



Neutral Citation Number: [2025] EWCA Civ 59

Case No: CA-2023-002612

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE EMPLOYMENT APPEAL TRIBUNAL
EA-2021-000659-NLD

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 January 2025

Before :

LORD JUSTICE BEAN
LORD JUSTICE BAKER
and
LADY JUSTICE ANDREWS

Between :

THE KINGDOM OF SPAIN
- and -
LYDIA LORENZO

Appellant

Respondent

Jonathan Davies (instructed by **Gunnercooke LLP**) for the **Appellant**
Matt Jackson and **Caitlin Page** (instructed by **Leigh Day**) for the **Respondent**

Supplementary Judgment

This judgment was handed down remotely at 10:00 on 29 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Bean, Lord Justice Baker, Lady Justice Andrews:

1. In our previous judgment ([2024 EWCA Civ 1602]) handed down on 20 December 2024 we invited further submissions from the parties and from the Secretary of State on whether a declaration should be made that section 4(2)(a) of the State Immunity Act 1978 is incompatible with the ECHR.
2. The Claimant sought such a declaration relying not only on Article 6 but also on Article 14 and Article 1 of the First Protocol (A1P1). Spain made detailed submissions but expressed itself to be neutral.
3. The Secretary of State, who had not taken part in the appeal itself, accepted that it followed from our judgment that section 4(2)(a) is not compatible with Article 6 of the ECHR and that the court had a discretion to make a declaration of incompatibility. However, the Secretary of State submitted that the conclusions reached in the judgment do not support a declaration of incompatibility in respect of A1P1 and that any declaration should be in terms only that section 4(2)(a) is incompatible with Article 6. The Secretary of State also reminded us of the observation of Baroness Hale of Richmond in *R(Wright) v Secretary of State for Health* [2009] UKHL 3; [2009] AC 739 that the court, when making a declaration of incompatibility, should not advise as to what needs to be done to bring legislation into line with the requirements of the ECHR.
4. We accept the submissions of the Secretary of State. We therefore make a declaration that section 4(2)(a) is incompatible with Article 6. We do not think any purpose would be served in considering the somewhat theoretical question of whether anything is added by Article 14 or by A1P1.
5. We also received submissions on costs from the Appellant and Respondent. Ms Lorenzo's legal team were acting pro bono but it is not in dispute that a pro bono costs order may be made under section 194 of the Legal Services Act 2007. We make an order that the Appellant must reimburse the Respondent's court fee of £626.00 and in addition must make a payment of pro bono costs to the prescribed charity, which we summarily assess at £27,500.