

COUR DE CASSATION (COURT OF CASSATION)**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 [Y] [K], known as [Y] [K], 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 [Y] [K], known as [Y] [K].

A written submission of defence was filed with the Cour de cassation (Court of cassation) registry by SCP Piwnica et Molinié, counsel for the [2] and [1].

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

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 [Y] [K], known as [Y] [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 [Y] [K] 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 [Y] [K] 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 [K] 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 [Y] [K] 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 [Y] [K] 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 [Y] [K] 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 [Y] [K] 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.

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.

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 [Y] [K]'s indictment 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 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 [Y] [K] 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 [Y] [K] must pay to the [2] and [1] 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.

THE REPORTING JUDGE

THE FIRST PRESIDENT

THE SENIOR REGISTRAR