

COUR DE CASSATION (COURT OF CASSATION)

MFM

PLENARY ASSEMBLY

Ruling of **25 July 2025**

QUASHING

M. SOULARD, First President

Ruling no. 685 B+R

Appeal no. C 24-84.393

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

RULING OF THE COURT OF CASSATION, sitting as a PLENARY ASSEMBLY, OF 25 JULY 2025

The prosecutor-general at the Cour d'appel (Court of Appeal) of Paris lodged an appeal against the ruling of the investigating chamber of the Cour d'appel (Court of Appeal) of Paris, 1st section, dated 26 June 2024, which, in the judicial investigation against an unnamed person, on charges of complicity in crimes against humanity and war crimes, ruled on the application for the annulment of documents of the proceedings.

By order dated 30 September 2024, the president of the criminal chamber ordered that the appeal be examined immediately.

By order dated 5 March 2025, the first president of the Cour de cassation (Court of cassation) ordered that the appeal be referred to the plenary assembly of the Cour de cassation (Court of cassation).

A written submission was filed by the prosecutor-general at the Cour d'appel (Court of Appeal) of Paris.

A written submission in defence to the appeal was filed to the registry of the Cour de cassation (Court of cassation) by SCP Sevaux et Mathonnet, counsel for Mr [G] [A], Ms [S] [B], Mr [I] [A], Ms [L] [A], Mr [A] [A] [K] and Ms [R] [A] [K], [D] [A] [S], the associations Civil Rights Defenders, Mnemonic, the Syrian Centre for Media and Freedom of Expression, Messrs [T][H], [M][H], [H][O], [H][M], and the Open Society Institute.

Observations were filed with the Cour de cassation (Court of cassation) registry by SCP Sevaux et Mathonnet, counsel for the defendants.

The written report of Ms Leprieur, judge, and the written advisory opinion of Mr Heitz, prosecutor-general, were made available to the parties.

On the report of Ms Leprieur, judge, assisted by Ms Camus, judge-auditor in the Documentation, Studies and Report Department, the observations of SCP Sevaux et Mathonnet, and the opinion of Mr Heitz, prosecutor-general, to which SCP Sevaux et Mathonnet, invited to reply, did not wish to reply, after the debates at the public hearing of 4 July 2025 at which were present Mr Soulard, first president, Mr Bonnal, Mr Vigneau, Ms Champalaune, Ms Martinel, presidents, Mr Huglo, Mr Boyer, elder judges of chambers acting as presidents, Ms Leprieur, reporting judge, Ms de la Lance, Ms Duval-Arnould, Mr Ponsot, elder judges, Ms Mariette, Ms Renaud-Malignac, Ms Proust, judges acting as elder judges of chambers, Ms Guihal, Ms Degouys, Ms Isola, Ms de Lacaussade, Ms Foucher-Gros, judges, Mr Heitz, prosecutor-general, and Ms Mégnien, senior registrar,

the Cour de cassation (Court of cassation), sitting in plenary assembly, composed of the first president, the presidents, the elder judges of the chambers and the aforementioned judges, having deliberated in accordance with the law, has delivered the present ruling.

Facts and procedure

1. It follows from the ruling under appeal and the documents in the proceedings that

2. On 4 March 2021, Mrs [S] [B], of French and Syrian nationality, and an association lodged a complaint as a civil party against an unnamed person for crimes against humanity and war crimes. Ms [B] complained that she and her family had been the target of two chemical attacks in Syria, the first on 5 August 2013 in Douma and the second on 21 August in the outskirts of the city.

3. On 26 April 2021, an investigation was opened against an unnamed person for crimes against humanity and war crimes, committed in Syria in August 2013.

4. According to the ruling under appeal, the judicial investigation established that two chemical attacks using sarin gas had taken place on 5 and 21 August 2013 in Syria, targeting the civilian population of Adra, Douma and Eastern Ghouta, that they had been carried out by Syrian military units and were part of a general military strategy of an offensive by the Syrian army in Eastern Ghouta. The use of chemical weapons by the Syrian State was shown to depend on a specific chain of command, placed under the direct orders of the President, Mr [B] [X].

5. On 13 November 2023, the investigating judges issued an arrest warrant for Mr [B] [X] on charges of complicity in crimes against humanity and war crimes.

6. By application dated 19 December 2023, the national anti-terrorism prosecutor applied to the investigating chamber for a ruling on the legality of this arrest warrant.

Reviewing the plea

Statement of the plea

7. The plea alleges infringement of international custom relating to the personal immunity of Heads of State In-Office, and of Article 591 of the criminal procedure code.

8. It objects to the ruling under appeal that it held that there was no need to annul the arrest warrant issued for Mr [B] [X], whereas:

1°/ the personal immunity recognised by international custom covers all acts committed by the Head of State, whether in an official capacity or in a private capacity, so that even supposing that the acts

complained of could be described as acts detachable from the functions, this circumstance alone would not be sufficient to exclude the benefit of this immunity; that, moreover, the acts in question could not be described as acts detachable from the functions;

2°/ the personal immunity of the Head of State, a fundamental principle of the international legal order, deriving from the principle of the sovereign equality of States, remains absolute before the national courts ; that although the Cour de cassation (Court of cassation) has reserved the possibility of an exception, which would fall within the jurisdiction of the international community, it has never admitted it; that the international courts have not established the existence, in customary international law, of an exception to this rule and that international doctrine agrees on the absolute nature of personal immunity;

3°/ that the right of access to a court is not absolute and does not preclude a limitation of that right arising from the immunity of foreign States and their representatives; moreover, the immunity from jurisdiction of a Head of State-In-Office does not mean that he enjoys impunity in respect of crimes that he may have committed.

The Court's response

Having regard to the general principles of international law relating to immunity from jurisdiction of Heads of State-In-Office:

9. Immunity from criminal jurisdiction derives from the sovereign equality of States.

10. It applies before national courts. The principle of immunity cannot be invoked before international courts, whose statutes expressly exclude any immunity, and which act on behalf of the international community.

11. Personal immunity, which is distinct from functional immunity, is granted only to Heads of State-In-Office, Heads of Government and Ministers for Foreign Affairs. It applies to all acts performed, whether in a private or official capacity.

12. Since personal immunity constitutes a clear procedural obstacle to the exercise of jurisdiction by a national court, it must be examined *ex officio* by the court.

13. The purpose of personal immunity, which is based on international custom, is to enable the exercise of the sovereign functions of

international representation and to protect a sovereign State from any foreign interference.

14. The principle of the sovereign equality of States, which means that all States are equal members of the international community, notwithstanding differences of an economic, social, political or other nature, includes the inviolability of the political independence of the State (United Nations General Assembly Resolution 2625 (XXV) of 24 October 1970 on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations).

15. Furthermore, article 29 of the Vienna Convention on Diplomatic Relations of 18 April 1961 provides that the person of a diplomatic agent is inviolable and that he or she may not be subjected to any form of arrest or detention. The International Court of Justice has ruled that the rule of customary international law reflected in this article, although concerning diplomatic agents, is necessarily applicable to Heads of State (ICJ, Ruling of 4 June 2008, Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France), § 174).

16. The purpose of personal immunity, thus defined, requires that it not be linked to the recognition of the status of Head of State by the *forum* State or to the existence of diplomatic relations between the two States.

17. The recognition of a government is a unilateral, political act by which a State grants that government rights in their bilateral relations. Customary international law does not prescribe an obligation of recognition and does not regulate either the conditions or the effects on immunities of such a discretionary act.

18. If personal immunity were to be made conditional on recognition, the result would be to confer on each State, whether democratic or not, the discretionary power to authorise criminal proceedings in its courts against a foreign Head of State. This would undermine the very substance of personal immunity.

19. It follows from all these factors that a unilateral act by which a State decides to no longer recognise a government cannot affect the personal immunity of a Head of State-In-Office by derogating from international custom.

20. It must therefore be held that Mr [B] [X] is entitled to personal immunity, without it being necessary to assess whether, on the date of the proceedings, he was recognised by France as a Head of State.

21. Furthermore, the lawfulness of an arrest warrant in terms of the immunity law must be assessed on the basis of the factual situation on the day it was issued.

22. Thus, the loss by Mr [B] [X] of the status of Head of State-In-Office subsequent to the issue of the arrest warrant cannot affect the validity of that act.

23. The present appeal therefore raises the question of whether, in international law, there are exceptions to immunity from personal criminal jurisdiction.

24. The Cour de cassation (Court of cassation) has ruled that international custom precludes Heads of State-In-Office from being prosecuted in the criminal courts of a foreign State, in the absence of international provisions to the contrary binding on the parties concerned (Crim., 13 March 2001, appeal no. 00-87.215, Bull. crim. 2001, no. 64).

25. It added that it is up to the international community to set any limits to this principle, where it may come in conflict with other values recognised by that community, in particular the prohibition of torture. It held that the crime of torture and acts of barbarism, however serious, do not fall within the scope of the exceptions to the principle of immunity from jurisdiction of foreign Heads of State-In-Office (Crim., 2 September 2020, Appeal no. 18-84.682, published in the Bulletin).

26. Although the Cour de cassation (Court of cassation) has accepted the possibility of exceptions to the principle of immunity from personal jurisdiction, it has never recognised any in practice. It has ruled in cases involving neither crimes against humanity nor war crimes.

27. It is therefore necessary to determine whether the principle of personal immunity can be invoked when the acts being prosecuted constitute international crimes by their very nature, such as genocide, crimes against humanity or war crimes.

28. Firstly, it has been argued that international crimes cannot be regarded as falling within the legitimate exercise of official functions by a Head of State and cannot therefore be covered by personal immunity from jurisdiction.

29. However, immunity in criminal matters applies, as a matter of principle, to acts that do not fall within the normal exercise of functions and the personal immunity of a Head of State-In-Office is not limited to acts of sovereignty.

30. Moreover, certain international crimes necessarily involve the exercise of State prerogatives. In French law, article 212-1, 10°, of the criminal code states that acts of segregation committed as part of an institutionalised regime of systematic oppression and domination of one racial group over any other racial group or groups and with the intention of maintaining that regime constitute a crime against humanity.

31. Secondly, it has also been argued, in order to remove crimes against humanity and war crimes from the scope of personal immunity, that they violate norms of *jus cogens*, which, according to Article 53 of the Vienna Convention of 23 May 1969 on the Law of Treaties, are peremptory norms of general international law accepted and recognised by the international community of States as a whole.

32. As it stands, however, international law does not recognise any exception to personal immunity on the grounds that the crime in question is prohibited by such a peremptory norm.

33. The International Court of Justice, ruling on the civil immunity of a State, has ruled out the existence of a conflict of norms between the rules of *jus cogens* and those of customary law relating to immunity. According to the Court, the rules governing immunity, which are confined to determining whether or not the courts of one State may exercise jurisdiction in respect of another State, do not bear upon the question of whether or not the conduct in respect of which the proceedings are brought is lawful or unlawful (ICJ, ruling of 3 February 2012, Jurisdictional Immunities of the State (Germany v. Italy; Greece (intervening)), § 93). This analysis appears to be transposable to personal immunity from jurisdiction in criminal matters.

34. According to the European Court of Human Rights, the benefit of immunity must not be regarded as a limitation of a substantive right, but as a procedural obstacle to the jurisdiction of national courts and tribunals to rule on that right (ECHR, decision of 23 May 2024, *M.M. v. France*, no. 13303/21).

35. Immunity does not equate to impunity. It does not exonerate the person benefiting from it from criminal responsibility.

36. Firstly, the crimes of which a Head of State is accused may be tried before the national courts of his own country or, in certain cases, before an international or *ad hoc* criminal court.

37. Secondly, personal immunity is temporary, as it is limited to the period of office. After ceasing to hold office, a Head of State is likely to benefit from functional immunity. As the Cour de cassation (Court of cassation) now holds, functional immunity cannot be invoked in the event of prosecution for genocide, crimes against humanity and war crimes (Plenary assembly., 25 July 2025, Appeal no. 24-84.071, published in the Bulletin).

38. Thirdly, international custom does not recognise any exception or limitation to the rule enshrining the immunity of a Head of State-In-Office from criminal jurisdiction where he or she is suspected of having committed international crimes, such as crimes against humanity or war crimes.

39. The Special Rapporteur of the United Nations International Law Commission, in her fifth report on the immunity of State officials from foreign criminal jurisdiction, concluded that it is not possible to determine, on the basis of practice, the existence of a customary rule allowing the application of limits or exceptions to personal immunity, nor to identify a trend in favour of this rule (14 June 2016, A/CN.4/701, § 240).

40. In this respect, although the House of Lords ruled on 24 March 1999 that Augusto Pinochet enjoyed immunity from jurisdiction for all acts performed before 8 December 1988, the date on which the United Kingdom ratified the Convention on Torture, he could not enjoy immunity after that date (*Regina v. Bartle and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet and Regina v.*

Evans and Another and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet, R v. [1999] UKHL 17, 24 March 1999), this decision does not concern the personal immunity of a Head of State-In-Office, but the functional immunity of a former Head of State.

41. In 2024, the Drafting Committee of the International Law Commission provisionally adopted draft Article 4 on the scope of personal immunity, according to which this immunity covers all acts performed, whether in a private or an official capacity, by Heads of State, Heads of Government and Ministers for Foreign Affairs during or prior to their period of office. No exceptions or limitations are provided for (23 July 2024, A/CN.4/L.1001).

42. In addition, while the UN Security Council has adopted various resolutions relating to Syria, including the resolution of 27 September 2013 that those responsible for the use of chemical weapons in the Syrian Arab Republic must be held accountable, such resolutions have no effect as regards immunities. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 13 January 1993 contains no provision concerning immunities.

43. It follows from the foregoing that, as international law stands, crimes against humanity and war crimes are not exceptions to the principle of immunity from jurisdiction of foreign Heads of State-In-Office.

44. This solution is not contrary to the right of access to a court, as guaranteed by article 6 of the European Convention on Human Rights, which is not absolute and does not preclude a limitation arising from the immunity of foreign States and their representatives, provided that this limitation is enshrined in international law and does not go beyond the generally recognised rules on State immunity (Crim., 2 September 2020, Appeal no. 18-84.682, published in the Bulletin).

45. In this case, in order to rule out the nullity of the arrest warrant issued for Mr [B] [X], the ruling under appeal states that international law now provides for exceptions to the principle of personal immunity in respect of genocide, crimes against humanity and war crimes.

46. After stating that, while the purpose of personal immunity is to enable the Head of State to exercise his functions of international representation normally, this objective must be set aside when the Head of State falls outside the scope of that protection, the judges found that Mr [B] [X] had excluded himself from the scope of personal

immunity by using chemical weapons against his own population, which did not constitute an act falling within the normal functions of a Head of State.

47. They point out that the use of such chemical weapons is formally prohibited by a peremptory norm of international law, either as an autonomous act or as constituting an international crime.

48. They added that the international crimes in question could not be regarded as forming part of the official functions of a Head of State, and were therefore detachable from the sovereignty naturally attached to those functions.

49. According to the judges, this was the view of the United Nations Security Council, which adopted resolutions demanding that the perpetrators of the crimes constituted by the 2013 chemical attacks in Syria be prosecuted, regardless of their official capacity.

50. Finally, to rule out immunity, the judges emphasised that Syria would never prosecute Mr [B] [X] for these crimes, that it would never waive the personal immunity of its President, and that no international court had jurisdiction, as Syria was not a party to the Rome Statute.

51. In so ruling, the investigating chamber disregarded the principles recalled and set out above.

52. The ruling must therefore be quashed.

Scope and consequences of the cassation

53. The ruling will be quashed without referral, as the Cour de cassation (Court of cassation) is able to apply the rule of law directly and put an end to the dispute, as permitted by article L. 411-3 of the judicial code.

54. The arrest warrant of 13 November 2023 should therefore be annulled. For the reasons set out in paragraph 37, this annulment has no bearing on the validity of an arrest warrant issued after the loss of the status of Head of State-In-Office.

FOR THESE REASONS, the Court:

QUASHES AND SETS ASIDE, in all its provisions, the aforementioned ruling of the investigating chamber of the Cour d'appel (Court of Appeal) of Paris, dated 26 June 2024;

DECLARES that there is no need to refer back the case;

DECLARES that the arrest warrant issued on 13 November 2023 for Mr [B] [X] is null and void;

RULES that there are no grounds for applying article 618-1 of the criminal procedure code;

ORDERS that this ruling be printed, entered in the registry of the investigating chamber of the Cour d'appel (Court of Appeal) of Paris and mentioned in the margin or following the annulled ruling;

Thus decided by the Cour de cassation (Court of cassation), sitting in plenary assembly, and pronounced by the first president at its public hearing on the twenty-fifth of July two thousand and twenty-five.

THE REPORTING JUDGE

THE FIRST PRESIDENT

THE SENIOR REGISTRAR