

BELHAJ v. STRAW
SUMMARY

1. In these proceedings the appellants seek a declaration of illegality and damages arising from what they contend was the participation of the respondents in their unlawful abduction, kidnapping and removal to Libya in March 2004. The claim includes allegations that they were unlawfully detained and/or mistreated in China, Malaysia, Thailand and Libya, and on board a US registered aircraft. It is alleged that their detention and mistreatment was carried out by agents of China, Malaysia, Thailand, Libya and the United States of America. The claim pleads the following causes of action: false imprisonment, trespass to the person, conspiracy to injure, conspiracy to use unlawful means, negligence and misfeasance in public office.
2. We must emphasise that the hearings below and on this appeal have been conducted on the basis of the pleadings lodged by the parties. As matters stand these are no more than allegations.
3. On behalf of the respondents it is submitted that the proceedings are barred by state immunity and the act of state doctrine.
4. We agree with the judge that state immunity does not bar these proceedings.
5. However, we also consider that the claim is not barred by the act of state doctrine because it falls within a limitation on grounds of public policy in cases of violations of international law and fundamental human rights. In coming to this conclusion we are influenced, in particular, by the following considerations:
 - (1) The allegations in this case – although they are only allegations - are of particularly grave violations of international law and human rights in the form of torture and unlawful rendition.
 - (2) The respondents in these proceedings are either current or former officers or officials of state in the United Kingdom or government departments or agencies. Their conduct, considered in isolation, would not normally be exempt from investigation by the courts. On the contrary there is a compelling public interest in the investigation by the English courts of these allegations.
 - (3) This is not a case in which there is a lack of judicial or manageable standards. On the contrary, the applicable principles of international law and domestic law are clearly established.
 - (4) Unless the English courts were able to exercise jurisdiction in this case, these very grave allegations would go uninvestigated and the appellants would be left without any legal recourse or remedy.

- (5) Notwithstanding evidence from the Foreign and Commonwealth Office that there is a risk that damage will be done to the foreign relations and national security interests of the United Kingdom, we do not consider that this can outweigh the need for our courts to exercise jurisdiction in this case. Here, the risk of displeasing our allies or offending other states, cannot justify our declining jurisdiction on grounds of act of state over what is a properly justifiable claim.
6. Furthermore, the act of state doctrine has no application to the extent that the proceedings relate to the extra-territorial acts of foreign states.
7. Finally, we have upheld the judge's ruling on issues of applicable law.