

## **FORMER KING OF SPAIN NOT ENTITLED TO STATE IMMUNITY AGAINST HARASSMENT CLAIMS MADE BY HIS FORMER PARTNER**

*Sayn-Wittgenstein-Sayn v Borbon [2022] EWHC 668 (QB)*

### **Introduction**

By a judgment handed down on 24 March 2022 in *Sayn-Wittgenstein-Sayn v Borbon [2022] EWHC 668 (QB)*, the English High Court held that the former king of Spain was not able to rely either on the personal immunity afforded to foreign heads of State and family members forming part of their household under Section 20 of the State Immunity Act 1978 (“SIA 1978”) or on the immunity afforded for acts performed by foreign heads of State in their public capacity under Section 14 SIA 1978 in respect of a harassment claim brought against him in the English courts by his former partner.

### **Background**

The defendant was Juan Carlos I, the former king and head of state in Spain. In June 2014, the defendant abdicated. His son became king (King Felipe VI). Pursuant to a royal decree, the defendant was entitled to continue to use the title ‘King Emeritus’ for the rest of his life on an honorary basis and was entitled to be addressed as ‘His Majesty’. He also continued, from his abdication until his retirement in June 2019, to represent Spain at public events.

The claimant and the defendant had previously been in a relationship from 2004 to 2009. The claimant alleged that since 2012 the defendant (and agents acting on his behalf) had mounted a campaign of harassment against her. In mid-2018, leaked recordings of the claimant speaking to a former chief of police gave rise to calls for the defendant to be investigated for corruption. In August 2020, the defendant relocated to the United Arab Emirates.

The defendant applied for a declaration that the English court had no jurisdiction over the harassment claim by virtue of his state immunity under SIA 1978. That immunity was asserted on two bases: (1) personal immunity as a foreign head of State under Section 20(1)(a) SIA 1978, and/or as a member of King Felipe VI’s family forming part of his household under Section 20(1)(b) SIA 1978; and (2) functional immunity for acts performed by a head of State in his public capacity under Section 14(1)(a) SIA 1978.

### **Decision**

The High Court (Nicklin J) refused the defendant’s state immunity application.

As regards the defendant’s claim to personal immunity as a head of state, Section 20(1)(a) SIA 1978 conferred immunity on a “sovereign or other head of state”. There was no separate category for a sovereign who was not a head of state. The Court of Appeal had established in *Harb v Aziz [2015] EWCA Civ 481* that former heads of state did not qualify for personal immunity, and the fact that the defendant had been granted a “special and unprecedented” constitutional status within

### **CONTACT:**

Spain was immaterial. The interpretation of Section 20(1)(a) SIA 1978 advanced by the defendant would grant him lifelong personal immunity from civil and criminal proceedings even after his abdication, his retirement from public duties, the cessation of his receipt of financial support from King Felipe VI and his move to the UAE. Such an interpretation was not compelled by principles of international law.

As regards the defendant's claim to personal immunity under Section 20(1)(b) SIA 1978, the judge found that, whilst there was no doubt the defendant (as the current King's father) remained part of the Spanish Royal Family, the evidence did not suggest that the defendant (who did not live with King Felipe VI) formed part of King Felipe VI's household. The Court of Appeal in *Apex Global Management Ltd v Fi Call Ltd* [2013] EWCA Civ 642 had established the test for the assessment of "household" – the key factor was whether the defendant was a dependant of King Felipe VI, which was not the case here.

As regards the defendant's claim to functional immunity under Section 14(1)(a) SIA 1978, the judge held that, overall, harassment is an act that any private citizen can perform; it is not "*of its own character a governmental act*" (citing *Kuwait Airways Corp v Iraqi Airways Co (No.1)* [1995] 1 WLR 1147). The judge nevertheless went on to consider whether any of the individual acts (as alleged) could give rise to a state immunity claim. The judge held that the majority of the alleged acts of harassment that occurred before the defendant's abdication could not attract functional immunity as most of them were not directly attributable to State actors. The fact that harassing email and telephone threats had allegedly been made to the claimant by a high-ranking Spanish official (the head of Spain's Centro Nacional de Inteligencia ("CNI")) did not render them "*state acts*" capable of attracting immunity. However, the judge held he had insufficient information to assess whether an alleged operation targeting the claimant's home in Monaco gave rise to a state immunity claim and left it open to be considered later in the proceedings if credible evidence emerged that that alleged operation was a state-sanctioned mission carried out by agents of the Spanish State.

Although, in light of the judge's conclusions, the point did not arise, the judge also dealt with and rejected the claimant's assertion that, had the defendant been able to establish a basis for state immunity, the exception in respect of personal injury claims (under Section 5 SIA 1978) would have applied. The claimant's claim was for "*pure harassment*", and did not include a claim for any psychiatric injury, or other personal injury.

Overall, the state immunity application was dismissed. However, the claimant was required to amend her pleadings to clarify whether certain acts alleged against the head of CNI were alleged to have been carried out in his personal or in his official capacity.

## **Concluding Remarks**

The judgment provides an illustration of the limits on the applicability of the personal immunity afforded to current heads of foreign states and family members forming part of their household under English law, as well as the difficulties that the English courts can experience in assessing (at

an early stage of proceedings and often on limited evidence) whether particular acts are private or sovereign in character for the purposes of the functional immunity test.

It is understood that the defendant indicated an intention to appeal to the Court of Appeal.