



Press Summary

6 March 2025

The Royal Embassy of Saudi Arabia (Cultural Bureau) (Appellant) v Costantine (Respondent)

[2025] UKSC 9

On appeal from [2024] EWCA Civ 332

Justices: Lord Lloyd-Jones, Lord Briggs, Lord Hamblen, Lord Leggatt and Lord Burnett

Background to the Appeal

Ms Costantine is a dual Lebanese and British national who was employed by the Royal Embassy of Saudi Arabia between 18 January 2010 and 17 January 2018. During this period, the Embassy's function included making arrangements for, and protecting the interests of, Saudi students who were studying in the United Kingdom.

Initially, Ms Costantine was employed as a Post Room Clerk in the Administrative Affairs Department. In essence, this was a data entry role. She dealt with university invoices and cross-referenced the relevant student's name, number and university. She did not open the mail or analyse the correspondence in any way. Although Ms Costantine may have been able to access wide-ranging confidential information through an electronic record system, she was unaware that she could do so and never in fact did so. Between 2012 and 2015, she was involved in organising the Embassy's Career Day and Graduation Ceremony. Her involvement may have granted her access to confidential personal details of government or royal attendees, but she did not analyse these details or make any decisions in relation to them.

The Embassy then transferred Ms Costantine to the role of Secretary to Dr Nassir, the Head of the Cultural Affairs Department, where she undertook basic secretarial functions. She did not have access to Dr Nassir's diary, attend any meetings with him or know the details of his meetings. She may have dealt with the children of Saudi officials or royal family members, but her role remained purely administrative, making arrangements for their study. Following the appointment of a new cultural attaché, Ms Costantine was moved back to the post room in the Administrative Affairs Department, where she undertook little or no work until her employment ended.

On 19 March 2018, Ms Costantine brought claims against the Embassy for direct discrimination on grounds of religious belief and harassment related to religious belief under the Equality Act 2010. The Embassy pleaded immunity from the claims under the State

Immunity Act 1978 (“**the SIA 1978**”). The Employment Tribunal held that the Embassy was not entitled to State immunity because Ms Costantine’s employment was not an exercise of sovereign authority. The Employment Appeal Tribunal dismissed the Embassy’s appeal on the first and again after an oral hearing. The Embassy was granted permission to appeal to the Court of Appeal and filed a skeleton argument in relation to the appeal. However, the Embassy failed to attend the hearing. The Embassy’s solicitors ceased acting for the Embassy because of prolonged non-payment of their bills and the Embassy did not find alternative representation. The Court of Appeal dismissed the Embassy’s appeal for non-appearance, without reference to the issue of State immunity. The Embassy appeals to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeal. In the circumstances of this case, the Court of Appeal erred in law by failing to give proper consideration, in accordance with its duty under section 1(2) of the SIA 1978, to whether the Embassy was entitled to State immunity. If the Court of Appeal had considered the issue, however, it would necessarily have concluded that the Embassy was not entitled to immunity. Lord Lloyd-Jones gives the judgment, with which the other Justices agree.

Reasons for the Judgment

State immunity is a general rule of customary international law, derived from the principle of sovereign equality of States. If a court exercises jurisdiction over a foreign State which is entitled to State immunity, there is a breach of international law. To ensure that no such breach occurs, section 1(2) of the SIA 1978 imposes a duty on domestic courts to give effect to State immunity even if the State does not appear in the proceedings and raise the point itself [36]-[40]. To determine whether State immunity applies, the court must inform itself of the relevant circumstances of the case, including the status of the defendant and the nature of the proceedings. Section 1(2) thus imposes an obligation of inquiry [42].

The duty imposed by section 1(2) extends to appellate courts, including the Court of Appeal. First, the natural meaning of the statutory provisions is clear, with “court” defined generously in the SIA 1978. Secondly, a general exclusion of appellate courts would be liable to defeat the purpose of section 1(2), for example where a foreign State does not appear in proceedings but the denial of immunity at first instance was clearly erroneous. Thirdly, section 1(2) has consistently been held to apply to appellate courts in this jurisdiction [43]-[49]. In this case, the Court of Appeal was aware of the issue of State immunity and, despite the Embassy’s failure to attend the hearing, should not have dismissed the appeal without considering of its own motion whether the Embassy was entitled to immunity [50]-[52].

In *Benkharbouche v Embassy of the Republic of Sudan* [2017] UKSC 62, the Supreme Court held that, in accordance with customary international law, State immunity is limited to acts carried out by a State in the exercise of sovereign authority. It held that the employment of purely domestic staff of a diplomatic mission is not a sovereign act but an act of a private law character. It suggested that, subject to exceptions, the same is true of technical and administrative staff whose role is essentially ancillary and supportive. As a result, certain provisions of the SIA 1978 which extended immunity beyond these limits were incompatible with the Human Rights Act 1998 and disapplied for inconsistency with the EU Charter in so far as they applied to claims derived from EU law [54]-[62]. The Secretary of State passed a Remedial Order, amending the SIA 1978 to reflect the judgment in *Benkharbouche*. The Remedial Order entered into force on 23 February 2023 and applies to proceedings in respect of causes of action arising on or after 18 October 2017, the date of the judgment [30], [34], [63]-[65]. In the present proceedings, some of Ms Costantine’s claims are likely to have arisen before this change in the law and others afterwards. The parties agreed that, notwithstanding

the legislative changes, Ms Costantine remains entitled to rely on the EU Charter in the same way as the claimants in *Benkharbouche*. The Supreme Court is content to proceed on that basis [66]-[69].

Applying the *Benkharbouche* principles, it is necessary to determine: first, whether the Embassy entered into the contract of employment with Ms Costantine in the exercise of sovereign authority; and secondly, whether the Embassy engaged in the conduct of which Ms Costantine complains in the exercise of sovereign authority [70]. In this case, the Employment Tribunal judge directed herself correctly as to the applicable law and made no error in her application of the law to the facts as she found them. The judge recognised that the promotion of culture and education is capable of being a governmental function within the Embassy. She considered Ms Costantine's proximity to those governmental functions in each of the three phases of her employment, taking into account the evidence regarding her access to confidential information, but found that her duties at no point went beyond the normal ancillary and supportive role of administrative staff [72]-[73]. The Supreme Court also rejects a new argument that Ms Costantine's complaints concern the exercise of sovereign authority, as there has been no suggestion that her dismissal was in any way connected with sovereign matters and she is not seeking reinstatement [75]-[76].

References in square brackets are to paragraphs in the judgment.

NOTE:

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. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)