

**EXTRACT
FROM
THE COURT REGISTER OF THE DANISH SUPREME COURT APPEALS AND
OBJECTIONS COMMITTEE**

**RULING OF THE SUPREME COURT
pronounced on Friday 9th August 2013**

Dignity, Danish Institute against Torture

(Attorney Thorkild Høyer)

applies for leave to intervene in support of the appellants in the following cases:

Case 135/2013

Qais J. Khaled Brak,

Khalid Mohammed,

Fawzi Mezaal Mwazi,

Sulaiman Al-Barrak,

Shahel Al-Jashaati

and

Basim-Mohammed Atiayah

(Attorney Christian Harlang counsel for all appellants)

against

the Ministry of Defence

(kammeradvokaten (legal advisor to the Danish Government) by Attorney Peter Biering)

Case 136/2013

Bandar Albarrak

and

Malik Al-Sadoon

(Attorney Christian Harlang counsel for both appellants)

against

the Ministry of Defence

(kammeradvokaten (legal advisor to the Danish Government) by Attorney Peter Biering)

and

Case 137/2013

Khalid Gerthaá Al-Saadoun,

Mutar Karhab Youshaa

and

Quati 'Hilas Zghair

(Attorney Christian Harlang counsel for all appellants)

against

the Ministry of Defence

(kammeradvokaten (legal advisor to the Danish Government) by Attorney Peter Biering)

Three judges participated in the ruling on the case: Børge Dahl, Niels Grubbe and Lars Hjortnæs.

Claim

On behalf of Dignity, Danish Institute against Torture, the attorney Thorkild Høyer has applied for leave to intervene in these cases, which are being handled in connection with one another, in support of the appellants, Qais J. Khaled Brak, Khalid Mohammed, Fawzi Mezaal Mwazi, Sulaiman Al-Barrak, Shahel Al-Jashaati, Basim-Mohammed Atiayah, Bandar Albarrak, Malik Al-Sadoon, Khalid Gerthaá Al-Saadoun, Mutar Karhab Youshaa and Quati 'Hilas Zghair.

Qais J. Khaled Brak et al. support the granting of leave to intervene on a subsidiary basis.

The Ministry of Defence has protested against this.

Presentation of the case

Qais J. Khaled Brak et al. have brought legal proceedings against the Ministry of Defence with a claim for compensation for pain and suffering as a consequence of allegedly having been subjected to offensive and unlawful treatment in 2004 during detention by the Danish forces in Iraq and upon being handed over to the Iraqi police, in whose custody they were allegedly subjected to torture and inhuman and degrading treatment.

In its rulings of 8th June 2012, 10th August 2012 and 7th January 2013 the regional court ruled pursuant to the Danish Administration of Justice Act § 321 that Qais J. Khaled Brak et al. must each individually put up security of kr. 40,000 for legal costs.

The rulings have been brought before the Supreme Court by Qais J. Khaled Brak et al. with the plea that they should not be obliged to provide security, stating that this would in particular be in contravention of Articles 3 and 6 of the European Convention on Human Rights and constitute a breach of Denmark's obligations under Article 14, Para. 1 of the UN Convention against Torture.

Dignity wishes to intervene as a supporter on a subsidiary basis (supporter without being able to submit new arguments or claims) in support of this plea.

According to the Institute's statutes of 17th June 2013 (which replace statutes dating back to 1982 with subsequent amendments) "DIGNITY – the Danish Institute against Torture" is a publicly funded, non-profit institute domiciled in the municipality of Copenhagen, Denmark". The institute's statutes also state the following:

"Objectives

§ 2.

DIGNITY's objective shall be to expose and document torture on a health professional basis and shall on the basis of systematic examination of torture survivors and research into torture, including suffering induced by torture, develop clinical diagnoses and treatment programmes for torture survivors with the objective of applying the experiences thus achieved to education and information in order to contribute to the global effort to abolish torture.

DIGNITY aims to achieve its objectives by running an Institute that undertakes clinical research and method development, treatment and rehabilitation of persons who have been subjected to torture. The Institute also provides education and information services and carries out project work in association with centres and programmes abroad that are involved in the treatment and rehabilitation of torture survivors and prevention of torture:

- The Institute undertakes clinical research and method development in order to provide knowledge about torture and the nature and extent of the consequences of torture.
- Treatment and rehabilitation is undertaken in the Institute with the assistance of a multi-disciplinary team. The Institute develops and documents treatment methods that have a curative or alleviating effect for torture survivors and seeks to include the torture survivors' families in the treatment to the extent that is relevant in order to reintegrate torture survivors in their families and society.

- The Institute develops education and information products that can be used to promote knowledge about the reasons for torture, conventions and laws, treatment methods and prevention of torture. As part of these activities support is given to national and international initiatives, organisations, bodies and projects that are engaged in activities which aim to stop/prevent torture and/or overcome the consequences of torture.
- the educational and information activities are directed at both health professionals and the staff of official bodies and the wider public and are conducted both in Denmark and abroad, for example as part of an integrated project.
- through its project work DIGNITY contributes to the establishment and operation of treatment centres and programmes for torture survivors and their families in countries where torture is taking place or has been perpetrated in the past. The project work involves systematically compiling knowledge about the results in order to apply this knowledge to the pursuit of DIGNITY's objectives.

Finance

§ 3.

DIGNITY operates with grants and donations from the Danish State, the European Commission, the UN's Voluntary Fund for Victims of Torture, other Danish and foreign public bodies and subsidies, gifts, legacies and contributions from funds, organisations, institutions, private individuals, etc.

...

Governing body

§ 4.

DIGNITY's governing body consists of 11 members, 9 of whom are appointed as follows:

3 members from Danish professional health organisations:

One member appointed by the Danish Medical Association.

One member appointed by the Danish Nurses' Organisation.

One member appointed by the Danish Psychological Association

3 members from the research sector:

One member appointed by the Faculty of Health Sciences at the University of Copenhagen

One member appointed by the Danish Council for Independent Research

One member appointed by SFI – the Danish National Centre for Social Research

3 members from the preventative/human rights and development institutions:

One member appointed by the Danish Bar and Law Society

One member appointed by the Danish Institute of Human Rights

One member appointed by the Department of Society and Globalisation at Roskilde University

Para. 2. Insofar as DIGNITY employs at least 35 members of staff, the employees shall have the right to elect 2 members of the governing board from their number...

...

Para. 7. The members of the governing board – apart from the employee-appointed members – may not be employees, have a quasi-employment relationship with or receive financial support from DIGNITY and may not have any other share in DIGNITY's assets, apart from a director's fee approved by the Ministry for Foreign Affairs, likewise the Chairman of the Board may receive a fee approved by the Ministry of Foreign Affairs, determined in accordance with more specific rules.

...

Para. 8. A board member may resign from the board at any time...

The Ministry of Foreign Affairs shall be kept informed of new members of the board.

...

Management

§ 5.

The Board shall be responsible for the overall management of the Institute's affairs.

Para. 2. The Board employs a manager to manage the day-to-day operation. The Board shall lay down conditions for the manager's employment and the more specific regulations for the manager's authority and shall obtain the approval of the Ministry of Foreign Affairs.

Para. 3. The Board and the Manager shall manage the Institute together. The Board shall establish the overriding guidelines for DIGNITY's work and approve the on-going plans and attend to the accomplishment of activities for the fulfilment of DIGNITY's objectives.

...

Accounting and auditing

§ 8.

...

Para. 4. The accounts shall be submitted to the Ministry of Foreign Affairs for its approval immediately after the Board's approval and no later than 3 months from the end of the accounting period.

Para. 5. DIGNITY shall also draw up half-yearly accounts which shall also be submitted to the Ministry of Foreign Affairs.

...

Para. 7. DIGNITY shall keep the Ministry of Foreign Affairs informed about important events and changes in the conditions affecting the granting of subsidies.

...

Amendments to the Statutes

§ 10.

...

Para. 3. The Ministry of Foreign Affairs shall approve the Statutes and any amendments to the same.

Dissolution

§ 11.

Insofar as circumstances dictate that DIGNITY should cease to operate, the Institute shall be dissolved after obtaining the approval of the Ministry of Foreign Affairs.

...

Para. 3. In the event of the Institute's dissolution the appropriation of DIGNITY's assets shall be determined by the State."

Dignity is recognised as one of the world's leading anti-torture organisations with special consultative status to the UN Economic and Social Council (ECOSOC). Dignity is a member of the International Rehabilitation Council for Torture Victims (IRCT), which is an umbrella organisation for about 140 anti-torture organisations. Dignity's annual report for 2012 states that the Institute had an income of kr. 88 million, including an overall allocation from the Ministry of Foreign Affairs of kr. 48 million. In 2012 the Institute celebrated its 30th anniversary with speeches from the Danish Minister for Foreign Affairs, Villy Søvndal, and the Institute's patron, Archbishop Desmond Tutu, among others.

Pleas

Dignity, Danish Institute against Torture has submitted among other things that they have the required legal interest to intervene in the case as a subsidiary supporter. The requirement imposed on the issue of legal interest is less stringent in the case of subsidiary intervention than in a separate legal action and the legal practice concerning organisations that in the pursuit of their members' interests have a legal interest in subsidiary intervention can be applied by analogy to Dignity, whose objective is to support torture survivors. Pursuant to Article 14, Para. 1 of the Convention against Torture, Qais J. Khaled Brak et al. must have an effective opportunity to obtain redress, which includes the right to have their cases heard before the courts. The protection of rights provided under this clause falls directly within Dignity's mandate. Dignity, which is a leading expert organisation in rehabilitation, prevention of and protection against torture, has a direct interest in the outcome of the cases and the Supreme Court's decision may be extremely important with respect to the right of other torture survivors to have their cases heard. It will be difficult for Dignity to fulfil

its objective of safeguarding the interests of torture survivors if the claims pursuant to the Convention against Torture are not heard before the courts. Dignity has been working for many years on the interpretation and application of the Convention against Torture and is able to assist with its clarification. The subsidiary intervention may also be made without causing significant delay or inconvenience for the parties to the case or the court.

The Ministry of Defence has protested against Dignity's subsidiary intervention and has stated among other things that it is difficult to see from Dignity's statutory or actual objectives that the Institute has a legal interest in the outcome of the case. The general interest that Dignity, and likewise other institutions, may have in the case, may be handled in other ways, for example by referral to the Danish Parliament's Defence Committee and the media. The primary considerations of financial management and the effectiveness of the legal process dictate that the Supreme Court should not permit the subsidiary intervention in the light of a general interest of this nature.

Qais J. Khaled Brak et al. have stated their support for the application and submit, among other things, that the case may be of significance for similar cases in the future for torture victims whom Dignity wishes to support with rehabilitation etc. For Qais J. Khaled Brak et al. the case is an initiative that aims to stop, prevent and overcome the consequences of torture, for example by obtaining recognition and redress. Consideration for financial management and the effectiveness of the legal process do not preclude Dignity's intervention as a subsidiary supporter.

The Supreme Court's grounds and result

The case concerns the question of whether, contrary to the Defence Ministry's protest, Dignity, Danish Institute against Torture should be permitted to intervene in support of the claim that the appellants, Qais J. Khaled Brak et al., should not have to provide security for costs for bringing a case against the Danish State for compensation for alleged atrocities.

The Danish Administration of Justice Act § 252, Para. 1 states that third parties may intervene on a subsidiary basis for one of the parties in a legal action, if the party concerned has an interest in the outcome. In connection with the considerations concerning the upholding of the provisions, the Danish Civil Justice Council stated in report no. 698/1973 concerning the handling of civil cases, that the provision is to be understood in such a way that it is left up to the discretion of the court in the individual case whether to permit intervention on a subsidiary basis, "if this is considered reasonable and well-founded" (page 101). In a subsequent revision of the rules in the Administration of Justice Act concerning the handling of civil cases, reference was made to the report in the comments on the parliamentary bill

(bill no. 89 of 29th November 1978, Danish Parliamentary Hansard 1978-79, till. A, sp. 1613), and the Supreme Court endorses the interpretation of the provision as stated.

Dignity is a non-profit institute based on statutes, which is financially supported by the Ministry of Foreign Affairs. According to its statutes, the Institute's objectives include assisting the global effort to abolish torture and it endeavours to achieve its objectives by activities involving among other things the treatment and rehabilitation of torture survivors and the prevention of torture. The Institute's work therefore involves safeguarding the interests of torture survivors and potential torture victims and the Institute must be considered as a generally recognised voice against torture and an advocate for torture victims – a group of individuals whose interests are not safeguarded elsewhere and who are particularly in need of help in the safeguarding of their interests.

Dignity's intervention in the case as a subsidiary supporter in order to speak in support of the appellants falls within the stated objectives and activities and can be arranged without delay or particular inconvenience for the parties to the case.

In the light of this the Supreme Court finds that intervention by Dignity on a subsidiary basis would be reasonable and well founded. The Supreme Court therefore grants the Institute's request on this subject in accordance with the Danish Administration of Justice Act § 252, Para.1.

The Court rules:

Dignity, Danish Institute against Torture may intervene in the cases in support of the appellants.

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**Certified true extract.
The Danish Supreme Court on ..**