Press Summary

27 July 2026

The Kingdom of Bahrain (Appellant) *v* Shehabi and another (Respondents)

[2026] UKSC 25

On appeal from: [2024] EWCA Civ 1158

Justices: Lord Lloyd-Jones, Lord Hamblen, Lord Leggatt, Lord Burrows and Lady Simler

Background to the Appeal

This appeal concerns whether the Kingdom of Bahrain ("**Bahrain**") can rely on state immunity under section 1 of the State Immunity Act 1978 ("**the SIA**") in respect of proceedings brought against it by Dr Saeed Shehabi and Mr Moosa Mohammed or whether the proceedings fall within the exception to immunity created by section 5 SIA.

Section 1 of the SIA gives foreign states immunity from the jurisdiction of courts of the United Kingdom, except as provided for in sections 2 to 11 of the SIA. The exception relevant to this appeal is section 5 which provides immunity for death, personal injury or property damage "caused by an act or omission in the United Kingdom". This is termed the "territorial tort exception".

Article 11 of the European Convention on State Immunity ("**ECSI**"), to which the United Kingdom is a party, excepts from immunity those proceedings which relate to redress for personal injury or property damage "if the facts which occasioned the injury or damage occurred in the territory of the State of the forum, and if the author of the injury or damage was present in that territory at the time when those facts occurred."

Dr Shehabi, a pro-democracy journalist and activist, is a leading figure in the Bahraini opposition movement who has lived in the United Kingdom since 1973. Mr Mohammed is a photographer, videographer and an activist for human rights and democracy in Bahrain who has lived in the United Kingdom since 2006.

The appeal has been heard on the basis of assumed facts. Dr Shehabi and Mr Mohammed allege that, from around September 2011, persons acting on behalf of Bahrain hacked or infected their computers with a spyware programme. They both allegedly suffered personal injury, in the form of psychiatric harm, upon learning of this in or around August 2014, following the publication of information about the spyware programme by WikiLeaks and/or an organisation called Bahrain Watch. It is alleged that this amounts to harassment, contrary to the Protection from Harassment Act 1997. They argue that their claim falls within the exception to immunity under section 5 of the SIA.

It is common ground that Dr Shehabi and Mr Mohammed's claim would not fall within the exception contained in article 11 of the ECSI because "the author of the injury or damage" was not present in the United Kingdom. Bahrain's agents were likely operating from outside the United Kingdom and the spyware was operated via a server located in Bahrain, while Dr Shehabi and Mr Mohammed and their computers were in the United Kingdom.

The High Court refused Bahrain's application for a declaration of immunity. It held that section 5 of the SIA does not require that the author of the personal injury or property damage be present in the United Kingdom. In addition, there is no requirement that every act or omission which caused the injury or damage has to take place in the United Kingdom, it is sufficient for there to be a substantial and effective causative act or omission.

The Court of Appeal dismissed Bahrain's appeal. It considered it artificial and unprincipled to treat the act, when a person located abroad uses a computer to infect a computer in the United Kingdom with spyware, as having taken place abroad and not in the United Kingdom. Nor did the Court of Appeal find it necessary for all acts of the foreign state to have taken place in the United Kingdom. Bahrain now appeals to the Supreme Court.

Judgment

The Supreme Court, by a majority, dismisses the appeal. Lord Lloyd-Jones, Lord Hamblen and Lady Simler give the leading judgment. Lord Leggatt and Lord Burrows give dissenting judgments.

Reasons for the Judgment

<u>Majority Judgment</u>

The issue on appeal is the correct interpretation of section 5 of the SIA [**1**]. The words of the statute are the primary focus **[36]**. Section 5 is expressed in straightforward language. It requires *an* act in the United Kingdom which is causative of personal injury or property damage. As a matter of ordinary language, there is no requirement in section 5 for "the" act or "all" acts to be in the United Kingdom, still less is there any express requirement of presence in the United Kingdom for the author of the relevant act **[45]**. This interpretation of section 5 does not involve reading in words **[47]**.

The words "caused by an act or omission" naturally import the legal requirements of causation. In other words, a legally causative act is required. This will exclude acts which are too remote or insignificant. But no further qualification is necessary **[47]**. There is no good reason why section 5 should be read as meaning only the initiating, precipitating or responsible act or omission **[55]**.

The effect of section 6(c) of the Interpretation Act 1978 is that the words "caused by an act" can also mean "caused by acts" in the United Kingdom. However, there is no basis for reading in a concept of exclusivity so that *every* act causing the harm must be performed in the United Kingdom **[52]-[53]**.

The central issue in this appeal is whether section 5 requires the presence of the responsible actor in the United Kingdom at the time of the act that is causative of the personal injury or property damage **[49]**.

Section 5 must be understood in light of the purpose of the SIA. One reason for the enactment of the SIA was to enable the United Kingdom to ratify ECSI **[49]**. While the SIA was intended to give broad effect to the ECSI, it was not intended to implement it precisely **[62]-[63]**. Illustratively, sections 3(1)(a), 4, 5, 9 and 13(4) of the SIA have a wider scope than the corresponding provisions in the ECSI, including the use of different jurisdictional linking factors from those in ECSI **[67]-[68]**.

Article 11 of the ECSI has two linking factors: "the facts which occasioned the injury or damage" must have "occurred in the territory of the State of the forum" and "the author of the injury or damage" must be "present in that territory at the time when those facts occurred". Section 5 of the SIA, by contrast, is concerned with "an act" of the foreign state causative of the relevant harm, and contains no express presence requirement **[49]**, **[60]**.

The words of section 5 are not reasonably capable of bearing the same meaning as the words of article 11 which impose the presence requirement. The natural meaning of the word "act" in section 5 is not limited to the physical movement of a human being. The principle of consistent interpretation (referring to the presumption that statutes should be interpreted in conformity with the United Kingdom's international obligations) has no application here because the departure from the ECSI is deliberate. If it had been Parliament's intention to require a presence requirement, it is inconceivable that this should have been omitted. Nor can its omission be explained by any difference in drafting styles between ECSI and the SIA; it was open to Parliament to include a presence requirement without adopting the exact language of article 11. The omission of a presence requirement in section 5 is clear and deliberate. The Court finds that this is determinative of the appeal **[73]-[75]**.

The United Kingdom has the power to derogate from the ECSI, and exclude immunity in a wider range of cases, under article 24(1) of the ECSI. The last sentence of article 24(1) provides that this is "without prejudice to the immunity from jurisdiction which foreign States enjoy in respect of acts performed in the exercise of sovereign authority". This provision does not exclude from derogation all acts performed in the exercise of sovereign authority. Article 11 of the ECSI itself does not distinguish between sovereign and non-sovereign acts. The effect of Article 24(1) is that the United Kingdom may, consistently with its obligations under the ECSI, deny immunity in wider circumstances that those identified in the ECSI provided that in doing so it does not deny immunity in respect of such sovereign acts for which customary international law requires immunity **[64]-[66]**.

While the Court found it unnecessary to express a concluded view on the status of customary international law, there was a reasonable basis in customary international law for the United Kingdom to conclude that it could lawfully give effect to a territorial tort exception in section 5 which did not distinguish between sovereign and non-sovereign acts and which employed a different jurisdictional linking factor from that contained in article 11 of the ECSI **[79]**. There is a substantial body of state practice supporting the existence of a territorial tort exception applicable to sovereign acts, including international conventions, national legislation, foreign judicial decisions, as well as academic commentary **[84]-[92]**.

Even if no territorial tort exception exists in customary international law, this does not support Bahrain's interpretation of section 5 **[94]**. Section 5 of the SIA and Article 11 of the ECSI do not distinguish between sovereign and non-sovereign acts. Therefore, section 5 would still permit the exercise of jurisdiction in breach of customary international law even if interpreted in conformity with article 11 of the ECSI **[96]**. To read down section 5 to comply with the claimed position in customary international law would require that sovereign acts performed by foreign state agents present in the United Kingdom be entitled to immunity. This would clearly conflict with Parliament's intention **[99]**.

There is no particular reason why presence should define the limits of the exception as a matter of customary international law. The purpose of the presence requirement arises from concerns as to jurisdiction rather than immunity. The relevant consideration as regards immunity is whether the linking factor establishes a sufficient connection with the forum state. Section 5 already requires satisfaction of a powerful linking factor justifying a denial of immunity, namely an act by the foreign state within the territory of the forum state. This is consistent with the principle of a state's sovereignty over its own territory **[97]-[105]**.

Concluding on the interpretation of section 5, the meaning of "an act" in section 5 of the SIA includes an act carried out using a device or other automated or remote means, even if the person responsible for carrying out the act is not physically present at the location where the act takes place. Therefore, hacking into a computer located in the United Kingdom by a foreign agent situated abroad is an act in the United Kingdom under section 5 **[131]**. Such conduct interferes with the territorial sovereignty of the United Kingdom. Where a foreign state caused an explosion in this country, the infringement is just as great if caused by a drone remotely controlled from abroad **[133].**

In the present case, the acts involved surveillance of Dr Shehabi and Mr Mohammed. That surveillance took place in the United Kingdom. It involved a serious and intrusive interference with the territorial sovereignty of the United Kingdom **[136]**. It makes no difference that surveillance is carried out by means of computer hacking rather than by a human **[138**]. The case therefore falls within the exception to immunity from jurisdiction contained in section 5 of the SIA **[147]**.

The Court held that it is not necessary to consider whether the grant of immunity would breach the right of access to a court under article 6 of the European Convention on Human Rights in circumstances where the appeal is dismissed **[148]**.

<u>Dissenting Judgments</u>

Lord Leggatt gives a dissenting judgment. In his view, the majority's interpretation of section 5 of the SIA is inconsistent with the language and purpose of the legislation and with international law **[154]**.

As the Supreme Court recently held in another case (*El-Khouri v USA* [2025] AC 845, para 51), on a normal and natural understanding of language, an act is done where the actor is located even if it has effects elsewhere. If an agent in Bahrain hacks a computer located in the UK, the agent performs acts by inputting commands in Bahrain. Those acts have almost instantaneous effects in the UK - eg activating the camera of the targeted computer or causing it to transmit data. But the acts - as opposed to their effects - all occur Bahrain **[198]-[204]**. An interpretation which conflates acts and their effects leads to incoherent outcomes and undermines clarity and certainty **[210]-[222]**.

Any doubt about the meaning of section 5 is removed by considering the purpose of the SIA. It is agreed that a key purpose of enacting it was to enable the UK to ratify the ECSI. That required the SIA to be consistent with the ECSI **[223]-[224]**. To be consistent, the SIA did not have to follow the ECSI precisely because the ECSI itself allowed wider exceptions to immunity provided they were compatible with customary international law (CIL) **[181]-[186]**. CIL permits a territorial tort exception to the general rule of state immunity for sovereign acts only where personal injury or damage to property is caused by an agent present in the territory of the forum state **[312]-[313]**. There is not a single instance of state practice to support a wider exception that would apply where the agent is located *outside* the territory of the forum state **[314]-[315]**. To interpret section 5 as creating such a wider exception in UK law involves attributing to Parliament an intention to place the UK in breach of CIL and of the treaty it wished to ratify **[231]-[232]**. Nor is such a wider exception required to comply with article 6 of the European Convention on Human Rights **[316]-[317]**.

To say that Parliament omitted from section 5 a requirement that the foreign agent be present in the UK begs the question. Properly interpreted, section 5 does require the foreign agent to be present in the UK by requiring the act or omission to take place in the UK. Parliament has used a different drafting technique from that used in article 11 of the ECSI to achieve a similar result **[229]-[242]**. To interpret section 5 as having a wider scope places the United Kingdom in breach of international law and has no valid justification **[323]**.

In his separate dissenting judgment, Lord Burrows gives ten reasons why the words of section 5 of the SIA are reasonably capable of being given an interpretation that is consistent with article 11 of the ECSI so that the presumption in *The Eschersheim* [1976] 1 WLR 430 (to the effect that, if possible, domestic legislation is to be interpreted consistently with the Treaty being implemented) is not rebutted **[325]-[341]**. He also explains why the UK was not free to derogate from article 11 of the ECSI by rejecting a requirement of presence in the UK **[342]-[351]**. He concludes by clarifying why he disagrees with the majority's judgment **[353]-[358]**.

References in square brackets are to paragraphs in the judgment.