EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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ECHR upholds House of Lords' decision that State immunity applies in civil cases involving torture of UK nationals by Saudi Arabian officials abroad but says the matter must be kept under review

In today's Chamber judgment in the case of **Jones and Others v. the United Kingdom** (application nos. 34356/06 and 40528/06), which is not final[1], the European Court of Human Rights held, by six votes to one , that there had been:

no violation of Article 6 § 1 (right of access to court) of the European Convention on Human Rights either as concerned Mr Jones' claim against the Kingdom of Saudi Arabia or as concerned all four applicants' claims against named Saudi Arabian officials.

The case concerned four British nationals who alleged that they had been tortured in Saudi Arabia by Saudi State officials. The applicants complained about the UK courts' subsequent dismissal for reasons of State immunity of their claims for compensation against Saudi Arabia and its officials.

The Court found that the granting of immunity to Saudi Arabia and its State officials in the applicants' civil cases had reflected generally recognised current rules of public international law and had not therefore amounted to an unjustified restriction on the applicants' access to court. In particular, while there was some emerging support at the international level in favour of a special rule or exception in public international law in cases concerning civil claims for torture lodged against foreign State officials, the weight of authority suggested that the State's right to immunity could not be circumvented by suing named officials instead. The House of Lords had considered the applicants' arguments in detail and dismissed them by reference to the relevant international law principles and case-law. However, in light of the current developments in this area of public international law, this was a matter which needed to be kept under review by Contracting States.

Principal facts

The applicants, Ronald Grant Jones, Alexander Hutton Johnston Mitchell, William James Sampson (now deceased), and Leslie Walker, are British nationals who were born in 1953, 1955, 1959 and 1946 respectively.

The applicants all claim that they were arrested in Riyadh in 2000 or 2001, and subjected to torture while in custody. Medical examinations carried out on returning to the United Kingdom all concluded that the applicants' injuries were consistent with their allegations.

In 2002 Mr Jones brought proceedings against Saudi Arabia's Ministry of Interior and the official who had allegedly tortured him claiming damages. His application was struck out in February 2003 on the grounds that Saudi Arabia and its officials were entitled to State immunity under the State Immunity Act 1978.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

A claim by Mr Mitchell, Mr Sampson and Mr Walker against the four State officials that they considered to be responsible for their torture was struck out for the same reason in February 2004.

The applicants appealed the decisions, and their cases were joined. In October 2004 the UK Court of Appeal unanimously found that, though Mr Jones could not sue Saudi Arabia itself, the applicants could pursue their cases against the individually named defendants. However, this decision was overturned by the House of Lords in June 2006, which held that the applicants could not pursue any of their claims on the ground that all of the defendants were entitled to State immunity under international law, which was incorporated into domestic law by the 1978 Act.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (access to court), the applicants complained that the UK courts' granting of immunity in their cases meant that they had been unable to pursue claims for torture either against Saudia Arabia or against named State officials. They alleged that this had amounted to a disproportionate violation of their right of access to court.

The applications were lodged with the European Court of Human Rights on 26 July 2006 and 22 September 2006, respectively.

The Redress Trust, Amnesty International, the International Centre for the Legal Protection of Human Rights and JUSTICE were given leave to submit written comments.

Judgment was given by a Chamber of seven judges, composed as follows:

Ineta **Ziemele** (Latvia), *President*,
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Vincent A. **de Gaetano** (Malta),
Paul **Mahoney** (the United Kingdom),

and also Françoise **Elens-Passos**, *Section Registrar.*

Decision of the Court

The Court recalled that everyone had the right under Article 6 § 1 to have any legal dispute relating to his or her civil rights and obligations brought before a court, but that this right of access to court was not absolute. States could impose restrictions on it. However, a restriction had to pursue a legitimate aim, and there had to be a reasonable relationship between the aim and the means employed to pursue it (the restriction must be proportionate).

As to the specific test in State immunity cases, the Court referred to its judgment of 2001 in the similar case of *Al-Adsani v. the United Kingdom* (no. 35763/97). There, the Grand Chamber had explained that sovereign immunity was a concept of international law under which one State should not be subjected to the jurisdiction of another State and that granting immunity in civil proceedings pursued the legitimate aim of complying with international law to promote comity and good relations between States through the respect of another State's sovereignty. That being the case. the decisive question when examining the proportionality of the measure was whether the immunity rule applied by the national court reflected generally recognised rules of public international law on State immunity. In *Al-Adsani*, which concerned the striking out of a torture claim against Kuwait, the Court had found it established that there was not, at the time of its judgment in that case, acceptance in international law of the proposition that States were not

entitled to immunity in respect of civil claims for damages concerning alleged torture committed outside the State. There had therefore been no violation of Article 6 § 1.

In the applicants' case, the Court accepted that the restriction on access to court as regards the claims against Saudi Arabia and the State officials had pursued the legitimate aim of promoting good relations between nations. It therefore applied the approach to proportionality set out in *Al-Adsani*. The main issue of the applicants' case was therefore whether the restrictions on access to court arising from State immunity had been in conformity with generally recognised rules of public international law.

As concerned the **claim against the Kingdom of Saudi Arabia**, the Court had to decide whether it could be said that at the time Mr Jones' claim had been struck out (in 2006) there was, in public international law, an exception to the doctrine of State immunity in civil proceedings where allegations of torture had been made against that State. The Court considered whether there had been an evolution in accepted international standards on immunity in such torture claims lodged against a State since *Al-Adsani*. For the Court, the conclusive answer to that question was given by the judgment of the International Court of Justice (ICJ) in February 2012 in the case of *Germany v. Italy*, where the ICJ had rejected the argument that a torture exception to the doctrine of State immunity had by then emerged. The Court therefore concluded that the UK courts' reliance on State immunity to defeat Mr Jones' civil action against Saudi Arabia had not amounted to an unjustified restriction on his access to court. Therefore there had been no violation of Article 6 § 1 as concerned the striking out of Mr Jones' complaint against Saudi Arabia.

As concerned the **claims against the State officials,** again the sole matter for consideration was whether the grant of immunity to the State officials reflected generally recognised rules of public international law on State immunity. The Court was of the view, after an analysis of national and international case-law and materials, that State immunity in principle offered State officials protection in respect of acts undertaken on behalf of the State in the same way as it protected the State itself; otherwise, State immunity could be circumvented by the suing of named individuals. It then turned to consider whether there was an exception to this general rule in cases where torture was alleged. It reviewed the position in international law and examined international and national case-law. It noted that there was some emerging support at the international level in favour of a special rule or exception in public international law in cases concerning civil claims for torture lodged against foreign State officials. However, it concluded that the weight of authority was still to the effect that the State's right to immunity could not be circumvented by suing named officials instead, although it added that further developments could be expected. The House of Lords in the applicants' case had carefully examined all the arguments and the relevant international and comparative law materials and issued a comprehensive judgment with extensive references. That judgment had been found to be highly persuasive by the national courts of other States.

The Court was therefore satisfied that the granting of immunity to State Officials in the applicants' civil cases had reflected generally recognised current rules of public international law and had not therefore amounted to an unjustified restriction on their access to court. Accordingly, there had been no violation of Article 6 § 1 as regards the applicants' claims against named State officials. However, in light of the developments underway in this area of public international law, it added that this was a matter which needed to be kept under review by Contracting States.

Separate opinions

Judge Kalaydjieva expressed a joint partly dissenting opinion and Judge Bianku expressed a concurring opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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