



Jurisdictional immunity of a foreign State: limitation on right of access to a court is compatible with European Convention on Human Rights

In its decision in the case of [Association des familles des victimes du JOOLA v. France](#) (application no. 21119/19) the European Court of Human Rights has unanimously declared the application inadmissible, as manifestly ill-founded.

On 26 September 2002, the vessel Joola, which had been acquired in 1990 by the Senegalese State to operate the ferry route between Casamance and the rest of the country, went down in international waters off the coast of Gambia: 1,863 of the 1,928 passengers and crew members drowned or were declared missing, including a number of French nationals. The applicant association, whose members are men, women and children who lost relatives or friends in the sinking of the Senegalese ferry or victims who survived the accident, complained before the Court that they had been deprived of their right of access to a court on account of the jurisdictional immunity which led to the discontinuance of the proceedings initiated by their criminal complaints in France.

The Court began by reiterating its settled case-law according to which the grant of sovereign immunity to a State in civil proceedings pursued the legitimate aim of complying with international law in order to promote comity and good relations between States through respect for another State's sovereignty.

It further noted the finding of the French courts that the breaches of international maritime navigation rules, which had been imputed to high-ranking figures in the Senegalese government, stemmed from the exercise by Senegal of its sovereignty, and not from acts of private administration. The Court of Cassation had emphasised that the acts for which the Senegalese leaders were reproached at the time of the sinking, however serious they might have been, did not fall within the exceptions to the principle of immunity of the State's representatives in sovereign matters.

The Court lastly found that in granting such immunity the domestic courts had not departed from the currently accepted international norms.

Having noted that there was nothing arbitrary or unreasonable in the interpretation by the domestic courts of the applicable legal principles, or in the way they had been applied in the present case, the Court declared the application manifestly ill-founded.

The decision is final.

Principal facts

The applicant association, Association des Familles des Victimes du Joola, which was set up on 26 May 2007 and is governed by the French Law of 1 July 1901, has its head office in Saint-Arnoult-en-Yvelines. The Association's members are individuals who lost relatives or friends in the sinking of the Senegalese ferry or victims who survived the accident.

The ferryboat Joola, with a capacity of 536 passengers, was acquired by the Senegalese State in 1990 to provide a transport link between the Casamance region and the rest of Senegal.

On 26 September 2002 the vessel sank in international waters off the coast of Gambia: 1,863 of the 1,928 passengers and crew members drowned or were declared missing, including a number of French nationals. The Senegalese authorities opened a judicial investigation and set up a commission of inquiry. On 7 August 2003 the Dakar public prosecutor concluded that the only person responsible for the sinking was the ship's captain, who was presumed dead. The case was closed with the termination of the prosecution.

The sole French survivor and a number of relatives of the eighteen French victims who died or were declared missing as a result of the sinking filed a criminal complaint in France. On 1 April 2003 the public prosecutor of Evry called for a judicial investigation. The investigating judge requested numerous forensic reports. These revealed that the ship was already listing heavily when it left the port of Ziguinchor, that it was overloaded with nearly 2,000 passengers on board, and that the doors of the hold had been left open, thus causing it to founder more rapidly. The experts also noted that the ship had not been fitted with a maritime distress and safety system or a device to receive weather information, that it did not have a decision support system for the captain and that the crew had not been trained in the steps to be taken in the event of an accident. The experts concluded that the weather could not have been the sole cause of the sinking.

In 2008 the investigating judge issued nine international arrest warrants against Senegalese leaders in office at the time of the sinking. Two of these warrants (against the Prime Minister and Minister of the Armed Forces) were cancelled by the Court of Cassation in January 2010, on the basis of the immunity of the foreign State. The individuals concerned by the other warrants lodged an application for the annulment of the proceedings for lack of jurisdiction of the French investigating judge and the withdrawal of the arrest warrants. Their appeals were dismissed by the Investigation Division of the Court of Appeal and then by the Court of Cassation.

In a decision of 16 October 2014 the investigating judge discontinued the proceedings. He considered that there was sufficient evidence for the charges under investigation to be made out but, after analysing the legal status applicable to the vessel, a hybrid status owing to the nature of its operation for both military and commercial purposes, found that the individuals being investigated were immune from jurisdiction.

The applicant association and the civil parties appealed against the discontinuance of the proceedings.

In a judgment of 14 June 2016 the Investigation Division of the Paris Court of Appeal upheld the decision. It noted that the purpose of the maritime link served by the vessel was to ensure territorial continuity between Casamance, a southern region cut off from the main part of the country by an enclave of Gambia, and the rest of Senegal. It noted that the protection of this link by military forces because of armed rebellions constituted an act of public authority and not an act of administration, even though the transport of persons and goods was a paid service and the vessel had the physical characteristics of a merchant ship. It was clear from the commission of inquiry that the constant policy of the State had been to entrust its nautical management to the Senegalese Navy. The Investigation Division lastly found that violations of international rules on navigation and safety at sea and of Senegalese domestic law were not such as to override the principle of jurisdictional immunity in France.

In a judgment of 16 October 2018 the Court of Cassation rejected the applicant association's appeal on points of law.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 April 2019.

Relying on Article 6 § 1 (right of access to a court) and Article 13 (right to an effective remedy), the applicant association argued that the granting by the French courts of jurisdictional immunity to Senegalese governmental figures in office at the time of the accident had constituted a disproportionate restriction of their right of access to a court. It contended that breaches of international rules on navigation and safety could not be characterised as acts falling within the exercise of the State's sovereignty.

The decision was given by a Committee of three judges, composed as follows:

Stéphanie **Mourou-Vikström** (Monaco), *President*,
Lado **Chanturia** (Georgia),
Arnfinn **Bårdsen** (Norway),

and also Martina **Keller**, *Deputy Registrar*.

Decision of the Court

Article 6 § 1 taken together with Article 13

The Court found that the applicant association's right of access to a court had been restricted in that it had not been able to participate in a trial through which the criminal liability of the Senegalese leaders in office at the relevant time could be determined.

It referred to its settled case-law according to which the grant of sovereign immunity to a State in civil proceedings pursued the legitimate aim of complying with international law in order to promote comity and good relations between States through respect for another State's sovereignty.

The Court reiterated the need to interpret the Convention in conjunction with other rules of international law, including those governing the grant of State immunity: measures taken by a State which reflected generally recognised principles of international law as to State immunity could not be considered to impose a disproportionate restriction on the right of access to a court as guaranteed by Article 6 § 1. Therefore, just as the right of access to a court was inherent in the guarantee of a fair trial afforded by that Article, certain restrictions on access also had to be regarded as inherent. An example could be found in the limitations generally accepted by the community of nations as falling within the realm of State immunity.

The Court further noted the finding of the French courts that the breaches of international maritime navigation rules, which had been imputed to high-ranking figures in the Senegalese government, stemmed from the exercise by Senegal of its sovereignty, and not from acts of private administration. The Court of Cassation had emphasised that the acts for which the Senegalese leaders were reproached at the time of the sinking, however serious they might have been, did not fall within the exceptions to the principle of immunity of the State's representatives in sovereign matters.

The Court noted that, in granting the immunity in question, the domestic courts had not departed from currently accepted international standards.

It observed that in the domestic proceedings the investigating judge had not refused to open a judicial investigation owing to the immunity of the persons concerned and the case had been discontinued only after particularly detailed and exhaustive enquiries had been made in order to shed light on the events leading up to the accident. After carrying out an investigation the judicial authorities had concluded that the acts in question could be "characterised as the offence of manslaughter".

Lastly, although the domestic courts had found that the civil parties were effectively prevented by jurisdictional immunity from publicly claiming compensation for their losses, they had nevertheless

stressed that civil remedies were available for this purpose. In the courts' view, the civil parties had thus not been deprived of all access to justice since they had been able to seek compensation under the scheme for indemnifying the victims of crime. Consequently, the applicant association and the other civil parties had not found themselves in a situation where there was no remedy at all.

The Court did not find anything arbitrary or unreasonable in the interpretation by the domestic courts of the applicable legal principles or in the way they had been applied in the present case. It concluded that the application was manifestly ill-founded and had to be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

The decision is available only in 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.