

C. Immunity of Heads and Former Heads of Foreign States

I. What immunity is available for officials with regards to civil proceedings?

(i) What if the civil proceedings relate to acts that are conducted in public capacity, on behalf of the State?

Type of Official	Proceedings				
	Civil		Criminal		
	Representative/public capacity	Personal/private capacity	Representative/public capacity	Personal/private capacity	Serious International Crimes (e.g. torture)
Head of State	Civil proceedings against a Head of State (<i>FSIA</i> s 36), in representative or public capacity, are in substance against the foreign state (<i>Zooernsch v Waldock</i>). Hence, the proceedings are subject to the ordinary principles of foreign state immunity with respect to functional immunity (<i>Prosecutor v Blaskic</i>). Refer to 6.B.	The Head of State (and their spouse) is entitled to the same jurisdictional immunity enjoyed by the head of a diplomatic mission (<i>FSIA</i> s 36(1)(a)). i.e. absolute immunity from civil jurisdiction, subject to the exceptions in the <i>VCDR</i> Art 31.	The Head of State (and their spouse) is entitled to the same jurisdictional immunity enjoyed by the head of a diplomatic mission (<i>FSIA</i> s 36(1)(a)). i.e. absolute immunity <i>ratione personae</i> from criminal jurisdiction (<i>VCDR</i> Art 31). Civil proceedings: <i>Thor Shipping</i> Criminal proceedings: <i>Gaddafi</i>		Because the Head of State enjoys immunity <i>ratione personae</i> , there is no exception to immunity even for serious international crimes (<i>Pinochet</i>).
Former Head of State	As above (residual immunity)		Former Heads of State are only entitled to jurisdictional immunity with respect to acts performed in the exercise of <u>official functions</u> of the head of state as a residual immunity (<i>VCDR</i> Art 39(2)).		Because the former Head of State only enjoys immunity <i>ratione materiae</i> , there is an exception to immunity from criminal jurisdiction in respect of acts of <u>official torture</u> as torture cannot be a state function (<i>Pinochet</i>).
Minister of Foreign Affairs or other high ranking	As above (<i>FSIA</i> s 3(3)(c))		To determine the immunity enjoyed by an official, consider the <u>nature of the functions</u> exercised by the official and whether the performance of such functions requires immunity <i>ratione personae</i> or <i>ratione materiae</i> . The Minister of Foreign Affairs enjoys immunity		However, if the proceeding is brought under universal civil jurisdiction (as opposed to universal criminal