende salær samt godtgørelse for udlæg, herunder rejseudgifter, som advokaten med føje har haft i forbindelse med hvervet, jf. dog § 333, stk. 1, 2. pkt.

(2) The appointed attorney shall be entitled to reasonable remuneration and reimbursement of expenses, including travel expenses, reasonably incurred by the solicitor in connection with the appointment, see, however, section 333(1), second sentence.

See more about this in section 7 on the exorbitant inequality of resources.

4.5 Denial of the right to call witnesses:

Witnesses denied the plaintiffs in the Eastern High Court

8 witnesses were denied on the request by the government's attorney.

Witnesses denied in the Supreme Court

From the side of the torture survivors, during the preparatory years (autumn 2018 and hereafter), it was wanted that the following 36 witnesses should be heard:

Category: Local individuals who were present in one of the two locations (Cyan 1 and Cyan 2) in Basra, where the arrests were made under the leadership and participation ⁴of Danish forces:

No.	Witness name	Location	Status	Court records
1		Cyan 4	Video/Refusal	25.01.21
2		Cyan 4	Video/Refusal	25.01.21
3		Cyan 4	Video/Refusal	25.01.21
4		Cyan 4	Video/Refusal	25.01.21
5			Deceased	29.11.19
6		Cyan 1	Video/Refusal	29.11.19
7		Cyan 1	Video/Refusal	25.01.21
8		Cyan 1	Video/Refusal	25.01.21
9		Cyan 1	Video/Refusal	25.01.21
10		Cyan 1	Video/Refusal	25.01.21
11		Cyan 1	Video/Refusal	25.01.21
12		Cyan 1	Video/Refusal	
13		Cyan 4	Video/Refusal	
14		Cyan 4	Video/Refusal	

These were people that the torture survivors wanted to present as witnesses. None of these were heard, mainly due to the denial by the court to accept their appearance in the court room in Copenhagen. Instead, the Supreme Court decided that they should simply attend a video interview in the Green Zone in Baghdad or elsewhere outside Europe.

Category: Witnesses not living in Iraq (mainly Denmark) who the torture survivor side wanted to have as witnesses:

No.	Witness name	Status	Position	Allowed/denied	Court records
15	Anders Koustrup Kærgaard	Officer	Second-in-command, Operation Green Desert	Denied	09.06.21
16	Morten Jansen			Denied	09.06.21
17	Masoud Vahedi	Officer	First-hand/present	Denied	09.06.21
18	Anders Fogh Rasmussen		PM 2024-05	Denied	09.06.21
19	Nick Hækkerup		MoD 2011-13	Denied	09.06.21
20	Peter Bartram		Chief of Defence 2012-17	Denied	09.06.21

⁴ Exhibit FT in the cases before the national courts, p. 3, no. 3.3.: 'Due to last minute changes DANBN was forced to become involved in the search and arrest phase itself.'

21	Trine Bramsen		MoD 2019-22	Denied	09.06.21
22	Claus Hjort Frederiksen		MoD 2016-19	Denied	09.06.21
23	Lars Løkke Rasmussen		PM 2009-11, 2015-19	Denied	09.06.21
24	Anders Samuelsen		Minister for Foreign Affairs 2016-19	Denied	09.06.21
25	Søren Pape Poulsen		Minister for Justice 2016-19	Denied	09.06.21
26	Mona Hamed Imam		Forensic reporter	Allowed	
27	Simone Elisabeth Søderberg			Denied	29.11.19
28	Klaus Hauder			Denied	29.11.19
29	Jens Jørgen Dall			Denied	29.11.19
30	Torben Smedegaard			Denied	29.11.19
31	Dennis Ry	Officer	First-hand/present	Denied	29.11.19
32	Jesper Gade	Officer	First-hand/present	Denied	29.11.19
33	Klaus Johansen	Officer	First-hand/present	Denied	29.11.19
34	Uffe Korrig	Officer	First-hand/present	Denied	29.11.19
35	Sinha Rene Peiris	Officer	First-hand/present	Denied	29.11.19
36	Mohammad Baltagi	Bystander	DK Embassy Beirut	Allowed	

By “denied”, it is meant that the Court has decided that that witness should not be heard under any circumstances.

Witnesses heard in the Supreme Court in 2022, allowed by the Supreme Court, in spite of objections from the attorney of the torture survivors for the reasons that they predominantly were not present during the arrests and captures in 2004, and many not even present in Iraq at that time, and thus no first-hand witnesses:

No.	Witness name	Allowed/ denied	Court records
A	John Dalby	Allowed	29.11.19
B	Jesper Helsø	Allowed	29.11.19
C	Rasmus Tantholdt	Allowed	29.11.19
D	Jes Rynkeby Knudsen	Allowed	29.11.19
E	Michael Schmidt	Allowed	29.11.19
F	Villiam Krüger-Klausen	Allowed	29.11.19
G	Bjørn Bisserup	Allowed	29.11.19
H	Søren Gade	Allowed	29.11.19
I	Kristian Sørensen	Allowed	29.11.19
J	Lars Mouritsen	Allowed	29.11.19

K	Lone Kjelgaard	Allowed	29.11.19
L	Grith Sandst Poulsen	Allowed	29.11.19
M	Peter Stehr	Allowed	29.11.19
N	Pauline Popp-Madsen	Allowed	04.06.20
O	Flemming Lentfer	Allowed	04.12.20

Thus, the Supreme Court allowed largely quantitative dominance of witness testimonies established by the Ministry of Defence.

Strikingly, this lack of equality in the right to bring witnesses completely contravenes the principles of equality of arms.

The damage even has two independent inequality consequences:

- (1) The time that the Supreme Court was willing to use for the case in its entirety became mainly occupied by witnesses with the dominance of persons employed with the Ministry of Foreign Affairs in a huge number. At the same time, the first-hand witnesses who the torture survivors wanted, were not heard(!).
- (2) The court thus heard second-hand explanations made by people, delivering their opinions without being first-hand witnesses.

This does not comply with standards of fair trial.

4.6 Denial of access to documents:

4.6.1 Denial from 2012-17 by delays:

The Eastern High Court is in the court records dated 16 April 2012 refers to a request made by the plaintiffs in their writ of 4 April 2012, in which the plaintiffs ask the court to decide according to the Act on the Administration of the Judiciary that the government must deliver to the enlightenment of the case the key document about the operation, its preparation and its completion, listed in item 1-13.

The court decided in 2012 to delay that decision in connection with the successive dealings with several of the objections put forth by the government, of which the main ones were lost by the government (Supreme Court ruling 17 September 2013: Security payment from the plaintiffs cannot be made a condition for the access to justice, and the Eastern High Court ruling 22 August 2016 (not appealed to the

Supreme Court): No prescription of the cases due to statute of limitations, and others).

Hereafter, the Eastern High Court in its records dated 21 November 2016 (with a delay of about 4 years and 7 months (since 4 April 2012, ref. above)) on amongst other issues on access to documents etc., referring to issues about witnesses wrote that:

‘Landsretten vil senere tage stilling til de spørgsmål, som parterne har rejst, vedrørende edition,...’

(The High Court will later decide on the issues that have been forwarded by the parties regarding access to documents,...)

As can be identified from later court records and written communications between the attorneys and the court, much later in 2017, and only partly, some of the materials were presented, still documents lacking when the oral hearings began on 7 November 2017. Thus, as can be read from writ no. 35 dated 18 March 2018, in the middle of the oral hearings, which began on 7 November 2017, and the court records (there are many) from the months of March and April 2018, it came up as a piece of information from the witness testimony given by chief of the Danish Battalion, colonel John Dalby, in the court on 14 March 2018 that information and documents delivered by the government in 2017 amongst this the claimed final operational command with the title ‘*Frago 284*, amendment 1’ was not the final. In the writ, it is stated that: ‘Colonel John Dalby testified on 14 March 2018 under oath that the above-mentioned document was not the final, because the final had some hand-written amendments.’

In the same writ, it is stated that Villiam Krüger-Klausen has testified the following day 15 March 2018 that the final version of the operational command is the result of amendments that the British forces wished “at the last moment” (Frago 4x/058).

Amongst others in the same writ, it is also stated:

‘The document *Frago 4x/058* has the indication of the hour by the abbreviation “DTG” (DateTimeGroup) that was made on 24 November 2004 at 22.50 and is commanding in item 6 for the use of Combat Camera Teams, which should be a part of the Danish Battalions’ completion of Operation Green Desert from 03.00 in the night of 25 November 2004.’

Confronted with that information, it would show that the government’s material delivered and answered to in 2017 was not comprising the final and most important pieces of information on the operational demand, the plaintiffs in that

same writ needed to put forward a request to the court to order the government to bring about that final operational command document, which the court did, but however, by several reasons presented by the lawyer of the government, it never came.

More can be read about this in the court transcripts.

This is just an example amongst many others about the lack of truthfulness on the side of the government and unfortunately how years of delay and deception compromise the full enlightenment of what happened and thus handicapped the proceedings and the courts' ability to find the truth.

4.6.2 No due process on documents, neither in the two domestic courts nor during the Chamber process (2023-25)

The Chamber's writing is abstracting from realities:

In order to establish a due process, equality of arms within the scheme of fair trial ref. art. 6 of the Convention, beyond any doubt access to documents and the production of evidence must be granted.

Amongst the principal aspects deriving from the judgment of 21 October 2025, is whether it is acceptable that not only crucial documents during the proceedings at the level of the national courts (Østre Landsret and Højesteret) but also at the level of the complaint examined and decided by the Court are kept inaccessible from the side of the torture survivors and their legal representatives. On that issue/question, it can be observed that the judgment has limited itself to the following very brief statement:

"128. The High Court dismissed the applicants' request and found that a new investigation was unlikely to bring out any new information of essential importance to the determination of the course of events during and after the operation, which had been almost fourteen years previously, or to assessing how far the Danish authorities were responsible for those events. It observed in that respect that the applicants' complaint about ill-treatment had been considered under the civil procedure rules which gave parties access to the production of evidence in the form of, inter alia, documentary evidence, a report from the Medico-Legal Counsel, examination of the parties and examination of witnesses. The proceedings had lasted fifty-two court days, and seventy-six persons had given evidence, including the vast majority of the applicants and a considerable number of military witnesses as well as

the psychologist and three of the four medical doctors who examined the applicants.”

Re ‘...new investigation was unlikely...’: That statement is wrong. It appears from the Supreme Court records that the request made by the attorney of the torture survivors brought up several examples of important information, giving more pieces in the attempt to bring about some form for partly or whole mosaic showing more about what happened, compensating for the redaction of the operational report, exhibit CÅ in the cases before the national courts, (this request’s exhibit GC7, cf. below).

The mentioning of the reason as a negative element, ‘which had been almost fourteen years previously’ calls for two observations:

- (1) The reason for that problem concerning the fourteen years is exclusively taking the years from 2011 into account, the systematic attempts to delay and handicap the processing of bringing up factual proof about what happened, all arranged by the government’s attorney. Relatively quickly, it must be an issue to take into consideration that a due process could have brought these documents forth at an earlier time.
- (2) Documents in a written form will as a starting point not lose their value as evidence, since written texts can be read and understood, regardless how many years have passed since they were written.

Taking the issue about ‘margin of appreciation’ into account under the scope of such exemptions from the rules of due process, it cannot be a valid argument that those fourteen years have passed, on the contrary, the need to make all possible relevant knowledge available would be and is evident, concerning to find out e.g. if the witness Anders Kærgaard, who was the officer second-in-command and Chief of Intelligence, who in the High Court gave evidence. He stated that as it was his job, the day before the operation he investigated the area to see if the reason mentioned by the Iraqi police that those civilians living in the targets Cyan 1 and Cyan 4 were armed insurrectionists or just peaceful civilians. He established the latter, which he told the head of the Danish Battalion, colonel John Dalby. Both the Eastern High Court and the Supreme Court made the surprising choice of not believing captain Kærgaard on this issue. Further documents could have turned the picture in favour of the testimony given by captain Kærgaard.

Further in point 128, the Chamber – on a another issue, but connected to the above – states that the High Court: ‘... observed in that respect that the applicants’ complaint about ill-treatment had been considered under the civil procedure rules which gave

parties access to the production of evidence in the form of, inter alia, documentary evidence, a report from the Medico-Legal Counsel, examination of the parties and examination of witnesses’.

That is the evidence about something different: it is about the evidence of the consequences for plaintiffs, not about what the military arranged and did when they made the arrests, that is to say where, how and who. Those elements are all about the preparation of the military operation and its completion. The fact that forensic reports were made, however contested by the lawyer of the government in spite of the high forensic scientific level and the Medico-Legal Council’s approval of that scientific level and of that and of the compliance with forensic doctors’ ethical norms, that theme is about the mental and physical damage, not the who, where and when of the operation.

Re ‘The proceedings had lasted fifty-two court days, and seventy-six persons had given evidence, including the vast majority of the applicants and a considerable number of military witnesses’: This is a misrepresentation. The text ignores that it is about 23 different individual cases, as stated in this request. The ‘vast majority of the applicants’ were not heard under acceptable conditions. Some of them broke down during the video interviews that had to be interrupted, etc. The limits and the form of those testimonies are widely in conflict with basic consideration on how to deal with parties suffering from those mental and physical consequences, PTSD etc., ref. the forensic reports. It is irresponsible to rush a torture victim coming from Basra in the Middle East into first the court room with limited time and poor translation and then some referred to only sit without their attorney and talk in a Danish embassy to a video camera about these extremely sensitive issues on arrests, interrogation and torture. The issues connected to art. 3 must be understood in conformity with the UN’s Convention against Torture, especially art. 12-14, the highly esteemed General Comments that the Court of Human Rights has referred to in the development of its case-law. Furthermore, attention can be drawn to the Istanbul Protocol, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, issued by the office of the UN High Commissioner for Human Rights and distributed from the UN in New York and Geneva in 2004. The full manual in both its 2004 version and the revised 2022 version, can be seen on the website of the UN’s website, and reference is made hereto. Attached as exhibit GC5 is merely the 2004 version’s table of contents and p. 17.

The attitude that can be observed in point 128 and elsewhere in the Chamber judgment, is in stark contrast to what must be understood as fair trial for torture

victims, not very well educated and coming from quite another cultural setting in the Middle East.

That statement made here by the applicants reflects a huge dismay to find that the writing by the Chamber is showing a not understandable lack of capacity to understand the difference between e.g. ordinary civil witnesses and that special attention that must be available concerning torture victims, ref. the forensic reports' clear conclusions. As can be understood by scrutinising the document from more than 10 years of attempts to obtain justice in Denmark, it is highly likely that the same almost blinded attitude about who torture victims are, can be found also naturally.

To establish that such were the conditions until now both at the national level and during the time passed with the Court, this letter will limit itself to merely the following references:

The Chamber judgment is made by far without the proper corpus of documents available for the applicants' access to the case and thus their proper representation.

Even during the preparations of the case admitted to the Court for consideration by the decision of 9 October 2023, no full access was given into the entirety of the court documents (2011-22), which would have included the entirety of the High Court and the Supreme Court records, other communications from/to the courts, communications between the courts and the attorneys on both sides and between those.

Immediately after receiving the observations from the Danish Government dated 3 April 2024, the lawyer of the applicants in his communication to the Ministry of Defence of 25 April 2024 notified the Court hereof.

The lawyer never received the documents, but only fragments. After each sending, unfortunately he could conclude that the material was absolutely not complete. On this issue he – mainly in vain – communicated to the government the following days:

- 25 April 2024
- 14 May 2024
- 10 June 2024
- 20 June 2024
- 4 July 2024
- 4 July 2024
- 5 July 2024
- 15 July 2024

- 18 July 2024
- 6 August 2024
- 6 August 2024
- 14 August 2024
- 7 February 2025
- 19 May 2025

The dissatisfactory answers were sent to him the following days:

- 24 May 2024
- 10 June 2024
- 13 June 2024 (phone call)
- 17 June 2024
- 18 June 2024
- 4 July 2024
- 5 July 2024
- 15 July 2024
- 19 July 2024
- 6 August 2024
- 8 August 2024
- 15 August 2024
- 11 November 2024
- 10 December 2024
- 20 December 2024
- 12 February 2025
- 18 March 2025
- 25 March 2025

Finally, by his submission to the Court of 25 May 2025, Mr Tyge Trier wrote inter alia as follows:

'I can inform the Court that the Ministry of Defence as well as the Ministry of Justice has still not fully processed and granted access to the core documents of the case. The documents requested contain substantial documentation regarding the domestic proceedings and is of pivotal importance for the counsel's ability to answer the Court's questions to the parties. Furthermore, attention is respectfully drawn to the fact that the application filed in September 2022 directly concerns (among others) the lack of a fair hearing under Article 6 of the Convention, including the core principle of equality of arms during domestic proceedings, and that the ongoing process of delaying the access for the Applicant's counsel in this case before the Court gives rise to serious criticism and shows the continuation of such lack of respect for this core principle between the parties in the case. The

Applicants note in this respect that the Danish Ministry of Justice is listed as the representative of the Contracting State and that it is the same entity which has delayed providing access to the file 2 documents contrary to established practice and in a manner which the Applicants find to be in bad faith.

(....)

Reference is made to the previous filings on behalf of the Applicants, including the application presented in October 2022, the filing presented in September 2024 and the 21 annexes.

As a follow up regarding counsel's criticism of the lack of facilitation of the ECHR process, I will draw attention to the fact that a relatively straightforward request for document access to the Ministry of Justice was presented in writing on 7 February 2025. The Ministry of Justice responded inter alia 6 March 2025 that the document access would be handled within seven days. **At present more than 100 days has passed without any of these documents being provided to counsel, despite the Ministry of Justice being fully aware of the Secretariat's deadline to counsel for the Iraqi individuals involved in an important case communicated to the Government of Denmark 19 September 2023.** Counsel maintains that the ongoing process of delaying access for the Applicant's counsel in this case gives rise to serious criticism and shows the continuation of such lack of respect for the representation of the Iraqi prisoners.

It is noted that these documents are not present to the Applicants, and it is also noted that the appointed counsel in the domestic proceedings before the Supreme Court (JF) will present a written statement about the Article 6 issues that the Iraqi defendants faced in the proceedings from 2018 to 2022.'

The above-mentioned document from the Mr Tyge Trier of 25 May 2025 is attached as exhibit GC6.

On this issue, completely unacceptably, it is the conclusion:

1. The lawyer of the applicants explicitly demanded access to the relevant documents to do his work, but never obtained that basic enlightenment of the case from the government.
2. The Chamber has ignored that lack of equality of arms, which by the way has been the same inherent and handicapping circumstance and government strategy ever since the beginning of the legal proceedings since the cases were lodged in 2011-12.
3. The judgment does not contain any information on that deficiency.

As the panel can observe, the government's permanent strategy all the years since 2011 from the filing of the cases, ever until 2025, has been and is to prevent and thus obstruct documents and by that enlightenment of the cases. Even documents that the government on the way has been obliged to forward, have had their informative value severely restricted by redactions.

Amongst others, a flagrant example of this is a very crucial document about what happened at the targets Cyan 1 and Cyan 4 (amongst other targets) during Operation Green Desert: Exhibit CÅ, which is attached as exhibit GC7.

Concerning GC7, it can be observed that this document is the key document for understanding namely the operational report. On the request of the plaintiffs, it was delivered in the Eastern High Court reluctantly. However, more than 95% of the text is made illegible by redaction. The reason for that delivered in 2015 and the following app. 3 years during the Eastern High Court proceedings was that all of the information contained could be harmful for "national interests" and the "relation to foreign powers".

In spite of repeated attempts to make the Eastern High Court decide to have the document in a more readable version, the High Court accepted that reason and thus there would be no legible version.

This was repeated during the preparation of the Supreme Court case from 2018 until the 2022 judgment.

It is beyond comprehension that even in 2022, app. 18 years after Operation Green Desert was completed, still the above-mentioned reasoning was accepted, and even to the extent of practically the entirety of the document, which contained 16 pages all redacted. By looking at the document, the panel can observe that circumstance.

The document can in its entirety be seen on a photo taken in a public outside meeting in 2017, where that document was referred to as 'The Black Bayeux Tapestry'. The public popular naming of the document is a reference to the 11th century tapestry explaining the preparation and completion of the military action by the Norman invasion in 1066 at Hastings, whereas the Operation Green Desert operational report about its preparation and completion is kept non-informative by severe redaction. A banner was made displaying the 'Black Bayeux Tapestry', which can be seen on the picture below:



The document CÅ in exhibition as a poster in front of the Danish Ministry of Defence, satirically referred to as 'The Black Bayeux Tapestry'

Furthermore, exhibit FT in the national court cases is attached as exhibit GC8.

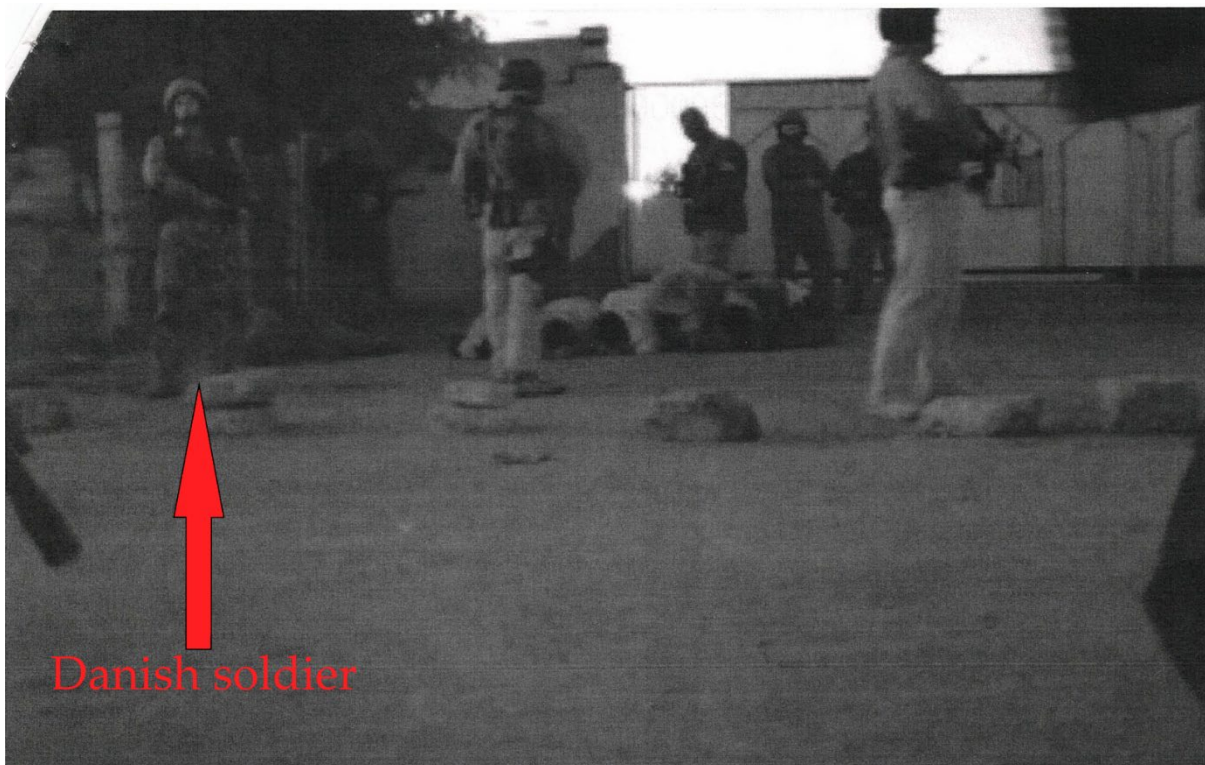
As it can be observed, several pieces of information were redacted. However, one piece of information (maybe by mistake), was not redacted, namely the following section on p. 3:

'Due to last minute changes DANBN was forced to become involved in the search and arrest phase itself'

This information in the case is key to understand what happened in the hours just before the operation began a couple of hours after midnight on 25 November 2004, in full conformity with the testimony given by the officer who was second-in-command Anders Kærgaard, when he gave testimony before the Eastern High Court: The Danish military needed to be involved in the search and arrests in the residential houses (Cyan1) and the place in Cyan 4. He and others explained that the idea that Iraqi police should make the search and arrests had to be given up. That is why the Danish forces did it. For the full enlightenment of the case, of course both these two crucial documents should be available for the enlightenment concerning the facts, namely if there is a hidden truth that the search and arrests actually were performed by Danish forces. In the writs from the plaintiffs ever since 2011, the information that they had experienced presence and participation during the arrests of Danish soldiers, where some of them were wearing combat cameras, which was falsely denied in the written answers from the attorney of the government, until a

video came up showing filming that morning at Cyan 1 and Cyan 4, and also showing fellow Danish soldiers showing other cameras (Danish flags on their uniform shoulders). Those other films, the government denied ever existed, but had from Autumn 2012 to accept the first-mentioned filming.

The above-mentioned document, exhibit FT, by which a glimpse of truth not covered in black ink appears in the sentence: 'Due to last minute changes DANBN was forced to become involved in the search and arrest phase itself', seen from the point of view of the evidence as well as from what some of the military witnesses have explained not the original arrangement about Danish participation around an outside perimeter what really happened. Rather, it was a direct military involvement at the two spots Cyan 1 and Cyan 4. There are in the video that was made available in the (not from the side of the government, but anonymously, several parts of the film showing Danish military deeply involved in the arrests and captures. From this, see the still photo below, where a Danish soldier is seen holding his gun pointing at the Iraqi torture survivors put together on the ground. (The soldiers wearing light trousers are Iraqi).



Still photo from video filming of Operation Green Desert arrests 25 November 2004 at app. (ca.) 05.30 AM. 7 captured Iraqi civilians on the ground. Danish soldiers standing to the right with a gun pointing downwards towards the captured individuals.

Some of the witnesses mentioned that lack of professional training with the Iraqi forces, or maybe combined with the lack of morale/courage, were some of the reasons for the above-mentioned 'last minute changes'. The issue has been vehemently kept in the darkness by the government during the app. 10 years of processing, but some further glimpse of facts came up during the cases' pending before the Supreme Court: Since the turnover of power to a new Iraqi constitutional governmental system in June 2004, except for jurisdiction made in the realms of occupying international forces, Iraq was under the constitutional order involving that to perform arrests of civilians would only be legal if such were made with warrants decided by a judge.

The lawyer of the torture survivors, put in his writ to the Supreme dated 4 April 2022 the remarks that are seen below (pp. 89-92. In order to limit the length of this request, this document here is only reproduced in an English translation):

'12.1.7 The necessary court order

Both the statement by witness Jan Hjelmager (Easten High Court judgment, p. 457, 1st paragraph) and the Post Operation Report, section 2.2. (...):

'...due to the sparse information provided by the ING, DANBN concluded that the initial ING plan would have to be altered if the op was to be conducted ...'

clearly indicate that a prerequisite for DANBAT4's participation in Operation Green Desert was that Operation Green Desert could not go beyond what was permitted by a court order.

12.1.7.1 The necessary court order was not available to the extent required (concealed by the Ministry of Defence). The judge who, according to the concealed information, issued an order was the presiding judge in the Iraqi court with jurisdiction over "serious crimes".

The Ministry of Defence was in possession of the newspaper articles from Al Manarah in readable form, including translations of the articles. In particular, in relation to this matter, it should be noted that

- 1) that the Ministry of Defence distorted the original Arabic text in the translations submitted by the Ministry of Defence in court, so that they could no longer be read,
- 2) that the Ministry of Defence has otherwise refused to submit the articles in a readable version,

3) that the Ministry of Defence has also refused to have the articles translated, even though such an obligation follows from section 149(2) of the Administration of Justice Act.

Among the facts originally unknown to the defendants/Supreme Court was the information that the necessary court order had not been obtained in relation to the anticipated scope of Operation Green Desert (...):

" ... when the judge, Yosif Yaqoub Kanbush, who issued the search and arrest warrant, was contacted, he stated that he had issued the arrest warrant in the name of one of the terrorists (a specific one) with the aim of having that person arrested. . . . "

The statement must be understood to mean that it was made by the presiding judge of the very court that had jurisdiction over 'serious crimes' in the Basra region (E-b10 - p. 4776) , 3rd last paragraph, cf. last paragraph).

The presiding judge is stated to have ' ... for various reasons has not made a favourable impression on CPA-S . ' (Two examples are given.)

The accuracy of the information that it was Yosif Yaqoub who issued the court order is further supported by the information in (E-b10- p. 4777) , second paragraph, concerning "The investigating magistrate, Mowafak ... ' , and the defendant (1)'s perception that the judge before whom he appeared was named 'Mowaffaq'. The accuracy is further supported by the fact that the defendant (18) recalls that it was the Court in al Maaqal that ruled on his case (Eastern High Court judgment, p. 221, lines 19-20) and the defendant (18)'s recollection that the judge before whom he appeared mentioned that he was accused of murder and terrorism (Eastern High Court judgment, p. 38, second paragraph).

The Supreme Court should and must conclude that the necessary legal basis for carrying out Operation Green Desert to the extent envisaged at the start of the operation did not exist, cf. also the Eastern High Court judgment p. 787, last paragraph.

A finding which in itself may well have been a contributing factor to the 'last minute changes' (...), cf. Appendix O, time 07:17, and Appendix KH, clip 5, timestamp 07:12: ' ... coalition soldiers do not need a court order ... '

A military communiqué (E-b12- p. 5783) dated 18 March 2005 has been submitted, stating that DANBAT is involved in an operation in which Al-Zarqawi is expected to be captured. It appears that the area is being surrounded. It appears that a mosque is then being stormed.

The Supreme Court should and must assume that the Iraqi forces did not obtain the court order necessary for the planned operation to be carried out for the purpose of the 'search and arrest' operation. (Eastern High Court judgment, p. 787, last paragraph, as a prerequisite). It must be assumed that DANBAT was aware of the content/scope of the court order obtained.

The Supreme Court should and must therefore also conclude that either there was no legal basis for carrying out Operation Green Desert to the extent envisaged at the start of the operation, as acknowledged by DANBAT, or alternatively that DANBAT 'took over' the operation as a result of an 'assumption' on the part of DANBAT that the implementation of Operation Green Desert was not conditional on obtaining the anticipated court order.'

In this request, reference is made to the parts cited above and to its alternative conclusions.

5. EXCEPTIONALITY BY THE CHAMBER DELIVERY AND ITS DIRE CONSEQUENCES ON HUMAN RIGHTS LAW ON EFFICIENT ACCESS TO JUSTICE:

The judgment is composed and written in such a way that the realities are invisible for any reader due to the construction of the presentation in the judgment.

That method is an inherent technique in both national judgments (first instance in the Eastern High Court of Denmark on 15 June 2018 and in the second instance for the Supreme Court of Denmark 31 May 2022).

It is an extremely problematic misrepresentation and misleading that the Court in its judgment of 21 October 2025 has adapted the same concept deriving from the above-mentioned Supreme Court judgment, which was the object of the application received by the court in September 2022.

It is further problematic that, as far as it can be understood, this huge case for the Iraqi individuals has been dealt with by the Danish section consisting of documents, including court transcripts (from 2011 to 2022) only written in Danish available for the 7 judges in the section, of which only one judge can read Danish, namely Anne Louise Bormann, who is a Supreme Court judge of the Kingdom of Denmark and was so, ever since the cases were put on appeal by the Danish government from July 2018. It is a fact that the judge is still holding a Supreme Court judge position within

the Supreme Court of Denmark to which place of working she will return when her term with the Court in Strasbourg is over and to her colleagues that then will have competence to decide on matters on her interests.

Torture survival plaintiffs denied in the Supreme Court:

In June 2018, the Eastern High Court judgment was appealed by the Danish government (The Ministry of Defence represented by the government's attorney "Kammeradvokaten" (lawyer Peter Biering) with the claim that the judgment in favour of 18 of the then 23 plaintiffs should be turned down and from the side of the torture survivors a writ was sent to the Supreme Court claiming that compensation etc. should be the result in all of the 23 cases.

From the side of the 23, it was claimed during the proceedings at the High Court level that it was according to the Danish Act on the Administration of the Judiciary (*retsplejeloven*), ECHR art. 6, etc., it was insisted that any of those 23 individuals (the deceased plaintiff _____ by its estate/family representative _____), should of course be granted full access to attend any court room proceedings, and to express himself in full accordance with the above-mentioned basic rule. However, on the request of the attorney of the government, these fundamental demands were denied prior to the oral hearings. At earlier stages of the Supreme Court hearings, some attendance was allowed by the Supreme Court, which can be seen from the court records.

Distortion and obstruction of the wish by plaintiffs to enjoy their plaintiff rights during the court proceedings regarding the right physically to deliver their testimony physically to the Supreme Court during the physical court meetings in which all of the witnesses (mainly military personnel) were allowed to give physical appearance testimonies. The denial of the Supreme Court to 'allow' that basic right, instead imposing video interviews, those decisions taken by the Supreme Court were preludes for the general denial of any possibility of normal attendance to the court hearings. The instrument for that that was both the use of the Supreme Court's competence position to decide any necessary expense to be allowed as a legal aid request. The issue is, like for the Eastern High Court and the interaction with the Immigration Services (Udlændingestyrelsen) a parallel

arrangement. Thus the Supreme Court only allowed and heard two torture survivors, who were living in Denmark, to give their testimonies, as they did.

Those controversial and unacceptable measures were executed stepwise as can be seen from immediately below:

Step 1 Denial of the plaintiffs' right to enjoy presence during the court proceedings:

<u>Date</u>	<u>Action</u>	<u>Document</u>
11.03.19	<p>Plaintiff attorney: Full rights of the presence presumed <i>'De øvrige indstævnte opholder sig i ikke-EU-lande, primært – men ikke udelukkende - i Irak.</i> <i>De indstævnte anser alle, at en videoafhøring er utilfredsstillende, og de indstævnte insisterer alle på, at blive afhørt direkte foran en dommer.'</i> (The other plaintiffs reside in non-EU countries, primarily – but not exclusively – in Iraq. The plaintiffs all have the view that video testimony is unsatisfactory, and they all insist that they give their testimonies directly in front of a judge)</p>	Writ
21.01.19	<p>Government attorney: No presence. Video calls outside Europe: <i>'Forsvarsministeriet (...) finder, at det i givet fald bør ske efter samme fremgangsmåde som bestemt af landsretten i retsbog af 22. januar 2018 (videoafhøring fra en dansk ambassade).</i> (The Ministry of Defence finds that it should then occur as did before the High Court by court records of 22 January 2018 (video testimony from a Danish embassy).)</p>	Writ
17.04.19	<p>Government attorney: <i>"Partsforklaringerne, som på helt betryggende vis blev afgivet via videolink fra danske ambassader, er behørigt gengivet i retsbøgerne fra retsmøderne og den indankede dom."</i> (The statements, which were given in a completely safe manner via video link from Danish embassies, are duly reproduced in the court records from the court hearings and the final judgment.)</p>	Writ
15.05.19	<p>Plaintiff attorney: <i>'...indstævnte 1- 4, 6-22 [ønsker] at afgive forklaring for Højesteret.</i></p>	Writ

Hertil kommer at indstævnte 5 begærer at (U) får mulighed for at afgive forklaring/ en udtalelse, jf. herom ovenfor i pkt. A. 2.

Forsvarsministeriet har ingen indvendinger mod at indstævnte 4, 16, 17 og 22 afgiver partsforklaring.

Forsvarsministeriet har protesteret mod, at indstævnte 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20 og 21 afgiver forklaring for Højesteret, idet Forsvarsministeriet gør gældende at de pågældende forklaringer vil være overflødig bevisførelse.

"Ovennævnte parter har allerede afgivet udførlige forklaringer for landsretten. Partsforklaringerne ... er behørigt gengivet i retsbøgerne fra retsmøderne og den indankede dom."

At Forsvarsministeriet gør gældende at de indstævnte fik lov til at afgive udførlige forklaringer for Østre Landsret, og at Forsvarsministeriet herunder bestrider det i bilag 136 anførte står i kontrast til det af retsformanden i retsbogen af d. 30. januar 2018, s. 2 anførte:

"... Retsformanden gentog...

Det påhviler advokaterne at drage omsorg for, at der inden for den tidsmæssige ramme, der er til rådighed - hvilket vil sige halvanden time til [de indstævnets egen advokats] afhøring ... stilles de relevante spørgsmål. Advokaterne kan ikke forvente, at der afsættes yderligere tid til afhøringerne."

Indstævnte 10 har i øvrigt ikke afgivet forklaring for Østre Landsret .

I relation til de øvrige indstævnte fastholdes ikke blot, at de pågældende forklaringer ikke er overflødige; De indstævnte gør yderligere gældende, at Forsvarsministeriet må antages at være positivt bekendt med, at det ikke vil være overflødig bevisførelse, at i hvert fald en række af de indstævnte afgiver forklaring for Højesteret .

(...)

I relation til de forklaringer, som er fremkommet ved videoafhøringer i Beirut fremlægges som sagens bilag 142 foreløbigt en erklæring fra adv. Baltagi. Af erklæringen fremgår bl.a. at de partsafhøringer som foregik ved hjælp af videokonference i Beirut foregik under rammer, som påvirkede de pågældende parter mulighed for at afgive forklaring på negativ vis.

(...)

Det fremgår bl.a. ikke af retsbogen fra d. 31. januar 2018: at indstævnte 9 og 10 efter ankomsten til lufthavnen i Beirut bl.a. blev afhørt af libanesiske myndigheder om deres ærinde i Beirut, hvilken afhøring varede omkring ½ time,

at da indstævnte 9 og 10 endelig ankom til hotellet i Beirut var der ikke nogen i receptionen, og de kunne således ikke få anvist deres værelser. De endte med at finde et tomt værelse, hvorefter indstævnte 9 kunne sove få timer på sofaen og indstævnte 10 kunne sove få timer i sengen.

at indstævnte 9 og 10 intet fik - og intet blev tilbudt - at spise førend eller i øvrigt i forbindelse med at de skulle afgive forklaring .

(...)

Fremadrettet vil undertegnede benævne den afhøringsform, som i 1. instans blev benyttet i relation til en række af de indstævnte, som "afhøring ved hjælp af videokonference".

Nærværende sag handler om krænkelse af de indstævntes rettigheder i henhold til EMRK art. 3, der i sin helhed lyder således:

"Ingen må underkastes tortur og ej heller umenneskelig eller nedværdigende behandling eller straf. "

Ordlyden af EMRK art. 3 i sin helhed fremhæves, idet de indstævnte herved søger at understrege at nærværende sag således handler om krænkelse af nogle af de absolut vigtigste menneskerettigheder.

C.3.1 . Kan de indstævntes ret til at afgive forklaring betinges af fratagelse af retten til personligt fremmøde?

I dansk ret har der i de senere år været et betydeligt fokus på videoafhøringer. Men denne fokus har været koncentreret om ønsket om at beskytte ofre mod den retraumatisering, som kan finde sted, ifald et offer mod sin egen vilje er nødsaget til at indfinde sig i samme retslokale som gerningsmanden, og afvejningen heraf over for den tiltaltes interesse i at have passende mulighed for at kunne bevise sin uskyld.

Omdrejningspunktet for Højesterets stillingtagen i denne sag er anderledes, idet ofrene - de indstævnte - i denne sag begærer at få lov til personligt fremmøde, hvorimod skadevolder

Forsvarsministeriet - begærer personligt fremmøde afskåret.

De indstævnte er enige med Forsvarsministeriet i, at det fremgår af Østre Landsrets retsbog af 1. september 2017, at de indstævnte naturaligvis havde ret til at overvære hovedforhandlingen. [Mine understregninger] .

Ordvalget ". .. naturaligvis ... ret til at overvære ... " indikerer med al tydelighed, at der må skulle ganske tungtvejende grunde til for at de indstævnte ikke skulle have ret til at overvære hovedforhandlingen, og - som det mindre i det mere - have lov til at afgive forklaring i retssalen, i stedet for at være henvist til at afgive forklaring ved hjælp af videokonference.

Af Østre Landsrets afgørelse af d. 16. januar 2018 fremgår ikke, at Østre Landsret nærmere har overvejet, hvad der i Retsplejelovens § 305 anses for at udgøre " ... de fornødne lempelser. .. ", og hvilke retskilder som evt. rent faktisk måtte være blevet inddraget i disse overvejelser.

Af forarbejderne til Rpl. § 174 (om afhøring af vidner ved hjælp af videokonference) fremgår bl. a. , at retten ved vurderingen bør lægge afgørende vægt på parternes og vidnets stilling til spørgsmålet.

Rpl. § 305 angiver:

"I øvrigt finder ved partsafhøring reglerne om vidner i kap. 18 , bortset fra §§ 178 , 182 og 188 anvendelse med de fornødne lempelser. " [Min understregning]

Kravet i Retsplejelovens § 305 om anvendelse af regler om afhøring ved hjælp af videokonference med "... de fornødne lempelser..." skal naturligvis forstås bl.a. under respekt af nærværende sags særlige karakter, og de retssikkerhedsmæssige forpligtelser, som Danmark i øvrigt er underlagt i relation til de indstævnte.

D. 29.05. 2001 har Danmark tiltrådt retshjælpskonventionen udarbejdet af Rådet i henhold til artikel 34 i traktaten om Den Europæiske Union om gensidig retshjælp i straffesager mellem Den Europæiske Unions medlemsstater, hvoraf bl.a. fremgår:

"Artikel 10

Afhøring ved hjælp af videokonference

1 . Hvis en person befinder sig på en medlemsstats område og skal afhøres som vidne eller sagkyndig af de judicielle myndigheder i en anden medlemsstat, kan denne anden medlemsstat, såfremt det ikke er hensigtsmæssigt eller muligt, at den pågældende møder personligt frem på dens område, anmode om , at afhøringen foretages ved hjælp af videokonference som fastsat i stk. 2- 8 .

3 . Anmodninger om afhøring ved hjælp af videokonference skal ud over de oplysninger, der er nævnt i artikel 14 i den europæiske retshjælpskonvention og artikel 37 i Benelux- traktaten, indeholde en begrundelse for, at det ikke er hensigtsmæssigt eller muligt, at vidnet eller den sagkyndige møder personligt frem, samt navnet på den judicielle myndighed og de personer, der skal foretage afhøringen.

9. Medlemsstaterne kan hensigtsmæssigt og med de efter eget kompetente skøn, hvor det er judicielle myndigheders samtykke, også anvende denne artikel på afhøring af en tiltalt ved hjælp af videokonference. I så tilfælde skal benyttelsen af

videokonference og den måde, hvorpå videokonferencen gennemføres, aftales mellem de berørte medlemsstater i overensstemmelse med deres nationale ret og med relevante internationale instrumenter, herunder den europæiske konvention til beskyttelse af menneskerettigheder og grundlæggende frihedsrettigheder fra 1950 .

Enhver medlemsstat kan samtidig med afgivelsen af den i artikel 27, stk. 2, nævnte notifikation erklære, at den ikke vil anvende første afsnit. En sådan erklæring kan til enhver tid trækkes tilbage .

Afhøring må kun ske med den tiltaltes samtykke. De bestemmelser, der måtte være nødvendige for at beskytte tiltaltes rettigheder, fastsættes af Rådet i et retligt bindende instrument." [Min understregning]

Om artikel 10, stk. 9 angives i øvrigt:"

" Erklæring fra Rådet ad artikel 10 , stk. 9

Når Rådet behandler vedtagelsen af det instrument, som er omhandlet i artikel 10, stk. 9, respekterer det medlemsstaternes forpligtelser i henhold til den europæiske menneskerettighedskonvention."

De indstævntes ret til som parter at overvære hovedforhandlingen støttes af EMRK. art. 6 og 13 og FNs Antitorturkonvention (CAT) (disse behandles i pkt. C. 3.2. nedenfor) .

En evt. fortolkning af Rpl. § 305, hvorefter de indstævntes ret som parter overvære hovedforhandlingen, hvorved retsplejelovens § 305 fortolkes i strid med EMRK. art. 6 og 13 må efter ordlyden af Retsplejelovens § 305 (" .. de fornødne lempelser. .. ") må umiddelbart antages at være i strid med lovgivers ønsker.

I bet. 2001. 1401 anføres da også (s. 351) :

" 4.1.3. Frivillighed

Formålet med at give parter og deres advokater mulighed for at deltage i retsmøder, herunder domsforhandlingen, via videoforbindelse eller telefon er overordnet set at fremme fleksibilitet og effektivitet i sagsbehandlingen . Videomøder og telefonmøder er således på den ene side en mulighed for parterne og på den anden side et middel for retten til at opnå en effektiv sagsbehandling .

I en vis forstand er det altid frivilligt for en part at deltage via videoforbindelse eller telefon. En part og dennes advokat eller anden rettergangsfuldmægtig har krav på indkaldelse til og (fysisk) tilstedeværelse i alle retsmøder. Retsplejerådet foreslår ingen ændringer heri.

Frivilligheden kan imidlertid ikke strækkes så vidt, at en part kan forlange, at der ses bort fra muligheden for deltagelse via videoforbindelse eller telefon, når retten fastsætter tidspunktet for et retsmøde, herunder berammer domsforhandlingen. Retten skal imidlertid tage hensyn til en rimeligt begrundet modstand mod at deltage via videoforbindelse eller telefon .

Hvis en part således efter aftale med sin advokat ønsker at være tilstede i retten sammen med advokaten under domsforhandlingen, skal retten tage rimeligt hensyn hertil ved berømmelsen af domsforhandlingen. Hvis parten er et selskab eller anden juridisk person, må parten imidlertid være indstillet på, at en repræsentants lovlige forhindring ikke nødvendigvis er afgørende, da der så må sendes en anden repræsentant. " [Min understregning]

For god ordens skyld bemærkes, at der i nærværende sag end ikke er skyggen af belæg for at antage, at de indstævntes ønske om ikke blot at være henvist til afhøring ved hjælp af en videoforbindelse er begrundet i de indstævntes ønske om at træne sagen.

I betænkningen fremgår endvidere (s. 353):

"Sigtedes eller tiltaltes fysiske tilstedeværelse i retten er langt væsentligere i straffesager end parternes i civile sager, og der er ikke samme hensyn at tage til anklagemyndigheden som til en part i en civil sag. "

I betænkningen fremgår endeligt (s. 355)

"Videomøder var ikke en realistisk dagligdags mulighed, da artikel 5, stk. 3, blev formuleret, og der kan argumenteres for, at en videofremstilling er tilstrækkelig til at opfylde bestemmelsen. Formålet med bestemmelsen er imidlertid blandt andet, at en uafhængig dommer skal kontrollere politiets behandling af anholdte.

Det er uden nævneværdig praktisk betydning i Danmark, men man kan godt tænke sig lande i Europa, hvor det efter omstændighederne kan have væsentlig betydning for beskyttelsen af den anholdte, at dommeren ser vedkommende umiddelbart foran sig frem for på en videoskærm.

Retsplejerådet finder, at en videofremstilling ikke bør kunne opfylde kravet om, at en anholdt, der ikke forinden er løsladt, inden 24 timer skal stilles for en dommer. I de tilfælde, hvor et grundlovsforhør efter gældende ret kan afholdes uden sigtedes tilstedeværelse, bør der imidlertid ikke være noget til hinder for, at sigtede deltager via en videoforbindelse, hvis dette dog er muligt. En sådan deltagelse ændrer imidlertid ikke ved, at sigtede fysisk skal stilles for en dommer inden 24 timer efter, at hindringen herfor er ophørt, j. f. retsplejelovens § 764, stk. 2, 2. pkt. " [Mine understregninger]

Det er de indstævntes opfattelse, at den samlede forståelse af det af Retsplejerådet i bet. 2001.1411 anførte således også må føre til, at de indstævnte som parter slet ikke kan pålægges at skulle afgive deres respektive partsforklaring i nærværende sag ved hjælp af videokonference mod eget ønske.

C.3.2. EMRK og CATS betydning for retten til personligt fremmøde .

C.3.2.1. EMRK

EMRK er inkorporeret direkte i dansk ret ved lov nr. 285 af 1992, og finder umiddelbart anvendelse på sagen.

I relation til spørgsmålet om retten til personligt fremmøde er det såvel art. 3 (det absolutte og ufravigelige forbud imod tortur og anden umenneskelig eller nedværdigende behandling eller straf) som art. 6 , stk. 1 (retten til retfærdig rettergang, det civile led), som er af betydning.

En stat har en positiv forpligtelse til at sikre, at et torturoffer har en praktisk og effektiv (i modsætning til teoretisk og illusorisk) mulighed for at tage del i sin egen sag om ansvaret for tortur, jf.

f.eks. Den Europæiske Menneskerettighedsdomstols (EMD) dom af 26. juli 2012 i sagen Savitskyy mod Ukraine, præmis 117:

"Bearing in mind that the Convention is intended to guarantee rights that are ' practical and effective ' (see Oluic v. Croatia, no. 61260/ 08, § 47, 20 May 2010), the Court takes the approach that in the particular circumstances of the present case the State's procedural obligations to ensure the effective participation of the victim in the investigation of his complaints of ill - treatment extended to the issues of providing effective access to free legal representation." [Min understregning]

En sådan effektiv deltagelse for et torturoffer kan ikke finde sted, hvis de indstævnte afskæres fra selv at være fysisk til stede.

Fra Den Europæiske Menneskerettighedsdomstols faste praksis kan som eksempel henvises til dom af 18. marts 1997 i sagen

Mantovanelli mod Frankrig, præmis 33 (med yderligere praksishenvisninger):

"33. The Court notes that one of the elements of a fair hearing within the meaning of Article 6 para. 1 (art. 6- 1) is the right to adversarial proceedings; each party must in principle have the opportunity not only to make known any evidence needed for his claims to succeed, but al so to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision (see, mutatis mutandis, the Lobo Machado v. Portugal and Vermeulen v. Belgium judgments of 20 February 1996, Reports of Judgments and Decisions 1996- I pp. 206-

07, para. 31, and p. 234, para. 33, respectively, and the Nideröst-Huber v. Switzerland judgment of 18 February 1997, Reports 1997- I, p. 108, para. 24) . " [Min understregning]

Sagen er af usædvanligt omfattende og faktisk kompliceret karakter, hvilket skærper kravene til statens opfyldelse af den positive forpligtelse til, at torturofre effektivt og praktisk har mulighed for at deltage i og bidrage til den kontradiktoriske proces.

C.3 .2 .2. FNs Anti torturkonvention (CAT)

C.3.2.2.A. CATS anvendelse i DK ret .

C3.2.2.A.1. "Direkte" anvendelse .

Konventionen er ikke inkorporeret i dansk ret , men dansk ret skal så vidt muligt fortolkes og anvendes således, at den danske stat ikke forbryder sig imod sine internationale forpligtelser.

Der henvises til Justitsministeriets betænkning nr. 1546 af 2014 (inkorporeringsbetænkningen) , s. 3 5, 2 . og 3. afsnit, hvoraf bl.a. fremgår:

"Efter formodningsreglen skal danske domstole og andre retsanvendende myndigheder ifølge den almindelige opfattelse tage udgangspunkt i, at lovgiver må formodes ikke at ville handle i strid med Danmarks folkeretlige forpligtelser. Domstolene og andre retsanvendende myndigheder skal derfor så vidt muligt søge at anvende de nationale regler på en sådan måde, at en krænkelse af de internationale forpligtelser undgås.

Hensynet til at undgå folkeretsbrud indgår med stor vægt i fortolkningen af love og administrativ regulering og kan efter omstændighederne føre til en fortolkning , der afviger fra ordlyden af en lovbestemmelse eller fra tilkendegivne forudsætninger i forarbejderne. Hverken fortolknings- eller formodningsreglen kan dog i enhver situation danne grundlag for en fortolkning af en national regel, der bringer reglen i overensstemmelse med en folkeretlig forpligtelse. Det gælder f. eks . , hvor lovgiver måtte have tilsigtet en klar modstrid mellem en dansk retsregel og en folkeretlig forpligtelse. Udvalget er dog ikke bekendt med, at sådanne tilsigtede uoverensstemmelser skulle være forekommet. ... "'

(...)

(Defendants 1-4, 6-22 wish to give evidence before the High Court. In addition, defendant 5 requests that (U)

be given the opportunity to give evidence/a statement, cf. section A. 2 above.

The Ministry of Defence has no objections to defendants 4, 16, 17 and 22 giving evidence. The Ministry of Defence has objected to

defendants 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20 and 21 give evidence before the Supreme Court, arguing that the evidence in question would be superfluous.

'The above-mentioned parties have already given detailed testimony before the High Court. The parties' testimony ... is duly reproduced in the court records from the court hearings and the judgment appealed.'

The Ministry of Defence's claim that the defendants were allowed to give detailed statements to the Eastern High Court, and that the Ministry of Defence disputes the contents of Appendix 136, contrasts with the statement made by the presiding judge in the court record of 30 January 2018, p. 2:

" ... The presiding judge repeated...

It is incumbent on the lawyers to ensure that, within the time frame available – that is, one and a half hours for the examination of [the defendants' own lawyer] – the relevant questions are asked. The lawyers cannot expect additional time to be allocated for the examinations. "

Respondent 10 has not submitted a statement to the Eastern High Court. In relation to the other respondents, it is maintained that the statements in question are not superfluous; The defendants further argue that the Ministry of Defence must be aware that it would not be superfluous to have at least some of the defendants give evidence before the Supreme Court.

(...)

In relation to the statements made during video interviews in Beirut, a preliminary statement from lawyer Baltagi is presented as Exhibit 142 in the case. The statement indicates, among other things, that the party hearings conducted by video conference in Beirut took place under conditions that negatively affected the parties' ability to give evidence.

(...)

The court record of 31 January 2018 does not state, among other things, that:

after arriving at Beirut airport, defendants 9 and 10 were questioned by the Lebanese authorities about the purpose of their visit to Beirut, and that this questioning lasted approximately half an hour,

that when defendants 9 and 10 finally arrived at the hotel in Beirut, there was no one at the reception desk, and they were therefore unable to be shown to their rooms. They ended up finding an empty room, after which respondent 9 was able to sleep

for a few hours on the sofa and respondent 10 was able to sleep for a few hours in the bed.

That defendants 9 and 10 were not given anything to eat – nor were they offered anything – before or in connection with their giving statements.

Going forward, the undersigned will refer to the form of questioning used in the first instance in relation to a number of the defendants as ‘questioning by video conference’.

The present case concerns a violation of the defendants' rights under Article 3 of the ECHR, which reads as follows:

‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment.’

The wording of Article 3 of the ECHR in its entirety is emphasised, as the defendants seek to emphasise that the present case thus concerns a violation of some of the most fundamental human rights.

C.3.1 . Can the defendants' right to give evidence be conditional on the deprivation of the right to appear in person?

In recent years, there has been a considerable focus on video interviews in Danish case-law. However, this focus has been concentrated on the desire to protect victims from the re-traumatisation that can occur if a victim is forced, against their will, to appear in the same courtroom as the perpetrator, and the balancing of this against the defendant's interest in having an adequate opportunity to prove their innocence.

The focus of the Supreme Court's position in this case is different, as the victims – the defendants – in this case are requesting to be allowed to appear in person, whereas the perpetrator, the Ministry of Defence, is requesting that personal appearance be prohibited. The defendants agree with the Ministry of Defence that it is clear from the Eastern High Court's court record of 1 September 2017 that the defendants were, of course, entitled to attend the main hearing. [My emphasis].

The wording ‘... of course ... entitled to attend ... ’ clearly indicates that there must be very compelling reasons for the defendants not to have the right to attend the main hearing and – as a lesser matter – to be allowed to give evidence in the courtroom, instead of being required to give evidence by video conference.

The Eastern High Court's decision of 16 January 2018 does not indicate that the Eastern High Court has considered in detail what is considered to constitute “ ... the necessary accommodations. .. ”, and which legal sources may actually have been taken into account in these considerations.

The preparatory works for section 174 of the Administration of Justice Act (on the examination of witnesses by means of video conferencing) state, among other things, that in its assessment, the court should attach decisive importance to the position of the parties and the witness on the issue.

Section 305 of the Administration of Justice Act states:

'In addition, the rules on witnesses in Chapter 18, with the exception of Sections 178, 182 and 188, apply to the examination of parties, with the necessary adjustments.'

The requirement in section 305 of the Administration of Justice Act regarding the application of rules on examination by means of video conference with "... the necessary adjustments..." must, of course, be understood, *inter alia*, with respect to the special nature of the present case and the legal obligations to which Denmark is otherwise subject in relation to the defendants.

On 29 May 2001, Denmark acceded to the Mutual Assistance Convention drawn up by the Council pursuant to Article 34 of the Convention on Mutual Assistance in Criminal Matters between the EU countries, which states, *inter alia*:

Article 10

Hearing by videoconference

1. If a person is in the territory of a Member State and is to be heard as a witness or expert by the judicial authorities of another Member State, that other Member State may, if it is inappropriate or impossible for that person to appear in person to its territory, request that the hearing be conducted by videoconference as provided for in paragraphs 2 to 8.

3. Requests for hearings by videoconference shall contain the information referred to in Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty,

a statement of the reasons why it is not appropriate or possible for the witness or expert to appear in person, and the name of the judicial authority and the persons who are to conduct the hearing.

9. Member States may, where appropriate and at their discretion, where the consent of the judicial authorities is required, also apply this Article to the hearing of an accused person by videoconference. In such cases, the use of videoconferencing and the manner in which it is conducted shall be agreed between the Member States concerned in accordance with their national law and relevant international instruments, including the Convention of 1950.

Examination may only take place with the consent of the accused. The provisions necessary to protect the rights of the accused shall be laid down by the Council in a legally binding instrument." [My emphasis] Regarding Article 10(9), it is further stated:

"Declaration by the Council on Article 10(9)
When considering the adoption of the instrument referred to in Article 10(9), the Council shall respect the obligations of Member States under the European Convention on Human Rights."

The right of the defendants to attend the main hearing as parties is supported by Articles 6 and 13 of the ECHR and the UN Convention against Torture (CAT) (these are discussed in section C. 3.2. below) .

Any interpretation of Section 305 of the Danish Administration of Justice Act, according to which the defendants' right as parties to attend the main hearing, whereby Section 305 of the Danish Administration of Justice Act is interpreted in contravention of Articles 6 and 13 of the ECHR, must, according to the wording of Section 305 of the Danish Administration of Justice Act ("... the necessary concessions. .. ") must immediately be assumed to be contrary to the wishes of the legislature.

In Decision 2001.1401, it is also stated (p. 351):

" 4.1.3. Voluntary participation

The purpose of allowing parties and their lawyers to participate in court hearings, including the trial, via video link or telephone is, broadly speaking, to promote flexibility and efficiency in the handling of cases . Video and telephone conferences are thus, on the one hand, an option for the parties and, on the other hand, a means for the court to achieve efficient case processing .

In a sense, it is always voluntary for a party to participate via video link or telephone. A party and their solicitor or other legal representative are entitled to be summoned to and (physically) present at all court hearings. The Council of the Judiciary proposes no changes in this regard.

However, voluntariness cannot be stretched so far that a party can demand that the possibility of participation via video link or telephone be disregarded when the court sets the date for a court hearing, including scheduling the trial. However, the court must take into account any reasonably justified opposition to participation via video link or telephone.

However, voluntariness cannot be stretched so far that a party can demand that the possibility of participation via video link or telephone be disregarded when the court sets the date for a court hearing, including scheduling the trial. The court must, however, take into account any reasonably justified objection to participating via video link or telephone .

If, after consultation with their solicitor, a party wishes to be present in court with their solicitor during the trial, the court must take reasonable account of this when scheduling the trial.

However, if the party is a company or other legal entity, the party must be prepared for the fact that a representative's legitimate impediment is not necessarily decisive, as another representative must then be sent."

It should be noted that in the present case there is not even the slightest indication that the defendants' wish not to be examined by video link is based on their desire to delay the proceedings.

The report also states (p. 353):

'The physical presence of the suspect or defendant in court is far more important in criminal cases than that of the parties in civil cases, and the same considerations do not apply to the prosecution as to a party in a civil case. '

Finally, the report states (p. 355)

"Video conferences were not a realistic everyday option when Article 5(3) was drafted, and it can be argued that a video presentation is sufficient to comply with the provision.

However, one of the purposes of the provision is that an independent judge should monitor the police's treatment of arrested persons.

This is of no practical significance in Denmark, but one can well imagine countries in Europe where, depending on the circumstances, it may be of significant importance for the protection of the arrested person that the judge sees him or her immediately in front of him or her rather than on a video screen.

The Permanent Commission on the Judiciary (*Retsplejerådet*) finds that a video presentation should not be able to fulfil the requirement that an arrested person who has not been released beforehand must be brought before a judge within 24 hours.

However, in cases where a preliminary hearing may be held without the suspect being present under current law, there should be no obstacle to the suspect participating via video link, if this is possible. However, such participation does not alter the fact that the suspect must be physically brought before a judge within 24 hours after the obstacle to this has ceased, cf. section 764(2),

second sentence, of the Administration of Justice Act. " [My emphasis]

It is the opinion of the defendants that the overall understanding of the statement made by the Commission on the Judiciary in decision 2001.1411 must therefore also lead to the conclusion that the defendants, as parties, cannot be required to give their respective statements in the present case by means of video conference against their will.

C.3.2. The significance of the ECHR and CAT for the right to appear in person.

C.3.2.1. ECHR

The ECHR is incorporated directly into Danish law by Act No. 285 of 1992 and is directly applicable to the case.

In relation to the question of the right to appear in person, both Article 3 (the absolute and non-derogable prohibition of torture and other inhuman or degrading treatment or punishment) and Article 6(1) (the right to a fair trial, the civil aspect) are relevant.

A state has a positive obligation to ensure that a victim of torture has a practical and effective (as opposed to theoretical and illusory) opportunity to participate in his or her own case concerning responsibility for torture, see, for example, the European Court of Human Rights (ECHR) judgment of 26 July 2012 in the case of Savitsky v. Ukraine, paragraph 117:

"Bearing in mind that the Convention is intended to guarantee rights that are "practical and effective" (see *Oluic v. Croatia*, no. 61260/08, § 47, 20 May 2010), the Court takes the approach that in the particular circumstances of the present case the State's procedural obligations to ensure the effective participation of the victim in the investigation of his complaints of ill-treatment extended to the issues of providing effective access to free legal representation."

Such effective participation by a victim of torture cannot take place if the defendants are prevented from being physically present.

From the established practice of the European Court of Human Rights, reference can be made, for example, to the judgment of 18 March 1997 in the case of *Mantovanelli v. France*, paragraph 33 (with further references to case law):

"33. The Court notes that one of the elements of a fair hearing within the meaning of Article 6 para. 1 (art. 6- 1) is the right to adversarial proceedings; each party must in principle have the opportunity not only to make known any evidence needed for his claims to succeed, but also to have knowledge of and comment on

all evidence adduced or observations filed with a view to influencing the court's decision (see, *mutatis mutandis*, the *Lobo Machado v. Portugal* and *Vermeulen v. Belgium* judgments of 20 February 1996, Reports of Judgments and Decisions 1996- I pp. 206-07, para. 31, and p. 234, para. 33, respectively, and the *Nideröst-Huber v. Switzerland* judgment of 18 February 1997, Reports 1997-I, p. 108, para. 24)

The case is unusually extensive and factually complex, which heightens the requirements for the state to fulfil its positive obligation to ensure that victims of torture have an effective and practical opportunity to participate in and contribute to the adversarial process.

C.3 .2 .2. UN Convention against Torture (CAT)

C.3.2.2.A. Application of CAT in Danish law .

C3.2.2.A.1. 'Direct' application .

The Convention has not been incorporated into Danish law, but Danish law must, as far as possible, be interpreted and applied in such a way that the Danish state does not violate its international obligations.

Reference is made to the Ministry of Justice's report no. 1546 of 2014 (the incorporation report), p. 35, paragraphs 2 and 3, which states, among other things:

"According to the presumption rule, Danish courts and other law-enforcing authorities must, according to the general view, assume that the legislature cannot be presumed to act in contravention of Denmark's obligations under international law. The courts and other law-enforcing authorities must therefore, as far as possible, seek to apply national rules in such a way as to avoid violating international obligations.

The consideration of avoiding violations of international law carries great weight in the interpretation of laws and administrative regulations and may, depending on the circumstances, lead to an interpretation that deviates from the wording of a legal provision or from the stated assumptions in the preparatory works. However, neither the rule of interpretation nor the rule of presumption can in any situation form the basis for an interpretation of a national rule that brings the rule into line with an obligation under international law. This applies, for example, where the legislator may have intended a clear conflict between a Danish legal rule and an obligation under international law.

	However, the Committee is not aware of any such intentional inconsistencies having occurred. ... "	
29.11.19	<p>'Ankeudvalget fandt det på den baggrund mest hensigtsmæssigt, at parterne ,</p> <p>samt de lokale vidner</p> <p>og</p> <p>afgiver forklaring ved anvendelse af telekommunikation med billede, jf. retsplejelovens § 174, stk. 2'</p> <p>(On that basis, the Appeals Committee [the Supreme Court's competent subcommittee] found it most appropriate that the parties</p> <p>, as well as the local witnesses</p> <p>and</p> <p>give testimony using telecommunications with images, cf. section 174(2) of the Administration of Justice Act.)</p>	Court records
02.10.20	Attorney of the government:	Letter

	<p>' Endelig har Forsvarsministeriet taget kontakt til det internationale konsulentfirma Control Risks, som har faciliteter i bl.a. Bagdad. Forsvarsministeriet har indhentet forslag fra Control Risks om gennemførelse af de irakiske parts- og vidneforklaringer på deres faciliteter og med deres infrastruktur i Bagdad. Control Risks forslag med bilag A ("Client Reference Letters") vedlægges dette brev. Control Risks har oplyst, at de bl.a. står for sikkerhed, transport og overnatning, når Udenrigsministeriets ansatte besøger Bagdad.'</p> <p>(Finally, the Ministry of Defence has contacted the international consulting firm Control Risks, which has facilities in Baghdad, among other places. The Ministry of Defence has obtained proposals from Control Risks regarding the implementation of the Iraqi parties' and witnesses' statements at their facilities and using their infrastructure in Baghdad. Control Risks' proposal with Appendix A ('Client Reference Letters') is enclosed with this letter. Control Risks has stated that they will be responsible for security, transport and accommodation when employees of the Ministry of Foreign Affairs visit Baghdad.)</p>	
09.10.20	<p>Plaintiff attorney:</p> <p>'Med henvisning til retsmødet d. 5. ds. kan oplyses, at undertegnede efter retsmødet har orienteret de indstævnte om Højesterets tilkendegivelser på retsmødet.</p> <p>Undertegnede har foreløbigt modtaget tilbagemelding fra "Al-Sadoon" - gruppens talsperson, indstævnte (1) .</p> <p>Det er bl.a. "Al-Sadoon"-gruppens opfattelse, at Højesterets tilkendegivelse af, at de indstævnte samt de indstævntes vidner skal afgive forklaring i Irak er "absurd", "farligt" og "udelukket". (Gloser anvendt i henhold til undertegnedes google-translateoversættelse af den modtagne meddelelse).</p> <p>"Al-Sadoon" -gruppen betragter det påtænkte i henhold til Højesterets tilkendegivelse som en overtrædelse af deres rettigheder som sagen parter, og henviser til seneste brev, som gruppens talsperson, indstævnte (1) , har sendt til Højesteret. "Al-Sadoon"-gruppen kan slet ikke forstå, at Højesteret overhovedet kan finde på at tilkendegive, at de indstævnte, herunder bl.a. talspersonen - indstævnte (1) - for at kunne deltage personligt i en retssag om overgreb begået mod de indstævnte – skal rejse tilbage til Irak, hvilket land de er flygtet fra.</p>	

"Al-Sadoon"-gruppens meddelelse er således, at hverken de eller deres vidner vil deltage i det af Forsvarsministeriet foreslåede "projekt" i Baghdad.

Meddelelsen herom afsluttes med følgende bemærkning (i henhold til undertegnede google-translate-oversættelse af meddelelsen): "Hvis Højesteret fortsætter med at nægte os menneskerettigheder for at opnå en retfærdig rettergang i Danmark, bliver vi nødt til at bede vores juridiske rådgiver i Europa, hr. Christian Harlang, om nu at indgive klager til de relevante FN-institutioner."

Retsbogen fra retsmødet, som jeg har modtaget d.d., giver mig anledning til følgende umiddelbare bemærkninger:

1) Jeg finder det efter omstændighederne misvisende (og det retvisende relevant), at retsbogen f.eks. ikke medtager de indstævntes bemærkninger om, at hele tanken om at de indstævntes og de indstævntes forklaringer "pludselig godt" kan afvikles på et andet lands territorium, konkret i Irak, står i skærende kontrast til det af Forsvarsministeriet helt og aldeles udelukkede i, at retsmøder evt. blev afviklet på et hotel i udlandet med hertil passende faciliteter.

(Jeg er klar over, at disse bemærkninger også fremgår af forudgående skriftligt indlæg fra undertegnede, men efter omstændighederne finder jeg at disse bemærkninger også burde være tilført retsbogen.)

I tilknytning til ovenstående bemærkning ønsker jeg tillige at tilføje følgende bemærkning, som jeg dog ikke fik medtaget i min udtalelse under retsmødet:

Da jeg på vegne af de indstævnte d. 23. januar d.å. forespurgte Højesterets Ankeudvalgs om jeg i forbindelse med det da forestående møde med de indstævntes talspersoner under den fri proces tillige skulle undersøge muligheden for evt. at anvende mødefaciliteter på hoteller i Istanbul var Højesterets Ankeudvalgs svar som følger:

"Ankeudvalgets formand bemærkede, at anvendelse af mødefaciliteter på et hotel til gennemførelse af parts- og vidneforklaringer ikke på det foreliggende grundlag kan antages at udgøre et reelt alternativ til anvendelse af en dansk ambassade eller repræsentation i udlandet."

(With reference to the court hearing on the 5th of this month, it can be stated that, following the hearing, the undersigned has informed the defendants [in this context, because of the appeal made in June 2018, the torture survivors (all 23), are referred to as defendants] the Supreme Court's statements at the hearing.

The undersigned has provisionally received feedback from the spokesperson for the 'Al-Sadoon' group, defendant (1)

Among other things, it is the opinion of the 'Al-Sadoon' group that the Supreme Court's statement that the defendants and the defendants' witnesses must give evidence in Iraq is 'absurd', "dangerous" and 'out of the question'.

(Glossary used in accordance with the undersigned's Google Translate translation of the message received).

The 'Al-Sadoon' group considers the Supreme Court's statement to be a violation of their rights as parties to the case and refers to the latest letter sent to the Supreme Court by the group's spokesperson, defendant (1) . The 'Al-Sadoon'

group cannot understand how the Supreme Court can even consider stating that the defendants, including the spokesperson - defendant (1) – must return to Iraq, the country from which they fled, in order to participate in person in a trial concerning abuses committed against the defendants.

The 'Al-Sadoon' group's message is thus that neither they nor their witnesses will participate in the 'project' in Baghdad proposed by the Ministry of Defence.

The announcement concludes with the following remark (according to the undersigned's Google Translate translation of the announcement):

'If the Supreme Court continues to deny us our human rights to a fair trial in Denmark, we will have to ask our legal advisor in Europe, Mr Christian Harlang, to lodge complaints with the relevant UN institutions.'

The court record from the hearing, which I have received today, gives me cause for the following immediate comments:

1) I find it misleading under the circumstances (and accurate and relevant) that the court record does not include, for example, the defendants' comments that the whole idea that the defendants' and the defendants' explanations can 'suddenly' be dealt with on the territory of another country, specifically Iraq, stands in stark to the Ministry of Defence's complete exclusion of the possibility that court hearings could be held in a hotel abroad with suitable facilities.

(I am aware that these comments also appear in my previous written submission, but in the circumstances I find that these comments should also be included in the court record.)

In connection with the above comment, I would also like to add

	<p>the following comment, which I did not include in my statement during the court hearing:</p> <p>When, on behalf of the defendants, I asked the Supreme Court Appeals Committee on 23 January this year the Appeals Committee of the Supreme Court whether, in connection with the upcoming meeting with the defendants' spokespersons under the free trial, I should also investigate the possibility of using meeting facilities at hotels in Istanbul, the Appeals Committee of the Supreme Court replied as follows:</p> <p>'The Chairman of the Appeals Committee noted that, on the basis of the information available, the use of meeting facilities at a hotel for the purpose of hearing the parties' and witnesses' statements cannot be considered a realistic alternative to the use of a Danish embassy or representation abroad.')</p>	
10.10.20	<p>Plaintiff attorney:</p> <p>'Med henvisning til retsmødet d. 5. ds. og Højesterets tilkendegivelse:</p> <p>Undertegnede har nu modtaget tilbagemelding fra 11 Sufi-gruppens" talsperson, indstævnte (15)</p> <p>Sufi-gruppen afviser, at de samt deres vidner evt. kan rejse til Baghdad under nogen omstændigheder.</p> <p>Det anføres i meddelelsen at det desværre er således, at den irakiske regering både tidligere og fortsat er påvirket af mange [muligvis menes</p> <p>"... i stor grad af ... "] militser, og at militser kontrollerer Irak, specielt den Grønne Zone.</p> <p>Selve beskeden afsluttes med følgende besked:</p> <p>"My apology to <i>you</i> sir but we can't put our lives in that risky."</p> <p>[For god ordens skyld:</p> <p>At beskeden fra indstævnte (15) til mig er blevet formuleret på engelsk er ikke udtryk for at indstævnte (15) nu selv behersker engelsk i en grad, som for hans vedkommende overflødigør tolkning til arabisk af de af sagens dokumenter, som er skrevet på engelsk. Der er blot tale om, at han har fået hjælp af sin datter til at sende beskeden.]'</p> <p>(With reference to the court hearing on the 5th of this month and the Supreme Court's statement:</p> <p>The undersigned has now received feedback from the spokesperson for the 11 Sufi group, the defendant (15)</p> <p>The Sufi group rejects that they and their witnesses may travel to</p>	Letter

	<p>Baghdad under any circumstances. The message states that, unfortunately, the Iraqi government has been and continues to be influenced by many [possibly meaning ‘... to a large extent ...’] militias, and that militias control Iraq, especially the Green Zone. The message itself ends with the following statement: “My apology to you sir but we can’t put our lives in that risky.” [For the record: The fact that the message from the defendant (15) to me has been written in English does not mean that the defendant (15) now has a command of English to such an extent that, in his case, it is unnecessary to translate into Arabic the documents in the case that are written in English. It is simply a matter of him having received help from his daughter in sending the message.)]</p>	
15.12.20	<p>Ankeudvalget (Thomas Rørdam, Lars Hjortnæs og Jan Schans Christensen) besluttede efter votering, at videoafhøringerne af de parter og vidner, der befinder sig i Irak, skal gennemføres ved Control Risks i Bagdad under forudsætning af, at der kan opnås tilladelse hertil fra de irakiske myndigheder. Ankeudvalget finder således, at det på baggrund af oplysningerne fra Forsvarsministeriet, herunder det fremlagte tilbud af 21. september 2020, kan lægges til grund, at videoafhøringerne vil kunne gennemføres ved Control Risks i Bagdad under betryggende former, jf. retsplejelovens § 196, stk. 6. Det, som de indstævnte har anført, kan ikke på det foreliggende grundlag føre til en anden vurdering.</p> <p>(The Appeals Committee (Thomas Rørdam, Lars Hjortnæs and Jan Schans Christensen) decided after voting that the video interviews of the parties and witnesses located in Iraq should be conducted at Control Risks in Baghdad, provided that permission can be obtained from the Iraqi authorities. The Appeals Committee thus finds that, based on the information from the Ministry of Defence, including the offer submitted on 21 September 2020, it can be assumed that the video interviews can be conducted at Control Risks in Baghdad in a secure manner, cf. section 196(6) of the Administration of Justice Act. The arguments put forward by the respondents cannot, on the basis of the information available, lead to a different assessment.)</p>	Court records

04.01.21	<p>Plaintiff attorney: 'Ingen af de indstævnte eller de indstævnets vidner vil være indstillet på, at afgive forklaring for Højesteret ved Control Risks i Bagdad (i Green Zone Bagdad).'</p> <p>(None of the [applicants] or their witnesses will be willing to testify before the Supreme Court at Control Risks in Baghdad (in the Green Zone in Baghdad))</p>	Letter
25.01.21	<p>... de indstævnte og deres vidner [er] ikke ... indstillet på at afgive forklaring ved Control Risks i Bagdad. De indstævnte har i den forbindelse henvist til en artikel fra Reuters af 20. december 2020, hvoraf det fremgår, at den amerikanske ambassade i Bagdad har været udsat for raketangreb. De indstævnte har desuden henvist til en artikel af 20. januar 2020 fra DR, hvor det bl.a. er anført, at den internationale zone i Bagdad ofte er mål for angreb.</p> <p>Forsvarsministeriet er ikke enig i de indstævnets beskrivelse af sikkerhedssituationen og har anført, at bemærkningerne vedrørende den amerikanske ambassade i Bagdad ikke uden videre lader sig overføre på, hvor mere eller mindre sikkert det vil være for de indstævnte og deres vidner at afgive forklaringer ved Control Risks. Ministeriet har endvidere henvist til, at forslaget fra Control Risks også omfatter udarbejdelse af en konkret sikkerhedsvurdering for de indstævnte og deres vidner. Control Risks har også lokaler i Basra. Desuden har det britiske forsvarsministerium oplyst, at man i flere år har anvendt et hotel i Basra til afgivelse af partsog vidneforklaringer via videoforbindelse. Begge muligheder lader sig undersøge, men det må kræve, at de indstævnte utvetydigt tilkendegiver, at de er indstillet på at afgive forklaringer på en eller begge af disse lokationer.</p> <p>De indstævnte har hertil anført, at det er udelukket, at de og deres vidner vil afgive forklaring i Irak, uanset hvor i Irak afhøringerne måtte finde sted, allerede fordi det vil involvere orientering af den irakiske regering. De indstævnte har i den forbindelse henvist til en mailkorrespondance mellem ansatte i Forsvaret og Forsvarsministeriet fra juli 2005 om et konkret tilfælde af overgreb i Al Jameat begået af irakiske politistyrker. Bilaget er fremkommet i forbindelse med Forsvarsministeriets opfyldelse af Højesterets editionspålæg, jf. retsbog af 4. december 2020. De indstævnte har endvidere anført, at de parter, der befinder sig uden for Irak, tidligere har givet udtryk for, at det er udelukket, at de vil afgive forklaring andet sted end i en dansk retssal.</p>	Court records

Ankeudvalget (Thomas Rørdam, Lars Hjortnæs og Jan Schans Christensen) finder, at det anførte ikke giver grundlag for at ændre ved beslutningen om, at de parter og vidner, der befinder sig i Irak, skal afgive forklaring ved Control Risks i Bagdad. Der er i øvrigt heller ikke grundlag for at ændre ved beslutningen om, at afhøringen af de parter og vidner, der befinder sig i udlandet, skal ske ved anvendelse af telekommunikation med billede.

De parter, der befinder sig i Irak, har meddelt, at de ikke vil medvirke til afhøringer i Irak, og det samme gælder deres vidner. De parter, der befinder sig uden for Irak, har meddelt, at de kun vil afgive forklaring, hvis det sker i Danmark.

Det kan således konstateres, at der ikke vil blive afgivet forklaring af de parter og vidner, der befinder sig i Irak. Der vil heller ikke blive afgivet forklaring af de parter, der befinder sig andetsteds i udlandet.

(... the defendants and their witnesses are not prepared to give evidence at Control Risks in Baghdad. In this connection, the defendants have referred to an article from Reuters dated 20 December 2020, which states that the American embassy in Baghdad has been subjected to rocket attacks. The defendants have also referred to an article dated 20 January 2020 from DR, which states, among other things, that the international zone in Baghdad is often the target of attacks.

The Ministry of Defence does not agree with the defendants' description of the security situation and has stated that the comments regarding the US Embassy in Baghdad cannot be readily transferred to how safe it will be for the defendants and their witnesses to give evidence at Control Risks. The Ministry has also pointed out that Control Risks' proposal also includes the preparation of a specific security assessment for the defendants and their witnesses. Control Risks also has offices in Basra. In addition, the British Ministry of Defence has stated that for several years it has used a hotel in Basra for the giving of statements by parties and witnesses via video link. Both options can be investigated, but this requires that the defendants unequivocally state that they are willing to give evidence at one or both of these locations.

The defendants have stated that it is out of the question for them and their witnesses to give evidence in Iraq, regardless of where in Iraq the hearings might take place, simply because it would involve informing the Iraqi government. In this connection, the defendants have referred to email correspondence between

	<p>employees of the Danish Armed Forces and the Ministry of Defence from July 2005 concerning a specific case of abuse in Al Jameat committed by Iraqi police forces. The appendix was produced in connection with the Ministry of Defence's compliance with the Supreme Court's order to produce documents, cf. the court record of 4 December 2020. The respondents have also stated that the parties located outside Iraq have previously indicated that they will not give evidence anywhere other than in a Danish courtroom.</p> <p>The Appeals Committee (Thomas Rørdam, Lars Hjortnæs and Jan Schans Christensen) finds that the above does not provide grounds for changing the decision that the parties and witnesses located in Iraq must give evidence at Control Risks in Baghdad. Furthermore, there is no basis for changing the decision that the parties and witnesses located abroad must be examined using video telecommunication.</p> <p>The parties located in Iraq have stated that they will not participate in hearings in Iraq, and the same applies to their witnesses. The parties located outside Iraq have stated that they will only give evidence if this takes place in Denmark.</p> <p>It can thus be concluded that no statements will be taken from the parties and witnesses located in Iraq. Nor will statements be taken from the parties located elsewhere abroad.)</p>	
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Supreme Court decision: Video calls outside Europe.

The torture survivors did not accept that.

Step 2: Denial of the plaintiffs' right to at least give their testimonies physically to the physically functioning Supreme Court oral hearings:

Only the two torture survivors then living in Denmark, Mr _____ and Mr _____, could give their testimony physically in the court.

The documentation below is from the Supreme Court recordings, which was written only in Danish. In order to make this request, it has not been possible to facilitate translation into English to full extent. It is not known whether the Chamber is in possession of these documents, and if it is, if they are only in Danish or if they are available in English.

The content proves that the same pattern of ill-treatment of the torture survivors' right to access to justice, due diligence about witnesses, documents, etc. happened

during the Supreme Court's treatment of the case from June 2018 until May 2022. Even worse, since it can be read that the court even made it worse to the torture survivors by the following decisions initiated on the request of the attorney of the government:

1. No decision to decide that the government should deliver exhibit CÅ without blank ink redactions.
2. Denial of several local witnesses, who were not allowed in the High Court, or who became relevant according to new information available during the years since 2018 by the investigation of the torture survivors' attorney before the Supreme Court, Mr Janus Fürst, and by other means.
3. By means of limitation on legal aid resources, visa hindrances, and referrals to video interviews arranged by the attorney of the government in private premises in the Green Zone in Baghdad, the applicants were hindered from any efficient access to the court, except for what their attorney could tell from his limited positions, restricted by lack of access to documents, etc. The attorney was allowed legal aid to pay for his investigations by interviewing some Iraqi locals (Cyan 1 and Cyan 4) in Istanbul, including some few of the clients related to those facts that those witnesses had knowledge of from what happened in those two areas the morning of 25 November 2004.

However, those witnesses who wanted to give testimonies, partly to match to some extent the enormity of witnesses allowed by the Supreme Court of Denmark to appear personally in the Supreme Court to give evidence, all arranged by attorney of the government as the government's witnesses, - those matching Iraqi witnesses by means of the decision made by the Supreme Court (on the exercise of section 341 on the Act on the Administration of the Judiciary) and by means of the steering made by the resources available for travel, etc., according the legal aid system, those Iraqi witnesses could only be offered to travel to the same private premises in the Green Zone in Baghdad and give interviews to a video camera. For security reasons and other reasons, they all declined to do so.

The same 'offer' was made by the Supreme Court for the torture survivors: the video camera interviews in the Green Zone, which they declined.

thus all of the many witnesses were called by the government's side, except two, who gave his testimony in a separate Supreme Court hearing on 4 December 2019 and another, who gave his testimony on 21 April 2021. The first-mentioned hearing is referred to in the court records, attached as **GC9**, which must be an interesting read for the Panel. The other, _____, gave his testimony in a physical Supreme Court meeting. Thus only those two who at that time were living in Denmark were allowed to testify and attend court meetings to the extent that they could afford to travel in Denmark.

6. COMMENTS TO THE CHAMBER JUDGMENT BEARING REASONS POINT 158-164 OF THE JUDGMENT.

The chamber's point 155, 156 and 157 reiterate the art. 6 on access to court, the principle of equality of arms, attached to the concept of fair hearing, fair balance and thus rules on protection of the weaker part, but does to a large and crucial extent not walk that talk.

As can be read below in the following chapters, it is documented that that talk is not walked, when the rules of margin of appreciation is undermining the core substance of protection of the weaker parties.

The key grounds are found in the judgments chapter (point 155-166) bearing the headline: "*The Court's assessment*".

Point 155, 156 and 157 reiterate the importance of the right to access to a court, established as an aspect of the right to fair hearing, guaranteed by art. 6, para. 1 of the Convention to which the adversarial principle and the principal of equality of arms, which are closely linked, are fundamental components of the concept of fair hearing, requiring 'fair balance' between the parties, also stating that 'the parties must be given the opportunity to have knowledge of and comment on all evidence adduced or observations filed'.

Point 157 mentions that the principles are not absolute, since a Contracting State enjoys a certain margin of appreciation, which is for the Court to determine in the last instance whether the requirements of the Convention have been complied with.

In this application, it is claimed that the true content and consequences of the judgment made by the Court on 21 October 2025, establish a law by which that margin is widely overstretched, which becomes obvious by confronting the key grounds facilitated by the wording of the core of the judgment which is to be read in point 158-164. As can be read below, it is observed that the those points 158-164 are largely written by means of the following clearly unacceptable techniques:

- (1) Factual errors and misrepresentations
- (2) Seductive omissions

The result of this is that the truth of the matters is disconnected from the findings, because the reader of those points 158-164 is left unable to recognise the detachments of reality.

However, to identify the far-reaching principles of the judgment in the functional meaning of 'access to justice', those realities are open for any Member State to acquire, appropriate and thus to claim as future human rights law, within the margins of art. 6.

Thus, it is absolutely necessary that the judgment be exposed to fresh consideration as an absolutely necessary exceptional need.

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Point 158 of the judgment:

In essence, the following statements are contained:

- (A) *'The Court observes that the applicants told the Supreme Court, inter alia, "that the High Court failed to allocate sufficient time for the case; that relevant witnesses were excluded; that the conditions under which the Iraqi [applicants] gave evidence were discriminatory and inadequate; and that fresh evidence has been presented to the Supreme Court which the High Court should be allowed the opportunity to consider(...)"*
- (B) *It observed that the proceedings in the High Court had taken up fifty-two court days, of which thirty-two had been allocated to the applicants' opening speech, the evidence of the plaintiffs and witnesses, and the first closing argument; that seventysix persons had given evidence (see paragraph 43 above); and that the High Court had continuously considered a number of issues, including whether witness examinations requested were relevant and the soundness and adequacy of evidence given in part via a videolink from the Danish Embassy in Beirut.*
- (C) *New exhibits had been produced to the Supreme Court, which had observed that most of them were presented by the applicants and had duly considered them (see paragraph 51 above).*

Re A: By means of the court records, communication with the attorneys etc. that the government kept unavailable for the lawyer Mr Trier and presumably thus the chamber during the preparatory work 2024-2025 (ref. above p. 28), prior to the judgment from the Chamber, it is clear that **core witnesses were excluded both by the Eastern High Court and the Supreme Court**, many on the request of the attorney of the government. The plaintiffs themselves were by different means prevented from attending the legal proceedings and from giving their testimonies, as can be read above and documented partly by the attachments to this Request. Either those circumstances were **ignored by the Chamber or those facts were unknown to the Chamber** because of the absence of documents, ref. Mr Trier's communications to the Chamber above p. 29. However, the Chamber,

as can be read in the judgment, had knowledge that the Eastern High Court in the midst of the oral hearing after five plaintiffs had given their testimonies in accordance with the rules of personal appearance in December 2017, astonishingly according to the **court records of 11 and 16 January 2018 (GC10)** decided that the testimonies from the remaining 16 plaintiffs (to the extent that they wanted to testify) **should not be given by the remaining 7 plus 1 plaintiffs attending court meetings** (contrary to the first five plaintiffs), since from that date, their appearance would not be “*needed*”. Since the dramatic decision taken by the Eastern High Court, ref. court records of 16 January 2018 (GC10), the Eastern High Court on the request of the Ministry of Immigration and Integration, Immigration Services (*Udlændingestyrelsen*), which wanted to avoid issuing visas, **the rest of the plaintiffs were banned from travelling to Denmark** to give their testimonies and/or to attend the oral proceedings. That fundamental deprivation of the rights of the plaintiffs to come to Denmark, attend the court proceedings and to give their testimonies being listened to in the court room by the judges thus came about. Whether the Chamber is unaware of the landmark negative court decision, built on the premise that those plaintiffs overall in spite of legal aid have no right to appear as parties during the oral proceedings, though that is basic Danish procedural law, and must be regarded to be a human rights law (ref. the Conventions art. 6 and the UN Convention against Torture, especially art. 12-14) is ignored.

Those statements in point 158 ignore or are unaware of the following draconian steps against the 18 remaining plaintiffs’ access to justice, which consists of the following facts:

Garrotting steps:

1. In accordance with national law and international human rights law on access to justice, when the **government** during a preparatory meeting in the court on 1 September 2017, **introduced an idea about non-presence of the plaintiffs during the oral proceedings** scheduled within the period of 7 November 2017 until 8 May 2018 (contrary to basic rules on access to justice) and (as a discriminatory and highly controversial 'solution') suggested **video testimonies**, on that very same court meeting, the side of the plaintiffs instantly objected, and the President of the Court wrote in the court records: ‘Retsformanden bemærkede, at sagsøgerne naturligvis har ret til at overvære hovedforhandlingen, hvortil der er reserveret retsdage i perioden fra den 7. november 2017 til den 8. maj 2018.’

(The presiding judge noted that the plaintiffs of course has a right to be present during the oral hearings for which court dates have been reserved in the period from 7 November 2017 to 8 May 2018.)

Hereafter, in full accordance with national and international law, (as the plaintiffs were correctly informed about ever since 2011-12, where their attorney met with them at meetings in the Middle East) they were **preparing to come to Denmark for the trial** where the first oral hearings were scheduled to begin on 7 November 2017.

2. But only in October, two months later, the High Court decided that a limitation of the legal aid would mean that they could only come for their testimony for just one day, unless they would pay themselves the expense of travel and stay, which it was very well known by the High Court and the attorney of the government (ref. their income situations, which can be read from the Supreme Court ruling of 17 September 2013, **GC11**) was not a possibility.
3. Under these narrowing conditions, five plaintiffs on different successive days arrived in Copenhagen in December 2017 with the purpose of giving their testimony in court the following day, which showed to be without enough time as foreseen by their attorneys because of linguistic, social and cultural reasons. A description of that is given by one of those five plaintiffs, Mr . That plaintiff has expressed about the conditions he was met with in December 2017. He is the one of only two plaintiffs that also gave his testimony to the Supreme Court, since he, because of the then very dangerous situation for him in Iraq, in 2017 claimed himself to be under the protection of the United Nation Conventions on Refugees and thus claimed asylum after he had given his testimony. His case was still pending in Denmark in December 2019, where he gave his testimony before the Supreme Court. He later left the country. The court records from his testimony before the Supreme Court is attached as **GC9**.
4. As mentioned above, these mere fragments of the decisions made by the Eastern High Court, the attorney of the government and the administrative governmental system on asylum devastated the position of the plaintiffs in two accumulative destructive ways, namely:
 - a. Cancelling of the arrivals for plaintiff testimonies
 - b. Referral to video interviews and thus no access to the court in person

- c. Even when one plaintiff (Mr [redacted]) by private funds managed to travel and stay in Copenhagen to express himself to the court, and during the weeks available wanted to attend the oral hearings in order to hear and understand what was being said during the proceedings, the special Eastern High Court governmental scheme of ‘...not necessary...’ ended up with refusal for that plaintiff to obtain visa. Undoubtedly, that is the position the Eastern High Court initiated by the attorney of the government, established together with the governmental immigration branch. That arrangement is a crystal-clear violation of the right to access to justice under due process. Also, it must be regarded as discriminatory, since those documents show that it was the intention of the governmental administration to hinder attendance to the court by means of the visa system, and that was accepted by the Eastern High Court, even with the contented approval by the attorney of the government.

That situation and those conditions are in stark contrast to the High Court’s statement on 1 September 2017 and to any rule about access to justice in a democratic society.

It is not possible to tell whether the Chamber’s reasoning is the result of ignoring those facts of because those facts have been kept unavailable for the Chamber’s deliberations.

5. From the Eastern High Court record of 4 December 2017, it appears that the court then having received a request from the Immigration Services (*Udlændingestyrelsen*) about requested visas had stated the following:

‘Landsretten bemærker endelig, at retten ikke finder grundlag for at bestemme, at de pågældende fire sagsøgere skal afgive forklaring ved brug af en videoforbindelse, idet dette – i hvert fald ikke for de nævnte fire sagsøgere – ikke kan anses for hensigtsmæssigt og forsvarligt, jf. retsplejelovens § 305, jf. § 174, stk. 2.’

Finally, the High Court notes that it finds no basis for ordering the four plaintiffs in question to give evidence via video link, as this – at least not for the four plaintiffs in question – cannot be considered appropriate and reasonable, cf. section 305 of the Administration of Justice Act, cf. section 174 (2).

However, in the court records of 16 January 2018, the following can be read on pp. 2-3:

'Landsretten finder efter de fremkomne bemærkninger til Udlændingestyrelsens e-mail af 10. januar 2018, at der er grundlag for at træffe bestemmelse om, hvorvidt sagsøgere, der endnu ikke har afgivet forklaring, skal afgive deres forklaring for landsretten i København eller ved hjælp af telekommunikation med billede (videoforbindelse) fra Den Danske Ambassade i Libanon.

1. Opsummering af sagen vedrørende sagsøgernes tilstedeværelse under hovedforhandlingen

Af landsrettens retsbog for den 1. september 2017 fremgår blandt andet:

"Henset til sagens særlige karakter og for at sikre sagsøgerne mulighed for behørig og effektiv varetægelse af deres interesser under sagen vil der under den fri proces kunne ydes ekstraordinær dækning af en række af sagsøgernes udgifter. Dette gælder for hver af sagsøgerne dækning af udgifter til overnatning i København i forbindelse med en rejse på typisk 5 dage, alt afpasset under hensyn til den endelige tidsplan for sagens hovedforhandling. Dette nærmere praktiseret således, at der i en sådan periode på fem dage er afsat en dag til rejse, ankomst og indkvartering, en dag til drøftelser med den beskikkede advokat, en dag til afgivelse af forklaring som part under hovedforhandlingen, en "ekstra" dag og en dag til hjemrejse. Sagsøgernes udgifter til transport til og fra Danmark samt udgifter til overnatning i denne forbindelse vil blive dækket. Disse udgifter skal forlods godkendes af landsretten og skal være rimelige og økonomisk forsvarlige, og hotelreservationer bør ske med mulighed for afbestilling af hele eller en del af opholdet, såfremt dette mod forventning måtte blive nødvendigt. Der vil ikke blive ydet sagsøgerne dækning for udgifter til fortæring eller "øvrige fraværsudgifter", herunder tabt arbejdsfortjeneste.

Retsformanden bemærkede, at sagsøgernes nødvendige udgifter til pas og visum også vil blive dækket under den fri proces. Retsformanden gjorde opmærksom på, at udgifter til udstedelse af pas allerede en gang – vel for de fleste af sagsøgerne – er blevet dækket under den fri proces. Den beskikkede advokats rimelige tidsforbrug i denne forbindelse kan dækkes.'

Based on the comments received regarding the Immigration Service's email of 10 January 2018, the High Court finds that there are grounds for deciding whether plaintiffs who have not yet given evidence should give evidence before the High Court. January 2018, that there are grounds for deciding whether the plaintiffs who have not yet given evidence should give their evidence before the High Court in Copenhagen or by means of

telecommunication with video connection from the Danish Embassy in Lebanon.

1. Summary of the case concerning the plaintiffs' presence at the main hearing

The High Court's court record for 1 September 2017 states, among other things:

"In view of the special nature of the case and in order to ensure that the plaintiffs are able to properly and effectively represent their interests during the proceedings, extraordinary coverage of a number of the plaintiffs' expenses may be granted under the free legal aid scheme. This applies to each of the plaintiffs' expenses for accommodation in Copenhagen in connection with a trip of typically five days, all adjusted to take into account the final schedule for the main hearing of the case. In practice, this means that, during such a five-day period, one day is set aside for travel, arrival and accommodation, one day for discussions with the appointed lawyer, one day for giving evidence as a party during the main hearing, one 'extra' day and one day for the return journey.

The plaintiffs' expenses for transport to and from Denmark and accommodation in this connection will be covered. These expenses must be approved in advance by the High Court and must be reasonable and economically justifiable, and hotel reservations should be made with the option of cancelling all or part of the stay if this should become necessary contrary to expectations. The plaintiffs will not be reimbursed for expenses for meals or 'other absence expenses', including lost earnings.

The presiding judge noted that the plaintiffs' necessary expenses for passports and visas will also be covered under legal aid. The presiding judge pointed out that the costs of issuing passports had already been covered once – probably for most of the plaintiffs – under legal aid. The reasonable time spent by the appointed lawyer in this connection may be covered."

In those same court records, it is referred to that there has been a communication between the courts and the attorney of the government and on p. 8, last paragraph, the following is stated:

'Det er under disse omstændigheder Forsvarsministeriets opfattelse, at videoafhøring af sagsøgerne på den danske ambassade i Beirut vil være en farbar vej. Det tilkommer dog Østre Landsret at vurdere, om det er

nødvendigt, at de irakiske sagsøgere giver møde i landsretten for at afgive forklaring, eller om forklaringerne kan afgives via video.'

In these circumstances, it is the opinion of the Ministry of Defence that video questioning of the plaintiffs at the Danish Embassy in Beirut would be a viable option. However, it is for the Eastern High Court to assess whether it is necessary for the Iraqi plaintiffs to appear in court to give evidence, or whether the evidence can be given via video.

The court records contain, amongst others, the following decision, which can be read on p. 9:

'For så vidt angår de 11 øvrige sagsøgere, der har ønsket at afgive forklaring for landsretten, og som ikke allerede bor i Danmark (sagsøgerne 2, 7, 8, 9, 10, 11, 15, 18, 19, 20 og 21), **finder landsretten det hensigtsmæssigt og forsvarligt, at deres forklaring i første række afgives ved brug af en videoforbindelse til Den Danske Ambassade i Libanon, der har sæde i Beirut**, hvor forklaring endvidere vil kunne afgives under betryggende former, jf. retsplejelovens § 305, jf. § 174, stk. 2, jf. § 192, stk. 6.'

With regard to the 11 other plaintiffs who have requested to give testimony before the High Court and who do not already reside in Denmark (plaintiffs 2, 7, 8, 9, 10, 11, 15, 18, 19, 20 and 21), the High Court finds it appropriate and reasonable that their testimony be given primarily via a video link to the Danish Embassy in Lebanon, which is located in Beirut, where testimony can also be given in a secure manner, cf. section 305 of the Act on the Administration of the Judiciary, cf. section 174(2), cf. section 192(6).

On p. 10, the following is stated:

'Landsretten har ved kontakt til Den Danske Ambassade i Libanon sikret sig, at man kan stille et lokale og en videoforbindelse til rådighed for afhøringerne, og denne forbindelse har været afprøvet ved et opkald til ambassaden i Beirut d.d.'

The High Court has contacted the Danish Embassy in Lebanon to ensure that a room and a video link can be made available for the hearings, and this link has been tested by means of a call to the embassy in Beirut today.

That same day, the attorneys of the plaintiffs protested strongly against that arrangement, writing inter alia the following:

'Den nu tilrettelagte form for afhøring af de nævnte sagsøgere er stridende imod deres rettigheder jf. retsplejeloven, EMRK art. 6 og 13, jf. art. 3, samt FNs antitorturkonventions art. 12 - 14, idet den ikke giver mulighed for at varetage sagsøgernes interesser under bevisførelsen behørigt. Ifølge de retsmedicinske rapporter, hvis faglige kvalitet er godkendt af Retslægerådet, er de torturofre og lider dels af fysiske skader, dels af mentale skader i form af PTSD-syndrom og andre virkninger. Omstændighederne er således, at de skal gives mulighed for at udtale sig for den dømmende ret under almindelige og for dem betryggende forhold.

Yderligere er bevisførelsen gennemført på almindelige vilkår påkrævet også i betragtning af, at det sagsøgte forsvarsministerium i forbindelse med sagens forelæggelse under hovedforhandlingens påbegyndelse afgav proceserklæring om, at man bestrider rigtigheden af det faktiske grundlag for de beskrivelser af begivenhederne ved tilfangetagelserne, afhøringerne og opholdet i torturfængslet (bortset fra sagsøger 6), som påberåbes af sagsøgerne under processen.'

The current form of testimonies of the aforementioned plaintiffs is contrary to their rights under the Administration of Justice Act, Articles 6 and 13 of the ECHR, cf. Article 3, and Articles 12-14 of the UN Convention against Torture, as it does not allow for the plaintiffs' interests to be properly represented during the presentation of evidence. According to the forensic reports, whose professional quality has been approved by the Medico-Legal Council, the plaintiffs are victims of torture and suffer from both physical injuries and mental injuries in the form of PTSD and other effects. The circumstances are such that they must be given the opportunity to testify before the court under normal and reassuring conditions.

Furthermore, the presentation of evidence under normal conditions is also required in view of the fact that, at the start of the main hearing, the defendant Ministry of Defence submitted a statement of defence contesting the accuracy of the factual basis for the descriptions of the events surrounding the arrests, interrogations and stay in the torture prison (except for plaintiff 6) invoked by the plaintiffs during the proceedings.

Further, the information about the representation of some of the plaintiffs were made by a statement from the lawyers of the plaintiffs with the following contents:

'Med hensyn til talspersonen for de personer, der blev tilfangetaget ved Cyan 4, kan det oplyses, at denne ikke længere er sagsøger (16)
men sagsøger (15) .

With regard to the spokesperson for the persons captured at Cyan 4, it can be stated that this is no longer plaintiff (16) , but plaintiff (15) .

The above-mentioned paragraphs are parts of the following documents, which are attached as **GC12**, which are:

11 January 2018:

Eastern High Court's records

Letter from the attorneys of the plaintiffs Christian Harlang and Christian F. Jensen

12 January 2018:

Letter from the private lawyer of the government Kammeradvokaten by Peter Biering

16 January 2018:

Eastern High Court's records

Letter from the attorneys of the plaintiffs Christian Harlang and Christian F. Jensen

17 January 2018

Eastern High Court's records

18 January 2018:

Eastern High Court's records

Letter from the attorneys of the plaintiffs sent by attorney Christian F. Jensen

6. The stepwise garrotting decisions taken by the Eastern High Court, initiated by the communication in December and January 2017/18 between the court, the attorney of the government and the Ministry of Integration, meant that the planned testimony appearance of the plaintiff , who then was referred to go to Beirut to meet a video camera in the premises of the Danish government, which he neither would nor could do. A few weeks later, he then asked to obtain visa, because he had amassed private funds to travel with the purpose of attending the court hearings planned for inter alia the witnesses presented by the side of the government about when he was captured, arrested, etc., at target Cyan 4.

. As mentioned elsewhere in this request, this treatment of the plaintiffs' witnesses and the plaintiffs themselves is in stark contrast with the treatment of the government side advancing about 15 physical witness hearings that took place inside the Supreme Court in Copenhagen with plenty of time and physical appearance in the court room. Clearly, that cannot be characterised as equality of arms.

Re B: By their use of mathematics, the Chamber ignores the following facts:

- 1) The 23 (21 before the Chamber) cases are individual in a large number of aspects:
 - Some of the plaintiffs stayed just app. 16 hours,
 - some few days in the notorious torture prison Al Shu'oon/Al Jameat,
 - some several weeks,
 - some even three or four months.
 - Some were fathers of families taken from their home in the early morning with children and wives watching the dreadful experience,
 - some had education,
 - some had no education,
 - some were old,
 - some were young,
 - some were employed,
 - some had their own business, etc.

The forensic reports that were approved on, as medically evident in October 2017 ref. the Medico-Legal Council (the board of medical experts attached to the Judiciary in Denmark), describe that

- some of those torture survivors (the plaintiffs) suffer from permanent and life-lasting mental and psychical damage to a very severe extent,
- others to a lesser extent.

From those reports, it can also be read their experiences in the different places they were, different both because Cyan 1 and Cyan 4 are different places, and also because within both Cyans, buildings and roads imply different sights.

Also, the statement by the Chamber ignores that to have a person from a country with a very different setting like a suburban village to Basra in Iraq to come to Copenhagen in Denmark and explain himself about what happened and what he saw cannot be rushed. If so, it could retraumatise that person, but further to that, with the acceptance of the High Court, it was for all of them prepared that there should be translation from Arabic into Danish.

Anyone familiar with legal proceedings in and translation in court rooms

knows that this takes much more time, so if the torture survivor is given the time of e.g. 3 hours to explain about it all, this would mean more than 6 hours in a time schedule, plus also time (and translation) for cross-examination from the side of the opponent attorney. Torture survivors, by experience, might also need buffer time because of mental breakdowns to explain what really happened. Unfortunately, the writing of the Chamber judgment as the position made by the High Court after 1 September 2017 and all the way through by the Supreme Court totally ignore that knowledge that would be totally clear for any experienced professional judge.

Thus, already before the amount of days were decided on by the Eastern High Court, the attorneys of the plaintiffs calculated that it would not be possible to prepare less than 1 day per plaintiff, which would mean 23 days, which were a part of the calculation of 72 days that the attorneys of the plaintiffs communicated to the Eastern High Court, which would not allow more than app. 50 days, clearly too little time and even further compromised by later expansionist according of witnesses from the side of the attorney of the government. Also a kind of garrotting trick, which the Eastern High Court gave in to. According to the Danish Act on the Administration of the Judiciary (*retsplejeloven*), the attorney of the plaintiffs must present the case according to the documents and other information all about the presence of Danish forces in Iraq since the Summer of 2004, including a huge number of documents connected to that as well as reports and a huge number of other items for this purpose, only five days were allocated, including days lost with the attorney of the government. Further to that under the protest of the plaintiff side, the Eastern High Court allowed the governmental side to have oral hearings in the High Court of app. 50 witnesses, of which most were uniformed personnel. They came to the High Court, explained and were heard by the judges. The mentioned 32 days were never available for the side of the plaintiffs in the court due to numerous amendments made by the High Court, most of them on the request of the attorney of the government as an obstructive strategy.

- 2) About the 76 persons giving evidence, it must be observed that only 12 of those were plaintiffs (under unacceptable conditions). The government had in all 56 witnesses, leaving 8 witnesses on the side of the plaintiffs. The huge number of governmental witnesses can only be regarded as a part of the litigation strategy in so to speak using the time available largely taking the time away from the side of the plaintiffs and putting in witnesses that appear just in front of the judges in the court room, strengthening the presentation in favour of the government. The video testimonies, against which the plaintiffs

protested, were made not only in Beirut, but also in Riyadh, in Bahrain, in the USA and in Australia.

Re C: As can be seen from the document 'Protest' (GC3), just before the beginning of the oral hearings in the Eastern High Court, the plaintiff side protested that not even the documents that the court had decided the government should deliver, were delivered. Further documents were exempted by the High Court. Those two kinds of documents, the Supreme Court was requested by the attorney for the torture survivors to decide that the government should deliver. That happened with a few of them, not them all. So the fact is that:

- A) During the Eastern High Court proceedings, the government avoided by both means to have the documents delivered to the court and the opponent.
- B) Thus, they were kept away from the first instance, and only in part available at the appeal level, the Supreme Court.

The wording that 'most of them were presented by the applicants...' is communicating that by itself that is a procedural advantage balancing the issue of fair trial and access to justice in favour of the applicants, like that was being an advantage they got inside the Supreme Court ruling. That is not true. Those documents were documents that ever since the requests made by applicants already and permanently since 2012 were suppressed and thus kept in the dark by the government all the years until they – again and upon repeated insistence from the side of the torture victims – at last were made available. As can be read from all of the court records, Eastern High Court the years 2012, 2015, 2016, 2017 and even in 2018, the exhibits mentioned in para. 158 (C), including the reference to para. 51, could have and should have been available several years before the Supreme Court hearing and would have made it less difficult for the plaintiffs to find the weak points in the material delivered and by means of that – as a natural thing in examination of the opponent's materials – established contra-evidence. The exhibits came at such a late stage and under conditions, where the torture survivors as a result of the compulsory video Green Zone interview arrangement (protested by them as not due process) and similarly about the local witnesses who were exposed to the same Green Zone arrangement, that the combination of those two mechanisms, namely all the years of delays until the Supreme Court preparatory stages and the Supreme Court video testimony programme that in all prevented efficient capacity to counter those exhibits in any realistic practical way.

Clearly, the absence of that realistic way to oppose is evident just by confronting some few examples from that para. 51, which the Chamber in its reasoning refers to under para. 158 (C) and elsewhere.

Example 1: The Supreme Court (the judgment's p. 16) is referred to write as accepted fact that:

'At the request of the Iraqi authorities, Danish and British military forces participated in an Iraqi 'search and arrest operation' on 25 November 2004 in Az Zubayr, outside Basra (Operation Green Desert). The tasks of the Danish forces were to form an outer perimeter around, inter alia, houses where Iraqi military and police were to detain suspected insurgents and to mentor and monitor the Iraqi forces.'

That description is severely in conflict with exhibit FT (GC14), where the following very clear information can be read:

“Due to last minute changes DANBN was forced to become involved in the search and arrest phase itself”

Though it is normally not an issue for the Court's Panel to do testing of evidence, however here there is within the material presented by the government manifest contradiction.

In spite of that, without any reservation, the Chamber refers inter alia to this piece of the Supreme Court's reasonings, neglecting that the above-mentioned exhibit FT is a fact that logically the contradiction is solved by only possible explanation: The so-called was, originally, the operational idea, but for some reason, the Danish forces were forced to change plans, and thus let the Danish military participate directly in the search and arrest operations, which is the way the operation was conducted concerning the capture and arrests of the plaintiffs.

When, in this request asking for referral to the Grand Chamber, there is made references to that failure made by the Chamber, it has mainly to do with documenting that because of the above-mentioned many years of delay with documents and because of the unacceptable video Green Zone coercion, access to due process was impeded.

Similarly, the following further examples from the same pages in the Chamber's judgment, p. 16:

'It was also found that, at a briefing, AI, a Battalion Commander, had encouraged any soldiers who might have seen Iraqi security forces ill-treat civilians in

connection with the operation to come forward, and that no soldiers had come forward with any such information.'

This statement communicates that the case should be about individual responsibility of soldiers. That was never claimed by the applicant. Rather, it is claimed that the command of the Danish Battalion is responsible for the 'search and arrests' as such. Any way that soldiers participating in a military operation involving entering into civilians' homes in the very hours of the morning, should come up with admitting heavy-handed conduct is not a serious piece of evidence in favour of the government's legal defence. Rather, it has some theatrical position, which even came into extensive use within the legal strategy of the government, arranging hearings of military 'witnesses', including in all testimonies from 21 soldiers, who were asked if they thought they had done anything wrong to the civilians. Not surprisingly, all of them denied having done anything wrong.

Example 2: The applicants were hindered from having testimonies from the mainly local witnesses that at a close hand observed what applicants.

Example 3: The Chamber's judgment's p. 17 is referring the following Supreme Court's finding of facts as such:

'As the High Court also said, there are circumstances that raise doubts as to the correctness of the statements made by the Iraqi [applicants]. The High Court's findings of fact are, however, based on comprehensive evidence, including examinations of most of the Iraqi [applicants]. The Supreme Court finds no basis for disregarding the High Court's findings of fact, including when the evidence produced to the Supreme Court is taken into account.'

See the general comments above connected to example 1. Further to that: The references in the first sentence is about some discrepancies in information noted by the forensic doctors and in some of the – refuted – testimony statements that the High Court noted. It is left out that:

- (1) Out of the 23/21, discrepancies were not found in all. The courts are to decide on each of the 23/21 cases individually. Thus, any discrepancy in e.g. 5 or 6 testimonies cannot damage the main applicants, since they all have the right to a fair trial, regardless of what might have appeared in others' statements concerning discrepancies.
- (2) Any judge will know that what was experienced in 2004 by someone in the Middle East, then explained many years later to a European forensic doctor, noted by that doctor in the medical report, and then again asked about in a court room or by video camera some years after and under deplorable conditions regarding insufficient time with translation from Arabic to Danish

and then noted by a Danish High Court judge, does imply some risk of mistakes.

Example 4 (p. 17):

‘The High Court proceedings lasted fifty-two court days, and seventy-six persons gave evidence. It appears from the court records of the High Court of 19 October 2017 that thirty-two court days were allocated to the Iraqi [applicants’] opening speeches, the evidence of the plaintiffs and witnesses, and the first closing argument.’

To this, the applicants refer to this request with the comments that can be read on p. 93.

Example 5 (p. 18):

‘...and at no point did the Danish forces detain Iraqis or otherwise hold them in custody.’

The applicants refer to example 1 above.

Example 6 (p. 20):

‘...the Supreme Court finds that neither the Danish forces nor any other Danish authorities had any reason to believe that the Iraqis would be subjected to inhuman treatment that would lead to the conclusion that under Danish law of torts those parties had been subjected to an offence committed by the Danish forces.’

That statement, which was contradicted by witnesses giving testimonies in the Eastern High Court, was by the video Green Zone arrangement hindered from being contradicted by local witnesses that would not go to give their testimonies in that arrangement, and who had insisted to be accepted as witnesses physically before judges in Denmark.

Example 7 (p. 20):

‘As stated in paragraph 2 above, Danish forces did not have command over the Iraqi military and police forces;...’

Reference is made to the applicants statements above 1-6.

Point 159 of the judgment:

‘The Court also observes that the applicants were granted free legal

aid for the High Court and the Supreme Court proceedings (see paragraphs 42 and 53 above) although for a lower claim that they had wanted to make, that they were represented throughout by counsel and by the two applicants who had declared that they had represented the other applicants in the compensation claim against the Ministry of Defence.'

The description that free legal aid was granted for the cases to be dealt with by the High Court and the Supreme Court is misleading and wrong. The 'free legal aid' did not allow the attorney of the torture survivors to make all necessary investigative efforts. Thus, as can be seen from the court records, several times during the years 2018-22, often with full dispositive involvement from the attorney of the government, the Supreme Court denied the attorney to do work, he wanted to about evidence. In parallel with that, the attorney of the government had no limitations about resources available for his caretaking. See section 7 below on the exorbitant inequality of resources.

As can be seen from above (including attachments), the truth is as follows:

- A. The first four years (September 2011 until September 2015), legal aid was denied in all 6 times. The denial came from the government institution Department of Civil Affairs (*Civilstyrelsen*) and the administrative body, the Appeals Permission Board (*Procesbevillingsnævnet*). The reasoning available was proscription due to the statute of limitations. That is wrong. So the government was incorrectly and illegally attempting to hinder the case by not allowing legal aid. That claim was brushed aside on 22 August 2016, as can be seen in **GC2**, but it delayed the case immensely, as can be seen above p. 11. Further, it was clearly an attempt to derail and hinder the case from being dealt with by the courts.

Thus, the description is misleading, because it leaves the impression that free legal aid was obtained at the appropriate time, namely as the cases began. The truth is that from December 2013, the case was dismissed by the Eastern High Court and was only resurrected about 10 months later on 24 October 2014. Even further to that, a very serious delay came up, as mentioned above, when the High Court accepted the request by the government that the plaintiffs should pay a security as a condition to have their cases dealt with within the Danish Judiciary. So the cases were stopped the app. 15 months, until the Supreme Court on 17 December 2013 decided to overturn the High Court decision. Once the legal aid was granted, the resources available for the then 23 plaintiffs were very scarce and limited and completely asymmetric to the resources that the same state has provided for its own representation and advice. See section 7 concerning about the exorbitant inequality in fees and

coverage of expenses that appears when comparing the resources available for the government's attorney on one side and on the other side the plaintiffs. The view that the plaintiffs '*...were represented throughout by counsel...*' is factually wrong, as can be seen from the existing exhibit A: On 18 December 2013, their lawyer informed the High Court that because of the recent denial of legal aid (for the sixth time(!)), and in spite of the Supreme Court ruling of 17 September 2013, they (the plaintiffs) could no longer enjoy legal advice and representation. The issue was dealt with on a preparatory court meeting on 7 September 2013, where the attorney of the government according to the court record declared that without attorney representation, the case could not continue. So, the government had calculated that the result of the sixth denial of legal aid would mean that the government would – in that way – hinder the case and thus the plaintiffs' access to justice. Factually wrong is also the statement that the legal interests in the case were represented '*...by the two applicants who had declared that they had represented the other applicants in the compensation claim...*'. Clearly, that is a misrepresentation, since it can be seen without any doubt that those two persons were only referred to as '*...spokespersons...*', thus representing the 23 on practical issues of different sorts that especially was needed to facilitate communication, information from any of the specific 23 clients to their attorneys, e.g. when writs and documents were delivered from the attorney of the government and arguments and others were brought up for practical reasons points of contact were needed. No one can imagine that those two persons, who were amongst the mainly uneducated group of plaintiffs, should have any position to understand and act in a court case, and absolutely not in a court case in Europe/Denmark. One may say that that part of the Chamber reasoning is nothing but absurd. That representation in its capacity was limited by the above-mentioned narrowing system of resources. The 'two applicants' had no working role or ability, only the role of communicator to the rest of the applicants.

Reference is made to the applicants' observation of 2 September 2024, where inter alia the following can be read:

'Attention is drawn to the fact that the undersigned counsel and advocate Mikala Hallund have been involved in a long process of seeking access to documents of the case from the representatives of the Government, as previously notified in letters to the Secretariat of the Court of 22 May 2024, 19 June 2024, 18 July 2024 and 15 August 2024.

I can inform the Court that the Ministry of Defence as well as the Ministry of Justice has still not fully processed and granted access to the core documents of the case. The documents requested contain substantial documentation regarding the domestic proceedings and is of pivotal importance for the counsel's ability to answer the Court's questions to the parties. Furthermore, attention is respectfully drawn to the fact that the application filed in September 2022 directly concerns (among others) the lack of a fair hearing under Article 6 of the Convention, including the core principle of equality of arms during domestic proceedings, and that the ongoing process of delaying the access for the Applicant's counsel in this case before the Court gives rise to serious criticism and shows the continuation of such lack of respect for this core principle between the parties in the case. The Applicants note in this respect that the Danish Ministry of Justice is listed as the representative of the Contracting State and that it is the same entity which has delayed providing access to the file documents contrary to established practice and in a manner which the Applicants find to be in bad faith.'

Reference is made to the applicants' supplemental observations of 23 May 2025, where inter alia the following can be read:

'Reference is made to the previous filings on behalf of the Applicants, including the application presented in October 2022, the filing presented in September 2024 and the 21 annexes.

As a follow up regarding counsel's criticism of the lack of facilitation of the ECHR process, I will draw attention to the fact that a relatively straightforward request for document access to the Ministry of Justice was presented in writing on 7 February 2025. The Ministry of Justice responded inter alia 6 March 2025 that the document access would be handled within seven days. At present more than 100 days has passed without any of these documents being provided to counsel, despite the Ministry of Justice being fully aware of the Secretariat's deadline to counsel for the Iraqi individuals involved in an important case communicated to the Government of Denmark 19 September 2023. Counsel maintains that the ongoing process of delaying access for the Applicant's counsel in this case gives rise to serious criticism and shows the continuation of such lack of respect for the representation of the Iraqi prisoners.

It is noted that these documents are not present to the Applicants,...

Point 160-163 of the judgment:

- (A) '160 More importantly, the applicants have not pointed the Court to any decisions of the domestic courts refusing to allow the applicants to give evidence, nor have they specified what evidence they were allegedly prevented from submitting (apart from the statements of three applicants) or prevented from submitting in a timely manner'
- (B) 161. The Court has previously found in various contexts that appearances by videolink are not necessarily problematic in themselves, as long as they serve a legitimate aim and the arrangements are compatible with the requirement of due process (see, for example and, *mutatis mutandis*, *Jallow v. Norway*, no. 36516/19, § 64, 2 December 2021 and the references cited therein).
- (C) 162. There is also no automatic right under the Convention to be granted legal aid to commence civil proceedings and it is regarded as legitimate and proportionate to refuse to grant free legal aid or to restrict it depending on whether a claim is likely to be successful (see, *mutatis mutandis*, *M.A.K. and R.K. v. the United Kingdom*, nos. 45901/05 and 40146/06, §§ 43-44, 23 March 2010; *Laskowska v. Poland*, no. 77765/01, § 50-54, 13 March 2007; and *Steel and Morris v. the United Kingdom*, no. 68416/01 § 62, ECHR 2005-II). Although pursuing proceedings as a litigant in person may not be easy, the limited public funds available for civil actions makes it a necessary feature of a system of administration of justice. The manner in which it functions in a particular case may be shown not to have been arbitrary or disproportionate, or to have impinged on the essence of the right of access to a court (see, *Laskowska v. Poland*, cited above, § 52). In the present case, the applicants have not, in the Court's view, substantiated their assertion that not having access to free legal aid to cover their travel expenses to be present during the entire trial or that they were only granted legal aid for a tort claim of 60.001 DKK was arbitrary or disproportionate.
- (D) 163. In the High Court the applicants also complained about the Ministry of Defence's redaction of information in the documentary evidence where it referred to matters of national security, relations with foreign states or considerations relating to the life or health of third parties. In its decision of 21 July 2017 (see paragraph 45 above), the High Court specifically dismissed the applicant's assertion that this "very limited redaction of information", compared to the volume and contents of the other documents produced, was in breach of Article 6 of the Convention. In its judgment of 15 June 2018 (see paragraph 40 above) it observed that the redaction referred to had not impaired the assessment of the applicants' claims, which had included the extensive examination and cross-examination of military witnesses. The High Court was also convinced that there was no video or sound footage from the

operation which had not been disclosed by the Ministry of Defence. For those reasons, the High Court dismissed the applicants' complaints under Article 6 in their entirety. In so far as the applicants in words or substance complained that the High Court had allowed the Ministry of Defence to submit "excessively extensive evidence" (see paragraph 158 above), including in its decision of 2 October 2017 (see paragraph 45 *in fine* above), this complaint was dismissed by the High Court. On 31 May 2022 the Supreme Court found there was no basis for finding the High Court's process to have been in breach of the Administration of Justice Act or of international law, including Article 6 of the Convention.

(...)

- (E) In particular as regard the nondisclosure of certain information, the Court notes that it was primarily names that had been redacted, and that the Ministry of Defence had described the information that had been redacted (see paragraph 45 above).
- (F) It also observes that it was the applicants, who, in civil proceedings, wanted access to large amounts of confidential information, which they hoped could prove that they had been subjected to treatment contrary to Article 3 of the Convention and not the State relying on information not made available to the defendants (a contrario, for example, Regner, cited above).
- (G) In the Court's view, however, the applicants have failed to explain and substantiate, why or how this very limited redacted information was essential for their case.
- (H) There are no elements indicating either, that the State, notably the Ministry of Defence without good cause, prevented the applicants from gaining access to, or falsely denied the existence of, documents in its possession" (compare, for example, McGinley and Egan v. the United Kingdom, 9 June 1998, §§ 86-90, Reports of Judgments and Decisions 1998-III).'

Re (A): That description is wrong. Elsewhere in this request, it is explained that when scrutinising the court records, the applicants were absolutely not given efficient evidence. What really happened in many different ways and steps are explained in this request, p. 74. The reality is as follows: '*the domestic courts refusing to allow the applicants to give evidence*' is the truth by means of the following:

- (1) The position '*...to give evidence...*' means that the plaintiff has a realistic chance to know what is going on, understand the questions, feel himself within safe and relaxing surrounding circumstances and especially concerning torture victims by the forensic reports approved on by the

Medico-Legal Council (*Retslægerådet*) in October 2017, being not only physically but also mentally damaged. As can be seen from the medical reports, most of them suffer from permanent PTSD. The acknowledgement of this comes also from the deliberations that can be seen in the court findings of 22 August 2016.

- (2) When a measure of too little time, extensive allocation of app. governmental witnesses and other circumstances are taken into account, the result is that there is too little time available, including translation for the hearings in December 2017 and scheduled for January 2018 are taken into account. The reality of efficient evidence is fading. Please read **GC9**, containing the testimony given two years after by the applicant _____ in December 2019 about how he experienced this giving of 'evidence' in December 2017.
- (3) Anyone can understand that when first telling that – naturally (cf. **GC4**) – the torture victims have a right to attend the court hearings, then telling them that they can only come when they were to give their testimony and then as the third step in that garrotte telling them that no, you are not going to a court in Denmark, you instead have to participate in a video interview, and you have to go to a foreign country in the Middle East to do it, and that foreign country will be as a first choice Lebanon (the plaintiffs are Sunni, as it is known, Lebanon is mainly Shia) and then – also – you have to appear in the Danish embassy, which is the governmental local representation, then just by that the quality of 'evidence' is verily compromised. The Panel can easily realise that this is just another example of serious discrepancies into what will normally be regarded as conditions for 'evidence', namely something totally different concerning surroundings, circumstances and all that one would find to be basic as the so-to-speak culture connected to courts in a democratic society and the circumstances under which such courts are functioning.
- (4) The absurdity of these steps away from the normality of evidence and court hearings was even continued when in the Supreme Court where the ill-treatment of the plaintiffs (and their local witnesses from Iraq) was even aggravated by the decision to cancel any travel to Denmark and instead (suggested by the attorney of the government) to establish an option of going to some private enterprise location in the Green Zone in Baghdad.

Re (B): The Chamber further states: 'videolink are not necessarily problematic in themselves, as long as they serve a legitimate aim and...'

The applicants refer to their comments elsewhere in this request, explaining why the combination of denial of physical appearance is the destructive backside of 'videolink. In and of itself, it is naturally unacceptable that a torture survivor trying to obtain justice and according to basic domestic and human rights law for years were informed that that access he would have (confirmed by the Eastern High Court on 1 September 2017) then step by step is confronted with interrogations ending up in some few video interviews against protest made in the early weeks of 2018, and then the remaining later referred to go to the Green Zone at the premises of a private company in Baghdad.

It is astonishing that the Chamber in its reasoning does not consider the following issues:

Do torture survivors, ref. the forensic reports, not have for themselves and for the reason of enlightenment in the best way of information to the case, a need for a relaxed and safe experience, sitting in a protected court room with his attorney that he has been speaking with just before the meeting preparing what would happen, sitting next to him all the way and with the chance of being able to communicate with him all along during the day of testimony?

To any judge, it must be elementary that you can expose a party to in court proceedings should be measured by who that person is and what that person is to explain about. What are the cultural, social etc. implications?

It must be regarded to be a clear failure that also the Chamber does not imagine those issues to be relevant or – at worst – has chosen to ignore that as a problem in the way that both the domestic courts have acted on that issue about video as an instrument for denying physical appearance in the physical proceedings, even neglecting that all the witnesses called by the attorney of the government (to a large extent military personnel plus others) appeared physically in the physical court proceedings.

It must be regarded to be an obvious matter of principle that torture survivors systematically can be denied their right to not only appearance to follow and hear their case but deprived from that and even deprived by the tool of having to go and sit in front of a video camera, either as it was largely for the most of them in the Eastern High Court their opponent government's representative office, an embassy somewhere outside Europe or as it was decided by the Supreme Court (proposed by the attorney of the government), the arrangement in the Green Zone by video alone and without any attorney beside.

Re (C): The Chamber states:

‘There is also no automatic right under the Convention to be granted legal aid to commence civil proceedings...’.

This writing is wrong in the sense that it ignores or neglects that the government’s departments and appeal boards over the years from 2012 until 2015 denied legal aid.

Regarding ‘successful’, it is also ignored and neglected that the reasoning for the denials showed to be failing, since the Eastern High Court in its findings 22 August 2016 (ref. above p. 11), stated that there could be no prescription of statute of limitations. Thus, legal aid was wrongly denied.

Re (D): The Chamber states:

‘In its judgment of 15 June 2018 (see paragraph 40 above) it observed that the redaction referred to had not impaired the assessment of the applicants’ claims, which had included the extensive examination and cross-examination of military witnesses’

By this, the Chamber ignores that many documents and many important documents, e.g. CÅ, were kept redacted via black ink and many documents (see above) were not made available either just few days before the beginning of the oral hearings in the High Court or – even some more – as late as during the Supreme Court proceedings.

That can – of course – not be compensated by cross-examination of military personnel, most of them still employed with the military and thus with the government and many of them having been in very intense instructional meetings with higher-ranking officers and the attorney of the government.

The Chamber further writes:

‘The High Court was also convinced that there was no video or sound footage from the operation which had not been disclosed by the Ministry of Defence...’

That is wrong. There is evidence that more cameras participated. The credibility of the information from the side of the government is seriously impaired by the fact that the attorney of the government in his writ of 16 May 2012 on p. 5 wrote:

‘Forsvarsministeriet har endvidere ved skrivelse af 27. januar 2012 til sagsøgeren i Brak-sagen oplyst, at der ikke under operation Green Desert blev foretaget billed- og lydoptagelser.’

(Furthermore, in a letter dated 27 January 2012 to the plaintiff in the Brak case, the Ministry of Defence stated that no image or sound recordings were made during Operation Green Desert.)

Hereafter, when the video emerged, the government claimed that this one was the only one. However, the video film displayed in the court room during the procedures showed a Danish soldier in uniform with a Danish flag on his shoulder wearing another combat camera filming. It appears from several of the testimonies taken at the level of the Eastern High Court, also from military personnel, that there was several cameras working during the operation. Like the operational report, those films are kept away from the enlightenment of the cases.

Re (E): The judgment states: ‘...primarily names that had been redacted...’

Wrong information. The fact is that several key exhibits, most glaringly exhibits CÅ and FT, ref. above.

Re (F): Yes, of course it was ‘...the applicants...’ who wanted that access, which is amongst others a claim of having the black ink removed from among others exhibit CÅ and FT, and to have access to all information about the reporting on the operation, which of course is a key issue to ascertain what happened.

Re (G): The applicants refer to the comments above.

Re H: The applicants refer to the denials and refusals made by the government’s attorney during the years 2012-18 in the Eastern High Court and to the fact that several documents only came up after repeated insistence from the side of the plaintiffs, e.g. by new decisions taken by the court in February and July that the government should deliver access to further documents that during previous years were attempted to be kept away from the enlightenment of the case. That behaviour and strategy must be regarded, not least in a case on the government’s responsibility for art. 3 matters (torture, inhumane or degrading treatment) must imply that the government will do its best to secure enlightenment of the case. That must be a core obligation according to the Convention, not least in such cases. Also, it is according to domestic law an obligation according to the administrative law that the government as a party in civil lawsuits must not hinder the enlightenment of the case but to work objectively and dispassionately to bring up the facts.

It would be in such cases an undermining principle if the actions and omissions made by the government and Judiciary in Denmark were to be in conflict with torture survivors' need for equality of arms, access to justice and due process.

Point 164:

- (A) The Court does however find reason to add that the right to a fair trial in civil proceedings against government authorities may imply access to relevant documents that are in the possession of the administrative authorities if they may be of importance to the case, if necessary by using a formal procedure for the disclosure of documents (see for example, *McGinley and Egan v. the United Kingdom*, 9 June 1998, § 86-89, Reports of Judgments and Decisions 1998-III), but that the right to disclosure of relevant evidence is not absolute.
- (B) The Court has recognised that the Contracting States enjoy a certain margin of appreciation when precedence is given to superior national interests when denying a party disclosure or discovery, as long as the restrictions do not affect the very essence of the right to due process (see the case-law cited in paragraph 157 above and *Regner*, cited above, § 148).'
- (C) The idea of the mentioned 'margin of appreciation' by far is removing the content of the protection to obtain a fair trial.

7. THE EXORBITANT INEQUALITY IN RESOURCES PROVIDED BY THE DANISH STATE IN FAVOUR OF ITS OWN LEGAL REPRESENTATION WITH A PRIVATE LAW FIRM AND IN HUGE DISADVANTAGE TO THE WORK AND REPRESENTATION OF THE SIDE OF THE TORTURE SURVIVORS:

According to practice for several decades and according to the wording of the article, this meant that the attorney, when those expenses were incurred, could send in requests attached with adherent documentation to have that reimbursed. However, in huge cases with many expenses, lawyers, once legal aid is granted, can ask for the court's prior acceptance, for example an expense for travel etc. As can be read about the first app. 4 years, no legal aid was granted. As can be seen from the court records

dated 26 November 2015, upon receiving the legal aid decision in September that same year, the lawyer of the applicants had sent his request and documentation for expenses within those four years, which was granted by the court by its judiciary act that day. The following months and years of the pending of the case before the Eastern High Court (until June 2018), the practice of prior consent from the court became a steering wheel to the extent that as it can be seen from the court records the applicants' attorney would need to ask for prior '*permission*'.

That tool became the way by which the position of the applicants as plaintiffs was weakened.

The opponent, the government, however did not and does not work under these limitations, since the system regarding the payment of the private lawyer of the government (Kammeradvokaten) means that expenses are not decided on by the court(!) but merely by the fee note etc. that the attorney of the government monthly is numerated few days after its sending. This means a striking asymmetry in the resources and thus the conditions for doing the work.

It was documented that the following figure and amount can be presented as such (documentation attached as **GC15**):

During the cases before the Eastern High Court, the lawyer of the government (Kammeradvokaten) received in fees (without VAT 25%) as well as expenses covered totalling	DKK 14,795,744 74,610
The fees for the government's attorney during the cases before the Supreme Court were (without VAT):	22,719,373
Moreover, Kammeradvokaten has had expenses covered during the case before the Supreme Court totalling	<u>683,364</u>
In total:	38,273,091

(EUR app. 5,1 million)

For comparison, the lawyers of the torture survivors have received:

For the cases before Eastern High Court, in fees:	4,400,000
Expenses covered before the Eastern High Court:	43,456

The lawyer of the plaintiffs in the Supreme Court received in total	3,600,000
Expenses covered during the Supreme Court cases	586,840
In total:	8,630,296

(EUR app. 1,15 million)

Note: The above-mentioned figures are made available by access to documents with the Ministry of Defence concerning the ministry's payment to the government's attorney, and from the attorneys of the plaintiffs.

It should be taken into account (without any figures, since those are not available) that the attorney of the government has all the years had as his free resource service the assistance of civil servants etc. within, according to information given by the attorney to the courts, the following ministries: The Prime Minister's Office, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Defence.

Thus, it can be concluded that on the top of that free resource available for the interests during the app. 11 years, the state has by its own funds paid almost **five times** more to the state's own interests, whereas the resources paid to the side of the 23 torture survivors was about five times less.

Further to that, the disadvantage of the torture survivors was that the same lawyers could not continue their work, like the lawyer of the government could, when the cases were appealed by the government to the Supreme Court.

This is not equality of arms, taking into account that resources because of the rules on civil litigation within the Danish Judiciary, leaves the work to the parties. The courts are in such cases not investigative and thus rely on evidence etc. being drawn up by the parties.

According to the court records from the Eastern High Court, the number of plaintiffs that had access in the Eastern High Court to give their testimony (under time-narrowing conditions) were 6. That number can be identified in the attached overview, which was used by their attorneys both in the High Court and the Supreme Court and not contested by the lawyer of the government. Thus, this information contained in the attached overview, is in brief showing the numbers.

As it can be seen, the six people were listed with nos. according to the list used in all of the years within the Eastern High Court as follows:

A. Physical testimonies:

December 2017:

- | | |
|-----|--------------------------------------|
| 12) | 12/13 December 2017 |
| 13) | 13 December 2017 |
| 14) | 13 December 2017 (+ 4 December 2019) |

January 2018:

- | | |
|-----|--|
| 1) | 22 January 2018 |
| 6) | 22 / 24 January 2018 (+ 21 April 2022) |
| 15) | 24 January 2018 |

B. Video testimonies:

- | | |
|-----|-----------------|
| 18) | 25 January 2018 |
| 21) | 25 January 2018 |
| 20) | 30 January 2018 |
| 9) | 31 January 2018 |
| 2) | 1 February 2018 |
| 11) | 1 February 2018 |
| 7) | 7 February 2018 |
| 8) | 7 Febraury 2018 |
| 3) | 8 February 2018 |

C. Not completed video testimony:

- 19)

D. No testimonies – denied visas

- 16)
4)
5)
10)
17)
22)
23)

Conclusion:

Out of the 23, only 6 were allowed to give their testimonies physically before the court and under unacceptable conditions for those Iraqi torture survivors.

The remaining were put to video (11), and 6 were not heard.

Also attached, please find a list according to each of the numbers of the six giving physical testimonies and 11 by video. As can be seen, the list is in the numeral order mentioned above.

In the second column from the right, their net time (netto) is calculated by deducting the time spent on translation. The figures are put in the right column to the list above.

Net time available for testimony, including cross-examination from the attorney of the government and few questions from the court panel:

No. and name	Net time
1)	1 hour, 30 minutes
2)	1 hour, 15 minutes
3)	1 hour
6)	40 minutes
7)	50 minutes
8)	50 minutes
9)	1 hour
10)	⁵
11)	50 minutes
12)	1 hour, 45 minutes
13)	1 hour, 10 minutes
14)	45 minutes
15)	1 hour, 30 minutes
18)	1 hour, 10 minutes
19)	⁶
20)	40 minutes
21)	50 minutes

⁵ Could not deliver his testimony. Was too tired because of flight delays from Basra arriving in the middle of the night and having visa only to stay until early the following day, so no testimony could be arranged.

⁶ Breakdown because of mental distress. The testimony not completed.

8. THE ESSENCE OF WHY REFERRAL TO THE GRAND CHAMBER IS NEEDED

This consideration has to do both with avoiding that the grand chamber's view of a state's margin of appreciation could undermine the core right of access to justice and to do with the need to deliver from the grand chamber useful principles about whether the technical facilities such as distant video interviews without consent from the individual party can be imposed into a civil lawsuit and thus also extended to imply that in spite of legal aid, that individual can be denied access to the physical legal proceedings in their entirety.

This case brings up the need for the Grand Chamber to decide whether a country's system of visas can be used to deny to physical attention in the individuals' trial pending physically and by that including physical testimonies given in the court by the other party (opponent) and/or by witnesses called by the opponent to attend physically:

In this specific case, the principles are of utmost importance because of the weak position of the individual torture victims. The court has in case **32446/96 Abdülsamet Yaman v. Turkey** (para. 53, an issue about compensation ref. art. 3) stated:

'53. The Court reiterates that the nature of the right safeguarded under Article 3 has implications for Article 13. Where an individual has an arguable claim that he has been tortured or subjected to serious ill-treatment by agents of the State, the notion of an "effective remedy" entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation...'

About 'arguable claim' reference in this case is made to the existence of forensic reports approved of by the Medico-Legal Council in October 2017.

In the judgment made by the Grand Chamber on 17 September 2014 in case no. **10865/09, Mocanu and others v. Romania** in para. 274 it is stated as follows:

'274. Like the United Nations Committee against Torture, quoted by the third-party intervener, the Court acknowledges that the psychological effects of ill-treatment inflicted by State agents may also undermine victims' capacity to complain about treatment inflicted on them, and may thus constitute a significant impediment to the right to redress of victims of torture and other ill-treatment (see General Comment No. 3 (2012),...'

This case was about the statute of limitations, but that precedence is relevant for this case, because it underlines the importance of taking consideration to victims' psychological positions and capacity.

As documented above, it is clear that the Chamber has in its judgment of 21 October 2025, like the two domestic courts, not shown to be interested in the fact about those 23 torture survivors' mental and social positions as plaintiffs and thus not complied with those basic standards regarding art. 6 and art. 3 in cases, where the plaintiff side is precarious socially and mentally etc. Thus, the Chamber has followed the path paved by the domestic courts, which is not deplorable, but not sustainable.

From the documentation, it is clear that apart from the judgments the first years, namely the Supreme Court ruling of 17 September 2013 and the not-appealed findings from the Eastern High Court of 22 August 2016, the judges involved did not show any attitude along with the general attitude in the two mentioned judgments above and their clear willingness to consider the actual circumstances with the plaintiffs themselves.

During the almost 11 years in Denmark, in all 20 Eastern High Court judges have dealt with the cases (2011-18) and 11 Supreme Court judges (2018-22), in all 31 Danish superior judges.

A fresh examination with the Grand Chamber is clearly needed.

According to powers-of-attorney received from each of the 21 applicants, the undersigned legal consultant Christian Harlang hereby forwards this request to the European Court of Human Rights.

19 January 2026

Christian Harlang