

**Hearing of the Plenary Assembly of the Cour de cassation on 4 July 2025  
Criminal immunities of foreign States' leaders: what scope?**

On 4 July 2025, the Plenary Assembly of the Cour de cassation examined the conditions of application of the personal immunity of foreign Heads of State, and the functional immunity of foreign State agents, when they are accused of having committed war crimes or crimes against humanity.<sup>1</sup>

This note only includes the elements concerning the hearing on the conditions for the application of Bashar al-Assad's personal immunity as President of the Syrian Arab Republic.<sup>2</sup>

The hearing began with the report of the Reporting Judge, Anne Leprieur (I) and then continued with the pleadings of Paul Mathonnet, defense lawyer for all the civil parties (II) and the requisitions of the Prosecutor General of the Cour de cassation, Rémi Heitz (III).

**I. Summary of the report of the Reporting Judge**

**A. Background of the proceedings**

The report began with a reminder of the proceedings underway before the French courts:

- opening of a judicial investigation following a complaint for war crimes and crimes against humanity filed by a person of French-Syrian nationality for the chemical attacks committed in Syria in August 2013;
- issuance of an arrest warrant against Bashar al-Assad on 13 November 2023, notwithstanding the contrary opinion of the National Anti-Terrorism Prosecutor's Office (PNAT);
- confirmation of the validity of the arrest warrant issued against Bashar al-Assad by the Investigating Chamber, following an appeal filed by the PNAT calling for its nullification.

The Reporting Judge then set out the main reasons for the decision of the Investigating Chamber:

*"Bashar al-Assad has excluded himself from the scope of personal immunity by not behaving as a Head of State should behave (...). The use of chemical weapons against his own population does not constitute an act falling within the normal functions of a Head of State, it being specified that the use of such chemical weapons is strictly prohibited by international law (...). [It] appears that the prohibition of the use of chemical weapons is part of customary international law as a peremptory norm, and that international crimes brought before the investigating Judges cannot be considered as part of the official functions of a Head of State. As a result, they are detachable from the sovereignty naturally attached to these functions (...). [The] Security Council has adopted Resolutions demanding that the perpetrators of the crimes constituted by the 2013 chemical attacks be prosecuted, regardless of their official capacity".*

<sup>1</sup> [Cassation proceedings](#) No. 24-84.393, Criminal immunities of foreign States' leaders: what scope (video of the hearing also available on [YouTube](#)).

<sup>2</sup> Questions and answers published on the hearing of 4 July 2025: Criminal immunities of [leaders](#) and [agents](#) of foreign States.

## **B. Presentation of the personal immunities theory**

The Reporting Judge presented the personal immunities theory, stating that it was based on the principle of sovereign equality of States, distinguishing between personal immunity - which concerned all acts performed by the Head of State, the Minister of Government and the Minister of Foreign Affairs, both in a private and official capacity - and functional immunity.

She then set out the case law of the Cour de cassation on the matter, illustrated by the decision rendered by the Criminal Chamber on 2 September 2020: the Court accepted the principle of possible exceptions to personal immunity but left it to the international community to determine the scope of these exceptions.

It was pointed out, however, by the Reporting Judge that such exceptions have never been consecrated, specifying nevertheless that the Court has never had to rule in cases concerning crimes against humanity or war crimes.

## **C. The legal questions on personal immunities referred to the Cour de cassation**

Finally, the report presented the legal questions that the Cour de cassation would have to answer and their main elements.

- *Should the quality of Head of State be the subject of recognition or lack of recognition?*

With regard to this unprecedented question, the Reporting Judge recalled that it was being raised because since November 2012, France has considered that Bashar al-Assad is no longer the legitimate representative of the Syrian people.

This question raises other subsidiary issues such as: whether personal immunity, in order to be applicable, requires that the status of Head of State be recognized at the political or diplomatic level by the prosecuting State? Is international custom of the same view? Does a unilateral act of de-recognition have legal effects on immunity?

- *Are there any limits to personal immunity in the case of international crimes?*

Several elements must be considered.

First of all, are such crimes detachable from the sovereignty of the Head of State as the Investigating Chamber considered?

Moreover, are there any limits to personal immunity that would depend on the will of the international community?

Indeed, the Investigating Chamber indicated in its decision that various resolutions of the United Nations Security Council demonstrated the will of the international community to allow the waiving of any immunity, including personal immunity, that would hinder the prosecution of the crimes committed in Syria using chemical weapons.

Finally, are there any limits to personal immunities that would arise from the fact that the offences prosecuted fall within the scope of *ius cogens* (a peremptory norm of general international law, accepted and recognized by the international community of States as a norm from which no derogation is permitted)?

On this point, the Reporting Judge highlighted that both the case law of the International Court of Justice and that of the Cour de cassation never admitted this.

- *Should and can the Plenary Assembly take into account the change in the political situation in Syria that intervened with the overthrow of Bashar al-Assad's regime?*

It is settled case law, both for the International Court of Justice and for the Cour de cassation, that the regularity of the arrest warrant is assessed on the day of its issuance - in this case at a time when Bashar al-Assad was president.

However, as the political situation has changed since the decision of the Investigating Chamber, can the Court rule on the basis of these subsequent factual developments and, in the event of a negative answer and the nullification of the arrest warrant, could the investigating Judges issue a new warrant on the basis of functional immunity, which has a more limited scope?

## **II. Plea of Paul Mathonnet, defense lawyer representing all the civil parties**

*The entirety of Paul Mathonnet's plea is attached in a separate document.*

After stating Bashar al-Assad's responsibility in the chemical weapons attacks, Paul Mathonnet presented the state of case law on the issue of immunities, noting that exceptions to functional immunity had been allowed on the basis of the fight against impunity.

Regarding personal immunity, the situation remains as described by the International Court of Justice in its *Arrest Warrant* case of 14 February 2002, known as *Yerodia*: a personal immunity justified by sovereign equality that would be total in that it would cover any act, but which would not, for all that, sacrifice the fight against impunity as long as repression would not be irreparably compromised.

Paul Mathonnet criticized this position on several grounds:

- on the one hand, the upholding of personal immunity, although temporary in nature, may lead to *de facto* impunity when there is no hope of national or international prosecution and when the regime prevents any alternation of power or separation of powers;
- on the other hand, national courts are now an integral part of the international justice system;
- finally, the fight against impunity is no longer conceived, in international law, as a simple value waiting to be consecrated by the will of the international community, but as a legally protected interest that binds States.

Thus, two main arguments have been put forward to justify the exclusion of personal immunity in the present case and the withholding of the arrest warrant issued against Bashar al-Assad.

**A. Personal immunity must be set aside with regard to the crimes of which Bashar al-Assad is accused**

The first argument put forward by Paul Mathonnet was that, in the case of personal immunity, a case-by-case approach could lead to the exclusion of said-immunity if, as in the present case, it produces a situation of impunity for crimes against humanity.

To do this, the Cour de cassation will have to go through three stages:

*1. The recognition of the fight against impunity as a legally protected interest entailing obligations for States*

Three arguments are set out to support this recognition:

- international crimes are violations of *jus cogens*;
- States have committed themselves to fighting impunity through various international instruments in the field of international criminal law;
- the practice of States that sets aside functional immunity, by judicial decisions or by specific legislation, in the name of the fight against impunity.

*2. Prevention of the political instrumentalization of prosecutions*

With regard to a possible instrumentalization, Paul Mathonnet pointed out that the present case contains two guarantees:

- the use of chemical weapons by the Damascus regime has been noted and documented by an international commission of inquiry and not unilaterally by French jurisdictions;
- the international community has repeatedly called for the punishment of all those responsible and France is not the only one to have been in favor of prosecuting Bashar al-Assad.

*3. The possible consequences of prosecution of a Head of State*

Paul Mathonnet recalled that personal immunity is no longer designed to protect the leader insofar as he or she embodies the State, but to allow the exercise of representative functions on the international scene.

As far as international action is concerned, the Head of State shares this personal immunity with others who can take over and ensure the continuity of the State's representation.

Regarding the impact on the functioning of the State and the international disruptions that may follow prosecutions, it is necessary to compare these disruptions with the scale of the disorder caused by the alleged crimes - in the current case the destabilization of an entire region creating repercussions that were felt as far away as Europe.

In fact, the situation in the present case is no different from that which results from a prosecution by an international court.

The only difference would be the legitimacy of the jurisdiction of the foreign State to prosecute these crimes, which is not supposed to be more legitimate than the State of the leader concerned.

However, when it comes to exercising jurisdiction over an international crime and with the two above-mentioned guarantees against the instrumentalization of prosecutions, it is in a way on the basis of an almost perfect mandate of the international community that the domestic judge acts with sufficient legitimacy.

### **B. Personal immunity must be ruled out because of the de-recognition of Bashar al-Assad**

In the event that the case-by-case logic is rejected, Paul Mathonnet presented a second argument according to which Bashar al-Assad no longer benefits from personal immunity in that he is no longer recognized by France as the legitimate Head of State, thus carrying out an act of de-recognition.

However, de-recognition - which is part of the obligation on States not to recognize and therefore not to give legal effects to situations based on violations of *jus cogens* - is an act with legal consequences as it puts an end to the existing legal relations between two States.

If no legal relationship exists, no breach of an obligation can result from the now non-existent relations between these two States.

Moreover, in the present case, this de-recognition constitutes a factual element:

- Bashar al-Assad no longer held an international representation function and its continued rule was only the result of mass crimes committed;
- the Syrian regime was largely diplomatically isolated and its power rested only on the military support of foreign powers.

Thus, since Bashar al-Assad no longer has the status of Head of State, he can no longer claim personal immunity.

In conclusion, the appeal should be dismissed.

### **III. Requisitions of the Prosecutor General at the Cour de cassation**

The Prosecutor General began his submissions by summarizing the question put to the Cour de cassation in the form of a question: can international law and subsequently French law tolerate that a leader suspected of crimes of absolute gravity enjoys absolute immunity from any legal action by virtue of his or her position?

He then recalled the context of the Syrian civil war as well as the chemical attacks perpetrated in 2013, concluding that it is "*legally indisputable that the chemical attacks committed in Syria fall within the scope of both war crimes and crimes against humanity since they deliberately targeted civilians with prohibited means within the framework of an explicit state policy*".

Indeed, the decision of the Investigating Chamber indicates that the judicial investigation has made it possible to collect numerous pieces of evidence establishing Bashar al-Assad's personal involvement in the commission of the acts denounced in his role as head of the army placed at the top of the chain of command, however the Prosecutor General does not consider that personal immunity can be set aside on the grounds held in said judgment.

**A. The rejection of the reasoning of the Investigating Chamber**

In its decision the Investigating Chamber sets aside personal immunity, basing itself on the condemnations issued by the United Nations Security Council and on the fact that the international crimes referred to the judges could not be considered as part of the official functions of a Head of State, which meant that they were detachable from the sovereignty attached to his office.

However, the Prosecutor General recalled that the personal immunity of sitting Heads of State prohibits any civil or criminal prosecution before foreign courts for private or official acts, referring on this to the conception of the International Court of Justice, the Cour de cassation and most of the legal doctrine - which do not see any exception to this principle even in the case of international crimes.

Hence, the Prosecutor General asserts that personal immunity cannot be set aside on the grounds relied upon by the Investigating Chamber.

**B. Proposal for substitution of grounds**

Nevertheless, the Prosecutor General **is not asking for the cancellation of Bashar al-Assad's arrest warrant.**

Indeed, supporting the same idea as Paul Mathonnet's last argument, he raised the point that the Cour de cassation could set aside personal immunity, not because the crimes committed would be detachable from his functions but because Bashar al-Assad, at the time the arrest warrant was issued, was no longer considered by France as the legitimate sitting Head of State of Syria - exposing the process that could be analyzed as a de-recognition initiative:

- the statement by French President François Hollande on 13 November 2012 indicating that France recognizes the Syrian National Coalition as the sole representative of the Syrian people;
- the reaffirmation of this position on 17 November 2012 when France accredited an opposition ambassador while refusing any representation of the regime;
- the participation in April 2018, alongside the United States and the United Kingdom, in targeted strikes against regime sites presented as sanctions;
- the qualification of the presidential election that led to the re-election of Bashar al-Assad as fraudulent by the French presidency in 2021, recalling that the European Union considers the coalition to be the legitimate representative of the aspirations of the Syrian people;
- the statement of French President Emmanuel Macron, on 8 December 2024, who welcomed the fact that "*the state of barbarism has fallen*".

Since the recognition of a government makes it possible to determine the legitimate holder of a State's international representation, including for the benefit of personal immunity, de-recognition has the opposite effect and therefore it can be argued that it removes the benefit of personal immunity.

The Prosecutor General argued that this reasoning, although never held by the Cour de cassation, is not unprecedented, since it had been adopted by the Federal Court for the Southern District of Florida in the case of *United States of America v. Noriega* to deny the benefit of judicial protection sought by General Noriega in his capacity as Head of State.

Thus, Rémi Heitz considers that the Cour de cassation could cumulatively take into account the following elements to hold that a de-recognition had taken place:

- lack of recognition of Bashar al-Assad's regime;
- recognition of another government, even a provisional one;
- severance of diplomatic relations with the regime;
- factual circumstances surrounding this diplomatic position, that is to say, **primarily, the commission of international crimes, but also the fact that Bashar al-Assad had lost control of a significant part of the Syrian territory.**

With regard to a possible functional immunity that Bashar al-Assad could then invoke as an agent of the State, the Prosecutor General recalled that many national jurisdictions (United Kingdom, Italy, Switzerland, Germany) depart from the traditional approach and refuse to apply this functional immunity to the perpetrators of international crimes, not because these acts would be detachable from the functions but because of the very nature of these acts, constituting international crimes.

The Paris Criminal Court also ruled out functional immunity in its conviction of three senior Syrian officials for crimes against humanity on 24 May 2024.

Moreover, this development has even recently been enshrined in several national legislations, such as Germany, which has amended its Code of Judicial Organization to explicitly exclude functional immunity in relation to international crimes.

The Prosecutor General therefore invited the Cour de cassation to join this jurisprudential and doctrinal movement by affirming that functional immunity cannot cover the most serious international crimes and by recalling a founding principle of international criminal law: no international crime must go unpunished.

He concluded by recalling Robert Badinter's quote: "*the dead listen to us when we talk about them*" adding that "*the victims of the atrocities committed by the regime of Bashar al-Assad, are looking at us today*" and requesting the rejection of the request presented by the Prosecutor General at the Paris Court of Appeal as well the dismissal of its appeal, proposing that the grounds of the Investigating Chamber's decision be substituted.

On this the Prosecutor General asserts that since 2012 Bashar al-Assad has not been the Syrian Head of State, within the meaning of international law, and consequently cannot benefit from the personal immunity granted to Heads of State, nor can he be protected by the functional immunity awarded to State agents due to the nature of the acts of which he is accused, in this case, chemical weapons attacks against the civilian population, constituting crimes against humanity and war crimes.

**The decision of the Cour de cassation will be rendered on 25 July 2025 at 3 p.m.**