

## IN THE CITY OF WESTMINSTER MAGISTRATES' COURT

### **Re: Mikhail Gorbachev**

This is a ex parte application by Mr Vladimir Bukovsy. The applicant alleges that when Mikhail Gorbachev was the Head of the Soviet Union and the commander in Chief of the armed forces he gave orders to troops to disperse peaceful demonstrations on the 9 April 1989 in Tblisi Georgia, 13 January 1991 in Vilnius, Lithuania and thirdly that he ordered an attack on the City of Baku in Azerbaijan on 20 January 1990. Deaths are alleged to have occurred as the result of each order.

The applicant is Vladimir Bukovsy. I do not know his connection with the alleged conduct, I have not considered it necessary to enquire. The applicant alleges that this conduct amounts to torture contrary to section 134 Criminal Justice Act 1988. I do not agree. The elements of the offence are not made out by the conduct alleged.

In this case this court is being asked to exercise extra-territorial jurisdiction over conduct in a foreign State by a person who is not a United Kingdom national against persons who were not United Kingdom nationals. There is no requirement in international law to allow a private prosecution in such a case.

This court has received information from the Foreign and Commonwealth Office in response to my request for information about the basis of Mr Gorbachev's visit to the United Kingdom. I am told that Mr Gorbachev is in the United Kingdom both for the purposes of attending a fundraising event this evening and to attend an official meeting with the Prime Minister. My job is to consider of my own volition, before considering whether to issue any criminal process, whether Mr Gorbachev is entitled to immunity. I am satisfied that Mr Gorbachev is entitled to immunity under customary international law as a member of a Special Mission. This immunity is in accordance with article 31 of the Convention on Special Missions of the 8<sup>th</sup> December 1969 which declares that the representatives of the sending state in the Special Mission and the members of all its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving state. This Convention was adopted by Resolution 2430 of the General Assembly of the United Nations in 1969.

State immunity *ratione materiae* is continuing immunity which applies to a person because of the conduct he undertook on behalf of his State. In this case the allegation relates to conduct on behalf of the State. Therefore the conduct which is alleged to be that of the offence may carry with it immunity. This is the same dilemma as in the Pinochet case. In that case the House of Lords said that Senator Pinochet could be extradited for offences of torture committed after the three States involved had all ratified the Torture Convention. In the Pinochet case the court was being asked to

extradite Senator Pinochet by another State and article 5.2 of the Torture Convention applies. The court was not being asked for a warrant by a private prosecutor.

The ICJ in the *Djibouti -v- France* case said that a State seeking to claim immunity must notify the authorities of the other State concerned. A State would only be able to do that if it was aware of the application for a warrant. In this case the Russian Federation. If I thought it were necessary I would notify the Russian Federation of this application before considering issuing a warrant. I do not think this is necessary.

I am satisfied that by virtue of being a member of a Special Mission Mr Gorbachev has immunity of prosecution, I am not satisfied that the elements of the offence are made out and I am declining to issue a warrant.

Deputy Senior District Judge

30 March 2011