



JUDICIARY OF
ENGLAND AND WALES

Benkharbouche & Janah v Embassy of the Republic of Sudan & Others

Court of Appeal (Civil Division)

5 February 2015

SUMMARY TO ASSIST THE MEDIA

Ms Benkharbouche and Ms Janah are both Moroccan nationals. They were employed as members of the domestic staff respectively at the Sudanese and Libyan Embassies in London. They were both dismissed and brought claims against the respective Embassies for unfair dismissal, failure to pay the national minimum wage and breach of the Working Time Regulations 1998. Ms Janah also claims arrears of pay, racial discrimination and harassment.

The Embassies have claimed state immunity in reliance on sections 16(1)(a) and 4(2)(b) of the State Immunity Act 1961. The effect of section 16(1)(a) is that states enjoy a blanket immunity from the jurisdiction of the courts of the UK in respect of proceedings concerning the employment of the members of an Embassy. For the reasons given in the judgment handed down, the court has decided that a rule of the breadth of section 16(1)(a) is not required by international law and is therefore in its application to the claimants incompatible with article 6 of the European Convention on Human Rights. Ms Janah's claim is also barred by section 4(2)(b) because she was not habitually resident in the UK at the time her contract of employment was made. The court has concluded that section 4(2)(b) is discriminatory on grounds of nationality and for that reason it infringes article 6 of the Convention when read with article 14.

The court therefore makes a declaration of incompatibility in respect of section 4(2)(b) and section 16(1)(a).

The court has also concluded that the claims (by both claimants) for breach of the Working Time Regulations 1998 and (by Ms Janah) for racial discrimination and harassment fall within the scope of EU law; the claimants are entitled to rely on article 47 of the EU Charter; and the court is required to disapply sections 4(2)(b) and 16(1)(a) in so far as they apply to those parts of the claims which fall within the scope of EU law.

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This summary is provided to assist in understanding the court's decision. It does not form part of the reasons for the decision. The full judgment of the court is the only authoritative document.