



Netherlands accountable for inadequate investigation into fatal shooting of civilian in Iraq during multinational military occupation in 2004

The case [Jaloud v. the Netherlands](#) (application no. 47708/08) concerned the investigation by the Netherlands authorities into the circumstances surrounding the death of an Iraqi civilian who died of gunshot wounds in Iraq in April 2004 in an incident involving Netherlands Royal Army personnel.

In today's **Grand Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life – procedural obligations) of the European Convention on Human Rights, as regards the failure of the Netherlands authorities to carry out an effective investigation into the death of Mr Jaloud's son.

The Court established that the complaint about the investigation into the incident – which had occurred in an area under the command of an officer of the armed forces of the United Kingdom – fell within the jurisdiction of the Netherlands within the meaning of Article 1 of the Convention (contract parties' obligation to respect the rights guaranteed in the Convention). The Court noted in particular that the Netherlands had retained full command over its military personnel in Iraq.

The Court came to the conclusion that the investigation had been characterised by serious shortcomings, which had made it ineffective. In particular, records of key witness statements had not been submitted to the judicial authorities; no precautions against collusion had been taken before questioning the Netherlands Army officer who had fired at the car carrying the victim; and the autopsy of the victim's body had been inadequate.

Principal facts

The applicant, Sabah Jaloud, is an Iraqi national who was born in 1943 and lives in An-Nasiryah, Iraq. He is the father of Azhar Sabah Jaloud, who died, aged 29, of gunshot wounds on 21 April 2004 in an incident involving Netherlands Royal Army personnel in Iraq.

Following the invasion of Iraq in March 2003 by a coalition of armed forces led by the United States of America, the Netherlands Government contributed troops to the Stabilisation Force in Iraq (SFIR). From July 2003 until March 2005 Netherlands troops were stationed in the province of Al-Muthanna in south-eastern Iraq as part of Multinational Division South-East (MND-SE), which was under the command of an officer of the armed forces of the United Kingdom. The participation of Netherlands forces in MND-SE was governed by a Memorandum of Understanding between the United Kingdom and the Kingdom of the Netherlands to which Rules of Engagement were appended. Both documents were and remain classified.

At around 2.30 a.m. on 21 April 2004, a patrol of six Netherlands soldiers led by Lieutenant A. arrived at a vehicle checkpoint located on the main supply route north of the town of Ar Rumaytah (in the province of Al-Muthanna). The personnel already present at the checkpoint were all members of the Iraqi Civil Defence Force ("ICDC"). The commander of the checkpoint, ICDC Sergeant H.S., had

1. Grand Chamber judgments are final (Article 44 of the Convention).

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

summoned the Netherlands soldiers following a drive-by shooting which had occurred at around 2.12 a.m. At this time a car had approached the checkpoint, slowed and turned. Shots had been fired at the ICDC personnel guarding the checkpoint, and the ICDC had returned fire. No one had been hit, and the car had driven away and disappeared.

Around 15 minutes after the arrival of the Netherlands soldiers, a black Mercedes car approached the checkpoint at speed. It hit a barrel set out in the middle of the road to form the checkpoint, but it did not stop. Shots were then fired at the car: Lieutenant A., a Netherlands soldier, fired 28 rounds from a Diemaco assault rifle, and shots may also have been fired by one or more ICDC personnel using the Kalashnikov AK-47 assault rifle. The driver then stopped the car. Azhar Sabah Jaloud was in the front passenger seat. He was hit in several places, including the chest. Netherlands soldiers removed him from the car and attempted to administer first aid; however, he was declared dead around one hour after the shooting.

An investigation was launched by the Netherlands Royal Military Constabulary (a branch of the Netherlands armed forces) later that morning. The AK-47 of Sergeant H.S., the Diemaco assault rifle of Lieutenant A., and the Mercedes car involved in the incident were all seized. Statements were taken from the personnel involved, and an X-Ray and autopsy were carried out on Azhar Sabah Jaloud's body. An examination of the car suggested that it had been fired on from both the right and the left sides. The X-Ray and autopsy both found metallic objects inside the chest, the autopsy identified these as bullet fragments, and these were submitted for examination by the Baghdad police. However, none of these investigations were able to establish from which weapon the bullets had been fired.

In early 2007, Sabah Jaloud's representative wrote to the Netherlands authorities, requesting information on whether any Netherlands personnel were being prosecuted for the incident. A public prosecutor replied, stating that the investigation had indicated that Lieutenant A. had acted in self-defence, mistakenly reacting to friendly fire from across the road, and that therefore no Netherlands servicemen had been identified as suspects. He further concluded that Azhar Sabah Jaloud had presumably been hit by an Iraqi bullet. In October 2007 Sabah Jaloud's representative lodged a request with the Military Chamber of the Arnhem Court of Appeal for the prosecution of Lieutenant A., complaining that his son's shooting had amounted to unnecessary use of force against a civilian. However, in April 2008 this court found that Lieutenant A. had reacted to friendly fire from across the road, mistaking it for hostile fire from inside the car. He had therefore acted within the confines of his instructions, and the decision not to prosecute had been sound.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) of the Convention, Sabah Jaloud complained that the investigation into the shooting of his son had neither been sufficiently independent nor effective.

The application was lodged with the European Court of Human Rights on 6 October 2008. On 9 July 2013 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber². The Government of the United Kingdom was given leave to submit written comments and take part in the hearing (Article 36 § 2 of the Convention). A Grand Chamber hearing was held on 19 February 2014.

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

Dean Spielmann (Luxembourg), *President*,
Josep Casadevall (Andorra),

² Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects".

Guido Raimondi (Italy),
Ineta Ziemele (Latvia),
Mark Villiger (Liechtenstein),
Isabelle Berro-Lefèvre (Monaco),
Elisabeth Steiner (Austria),
Alvina Gyulumyan (Armenia),
Ján Šikuta (Slovakia),
Päivi Hirvelä (Finland),
Luis López Guerra (Spain),
András Sajó (Hungary),
Zdravka Kalaydjieva (Bulgaria),
Aleš Pejchal (the Czech Republic),
Johannes Silvis (the Netherlands),
Valeriu Grițco (the Republic of Moldova),
Iulia Antoanella Motoc (Romania),

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

Decision of the Court

Article 1 – jurisdiction

The Court first addressed an objection of the Netherlands Government to the effect that the complaints did not fall within the jurisdiction of the Netherlands within the meaning of Article 1 of the Convention (contract parties' obligation to respect the rights guaranteed in the Convention).

The Court noted in particular the following points: The Netherlands was not divested of its jurisdiction solely because it had accepted the operational control of a United Kingdom officer. As was clear from a letter by the Ministers of Foreign Affairs and of Defence to the Parliament of the Netherlands, of June 2003, concerning the participation of Netherlands forces in SFIR, the Netherlands had retained full command over its military personnel in Iraq. It also followed from an excerpt of the Memorandum of Understanding for MND-SE, to which the Netherlands Government had given the Court access, that the drawing up of distinct rules on the use of force had remained in the domain of individual sending States. While the checkpoint where the shooting happened had nominally been manned by Iraqi ICDC personnel, the ICDC had been supervised by officers from the coalition forces. In view of these considerations the Court found that the Netherlands troops had not been at the disposal of any power, whether Iraq or the United Kingdom.

Having regard to the circumstances in which Azhar Sabah Jaloud had died – when the car in which he was a passenger was passing through a checkpoint manned by personnel under the command and direct supervision of a Netherlands officer – the Court found that his death had indeed occurred within the jurisdiction of the Netherlands within the meaning of Article 1.

The facts giving rise to the complaints derived from alleged acts and omissions of Netherlands military personnel and of the investigative and judicial authorities. As such they were capable of giving rise to the responsibility of the Netherlands under the Convention.

Article 2 – alleged breach of the duty to investigate

The Court could not agree with Sabah Jaloud's complaint that the investigation had not been sufficiently independent. He had called into question the independence of the Royal Military Constabulary unit which had undertaken the initial investigation, on the ground that they had shared their living quarters with the army personnel whom he blamed for his son's death. However, there was no evidence to show that that fact in itself had affected the independence of the Military

Constabulary. Furthermore, the fact that the public prosecutor had relied to a large extent on the reports by the Royal Military Constabulary did not raise an issue in itself, given that public prosecutors inevitably relied on the police for information and support. Finally, the Court could not agree that the independence of the Military Chamber of the Court of Appeal – which had confirmed the decision not to prosecute Lieutenant A., who had fired at the car transporting Azhar Sabah Jaloud – had been tainted by the presence of a serving military officer as a judge. The Court noted in particular that the military member of that court was not subject, in his judicial role, to military authority; his functional independence was the same as those of civilian judges.

As regards Sabah Jaloud's complaint that the investigation had not been sufficiently effective, the Court observed that the investigation had indeed been characterised by a number of shortcomings.

Notably, the Military Chamber of the Court of Appeal had confined itself to establishing that Lieutenant A. had acted in self-defence, mistakenly reacting to friendly fire from across the road. It had not, however, addressed certain aspects relevant to the question of the proportionality of the force used, in particular whether more shots had been fired than necessary and whether the firing had ceased as soon as the situation had allowed. The Court observed that documents containing information potentially relevant to those questions – which had been submitted by the parties in the proceedings before the Court – had not been made available to the Netherlands judicial authorities at the time. In particular, an official record of statements from the Iraqi ICDC personnel who had been guarding the checkpoint at the time of the shooting and a list of the names of ICDC personnel who had fired their weapons had not been added to the case file.

Moreover, there had been a delay of more than six hours after the incident before Lieutenant A. was questioned. While there was no suggestion of foul play, the mere fact that no appropriate steps had been taken to reduce the risk of him colluding with other witnesses amounted to a shortcoming in the adequacy of the investigation. As regards the autopsy of Azhar Sabah Jaloud's body, it had been carried out without any qualified Netherlands official being present. The pathologist's report was extremely brief, lacked detail and did not include any pictures. Finally, fragments of metal identified as bullet fragments taken from Azhar Sabah Jaloud's body – potentially important material evidence – had subsequently been lost in unknown circumstances.

The Court recognised that the Netherlands military and investigators, being engaged in a foreign country in the aftermath of hostilities, had worked in difficult conditions. Nevertheless, the shortcomings in the investigation, which had seriously impaired its effectiveness, could not be considered inevitable, even in those conditions. The Court therefore concluded that the investigation had not fulfilled the standards required under Article 2. There had thus been a violation of Article 2 as regards the State's procedural obligation.

Just satisfaction (Article 41)

The Court held that the Netherlands was to pay Sabah Jaloud 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,372.06 in respect of costs and expenses.

Separate opinions

Judge Spielmann, joined by Judge Raimondi, expressed a concurring opinion; Judges Casadevall, Berro-Lefèvre, Šikuta, Hirvelä, López Guerra, Sajó and Silvis expressed a joint concurring opinion; Judge Motoc expressed a concurring opinion. These separate opinions are annexed to the judgment.

The judgment is available in English and French.

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