



17 January 2017

## PRESS SUMMARY

**Belhaj and another (Respondents) v Straw and others (Appellants) [2017] UKSC 3**

*On appeal from [2014] EWCA Civ 1394*

**Rahmatullah (No 1) (Respondent) v Ministry of Defence and another (Appellants)**

**[2017] UKSC 3**

*On appeal from [2014] EWHC 3846 (QB)*

**JUSTICES:** Lord Neuberger (President), Lady Hale (Deputy President), Lord Mance, Lord Clarke, Lord Wilson, Lord Sumption, Lord Hughes

### BACKGROUND TO THE APPEALS

This judgment is one of a number given by the Supreme Court today on issues arising from alleged complicity of United Kingdom officials in allegedly tortious acts of the UK or other states overseas.

Mr Belhaj and his wife were detained in Kuala Lumpur in 2004. The respondents allege that MI6 informed the Libyan authorities of their whereabouts, leading to them being rendered to Libya against their will. They allege that they were unlawfully detained by Malaysian officials in Kuala Lumpur, Thai officials and US agents in Bangkok, and finally in Libya. They allege that the United Kingdom “arranged, assisted and encouraged” their rendition, as well as conspired in and assisted torture, inhumane and degrading treatment inflicted on them by the US and Libyan authorities.

Mr Rahmatullah was detained by British forces in Iraq on 28 February 2004 on suspicion of being a member of the proscribed organisation Lashkar-e-Taiba. Within a few days he was transferred into US custody. By the end of March 2004 the US authorities had transferred him to Bagram Airbase in Afghanistan, where he was detained by such authorities without charge for over ten years. Part of his claim is that, in relation to this ten year period, British officials acted in combination with the US authorities and/or assisted or encouraged his unlawful detention and mistreatment by the US authorities. *Rahmatullah* is said to be representative of other claims currently before the High Court.

The issues before the Court are whether, assuming for present purposes that the allegations made are true, the claims of UK complicity for unlawful detention and mistreatment overseas at the hands of foreign state officials are properly triable in the English courts. The appellants rely on the doctrines of state immunity and/or ‘foreign act of state’. In *Belhaj* the High Court held that there was no state immunity but that the claims were barred being based on foreign acts of state. The Court of Appeal affirmed the decision on state immunity but held the doctrine of foreign act of state to be: (i) limited to acts occurring within the jurisdiction of the relevant foreign state; and (ii) subject to a public policy exception for grave human rights violations. In *Rahmatullah*, the High Court held that neither doctrine applied. Both cases come before the Court on appeal, in the case of *Rahmatullah* by leapfrog order.

### JUDGMENT

The Supreme Court unanimously dismisses the Government’s appeals. Lord Mance gives the lead judgment. Lord Neuberger gives a concurring judgment, with which Lord Wilson, Lady Hale and Lord Clarke agree. Lord Sumption adds a further concurring judgment, with which Lord Hughes agrees.

## REASONS FOR THE JUDGMENT

State immunity is based on the sovereign equality of states and international comity [12]. The appellants submit that state immunity covers (under the concept of ‘indirect impleading’) cases where it is integral to a claim against United Kingdom authorities to prove that foreign officials acted contrary to their own laws. They rely on the concepts of “interests or activities” in Article 6(2)(b) of the 2004 UN Convention on Jurisdictional Immunities of States and Their Property [25]. However, the Court concludes that none of those concepts covers reputational disadvantage that could be suffered by foreign states [29, 195]. The relevant foreign states will not be affected in any legal sense by proceedings to which they are not party. The pleas of state immunity fail accordingly [31, 197].

Lord Mance identifies three types of foreign act of state rule recognised in current English authority, broadly also reflected in the judgment of Lord Neuberger. The first is a rule of private international law, whereby a foreign state’s legislation will normally be recognised and treated as valid, so far as it affects movable or immovable property within that state’s jurisdiction [35, 135]. The second rule (taking, without necessarily endorsing current Court of Appeal authority) goes no further than to preclude a domestic court from questioning the validity of a foreign state’s sovereign act in respect of property within its jurisdiction, at least in times of civil disorder [38, 74-78]. Even if this rule were, however, viewed as extending more generally to acts directed against the person, it would be subject to a public policy exception which would permit the allegations of complicity in torture, unlawful detention and enforced rendition in this case to be pursued in the English courts [80, 156]. Thirdly, a domestic court will treat as non-justiciable – or will refrain from adjudicating on or questioning – certain categories of sovereign act by a foreign state abroad, even if outside the jurisdiction of that state [40, 123]. Whether an issue is non-justiciable under the third rule falls to be considered on a case-by-case basis, having regard to the separation of powers and the sovereign nature of activities [90-95]. English law will take into account whether issues of fundamental rights are engaged, including liberty, access to justice and freedom from torture [98, 101]. The international relations consequences of a court adjudicating on an issue may also feed into the assessment under the third rule [41]. In this case, the circumstances do not lead to a conclusion that the issues are non-justiciable [96-105, 167-8].

Lord Neuberger underlines the limits of the foreign act of state doctrine. A public policy exception qualifies the first and (so far as it exists) second rules; and, if necessary, also the third rule [157].

Lord Sumption identifies in the case law two relevant principles: ‘municipal law act of state’ corresponding generally with the first two rules of Lord Mance’s framework [228], and ‘international law act of state’ corresponding generally with Lord Mance’s third rule. Municipal act of state is confined to acts done within the territory of the relevant foreign state [229]. International law act of state requires the English courts not to adjudicate on the lawfulness of the extraterritorial acts of foreign states in their dealings with other states or the subjects of other states, since these occur on the plane of international law [234]. But the doctrine does not apply simply because the subject-matter may incidentally disclose that a state has acted unlawfully and it is subject to a further public policy exception, potentially applicable in cases of violations of jus cogens under international law (fundamental norms from which no derogation is permitted) and of fundamental human rights [248].

It is unnecessary to decide whether: a) the UN Convention against Torture requires any modification of the doctrine of foreign act of state to give a universal civil remedy for torture [11(v)(a), 108]; b) Art. 6 of the European Convention on Human Rights precludes reliance on state immunity or foreign act of state; or to say more than that the appellants would face difficulties on each point [11(v)(b), 281-4].

In the result, state immunity is no bar to the claims, and the appellants have not, on the assumed facts, shown any entitlement to rely on the doctrine of foreign act of state to defeat the present proceedings. The appeals are dismissed and the cases may proceed to trial.

*References in square brackets are to paragraphs in the judgment*

**NOTE:** This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <http://supremecourt.uk/decided-cases/index.html>