CASE OF AL-ADSANI v. THE UNITED KINGDOM

(Application no. 35763/97)

JUDGMENT

STRASBOURG

21 November 2001

In the case of Al-Adsani v. the United Kingdom,

The European Court of Human Rights,

Delivers the following judgment, which was adopted on the last-mentioned date:

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The alleged ill-treatment

9. The applicant made the following allegations concerning the events underlying the dispute he submitted to the English courts. The Government stated that they were not in a position to comment on the accuracy of these claims.

10. The applicant, who is a trained pilot, went to Kuwait in 1991 to assist in its defence against Iraq. During the Gulf War he served as a member of the Kuwaiti Air Force and, after the Iraqi invasion, he remained behind as a member of the resistance movement. During that period he came into possession of sex videotapes involving Sheikh Jaber Al-Sabah Al-Saud Al-Sabah ("the Sheikh"), who is related to the Emir of Kuwait and is said to have an influential position in Kuwait. By some means these tapes entered general circulation, for which the applicant was held responsible by the Sheikh.

11. After the Iraqi armed forces were expelled from Kuwait, on or about 2 May 1991, the Sheikh and two others gained entry to the applicant's house, beat him and took him at gunpoint in a government jeep to the Kuwaiti State Security Prison. The applicant was falsely imprisoned there for several days during which he was repeatedly beaten by security guards. He was released on 5 May 1991, having been forced to sign a false confession.

12. On or about 7 May 1991 the Sheikh took the applicant at gunpoint in a government car to the palace of the Emir of Kuwait's brother. At first the applicant's head was repeatedly held underwater in a swimming-pool containing corpses, and he was then dragged into a small room where the Sheikh set fire to mattresses soaked in petrol, as a result of which the applicant was seriously burnt.

13. Initially the applicant was treated in a Kuwaiti hospital, and on 17 May 1991 he returned to England where he spent six weeks in hospital being treated for burns covering 25% of his total body surface area. He also suffered psychological damage and has been diagnosed as suffering from a severe form of post-traumatic stress disorder, aggravated by the fact that, once in England, he received threats warning him not to take action or give publicity to his plight.

B. The civil proceedings

14. On 29 August 1992 the applicant instituted civil proceedings in England for compensation against the Sheikh and the State of Kuwait in respect of injury to his physical and mental health caused by torture in Kuwait in May 1991 and threats against his life and well-being made after his return to the United Kingdom on 17 May 1991. On 15 December 1992 he obtained a default judgment against the Sheikh.

15. The proceedings were re-issued after an amendment to include two named individuals as defendants. On 8 July 1993 a deputy High Court judge *ex parte* gave the applicant leave to serve the proceedings on the individual defendants. This decision was confirmed in chambers on 2 August 1993. He was not, however, granted leave to serve the writ on the State of Kuwait.

16. The applicant submitted a renewed application to the Court of Appeal, which was

heard *ex parte* on 21 January 1994. Judgment was delivered the same day. The court held, on the basis of the applicant's allegations, that there were three elements pointing towards State responsibility for the events in Kuwait: firstly, the applicant had been taken to a State prison; secondly, government transport had been used on 2 and 7 May 1991; and, thirdly, in the prison he had been mistreated by public officials. It found that the applicant had established a good arguable case, based on principles of international law, that Kuwait should not be afforded immunity under section 1(1) of the State Immunity Act 1978 ("the 1978 Act": see paragraph 21 below) in respect of acts of torture. In addition, there was medical evidence indicating that the applicant had suffered damage (post-traumatic stress) while in the United Kingdom. It followed that the conditions in Order 11 rule 1(f) of the Rules of the Supreme Court had been satisfied (see paragraph 20 below) and that leave should be granted to serve the writ on the State of Kuwait.

17. The Kuwaiti government, after receiving the writ, sought an order striking out the proceedings. The application was examined *inter partes* by the High Court on 15 March 1995. In a judgment delivered the same day the court held that it was for the applicant to show on the balance of probabilities that the State of Kuwait was not entitled to immunity under the 1978 Act. It was prepared provisionally to accept that the Government were vicariously responsible for conduct that would qualify as torture under international law. However, international law could be used only to assist in interpreting lacunae or ambiguities in a statute, and when the terms of a statute were clear, the statute had to prevail over international law. The clear language of the 1978 Act bestowed immunity upon sovereign States for acts committed outside the jurisdiction and, by making express provision for exceptions, it excluded as a matter of construction implied exceptions. As a result, there was no room for an implied exception for acts of torture in section 1(1) of the 1978 Act. Moreover, the court was not satisfied on the balance of probabilities that the State of Kuwait was responsible for the threats made to the applicant after 17 May 1991. As a result, the exception provided for by section 5 of the 1978 Act could not apply. It followed that the action against the State should be struck out.

18. The applicant appealed and the Court of Appeal examined the case on 12 March 1996. The court held that the applicant had not established on the balance of probabilities that the State of Kuwait was responsible for the threats made in the United Kingdom. The important question was, therefore, whether State immunity applied in respect of the alleged events in Kuwait. Lord Justice Stuart-Smith finding against the applicant, observed:

"Jurisdiction of the English court in respect of foreign States is governed by the State Immunity Act 1978. Section 1(1) provides:

'A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act. ...'

... The only relevant exception is section 5, which provides:

'A State is not immune as respects proceedings in respect of

(a) death or personal injury ... caused by an act or omission in the United Kingdom.'

It is plain that the events in Kuwait do not fall within the exception in section 5, and the express words of section 1 provide immunity to the First Defendant. Despite this, in what [counsel] for the Plaintiff acknowledges is a bold submission, he contends that that section must be read subject to the implication that the State is only granted immunity if it is acting within the Law of Nations. So that the section reads: 'A State *acting within the Law of Nations* is immune from jurisdiction except as provided ...'

... The argument is ... that international law against torture is so fundamental that it is a *jus cogens*, or compelling law, which overrides all other principles of international law, including the well-established principles of sovereign immunity. No authority is cited for

this proposition. ... At common law, a sovereign State could not be sued at all against its will in the courts of this country. The 1978 Act, by the exceptions therein set out, marks substantial inroads into this principle. It is inconceivable, it seems to me, that the draughtsman, who must have been well aware of the various international agreements about torture, intended section 1 to be subject to an overriding qualification.
Moreover, authority in the United States at the highest level is completely contrary to [counsel for the applicant's] submission. [Lord Justice Stuart-Smith referred to the judgments of the United States courts, *Argentine Republic v. Amerada Hess Shipping Corporation* and *Siderman de Blake v. Republic of Argentina*, cited in paragraph 23 below, in both of which the court rejected the argument that there was an implied exception to the rule of State immunity where the State acted contrary to the Law of Nations.] ... [Counsel] submits that we should not follow the highly persuasive judgments of the American courts. I cannot agree.
... A moment's reflection is enough to show that the practical consequences of the Plaintiff's submission would be dire. The courts in the United Kingdom are open to all who seek their help, whether they are British citizens or not. A vast number of people come to this country each year seeking refuge and asylum, and many of these allege that they have been tortured in the country whence they came. Some of these claims are no doubt justified, others are more doubtful. Those who are presently charged with the responsibility for deciding whether applicants are genuine refugees have a difficult enough task, but at least they know much of the background and surrounding circumstances against which the claim is made. The court would be in no such position. The foreign States would be unlikely to submit to the jurisdiction of the United Kingdom court, and in its absence the court would have no means of testing the claim or making a just determination. ..."
The other two members of the Court of Appeal, Lord Justice Ward and Mr Justice Buckley, also rejected the applicant's claim. Lord Justice Ward commented that "there may be no international forum (other than the forum of the *locus delicti* to whom a victim of torture will be understandably reluctant to turn) where this terrible, if established, wrong can receive civil redress".
19. On 27 November 1996 the applicant was refused leave to appeal by the House of Lords. His attempts to obtain compensation from the Kuwaiti authorities via diplomatic channels have proved unsuccessful.
II. RELEVANT LEGAL MATERIALS
A. Jurisdiction of English courts in civil matters
20. There is no rule under English law requiring a plaintiff to be resident in the United Kingdom or to be a British national before the English courts can assert jurisdiction over civil wrongs committed abroad. Under the rules in force at the time the applicant issued proceedings, the writ could be served outside the territorial jurisdiction with the leave of the court when the claim fell within one or more of the categories set out in order 11, Rule 1 of the Rules of the Supreme Court. For present purposes only Rule 1(f) is relevant:
"... service of a writ out of the jurisdiction is permissible with the leave of the court if, in the action begun by the writ,
...
(f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction ..."
B. The State Immunity Act 1978
21. The relevant parts of the State Immunity Act 1978 provide:
"1. (1) A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act.

...
5. A State is not immune as regards proceedings in respect of-
(a) death or personal injury;
...
caused by an act or omission in the United Kingdom ..."

C. The Basle Convention

22. The above provision (section 5 of the 1978 Act) was enacted to implement the 1972 European Convention on State Immunity ("the Basle Convention"), a Council of Europe instrument, which entered into force on 11 June 1976 after its ratification by three States. It has now been ratified by eight States (Austria, Belgium, Cyprus, Germany, Luxembourg, the Netherlands, Switzerland and the United Kingdom) and signed by one other State (Portugal). Article 11 of the Convention provides:
"A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State in proceedings which relate to redress for injury to the person or damage to tangible property, if the facts which occasioned the injury or damage occurred in the territory of the State of forum, and if the author of the injury or damage was present in that territory at the time when those facts occurred."
Article 15 of the Basle Convention provides that a Contracting State shall be entitled to immunity if the proceedings do not fall within the stated exceptions.

D. State immunity in respect of civil proceedings for torture

23. In its Report on Jurisdictional Immunities of States and their Property (1999), the working group of the International Law Commission (ILC) found that over the preceding decade a number of civil claims had been brought in municipal courts, particularly in the United States and United Kingdom, against foreign governments, arising out of acts of torture committed not in the territory of the forum State but in the territory of the defendant and other States. The working group of the ILC found that national courts had in some cases shown sympathy for the argument that States are not entitled to plead immunity where there has been a violation of human rights norms with the character of *jus cogens*, although in most cases the plea of sovereign immunity had succeeded.
24. The working group of the ILC did, however, note two recent developments which it considered gave support to the argument that a State could not plead immunity in respect of gross human rights violations. One of these was the House of Lords' judgment in *ex parte Pinochet (No. 3)* (see paragraph 34 below). The other was the amendment by the United States of its Foreign Sovereign Immunities Act (FSIA) to include a new exception to immunity. This exception, introduced by section 221 of the Anti-Terrorism and Effective Death Penalty Act of 1996, applies in respect of a claim for damages for personal injury or death caused by an act of torture, extra-judicial killing, aircraft sabotage or hostage-taking, against a State designated by the Secretary of State as a sponsor of terrorism, where the claimant or victim was a national of the United States at the time the act occurred.

E. The prohibition of torture in Kuwait and under international law

25. The Kuwaiti Constitution provides in Article 31 that "No person shall be put to torture".
26. Article 5 of the Universal Declaration of Human Rights 1948 states:
"No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."
27. Article 7 of the International Covenant on Civil and Political Rights 1966 states as relevant:
"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."
28. The United Nations 1975 Declaration on the Protection of All Persons from Being

Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment provides in Article 3 that: “No State may permit or tolerate torture and other cruel inhuman or degrading treatment or punishment.”
29. In the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, adopted on 10 December 1984 (“the UN Convention”), torture is defined. . . The UN Convention requires by Article 2 that each State Party is to take effective legislative, administrative, judicial or other measures to prevent torture in any territory under its jurisdiction, and by Article 4 that all acts of torture be made offences under each State’s criminal law.
30. In its judgment in *Prosecutor v. Furundzija* (10 December 1998, case no. IT-95-17/I-T, (1999) 38 International Legal Materials 317), the International Criminal Tribunal for the Former Yugoslavia observed as follows:
“144. It should be noted that the prohibition of torture laid down in human rights treaties enshrines an absolute right, which can never be derogated from, not even in time of emergency ... This is linked to the fact, discussed below, that the prohibition on torture is a peremptory norm or *jus cogens*. ... This prohibition is so extensive that States are even barred by international law from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.
145. These treaty provisions impose upon States the obligation to prohibit and punish torture, as well as to refrain from engaging in torture through their officials. In international human rights law, which deals with State responsibility rather than individual criminal responsibility, torture is prohibited as a criminal offence to be punished under national law; in addition, all States parties to the relevant treaties have been granted, and are obliged to exercise, jurisdiction to investigate, prosecute and punish offenders. ...
146. The existence of this corpus of general and treaty rules proscribing torture shows that the international community, aware of the importance of outlawing this heinous phenomenon, has decided to suppress any manifestation of torture by operating both at the interstate level and at the level of individuals. No legal loopholes have been left.
154. Clearly the *jus cogens* nature of the prohibition against torture articulates the notion that the prohibition has now become one of the most fundamental standards of the international community. ...”
F. Criminal jurisdiction of the United Kingdom over acts of torture
32. The United Kingdom ratified the UN Convention with effect from 8 December 1988.
33. Section 134 of the Criminal Justice Act 1988, which entered into force on 29 September 1988, made torture, wherever committed, a criminal offence under United Kingdom law triable in the United Kingdom.
THE LAW
I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION
38. It is true that, taken together, Articles 1 and 3 place a number of positive obligations on the High Contracting Parties, designed to prevent and provide redress for torture and other forms of ill-treatment. However, in each case the State’s obligation applies only in relation to ill-treatment allegedly committed within its jurisdiction.
39. In *Soering* . . the Court recognised that Article 3 has some, limited, extraterritorial application, to the extent that the decision by a Contracting State to expel an individual might engage the responsibility of that State under the Convention, where substantial grounds had been shown for believing that the person concerned, if expelled, faced a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the receiving country. In the judgment it was emphasised, however, that in so far as any liability under the Convention might be incurred in such circumstances, it

would be incurred by the expelling Contracting State by reason of its having taken action which had as a direct consequence the exposure of an individual to proscribed ill-treatment (op. cit., pp. 35-36, § 91).
40. The applicant does not contend that the alleged torture took place within the jurisdiction of the United Kingdom or that the United Kingdom authorities had any causal connection with its occurrence. In these circumstances, it cannot be said that the High Contracting Party was under a duty to provide a civil remedy to the applicant in respect of torture allegedly carried out by the Kuwaiti authorities.
41. It follows that there has been no violation of Article 3 of the Convention in the present case.
II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

B. Compliance with Article 6 § 1
2. The Court's assessment
52. In *Golder v. the United Kingdom* (judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36) the Court held that the procedural guarantees laid down in Article 6 concerning fairness, publicity and promptness would be meaningless in the absence of any protection for the pre-condition for the enjoyment of those guarantees, namely, access to a court. It established this as an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlie much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court.
53. The right of access to a court is not, however, absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is no reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I).
54. The Court must first examine whether the limitation pursued a legitimate aim. It notes in this connection that sovereign immunity is a concept of international law, developed out of the principle *par in parem non habet imperium*, by virtue of which one State shall not be subject to the jurisdiction of another State. The Court considers that the grant of sovereign immunity to a State in civil proceedings pursues the legitimate aim of complying with international law to promote comity and good relations between States through the respect of another State's sovereignty.
55. The Court must next assess whether the restriction was proportionate to the aim pursued. It reiterates that the Convention has to be interpreted in the light of the rules set out in the Vienna Convention on the Law of Treaties of 23 May 1969, and that Article 31 § 3 (c) of that treaty indicates that account is to be taken of "any relevant rules of international law applicable in the relations between the parties". The Convention, including Article 6, cannot be interpreted in a vacuum. The Court must be mindful of the Convention's special character as a human rights treaty, and it must also take the relevant rules of international law into account (see, *mutatis mutandis*, *Loizidou v. Turkey* (merits), judgment of 18 December 1996, *Reports* 1996-VI, p. 2231, § 43). The Convention should so far as possible be interpreted in harmony with other rules of

international law of which it forms part, including those relating to the grant of State immunity.

56. It follows that measures taken by a High Contracting Party which reflect generally recognised rules of public international law on State immunity cannot in principle be regarded as imposing a disproportionate restriction on the right of access to a court as embodied in Article 6 § 1. Just as the right of access to a court is an inherent part of the fair trial guarantee in that Article, so some restrictions on access must likewise be regarded as inherent, an example being those limitations generally accepted by the community of nations as part of the doctrine of State immunity.

57. The Court notes that the 1978 Act, applied by the English courts so as to afford immunity to Kuwait, complies with the relevant provisions of the 1972 Basle Convention, which, while placing a number of limitations on the scope of State immunity as it was traditionally understood, preserves it in respect of civil proceedings for damages for personal injury unless the injury was caused in the territory of the forum State (see paragraph 22 above). Except insofar as it affects claims for damages for torture, the applicant does not deny that the above provision reflects a generally accepted rule of international law. He asserts, however, that his claim related to torture, and contends that the prohibition of torture has acquired the status of a *jus cogens* norm in international law, taking precedence over treaty law and other rules of international law.

58. Following the decision to uphold Kuwait's claim to immunity, the domestic courts were never required to examine evidence relating to the applicant's allegations, which have, therefore, never been proved. However, for the purposes of the present judgment, the Court accepts that the ill-treatment alleged by the applicant against Kuwait in his pleadings in the domestic courts, namely, repeated beatings by prison guards over a period of several days with the aim of extracting a confession (see paragraph 11 above), can properly be categorised as torture within the meaning of Article 3 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, ECHR 1999-V, and *Aksoy*, cited above).

59. Within the Convention system it has long been recognised that the right under Article 3 not to be subjected to torture or to inhuman or degrading treatment or punishment enshrines one of the fundamental values of democratic society. It is an absolute right, permitting of no exception in any circumstances (see, for example, *Aksoy*, cited above, p. 2278, § 62, and the cases cited therein). Of all the categories of ill-treatment prohibited by Article 3, "torture" has a special stigma, attaching only to deliberate inhuman treatment causing very serious and cruel suffering (ibid., pp. 2278-79, § 63, and see also the cases referred to in paragraphs 38-39 above).

60. Other areas of public international law bear witness to a growing recognition of the overriding importance of the prohibition of torture. Thus, torture is forbidden by Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights. The United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment requires, by Article 2, that each State Party should take effective legislative, administrative, judicial or other measures to prevent torture in any territory under its jurisdiction, and, by Article 4, that all acts of torture should be made offences under the State Party's criminal law (see paragraphs 25-29 above). In addition, there have been a number of judicial statements to the effect that the prohibition of torture has attained the status of a peremptory norm or *jus cogens.* For example, in its judgment of 10 December 1998 in *Furundzija* (see paragraph 30 above), the International Criminal Tribunal for the Former Yugoslavia referred, *inter alia*, to the foregoing body of treaty rules and held that "[b]ecause of the importance of the values it protects, this principle [proscribing torture] has evolved into a peremptory norm or *jus cogens*, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even 'ordinary' customary rules". Similar

statements have been made in other cases before that tribunal and in national courts, including the House of Lords in the case of *ex parte Pinochet (No. 3)* (see paragraph 34 above).

61. While the Court accepts, on the basis of these authorities, that the prohibition of torture has achieved the status of a peremptory norm in international law, it observes that the present case concerns not, as in *Furundzija* and *Pinochet*, the criminal liability of an individual for alleged acts of torture, but the immunity of a State in a civil suit for damages in respect of acts of torture within the territory of that State. Notwithstanding the special character of the prohibition of torture in international law, the Court is unable to discern in the international instruments, judicial authorities or other materials before it any firm basis for concluding that, as a matter of international law, a State no longer enjoys immunity from civil suit in the courts of another State where acts of torture are alleged. In particular, the Court observes that none of the primary international instruments referred to (Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Articles 2 and 4 of the UN Convention) relates to civil proceedings or to State immunity.

62. It is true that in its Report on Jurisdictional Immunities of States and their Property (see paragraphs 23-24 above) the working group of the International Law Commission noted, as a recent development in State practice and legislation on the subject of immunities of States, the argument increasingly put forward that immunity should be denied in the case of death or personal injury resulting from acts of a State in violation of human rights norms having the character of *jus cogens*, particularly the prohibition on torture. However, as the working group itself acknowledged, while national courts had in some cases shown some sympathy for the argument that States were not entitled to plead immunity where there had been a violation of human rights norms with the character of *jus cogens*, in most cases (including those cited by the applicant in the domestic proceedings and before the Court) the plea of sovereign immunity had succeeded.

63. The ILC working group went on to note developments, since those decisions, in support of the argument that a State may not plead immunity in respect of human rights violations: first, the exception to immunity adopted by the United States in the amendment to the Foreign Sovereign Immunities Act (FSIA) which had been applied by the United States courts in two cases; secondly, the *ex parte Pinochet (No. 3)* judgment in which the House of Lords "emphasised the limits of immunity in respect of gross human rights violations by State officials". The Court does not, however, find that either of these developments provides it with a firm basis on which to conclude that the immunity of States *ratione personae* is no longer enjoyed in respect of civil liability for claims of acts of torture, let alone that it was not enjoyed in 1996 at the time of the Court of Appeal's judgment in the present case.

64. As to the amendment to the FSIA, the very fact that the amendment was needed would seem to confirm that the general rule of international law remained that immunity attached even in respect of claims of acts of official torture. Moreover, the amendment is circumscribed in its scope: the offending State must be designated as a State sponsor of acts of terrorism, and the claimant must be a national of the United States. The effect of the FSIA is further limited in that after judgment has been obtained, the property of a foreign State is immune from attachment or execution unless one of the statutory exceptions applies (see paragraph 24 above).

65. As to the *ex parte Pinochet (No. 3)* judgment (see paragraph 34 above), the Court notes that the majority of the House of Lords held that, after the UN Convention and even before, the international prohibition against official torture had the character of *jus cogens* or a peremptory norm and that no immunity was enjoyed by a torturer from one

Torture Convention State from the criminal jurisdiction of another. But, as the working group of the ILC itself acknowledged, that case concerned the immunity *ratione materiae* from criminal jurisdiction of a former head of State, who was at the material time physically within the United Kingdom. As the judgments in the case made clear, the conclusion of the House of Lords did not in any way affect the immunity *ratione personae* of foreign sovereign States from the civil jurisdiction in respect of such acts (see in particular, the judgment of Lord Millett, mentioned in paragraph 34 above). In so holding, the House of Lords cited with approval the judgments of the Court of Appeal in *Al-Adsani* itself.

66. The Court, while noting the growing recognition of the overriding importance of the prohibition of torture, does not accordingly find it established that there is yet acceptance in international law of the proposition that States are not entitled to immunity in respect of civil claims for damages for alleged torture committed outside the forum State. The 1978 Act, which grants immunity to States in respect of personal injury claims unless the damage was caused within the United Kingdom, is not inconsistent with those limitations generally accepted by the community of nations as part of the doctrine of State immunity.

67. In these circumstances, the application by the English courts of the provisions of the 1978 Act to uphold Kuwait's claim to immunity cannot be said to have amounted to an unjustified restriction on the applicant's access to a court.

It follows that there has been no violation of Article 6 § 1 of the Convention in this case.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 3 of the Convention;
2. *Holds* by nine votes to eight that there has been no violation of Article 6 § 1 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 21 November 2001.