

Anwar (Appellant) v The Advocate General (representing the Secretary of State for Business Energy and Industrial Strategy) (Respondent) (Scotland)

Case ID: UKSC 2020/0074

Case summary

Issue

- (1) Does the Court of Session and/or the Sheriff Court already have power to grant a warrant for inhibition and arrestment on the dependence of an application to an Employment Tribunal by a worker alleging unlawful work and workplace related discrimination and/or harassment on grounds of sex and/or race and/or religion or belief?
- (2) If the Court of Session and/or the Sheriff Court have this power, does the requirement for an applicant in an Employment Tribunal claim to raise a court action constitute a breach of the common law and EU principles of effectiveness or effective remedy?
- (3) If the Court of Session and/or the Sheriff Court do not have this power, does this constitute a breach of EU law?

Facts

In July 2016, the Employment Tribunal held that the appellant, Ms Anwar, had been subjected to unlawful workplace and work related harassment on the grounds of her sex and her religion or beliefs. The Tribunal ordered Ms Anwar's former employer and her former line manager to pay Ms Anwar £74,647.96 on a joint and several basis.

Ms Anwar sought to enforce the judgment. Her former employer's bank statements indicated that, as at 1 August 2016, it had more than £68,000 in its account. However, by 7 October 2016, that sum had fallen to around £4,000. Ms Anwar believes that her former employer took steps to dispose of its funds to prevent Ms Anwar from receiving the sums due to her under the Employment Tribunal's order. She has not yet received any of the sums due under the order, and has no reasonable expectation of ever doing so.

Ms Anwar maintains that she would not be in this position if she had been able to effect an arrestment of funds on the dependence of her Employment Tribunal application. She issued a petition for judicial review against the Secretary of State for Business, Energy and Industrial Strategy. Ms Anwar claims that – because there is no express legislation which provides Employment Tribunals with the power to grant an arrestment in cases like hers – the Secretary of State has failed properly to implement in Scotland the provisions of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. She argues that this is incompatible with her EU law right to an effective remedy.

The Outer House of the Court of Session dismissed Ms Anwar's petition for judicial review. Her appeal was dismissed by the Inner House. Ms Anwar now appeals to the Supreme Court.

Judgment appealed

[\[2019\] CSIH 43](#)

Parties

Appellant(s)

Anwar

Respondent(s)

The Advocate General (representing the Secretary of State for Business, Energy and Industrial Strategy)

Appeal

Justices

Lord Hodge, Lord Lloyd-Jones, Lord Briggs, Lord Leggatt, Lord Burrows

Hearing start date

25 February 2021

Hearing finish date

25 February 2021

Watch hearing

25 Feb 2021 [Morning session](#) [Afternoon session](#)

Judgment details

Judgment date

13 October 2021

Neutral citation

[2021] UKSC 44