

## **Immunity of State officials from foreign criminal jurisdiction**

*“The Commission would appreciate being provided by States with information on their legislation and practice, in particular judicial practice, related to limits and exceptions to the immunity of State officials from foreign criminal jurisdiction ”*

### **United Kingdom response**

In the United Kingdom, the immunity of State officials from foreign criminal jurisdiction is governed by the common law, which incorporates customary international law in this area. The existence of exceptions to the immunity of State officials from foreign criminal jurisdiction has been considered in the following judicial decisions:

- *R v Bow Street Stipendiary Magistrate and others, ex parte Pinochet Ugarte (Amnesty International and others intervening) (No 3)*, House of Lords, 24 March 1999 ([1999] 2 All E R 97), and
- *Khurts Bat v Investigating Judge of the Federal Court of Germany*, Divisional Court, 29 July 2011 ([2011] EWHC 2029 (Admin))

Immunity does not present a procedural bar where it has been waived by the State which the official serves or has served. This was recognised by the House of Lords, the UK’s highest court, in the *Pinochet* case. The Court held that immunity did not bar criminal proceedings against a former Head of State in relation to allegations of torture. States which have ratified the UN Convention against Torture have implicitly waived the immunity of their officials in relation to that offence, owing to the express duty in Article 5(2) to establish jurisdiction over torture where the suspect is present on the State’s territory and not extradited.

The UK does not consider that any norms of *jus cogens* pertaining to criminal offences ‘trump’ immunity. Immunity is a procedural bar to jurisdiction and cannot conflict with substantive rules of criminal law.