

Strasbourg, 05/03/14

CAHDI (2014) Inf 4

# **COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)**

---

**Recent cases before the European Court of Human Rights  
involving issues of public international law**

**Jones and Others v. the United Kingdom**

**47<sup>th</sup> meeting**  
Strasbourg, 20-21 March 2014

---

Document presented by the delegation of the United Kingdom

Public International Law Division and Treaty Office  
Directorate of Legal Advice and Public International Law, DLAPIL

**“JONES AND OTHERS V. THE UNITED KINGDOM”**

Applications nos. 34356/06 and 40528/06

**Judgment of 14 January 2014 (not final)****Principal facts**

The applicants are four British nationals who alleged that they had been arrested and tortured in Saudi Arabia by Saudi State officials. Upon their return to the United Kingdom, the applicants sought to bring a civil claim for damages in the English High Court against the Ministry of Interior of Saudi Arabia and the officials who they considered were responsible for their torture. The High Court held that the Kingdom of Saudi Arabia and its officials were immune from jurisdiction in civil proceedings under the State Immunity Act 1978. The applicants appealed against this judgment to the Court of Appeal, which upheld the immunity of the Kingdom of Saudi Arabia, but allowed the claims against the officials to proceed. Saudi Arabia appealed to the House of Lords against the decision of the Court of Appeal in respect of the individual defendants and Mr Jones appealed against the decision of the Court of Appeal in respect of his claim against Saudi Arabia itself. In 2006, the House of Lords ruled that the individual defendants and the State of Saudi Arabia were entitled to State immunity, in accordance with international law as incorporated into domestic law by the State Immunity Act of 1978.

Before the European Court of Human Rights, Mr Jones claimed that the granting of immunity to Saudi Arabia and the individual defendant in his case was a disproportionate violation of their right of access to court as enshrined by Article 6§1 of the European Convention on Human Rights (ECHR). The remaining applicants complained that the granting of immunity to the individual defendants in their case was a disproportionate violation of their right of access to a court.

**Decision of the Court**

The Court recalled, according to its well established case law, that restrictions to the right of access to a court are possible and compatible with Article 6§1 provided they pursue a legitimate aim and remain proportionate.

As regards the claim against the Kingdom of Saudi Arabia, the Court referred to its judgment in the similar case of *Al-Adsani v. the United Kingdom* and considered that the grant of 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. Regarding the proportionality of the measure, the Court assessed the conformity of the restrictions on access to court arising from State immunity with generally recognised rules of public international law. It considered that there had been no evolution since its judgment in the *Al-Adsani* case in 2002. Regarding the existence of a *jus cogens* exception to State immunity, the Court noted that the judgment of the International Court of Justice in the case of *Jurisdictional Immunities of the State (Germany v. Italy, Greece intervening)* in February 2012 established that such an exception did not exist and was authoritative as regard the content of customary international law. Hence, the recognition of State immunity by the British House of Lords in 2006 could not amount to an unjustified limitation of the right of access to court of the applicants.

Therefore, the Court found that there had been no violation of Article 6§1 of the ECHR as concerns the applicants' complaint against the Kingdom of Saudi Arabia.

As regards the claim against Saudi Arabia State officials, the Court considered that State immunity applied to State officials, considering that the immunity was invoked and could be waived by the

State, and took the view that the grant of immunity pursued a legitimate aim as it was intended to comply with international law.

Regarding the proportionality of the measure, the Court had to determine whether the grant of immunity to State officials reflected generally recognised rules of public international law. In order to ascertain the existence of a general rule under public international law, the Court conducted an examination of both international and national case-law. It concluded that State officials were protected by State immunity in respect of official acts to the same extent as States.

In order to determine whether there existed an exception in respect of acts of torture to the general rule of immunity, the Court took into consideration international legal instruments, international and national case-law as well as national legislation. It noted that whilst there is some emerging support for an exception in cases concerning civil claims brought by individuals against State officials for torture, the bulk of the authority is to the effect that the State's right to immunity may not be circumvented by suing its servants or agents instead. The Court, therefore, found that the law is currently in a "state of flux", with evidence of both the grant and refusal of immunity in such cases, and noted that further developments may be expected. Against that background, the Court found that the "lengthy and comprehensive" judgment of the House of Lords in the UK which upheld immunity was neither manifestly erroneous nor arbitrary.

The Court therefore concluded that there had been no violation of Article 6§1 of the ECHR in this case.