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INTRODUCTORY NOTE TO RULING NO. 684 B+R3 (CASS.)

BY APOLLIN KOAGNE ZOUAPET*

[July 25, 2025]

Abstract: On July 25, 2025, the French Court of Cassation handed down an important decision concerning the existence in international law of possible exceptions to the functional immunity of agents of a foreign state. The Court of Cassation reached the conclusion that the "principle of functional immunity from jurisdiction in criminal matters" recognized for foreign agents acting in the exercise of their functions cannot be invoked in cases of prosecutions for genocide, crimes against humanity, and war crimes. However, the Court's internationalist approach, which sought to identify the evolution of custom on the issue by examining relevant state practice, remains exclusively Eurocentric, by examining the practice of only five states, all from the same region of the world.

Introduction

On July 25, 2025, the French Court of Cassation, Plenary Assembly issued two important decisions concerning the scope of criminal immunity for heads of state and foreign agents before French courts.[1] Although the two decisions relate to separate cases, they must be read together to understand the French court's approach to the issue of jurisdictional immunities of foreign officials and agents. In the decision presented below,[2] the Court of Cassation affirms that the "principle of functional immunity from jurisdiction in criminal matters," recognized for foreign agents acting in the exercise of their functions, cannot be invoked in cases of prosecutions for genocide, crimes against humanity, and war crimes.

Background

The case, like the second one involving the then Syrian president (now in exile), arose in the context of the chemical attacks committed in August 2023 in Eastern Ghouta, during the civil war in Syria. On December 20, 2022, following a preliminary investigation initiated by the public prosecution of the Tribunal judiciaire of Paris, and based on domestic provisions relating to the personal jurisdiction of French courts, French *juges d'instruction* charged Mr A.X., known as A.Y., a Franco-Syrian national, with complicity in crimes against humanity and war crimes, aggravated money laundering, and conspiracy to commit a criminal offence. He was subsequently placed under judicial supervision.

Subject to European Union sanctions in his personal capacity, Mr A.X. served as Governor of the Syrian Central Bank from 2011 to July 2016, before becoming Minister for the Economy and Foreign Trade until April 2017. He is suspected of having set up financial arrangements while in office from 2011 to July 2016 for the purpose of circumventing those sanctions and supporting the regime then in power in Syria. He is also alleged to have enabled the Syrian Central Bank to cooperate with a company involved in the design and development of chemical weapons for the Syrian government by placing all the services under his control at the disposal of the intelligence units.

On June 20, 2023, Mr A.X. requested the Investigating Chamber of the Paris Court of Appeal to have the charges against him dismissed. He argued that the functional immunity he enjoys as a former agent of a foreign state prevents him from being prosecuted by the French courts for acts committed in the course of his duties. The Investigating Chamber rejected this argument and confirmed the indictment in a ruling dated June 5, 2024. Mr A.X. then lodged an appeal against the ruling of the Chamber before the Court of Cassation, which had to rule on the existence of an exception of functional immunity under international law for the benefit of the applicant.

The Court of Cassation Decision

On the issue of immunities, the Court of Cassation began by defining the functional immunity claimed by Mr A.X. Drawing in particular on its previous case law, the Court affirmed that the functional immunity granted to state agents in the exercise of their functions precludes such agents, in the absence of international provisions to the contrary binding on the parties concerned, from being prosecuted for acts falling within this category before the criminal

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courts of a foreign state.[3] The Court also asserted, without indicating the basis on which it relies, that, by contrast, the "principle of immunity" does not apply before international courts acting "on behalf of the international community," whose statutes expressly exclude any immunity.[4]

Looking next at whether exceptions to functional immunity have developed in international law, the Court noted that the conclusion of the International Court of Justice (ICJ) in its judgment of February 3, 2012, according to which a state is not deprived of immunity by reason of the fact that it is accused of serious violations of the international human rights law or the international law of armed conflict, does not cover the case of criminal proceedings brought against an official of the state.[5] The Court of Cassation further noted that the fight against impunity, combined with the principle of individual criminal responsibility, has led the international community to accept exceptions to functional immunity from criminal jurisdiction where the acts being prosecuted constitute "international crimes by their very nature," such as genocide, crimes against humanity, or war crimes. It based this conclusion in particular on a decision of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia;[6] two decisions of foreign national courts (Swiss Federal Court and German Federal Court of Justice);[7] a resolution of the Institute of International Law;[8] the work of the United Nations International Law Commission on the immunity of state representatives from foreign criminal jurisdiction, in particular draft article 7 adopted in May 2025;[9] and foreign legislation that would exclude the application of functional immunity for international crimes (Spain, Austria, Germany).[10]

On the basis of these elements, the Court of Cassation asserted that there is "significant State practice" and a "development in international custom," to which it intends to contribute, consisting in setting aside functional immunity in cases of international crimes.[11] The plea of Mr A.X. was consequently dismissed.

Conclusion

The decision of the French Court of Cassation is a further step towards the establishment of an anthropocentric international legal order in which state sovereignty can no longer be used as a cover for the most serious crimes. As a symbol of state-centered international law, the system of immunities must adapt to take account of the realities of a changing international society. That said, the process is ongoing, and one cannot—as the Court of Cassation does—both assert its contribution to the process and claim that the result has been achieved. A thing cannot be and not be at the same time.

Some of the Court's positions may also give pause for thought. This is the case, for example, with its assertion that immunities cannot be invoked and applied before an international court whose statutes expressly exclude any immunity. The Court does not explain why what certain states cannot do on their own (prosecute a foreign state agent before their courts) becomes possible once they constitute a group and can impose it on states that have not consented to it. The Court of Cassation's conclusion ignores the tension that exists, for example, between Articles 27(1) and 98(1) of the Rome Statute and the differences between states in their interpretation and articulation.[12]

Questions may also be raised about the "significant State practice" on which France's highest court relied in reaching its conclusion that international custom regarding the functional immunity of state agents has evolved. The Court has taken an exclusively European-centric approach to examining the practice of states and seems to ignore the fact that, according to Article 38 (1)(b) of the Statute of the ICJ, which is accepted as defining custom in international law, international custom can only result from "a general practice accepted as law." Whether it is the emergence of a customary norm or its subsequent modification, "The relevant practice must be general, meaning that it must be sufficiently widespread and representative, as well as consistent."[13] The legislation and decisions of the courts of five European states cannot be taken as evidence of such a general practice.

With this reductive approach, the Court of Cassation disregards the diverse practice, which is not as uniform and consistent as the judgment might suggest.[14] Indeed, many states only accept very limited exceptions to immunities, whether those granted to states or to their leaders, representatives, or agents. For those states, immunities still play a very useful social role, notably by preventing certain states from demonstrating their de facto "supremacy" due to their power, and by preserving the achievements and principles of the Westphalian

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system.[15] In a context where these principles are increasingly being challenged by certain states, including some of the most powerful, there is a need to avoid a situation where the values of the international community are in reality nothing more than an ideological Trojan horse enabling certain states to establish their domination. It is also incumbent upon national judges not to open the way—even unintentionally—to such abuses.

NOTES

1 Cour de cassation [Cass.] [supreme court for judicial matters] crim., Juil. 25, 2025, n° 24-84.071, (B) (R), PL; Cour de cassation [Cass.] [supreme court for judicial matters] crim., Juil. 13, 2025, n° 24-84.393, (B) (R), PL.

2 No. 24-84.071, (B) (R), PL [hereinafter Decision].

3 Decision, ¶¶ 9, 11–14.

4 *Id.* ¶ 10.

5 *Id.* ¶ 19.

6 *Id.* ¶ 18.

7 *Id.* ¶ 20–22.

8 *Id.* ¶ 23.

9 *Id.* ¶¶ 24–26.

10 *Id.* ¶ 27–30.

11 *Id.* ¶¶ 31–33.

12 *See* Apollin, Koagne Zouapet, LES IMMUNITES DANS L'ORDRE JURIDIQUE INTERNATIONAL. LE PRISME DE LA CONSTANCE (Pedone, 2020) 334–366.

13 Conclusion 8, *ILC's Draft Conclusions on Identification Of Customary International Law*, Y.B. INT'L L. COMM'N (2018).

14 *See* Régis Bismuth et al., SOVEREIGN IMMUNITY UNDER PRESSURE (Springer 2022).

15 Koagne Zouapet, *supra* note 12, p. 435.

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RULING NO. 684 B+R3 (CASS.)*
[July 25, 2025]

COUR DE CASSATION (COURT OF CASSATION)

MFM

PLENARY ASSEMBLY

Ruling of **25 July 2025**

DISMISSAL

M. SOULARD, First President

Ruling no. 684 B+R

Appeal no. C 24-84.071

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

RULING OF THE COUR DE CASSATION (COURT OF CASSATION), sitting as a PLENARY ASSEMBLY, OF 25 JULY 2025

Mr [A] [X], known as [A] [Y], lodged an appeal against the ruling of the investigating chamber of the Paris Cour d'appel (Court of Appeal) of 5 June 2024, which, in the judicial investigation against him for complicity in crimes against humanity and war crimes, aggravated money laundering and conspiracy to commit a criminal offence, ruled on his request 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 heard 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).

The appellant raised one plea before the plenary assembly.

This plea was set out in a written submission filed with the registry of the Cour de cassation (Court of cassation) by SARL Matuchansky, Poupot, Valdelièvre et Rameix, counsel for Mr [A] [X], known as [A] [Y].

A written submission of defence was filed with the Cour de cassation (Court of cassation) registry by SCP Piwnica et Molinié, counsel for the International Federation for Human Rights and the Syrian Centre for Media and Freedom of Expression.

Observations were filed with the Cour de cassation (Court of cassation) registry by SARL Matuchansky, Poupot, Valdelièvre and Rameix, counsel for Mr [A] [X], known as [A] [Y].

The written report of Ms Leprieur, judge, and the written advisory opinion of Ms Djemni-Wagner, advocate-general, were made available to the parties.

*This text was reproduced and reformatted from the text available on the Cour de Cassation website (visited January 13, 2026), https://www.courdecassation.fr/files/files/Communiqu%C3%A9s/Immunit%C3%A9%20chefs%20d%27Etats%20%C3%A9trangers/Ruling_n%C2%B01_25_July_2025.pdf. It is an official translation from the Court. The original French language version follows.

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On the report of Ms Leprieur, judge, assisted by Ms Camus, judge-auditor in the Documentation, Studies and Report Department, the observations of SARL Matuchansky, Poupot, Valdelièvre et Rameix, of SCP Piwnica et Molinié, and the opinion of Ms Djemni-Wagner, advocate-general, among the parties, who were invited to do so, SARL Matuchansky, Poupot, Valdelièvre et Rameix replied, after 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 of chambers, 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, Ms Djemni-Wagner, advocate-general, and Ms Mégnien, senior registrar, the Cour de cassation (Court of cassation), 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. In the course of a preliminary investigation initiated by the public prosecution of the Tribunal judiciaire of Paris (first instance Court of Paris), it was found that Mr [A] [X], known as [A] [Y], who has dual French and Syrian nationality, was subject to European Union sanctions in his personal capacity as Governor of the Central Bank of Syria, a position he held from 2011 to July 2016, before becoming Minister for the Economy and Foreign Trade until April 2017.
3. According to the ruling under appeal, financial arrangements put in place by Mr [A] [X] to circumvent the sanctions and support the regime were uncovered. In addition, cooperation was allegedly established between the Syrian central bank and the company directly involved in the design and development of chemical weapons for the Syrian government.
4. Mr [A] [X] was indicted on 20 December 2022 on charges of complicity in crimes against humanity and war crimes, laundering the proceeds of such crimes and participating in groups formed to prepare such crimes. He was placed under judicial supervision.
5. By application dated 20 June 2023, Mr CCC sought to have his indictment annulled.

Reviewing the plea

Statement of the plea

6. The plea objects to the ruling under appeal that insofar as it dismissed the application to annul the indictment of Mr [A] [X] and ruled that there was no need to annul any act or document of the proceedings, whereas "international custom precludes the officials of a State, in the absence of international provisions to the contrary binding on the parties concerned, from being prosecuted in the criminal courts of a foreign State for acts falling within the exercise of the sovereignty of the State; that it is for the international community alone to set any limits to this principle, when it may be in conflict with other values recognised by that community, and in particular that of the prohibition of war crimes and crimes against humanity; that, as international law currently stands, such crimes, however serious, are not exceptions to the principle of immunity from jurisdiction ; that, in holding that Mr [A] [X] could not rely on the functional immunity granted to officials of a foreign State before the French courts and consequently rejecting his request for annulment, the investigating chamber, after noting that the acts of which Mr [A] [X] was accused constituted acts falling within the sovereignty of the Syrian State and that they had allegedly been committed in the performance of his duties as Governor of the Central Bank of Syria (ruling under appeal, pp.14-16), held that, by virtue of an evolving interpretation of the immunity law, war crimes and crimes against humanity constituted an exception justifying the exclusion of Mr Mr [A] [X] from the benefit of the functional immunity to which he was entitled (ruling under appeal, pp. 17-18); that, by thus applying an exception to the principle of immunity from jurisdiction that is not currently enshrined by the international community, the investigating chamber infringed the principles of international law relating to immunity from the jurisdiction of foreign States.

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Court's response

7. The question of the jurisdiction of the court is prior to that of immunity. However, the question of the jurisdiction of the French courts to hear cases of complicity committed abroad by a French national is disputed when, as in the present case, the principal perpetrator is a foreign national.
8. Article 121-6 of the criminal code provides that an accomplice to an offence will be punished in the same way as the perpetrator. It should therefore be stated that the combined provisions of articles 689 of the criminal procedure code, 113-6 and 121-6 of the criminal code allow French courts to retain jurisdiction over acts of complicity committed abroad by a person of French nationality, even if the offence was committed abroad by a foreign principal offender.
9. Immunity from criminal jurisdiction is based on 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. Functional immunity from jurisdiction, as distinct from personal immunity, is granted to public officials acting in the exercise of their functions. It is not limited in time and remains in effect once the official has ceased to hold office.
12. The Cour de cassation (Court of cassation) has ruled that international custom, which precludes the prosecution of States before the criminal courts of a foreign State, extends to bodies and entities that constitute an emanation of the State, as well as to their officials, in respect of acts that fall within the sovereignty of the State concerned (Crim, 23 November 2004, appeal no. 04-84.265, Bull. crim. 2004, no. 292; Crim. 19 January 2010, appeal no. 09-84.818, Bull. crim. 2010, no. 9).
13. Reaffirming its case law, according to which international custom precludes the officials of a State, in the absence of international provisions to the contrary binding on the parties concerned, from being prosecuted for acts falling into this category before the criminal courts of a foreign State, it added that it is up to the international community to set any limits to the principle of immunity, where it may be in conflict with other values recognised by that community. It stated that, as international law stands, the crime of torture and acts of barbarism, however serious, do not fall within the exceptions to the principle of immunity from jurisdiction (Crim., 13 January 2021, Appeal no. 20-80.511, published in the Bulletin).
14. While the Cour de cassation (Court of cassation) has thus accepted the possibility of exceptions to the principle of functional immunity from jurisdiction, it has never actually recognised any. It has ruled in cases that involved neither crimes against humanity nor war crimes.
15. The present appeal raises the question of whether, under international law, there are exceptions to functional immunity from criminal jurisdiction where the acts being prosecuted constitute international crimes by their very nature, such as genocide, crimes against humanity or war crimes.
16. The international community's objective is to strengthen the fight against impunity for these crimes, which are characterised by acts that run counter to the values, norms and fundamental legal principles recognised by the said community and threaten, in the words of the preamble to the Rome Statute of the International Criminal Court signed in Rome on 18 July 1998, "peace, security and the well-being of the world".
17. This objective of combating impunity, combined with the principle of individual criminal responsibility, has led the international community to seek a fair balance with the principle of the sovereign equality of States, with a view to reconciling various rights protected by international law, namely, on the one hand, that of the State of the agent, consisting of protection from any foreign interference of the functions performed by its representatives, and on the other hand, that of the *forum* State, deriving from its power to judge international crimes.
18. Thus, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia, in a ruling of 29 October 1997, stated that those responsible for genocide, crimes against humanity and war crimes cannot invoke immunity from national or international courts, even if they perpetrated such crimes while acting in their official capacity (ICTY, Appeals Chamber, ruling of 29 October 1997, Prosecutor v Blaskic, case IT-95-14-AR 108 bis, § 41).
19. While the International Court of Justice, in its ruling on State jurisdictional immunities of 3 February 2012, noted that, as customary international law presently stands, a State is not deprived of immunity by reason of the fact that it is accused of serious violations of the international human rights law or the international law of armed conflict, it emphasized that it was addressing only the immunity of the State itself from the jurisdiction of the courts of other States and reserved the question of whether, and if so to what extent, immunity might apply in the context of criminal proceedings brought against an official of the State (ICJ, Ruling of 3 February 2012, Jurisdictional Immunities of the State (Germany v. Italy; Greece (intervening), § 91)).
20. Various foreign national courts have ruled out functional immunity in the case of international crimes.

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21. The Federal Supreme Court of Switzerland ruled out the functional immunity of a former defence minister accused of war crimes and acts of torture, holding that it is generally recognised that the prohibition of serious crimes against humanity, including torture, is customary in nature (Federal Supreme Court, ruling of 25 July 2012 - BB.2011.140).
22. Similarly, the German Federal Court of Justice, in its order of 21 February 2024, stated that the general functional immunity of public officials does not apply to crimes under international law, regardless of the status and rank of the perpetrator. It noted that this functional immunity for foreign officials is excluded in the case of crimes against international criminal law is an indisputable part of customary international law (BGH Decision 21.02.2024 - AK 4/24, Rn. 53).
23. Furthermore, in 2009, the Institute of International Law adopted a resolution on the immunity from jurisdiction of the State and its officials in the case of international crimes, providing that "No immunity from jurisdiction other than personal immunity in accordance with international law applies with regard to international crimes " (Institute of International Law, Napoli Session, 2009, Resolution on the Immunity from Jurisdiction of the State and of Persons Who Act on Behalf of the State in case of International Crimes, Article III.1).
24. The United Nations International Law Commission, in its Fifth report on the immunity of State officials from foreign criminal jurisdiction, found that there is a customary norm that international crimes constitute a limit or exception to immunity. It adopted, as of 2017, a draft article 7 according to which immunity *ratione materiae* from the exercise of foreign criminal jurisdiction shall not apply in relation to the international law crimes of genocide, crimes against humanity, war crimes, apartheid, torture and enforced disappearances (A/CN.4/701, 14 June 2016).
25. In its report on the seventy-third session, the International Law Commission stated that the adoption of this text was justified by taking into account "of the strides made in international criminal law in terms of defining and punishing the most serious crimes under international law, defining the principle of accountability as one of its constituent elements, and consolidating the fight against impunity as a goal of the international community." (A/77/10, 18 April-3 June and 4 July-5 August 2022).
26. On 12 May 2025, the Commission's drafting committee provisionally adopted this draft Article 7.
27. In addition, foreign legislation has excluded the application of functional immunity for international crimes.
28. Thus, in Spain, Article 23 of the Organic Law of 27 October 2015 on Immunities provides that functional immunity must be excluded for international crimes, namely crimes against humanity, genocide and war crimes.
29. On 5 July 2022, Austria issued a decree clarifying that representatives other than Heads of State-In-Office, Heads of Government and Ministers of Foreign Affairs do not enjoy immunity *ratione materiae* for the crime of genocide, crimes against humanity, war crimes, the crime of aggression and torture.
30. In Germany, following the aforementioned decision of the German Federal Court of Justice, the case law was codified on 6 June 2024, with the judicial code now providing that functional immunity does not prevent the extension of German jurisdiction to the prosecution of crimes covered by the International Criminal Code.
31. It can be deduced from these elements that there is significant State practice consisting in setting aside, as a matter of law, functional immunity in the case of international crimes.
32. This development in international custom, to which the Cour de cassation (Court of cassation) intends to contribute, defines a new balance between immunities and the fight against impunity.
33. It should therefore be held that, subject to the provisions of international conventions, in particular those relating to diplomatic and consular relations, the principle of functional immunity from jurisdiction in criminal matters cannot be invoked in the case of prosecutions for genocide, crimes against humanity and war crimes.
34. In dismissing the plea that Mr [A] [X]'sindictment was null and void, the ruling under appeal noted, firstly, that the person concerned, who became a naturalised French citizen in 1993 and had held the position of Governor of the Central Bank of Syria between 2011 and 2016, had participated in the violent repression of the population by placing all of the services for which he was responsible at the disposal of the intelligence units.
35. The judges went on to note that the Central Bank of Syria had no real independence from the Syrian State, of which it appears to be an emanation. From this they deduced that its officials, including its Governor, who performed his duties under the authority of the executive, were likely to benefit from functional criminal immunity.
36. As regards the laundering of the proceeds of crimes against humanity and war crimes, they held that the material elements of that offence were not part of the continuity of acts falling within the sovereignty of the State and were excluded from the scope of immunity.
37. However, they stated that other acts intrinsically linked to the functions of governor of the central bank, characterized as complicity in crimes against humanity and war crimes, were not to be analysed as private acts of administrative or

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commercial management within the meaning of the case law, but as acts of public authority falling within the sovereignty of the State, which are therefore likely to entitle their perpetrator to immunity from jurisdiction.

38. The judges held that the latter crimes, for which Mr [A] [X] was being indicted, nevertheless fell into the category of the most serious crimes because of the harm they caused to the population and to the fundamental values of democratic States.
39. They deduced that the nature of the offences with which he was charged constituted an exception justifying the exclusion of the benefit of functional immunity before the French courts.
40. In so ruling, the investigating chamber did not disregard the principles referred to in the plea.
41. Accordingly, the plea must be dismissed.
42. Moreover, the ruling is procedurally correct.

FOR THESE REASONS, the Court :

DISMISSES the appeal;

SETS at 3,000 euros the total sum that Mr [A] [X] must pay to the International Federation for Human Rights and the Syrian Centre for Media and Freedom of Expression pursuant to article 618-1 of the criminal procedure code.

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.

[SIGNATURES]

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COUR DE CASSATION MFM

ASSEMBLÉE PLÉNIÈRE

Arrêt du 25 juillet 2025

REJET

M. SOULARD, premier président

Arrêt n° 684 B+R

Pourvoi n° C 24-84.071

R É P U B L I Q U E F R A N Ç A I S E

AU NOM DU PEUPLE FRANÇAIS

ARRÊT DE LA COUR DE CASSATION, siégeant en ASSEMBLÉE PLÉNIÈRE, DU 25 JUILLET 2025

M. [Y] [K] dit [Y] [K], a formé un pourvoi contre l'arrêt de la chambre de l'instruction de la cour d'appel de Paris, en date du 5 juin 2024, qui, dans l'information suivie contre lui des chefs de complicité de crimes contre l'humanité et de crimes de guerre, blanchiment aggravé et associations de malfaiteurs, a prononcé sur sa demande d'annulation de pièces de la procédure.

Par ordonnance du 30 septembre 2024, le président de la chambre criminelle a prescrit l'examen immédiat du pourvoi.

Par ordonnance en date du 5 mars 2025, le premier président de la Cour de cassation a ordonné le renvoi de l'examen du pourvoi devant l'assemblée plénière de ladite Cour.

Le demandeur au pourvoi invoque, devant l'assemblée plénière, un moyen de cassation.

Ce moyen de cassation a été formulé dans un mémoire déposé au greffe de la Cour de cassation par la SARL Matuchansky, Poupot, Valdelièvre et Rameix, avocat de M. [Y] [K] dit [Y] [K].

Un mémoire en défense a été déposé au greffe de la Cour de cassation par la SCP Piwnica et Molinié, avocat de la [2] et le [1].

Des observations ont été déposées au greffe de la Cour de cassation par la SARL Matuchansky, Poupot, Valdelièvre et Rameix, avocat de M. [Y] [K] dit [Y] [K].

Le rapport écrit de Mme Leprieur, conseillère, et l'avis écrit de Mme Djemni-Wagner, avocate générale, ont été mis à disposition des parties.

Sur le rapport de Mme Leprieur, conseillère, assistée de Mme Camus, auditrice au service de documentation, des études et du rapport, les observations de la SARL Matuchansky, Poupot, Valdelièvre et Rameix, de la SCP Piwnica et Molinié, et l'avis de Mme Djemni-Wagner, avocate générale, parmi les parties, invitées à le faire, la SARL Matuchansky, Poupot, Valdelièvre et Rameix a répliqué, après débats en l'audience publique du 4 juillet 2025 où étaient présents M. Soulard, premier président, MM. Bonnal, Vigneau, Mmes Champalaune, Martinel, présidents, MM. Huglo, Boyer, doyens de chambre faisant fonction de présidents, Mme Leprieur, conseillère rapporteure, Mmes de la Lance, Duval-Arnould, M. Ponsot, doyens de chambre, Mmes Mariette, Renaud-Malignac, Proust, conseillères faisant fonction de doyennes de chambre, Mmes Guihal, Degouys, Isola, de Lacaussade, Foucher-Gros, conseillères, Mme Djemni-Wagner, avocate générale, et Mme Mégnien, cadre greffière, la Cour de cassation, siégeant en assemblée plénière, composée du premier président, des présidents, des doyens de chambre et des conseillers précités, après en avoir délibéré conformément à la loi, a rendu le présent arrêt.

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Exposé du litige

Faits et procédure

1. Il résulte de l'arrêt attaqué et des pièces de la procédure ce qui suit.
2. Dans le cadre d'une enquête préliminaire diligentée par le parquet de Paris, il a été constaté que M. [Y] [K], dit [Y] [K], ayant la double nationalité française et syrienne, était visé par les sanctions de l'Union européenne à titre personnel en tant que gouverneur de la Banque centrale de Syrie, poste qu'il avait occupé de 2011 à juillet 2016, avant d'être ministre de l'économie et du commerce extérieur jusqu'en avril 2017.
3. Selon l'arrêt attaqué, des montages financiers mis en place par M. [K] pour contourner les sanctions et soutenir le régime ont été mis à jour. En outre, il aurait été établi une coopération entre la banque centrale syrienne et la société impliquée directement dans la conception et le développement de l'arme chimique au profit du gouvernement syrien.
4. M. [K] a été mis en examen le 20 décembre 2022 des chefs de complicité de crimes contre l'humanité et de crimes de guerre, blanchiment du produit de tels crimes et participation à des groupements formés en vue de la préparation de tels crimes. Il a été placé sous contrôle judiciaire.
5. Par requête du 20 juin 2023, M. [K] a sollicité l'annulation de sa mise en examen.

Moyens

Examen du moyen

Enoncé du moyen

6. Le moyen critique l'arrêt attaqué en ce qu'il a rejeté la requête tendant à l'annulation de la mise en examen de M. [K] et a dit n'y avoir lieu à annulation d'un acte ou d'une pièce de la procédure, alors « que la coutume internationale s'oppose à ce que les agents d'un État, en l'absence de dispositions internationales contraires s'imposant aux parties concernées, puissent faire l'objet de poursuites devant les juridictions pénales d'un État étranger, pour des actes relevant de l'exercice de la souveraineté de l'État ; qu'il n'appartient qu'à la communauté internationale de fixer les éventuelles limites de ce principe, lorsqu'il peut être confronté à d'autres valeurs reconnues par cette communauté, et notamment celle de la prohibition des crimes de guerre et des crimes contre l'humanité ; qu'en l'état actuel du droit international, de tels crimes, quelle qu'en soit la gravité, ne relèvent pas des exceptions au principe de l'immunité de juridiction ; que, pour juger que monsieur [K] ne pouvait se prévaloir de l'immunité fonctionnelle reconnue aux agents d'un État étranger devant les juridictions françaises et rejeter en conséquence sa requête en nullité, la chambre de l'instruction, après avoir constaté que les faits reprochés au mis en examen constituaient des actes relevant de la souveraineté de l'État Syrien et qu'ils avaient été prétendument commis dans l'exercice des fonctions de gouverneur de la Banque centrale de Syrie qu'il occupait (arrêt attaqué, pp.14-16), a retenu qu'en vertu d'une interprétation évolutive du droit des immunités, les crimes de guerre et crimes contre l'humanité constituaient une exception justifiant d'exclure monsieur [K] du bénéfice de l'immunité fonctionnelle à laquelle il pouvait prétendre (arrêt attaqué, pp. 17-18) ; qu'en faisant de la sorte application d'une exception au principe d'immunité de juridiction qui n'est pas consacrée à ce jour par la communauté internationale, la chambre de l'instruction a violé les principes de droit international relatifs à l'immunité de juridiction des États étrangers. »

Motivation

Réponse de la Cour

7. La question de la compétence de la juridiction est préalable à celle de l'immunité. Or, la question de la compétence de la juridiction française pour connaître de faits de complicité commis à l'étranger par un Français est discutée lorsque, comme en l'espèce, l'auteur principal est de nationalité étrangère.
8. L'article 121-6 du code pénal dispose que le complice de l'infraction sera puni comme auteur. Il convient par conséquent d'énoncer que les dispositions combinées des articles 689 du code de procédure pénale, 113-6 et 121-6 du code pénal permettent de retenir la compétence des juridictions françaises pour connaître d'actes de complicité, commis à l'étranger, par une personne de nationalité française, même si l'infraction a été commise à l'étranger par un auteur principal étranger.
9. L'immunité pénale de juridiction procède de l'égalité souveraine des États.

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10. Elle s'applique devant les juridictions nationales. Le principe de l'immunité ne peut être opposé devant les juridictions internationales, dont les statuts écartent expressément toute immunité, et qui agissent au nom de la communauté internationale.
11. L'immunité de juridiction fonctionnelle, distincte de l'immunité personnelle, est reconnue aux agents de l'État agissant dans l'exercice de leurs fonctions. Elle n'est pas limitée dans le temps et subsiste après la fin des fonctions.
12. La Cour de cassation a jugé que la coutume internationale qui s'oppose à la poursuite des États devant les juridictions pénales d'un État étranger s'étend aux organes et entités qui constituent l'émanation de l'État ainsi qu'à leurs agents en raison d'actes qui relèvent de la souveraineté de l'État concerné (Crim., 23 novembre 2004, pourvoi n° 04-84.265, Bull. crim. 2004, n° 292 ; Crim., 19 janvier 2010, pourvoi n° 09-84.818, Bull. crim. 2010, n° 9).
13. Réaffirmant sa jurisprudence, selon laquelle la coutume internationale s'oppose à ce que les agents d'un État, en l'absence de dispositions internationales contraires s'imposant aux parties concernées, puissent faire l'objet de poursuites, pour des actes entrant dans cette catégorie, devant les juridictions pénales d'un État étranger, elle a ajouté qu'il appartient à la communauté internationale de fixer les éventuelles limites du principe d'immunité, lorsqu'il peut être confronté à d'autres valeurs reconnues par cette communauté. Elle a énoncé qu'en l'état du droit international, le crime de tortures et actes de barbarie, quelle qu'en soit la gravité, ne relève pas des exceptions au principe de l'immunité de juridiction (Crim., 13 janvier 2021, pourvoi n° 20-80.511, publié au Bulletin).
14. Si la Cour de cassation a ainsi admis la possibilité d'exceptions au principe de l'immunité de juridiction fonctionnelle, elle n'en a jamais concrètement reconnu. Elle a statué dans des espèces qui ne concernaient ni des crimes contre l'humanité ni des crimes de guerre.
15. Le présent pourvoi pose la question de savoir si, en droit international, l'immunité de juridiction pénale fonctionnelle connaît des exceptions lorsque les faits poursuivis constituent des crimes internationaux par nature, tels un génocide, des crimes contre l'humanité ou des crimes de guerre.
16. La communauté internationale a pour objectif le renforcement de la lutte contre l'impunité en ce qui concerne ces crimes, lesquels sont caractérisés par des actes contraires aux valeurs, normes et principes juridiques fondamentaux reconnus par ladite communauté et menacent, selon les termes du préambule de la Convention portant statut de la Cour pénale internationale, signée à Rome le 18 juillet 1998, « la paix, la sécurité et le bien-être du monde ».
17. Cet objectif de lutte contre l'impunité, combiné au principe de responsabilité pénale individuelle, a conduit la communauté internationale à rechercher un juste équilibre avec le principe de l'égalité souveraine des États, en vue de concilier divers droits protégés par le droit international, soit, d'une part, celui de l'État de l'agent, consistant en la protection de toute ingérence étrangère des fonctions accomplies par ses représentants, d'autre part, celui de l'État du for, tenant à son pouvoir de juger les crimes internationaux.
18. Ainsi, la chambre d'appel du Tribunal pénal international pour l'ex-Yougoslavie, dans un arrêt du 29 octobre 1997, a énoncé que les responsables de génocide, crimes contre l'humanité et crimes de guerre ne peuvent invoquer l'immunité devant les juridictions nationales ou internationales, même s'ils ont commis ces crimes dans le cadre de leurs fonctions officielles (TPIY, chambre d'appel, arrêt du 29 octobre 1997, Le procureur c/ Blaskic, affaire IT-95-14-AR 108 bis, § 41).
19. Si la Cour internationale de justice, dans son arrêt Immunités juridictionnelles de l'État du 3 février 2012, a relevé qu'en l'état actuel du droit international coutumier, un État n'est pas privé de l'immunité pour la seule raison qu'il est accusé de violations graves du droit international des droits de l'homme ou du droit international des conflits armés, elle a tenu à souligner qu'elle ne se prononçait que sur l'immunité de juridiction de l'État lui-même devant les tribunaux d'un autre État et a réservé la question de savoir si et, le cas échéant, dans quelle mesure, l'immunité peut s'appliquer dans le cadre de procédures pénales engagées contre un représentant de l'État (CIJ, arrêt du 3 février 2012, Immunités juridictionnelles de l'État (Allemagne c. Italie ; Grèce (intervenant), § 91)).
20. Diverses juridictions nationales étrangères ont écarté l'immunité fonctionnelle dans le cas de crimes internationaux.
21. Le Tribunal fédéral suisse a écarté l'immunité fonctionnelle d'un ancien ministre de la défense accusé de crimes de guerre et d'actes de torture, en retenant qu'il est généralement reconnu que l'interdiction des crimes graves contre l'humanité, notamment en cas de torture, a un caractère coutumier (Tribunal fédéral, arrêt du 25 juillet 2012 - BB.2011.140).
22. De même, la Cour fédérale de justice allemande, dans son ordonnance du 21 février 2024, a énoncé que l'immunité fonctionnelle générale des agents publics ne s'applique pas aux crimes de droit international, et ce indépendamment du statut et du rang de l'auteur. Elle a relevé que l'exclusion de cette immunité fonctionnelle en cas de crimes internationaux fait partie de l'acquis indubitable du droit international coutumier (Décision BGH 21.02.2024 - AK 4/24, Rn. 53).

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23. Par ailleurs, en 2009, l'[3] a adopté une résolution sur l'immunité de juridiction de l'État et de ses agents en cas de crimes internationaux, prévoyant que « hors l'immunité personnelle dont un individu bénéficierait en vertu du droit international, aucune immunité n'est applicable en cas de crimes internationaux » ([3], Session de Naples, 2009, Résolution sur l'immunité de juridiction de l'Etat et de ses agents en cas de crimes internationaux, article III.1).
24. La Commission du droit international des Nations unies, dans son cinquième rapport sur l'immunité de juridiction pénale étrangère des représentants de l'État, a estimé qu'il existe une norme coutumière selon laquelle les crimes internationaux constituent une limite ou exception à l'immunité. Elle a adopté, dès 2017, un projet d'article 7 selon lequel l'immunité ratione materiae à l'égard de l'exercice de la juridiction pénale étrangère ne s'applique pas en ce qui concerne les crimes de droit international de génocide, crimes contre l'humanité, crimes de guerre, apartheid, torture et disparitions forcées (A/CN.4/701, 14 juin 2016).
25. Dans son rapport afférent à la soixante-treizième session, la Commission du droit international a précisé que l'adoption de ce texte est justifiée par la prise en compte « des acquis du droit pénal international que sont l'incrimination et la sanction des crimes de droit international les plus graves, la reconnaissance du principe de responsabilité comme un de ses éléments constitutifs, et le renforcement de la lutte contre l'impunité, considérée comme un objectif de la communauté internationale » (A/77/10, 18 avril-3 juin et 4 juillet-5 août 2022).
26. Le 12 mai 2025, le comité de rédaction de ladite commission a adopté provisoirement ce projet d'article 7.
27. En outre, des législations étrangères ont exclu l'application de l'immunité fonctionnelle pour les crimes internationaux.
28. Ainsi, en Espagne, l'article 23 de la loi organique du 27 octobre 2015 sur les immunités prévoit que l'immunité fonctionnelle doit être exclue pour les crimes internationaux, soit les crimes contre l'humanité, le génocide et les crimes de guerre.
29. Le 5 juillet 2022, l'Autriche a publié un décret précisant que les représentants autres que les chefs d'État, chefs de gouvernement et ministres des affaires étrangères en exercice ne bénéficient pas de l'immunité ratione materiae pour le crime de génocide, les crimes contre l'humanité, les crimes de guerre, le crime d'agression et la torture.
30. En Allemagne, à la suite, notamment, de la décision de la Cour fédérale de justice allemande précitée, la jurisprudence a été codifiée le 6 juin 2024, le code de l'organisation judiciaire prévoyant désormais que l'immunité fonctionnelle n'empêche pas l'extension de la juridiction allemande à la poursuite des crimes visés par le code pénal international.
31. Il se déduit de ces éléments qu'il existe une pratique significative des États tendant à écarter, comme étant le droit, l'immunité fonctionnelle en cas de crimes internationaux.
32. Cette évolution de la coutume internationale, à laquelle la Cour de cassation entend contribuer, définit un nouvel équilibre entre les immunités et la lutte contre l'impunité.
33. Il convient dès lors de juger que, sous réserve des stipulations des conventions internationales, notamment celles relatives aux relations diplomatiques et consulaires, le principe d'immunité fonctionnelle de juridiction en matière pénale ne peut pas être opposé en cas de poursuites des chefs de génocide, crimes contre l'humanité et crimes de guerre.
34. Pour écarter le moyen de nullité de la mise en examen de M. [K], l'arrêt attaqué constate, d'abord, que l'intéressé, naturalisé français en 1993, qui a exercé les fonctions de gouverneur de la Banque centrale de Syrie entre 2011 et 2016, a participé à la répression violente de la population en plaçant l'ensemble des services dont il avait la charge à la disposition des unités de renseignement.
35. Les juges relèvent, ensuite, que la Banque centrale de Syrie ne présente aucune indépendance réelle à l'égard de l'État syrien, dont elle apparaît constituer une émanation. Ils en déduisent que ses agents, dont son gouverneur exerçant ses fonctions sous l'autorité des organes du pouvoir exécutif, sont susceptibles de bénéficier de l'immunité pénale fonctionnelle.
36. En ce qui concerne le blanchiment du produit des crimes contre l'humanité et des crimes de guerre, ils retiennent que les éléments matériels de ce délit ne s'inscrivent pas dans la continuité des actes relevant de la souveraineté de l'État et sont exclus du périmètre de l'immunité.
37. Ils énoncent en revanche que d'autres actes intrinsèquement liés aux fonctions de gouverneur de la banque centrale, qualifiés de complicité de crimes contre l'humanité et de crimes de guerre, s'analysent, non comme des actes privés de gestion administrative ou commerciale au sens de la jurisprudence, mais comme des actes de puissance publique relevant de la souveraineté de l'État, qui sont dès lors susceptibles de faire bénéficier leur auteur de l'immunité de juridiction.

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38. Les juges retiennent que ces derniers crimes des chefs desquels M. [K] est mis en examen relèvent cependant de la catégorie des crimes les plus graves en raison de l'atteinte portée aux populations et aux valeurs fondamentales des États démocratiques.
39. Ils en déduisent que la nature des infractions reprochées à l'intéressé constitue une exception justifiant l'exclusion du bénéfice de l'immunité fonctionnelle devant les juridictions françaises.
40. En statuant ainsi, la chambre de l'instruction n'a pas méconnu les principes visés au moyen.
41. Dès lors, le moyen ne peut être accueilli.
42. Par ailleurs, l'arrêt est régulier en la forme.

Dispositif

PAR CES MOTIFS, la Cour :

REJETTE le pourvoi ;

FIXE à 3 000 euros la somme globale que M. [Y] [K] devra payer à la [2] et le [1] en application de l'article 618-1 du code de procédure pénale.

Ainsi fait et jugé par la Cour de cassation, siégeant en assemblée plénière, et prononcé par le premier président en son audience publique du vingt-cinq juillet deux mille vingt-cinq.

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