Neutral Citation Number: [2026] EAT169

Case No: EA-2024-000998-JPD

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 5 November 2026

Before:

THE HONOURABLE MR JUSTICE COPPEL

- -

Between:

MR AL-ATEEQI

Claimant/Appellant

- and –

KUWAIT INVESTMENT AUTHORITY

Respondent

- -
- -

Alison Macdonald KC and George Molyneaux (instructed by **Kingsley Napley LLP) for the Appellant**
Claire Darwin KC and Phillippa Webb KC (instructed by **Baker & McKenzie LLP**) **for the Respondent**

Hearing date: 21 - 22 July 2026

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JUDGMENT

SUMMARY

State immunity

The Claimant was the Chief Executive Officer ("CEO") of the Kuwait Investment Office ("KIO"), a London office of the Kuwait Investment Authority ("KIA") which manages sovereign wealth funds of the State of Kuwait. As CEO of the KIO, he had diplomatic status, as a Financial Attaché to the Kuwaiti Embassy in London. The Employment Tribunal ("ET") upheld a defence of state immunity to the Claimant's claims that he had suffered detriment and had been unfairly dismissed as a result of making protected disclosures. The ET decided that the KIA was a "separate entity" rather than being part of the State of Kuwait, but that it fulfilled the conditions for immunity of a separate entity in s. 14(2) of the State Immunity Act 1978 ("the Act").

The EAT upheld the ruling of the ET. The proceedings related to the appointment and dismissal of the Claimant which had been done by the KIA in the exercise of sovereign authority, having regard to his status as a diplomat which was inseparable from his CEO role (s. 14(2)(a)). Further, the State of Kuwait would have been immune, pursuant to s. 16(1)(a) of the Act, if it had been the Claimant's employer (s. 14(2)(b)). The EAT also held (*obiter*) that there was a further basis on which s. 14(2)(a) was satisfied, due to the sovereign nature of the activities of the KIA, and a further basis on which the State of Kuwait would have been immune, as required by s. 14(2)(b), namely s. 4(2)(a) and 4(3) of the Act.

THE HONOURABLE MR JUSTICE COPPEL:

The appeal and the cross-appeal

1. The Appellant ("the Claimant") appeals from a decision of the Employment Tribunal ("ET") (Employment Judge ("EJ") Brown) dated 16 July 2024 (referred to by the ET as its "Judgment") dismissing his claim for compensation for detriment which was allegedly visited upon him as a result of his making protected disclosures, contrary to s. 47B of the Employment Rights Act 1996 ("ERA"), and for unfair dismissal, contrary to ss. 94 and 103A ERA.

2. The Judgment followed a preliminary hearing at which the Respondent (the Kuwait Investment Authority, or "KIA") invited the ET to dismiss the Claimant's claim on the grounds that it had immunity from the jurisdiction of the ET pursuant to the State Immunity Act 1978 ("SIA"). The ET upheld this defence of the KIA. EJ Brown concluded in §1 of the Judgment that the Respondent is a "*separate entity*", within the meaning of s. 14(1) SIA, which is distinct from the executive organs of the Government of the State of Kuwait and is capable of suing or being sued. She further decided, in §2 of the Judgment, that the conditions for immunity of a separate entity in s. 14(2) SIA were satisfied because the proceedings relate to the employment of the Claimant by the KIA, as Chief Executive Officer ("CEO") of the Kuwait Investment Office ("KIO"), which was done in the exercise of sovereign authority and the circumstances were such that the State of Kuwait would have been immune if it had been the respondent to the proceedings.

3. Unless otherwise stated, (a) references hereafter to paragraph numbers are to paragraphs of the ET's reasons for its Judgment ("the Reasons") and (b) references to statutory provisions are to provisions of the SIA.

4. There is no challenge to the finding of the ET that the KIA is a separate entity, such that s. 14(2) is the governing provision in relation to the availability of state immunity in this case. The Claimant appeals against the ET's decision that the s. 14(2) conditions for immunity of a separate entity were satisfied in this case. For its part, the KIA cross-appeals against certain findings made by EJ Brown in the course of her analysis of whether the s. 14(2) conditions were met. In circumstances where an appeal (and, therefore, a cross-appeal) lies against part or all of a "decision" of the ET (see s. 21 of the Employment Tribunals Act 1996), and the KIA does not seek to challenge the only aspect of the decision of the ET in this case (that is, the Judgment) which went against it, on "*separate entity*", it was unnecessary for the KIA's opposition to the appeal to have been framed in part by way

of a cross-appeal. In substance, in both its reasons for opposing the appeal and in its cross-appeal, the KIA contends that there were additional reasons, other than those upheld by EJ Brown, as to why the s. 14(2) conditions were satisfied so as to give rise to state immunity in the Claimant's case. The grounds of cross-appeal address alternative bases for meeting the conditions in s. 14(2) which were rejected by the ET in the Reasons. These are consequential upon the appeal, in that they do not fall for decision unless the grounds of appeal are successful in whole or in part (see §1 of the reasons given by HHJ Auerbach in his Order of 18 March 2025 setting down the cross-appeal for hearing).

5. For the reasons set out below, I have concluded that the appeal should be dismissed. I also dismiss the cross-appeal, because the cross-appeal does not arise for determination in circumstances where the appeal has not succeeded, and also because the cross-appeal was not capable of undermining any part of the decision of the ET. Although it was not necessary for me to do so, I have, however, considered the principal issues raised by the cross-appeal and concluded that the KIA's state immunity defence should have succeeded for reasons additional to those found by EJ Brown.

The relevant provisions of the SIA

6. Pursuant to s. 1(1), a state is immune from the jurisdiction of the courts of the UK, unless that immunity is disapplied by the subsequent provisions of the SIA.

7. Section 14(1) draws a distinction between states and separate entities:

> "The immunities and privileges conferred by this Part of this Act apply to any .. State other than the United Kingdom; and references to a State include references to -
>
> (a) the sovereign or other head of that State in his public capacity;
>
> (b) the government of that State; and
>
> (c) any department of that government,
>
> but not to any entity (hereafter referred to as a "separate entity") which is distinct from the executive organs of the government of the State and capable of suing or being sued."

8. Section 14(2) sets out the conditions for immunity of a separate entity such as the KIA:

> "A separate entity is immune from the jurisdiction of the courts of the United Kingdom if, and only if -
>
> (a) the proceedings relate to anything done by it in the exercise of sovereign authority;

and

(b) the circumstances are such that a State .. would have been so immune."

9. As to the requirement in s. 14(2)(b), that the State of Kuwait would have been immune in like circumstances, the SIA makes provision for the disapplication of immunity in certain employment claims. Section 4(1) provides:

> "A State is not immune as respects proceedings relating to a contract of employment between the State and an individual where the contract was made in the United Kingdom or the work is to be wholly or partly performed there."
>
> "Proceedings relating to a contract of employment" include proceedings between the parties to a contract of employment in respect of any statutory rights or duties to which they are entitled or subject as employer or employee, and so would include proceedings such as the present which claim breach of the statutory employment rights of whistleblowers and/or unfair dismissal (s. 17(4A)).

10. Section 4(1) would disapply the immunity conferred by s. 1 in the case, such as the Claimant's, of an employment claim by an employee or former employee whose work was to be carried out in the UK. However, s. 4(1) is itself disapplied, with the effect that the s. 1 immunity is reinstated, by certain other provisions of the SIA. Section 16(1) provides, so far as material:

> "(1) This Part of this Act does not affect any immunity or privilege conferred by the Diplomatic Privileges Act 1964 or the Consular Relations Act 1968; and -
>
> (a) section 4 above does not apply to proceedings relating to a contract of employment between a State and an individual if the individual is or was employed under the contract as a diplomatic agent or consular officer;
>
> (aa) section 4 above does not apply to proceedings relating to a contract of employment between a State and an individual if the individual is or was employed under the contract as a member of a diplomatic mission (other than a diplomatic agent) or as a member of a consular post (other than a consular officer) and either -
>
> (i) the State entered into the contract in the exercise of sovereign authority; or
>
> (ii) the State engaged in the conduct complained of in the exercise of sovereign authority;"

A "diplomatic agent" is a member of the diplomatic staff of a mission (see art. 1(e) of the Vienna Convention on Diplomatic Relations, applied by s. 16(1A)).

11. In the present case, the ET held that s. 16(1)(a) applied so as to disapply s. 4(1) and so reinstate the s. 1 immunity. It also considered, and rejected, arguments by the KIA that s. 4(1) was disapplied by subsequent provisions of s. 4. Those provisions state:

"(2) Subject to subsections (3) and (4) below, this section does not apply if -

(a) at the time when the proceedings are brought the individual is a national of the State concerned; …

(3) Where the work is for an office, agency or establishment maintained by the State in the United Kingdom for commercial purposes, subsection (2)(a) and (b) above do not exclude the application of this section unless the individual was, at the time when the contract was made, habitually resident in that State."

12. The Claimant is a national of Kuwait, hence the effect of s. 4(2)(a), read alone, was to disapply s. 4(1) and so reinstate the s. 1 immunity. However, at the time that the contract was made, he was not habitually resident in Kuwait (being resident in Dubai). The effect of s. 4(3) was, accordingly, that s. 4(2)(a) would not disapply s. 4(1), so the s. 1 immunity would itself be disapplied by s. 4(1), if the Claimant's work had been for an office, agency or establishment which was maintained by Kuwait in the UK for commercial purposes.

13. "*Commercial purposes*" are defined in s. 17(1) as "*purposes of such transactions or activities as are mentioned in s. 3(3) above*". Section 3 in turn states, so far as material:

"(1) A State is not immune as respects proceedings relating to -

(a) a commercial transaction entered into by the State; or

(b) an obligation of the State which by virtue of a contract (whether a commercial transaction or not) falls to be performed wholly or partly in the United Kingdom.

(3) In this section "commercial transaction" means -

(a) any contract for the supply of goods or services;

(b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and

> (c) any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a State enters or in which it engages otherwise than in the exercise of sovereign authority;
>
> but neither paragraph of subsection (1) above applies to a contract of employment between a State and an individual."

14. The current wording of ss. 4 and 16 is a consequence of a remedial order – the State Immunity Act 1978 (Remedial) Order 2023 (SI 2023/112) – which was made in response to a Human Rights Act 1998 ("HRA") declaration of incompatibility made in **Benkharbouche v Embassy of the Republic of Sudan** [2017] UKSC 62, [2019] AC 777. Formerly, the SIA had conferred immunity in relation to all employment claims by employees of a diplomatic mission, including domestic staff such as the claimants in **Benkharbouche**, irrespective of their nationality and of whether their employment had been an exercise of sovereign authority and of whether anything about their treatment engaged the sovereign interests of their employers. This was not required by customary international law, and so was contrary to Article 6 ECHR. As can be seen from §10 above, s. 16 now distinguishes between diplomatic agents/consular officers, in respect of whom s. 4(1) is always disapplied, and other employees of a diplomatic mission, in respect of whom it may or may not be disapplied depending on the circumstances.

15. In **Kingdom of Spain v Lorenzo** [2024] EWCA Civ 1602, [2025] ICR 751, the Court of Appeal made a declaration of incompatibility of s. 4(2)(a), which reinstates immunity in an employment claim where the claimant was, at the time when the proceedings are brought, a national of the respondent state. Ms Lorenzo was a locally recruited member of staff of the Spanish Embassy in London who was a British citizen but also held dual Spanish nationality. The nature of her employment, as the Ambassador's social secretary and then as an administrative assistant, did not engage the sovereign interests of Spain. In the circumstances, customary international law did not require that Spain have immunity from her claim, which was the effect, on its face, of s. 4(2)(a). Section 4(2)(a) was accordingly contrary to Article 6 ECHR, on the same reasoning as in **Benkharbouche** and a declaration of incompatibility was justified (see [2025] EWCA Civ 59), in addition to disapplication pursuant to Article 47 of the EU Charter of Fundamental Rights. No remedial order has yet been made to give effect to the declaration of incompatibility made in **Lorenzo**.

The Reasons of the ET

(i) Relevant facts

16. The ET made the following relevant findings of fact:

a. The KIA was the first sovereign wealth fund in the world. It originated from the Kuwait Investment Board, which was established in London in 1953, following Kuwait's discovery of oil reserves in 1948. Its mandate was to invest surplus oil revenue in a diverse range of investments, with the long-term goal of reducing Kuwait's reliance on a single finite source of income and to protect Kuwait against the inflationary pressures associated with the trading of oil (§17).

b. The KIA was established by Kuwaiti Law No. 47 of 1982 (the "1982 Law"), to manage the reserve funds of the State of Kuwait. Its mission is "*To achieve a long-term investment return on the financial reserves entrusted by the State of Kuwait to the Kuwait Investment Authority, providing an alternative to oil reserves*". Under Article 2 of the 1982 Law, the objective of the KIA is "*to undertake, in the name and for the account of the Government of Kuwait, the management of the State's Reserve Fund, the monies allocated for the Future Generations Fund, as well as such other monies that the Minister of Finance may entrust the Authority with its management*" (§19).

c. The KIA manages assets held within the State of Kuwait's "General Reserve Fund" ("GRF") and "Future Generations Fund" ("FGF"). The FGF was created in 1976 under Kuwaiti Law No 106/1976, as an alternative reserve of wealth and as an intergenerational saving platform for the State of Kuwait. It comprises investments from outside Kuwait, based on an approved Strategic Asset Allocation. It is not possible to withdraw funds from the FGF in the absence of a law sanctioning such a withdrawal. The GRF holds Government assets and liabilities and effectively operates as the Government's treasury account. Revenues generated from the sale of oil are placed directly into an account which lies within the GRF. When funds are required or requested by the Minister of Finance, the KIA takes the proceeds from the sale of oil in the GRF and converts it into Kuwaiti Dinars for use by the Government. The KIA also allocates money for the FGF and other funds (§§20-24).

d. The KIO is the KIA's London office. It does not have any legal personality separate from the KIA. It manages funds held in the FGF (but not the GRF) and seeks to make a return on

those funds. As part of that work, it oversees various legal entities which are vehicles for investing in certain asset classes. These vehicles are allocated capital by the KIA to invest on its behalf. Any profits made by the KIO remain part of the FGF. They cannot be used by the KIA. The KIA and so the KIO do not receive any fees or monies from the FGF (or GRF) assets (§§25-26). The KIO has no balance sheet, no share capital, and its operational costs, including all salaries, are funded by the Ministry of Finance in Kuwait (§43).

e. Management of the FGF is effectively split between the KIA and KIO. The portion allocated to the KIA is largely delegated to external fund managers (more than 500 are retained by the KIA to manage its investments in equities, bonds and cash and also investments in hedge funds and infrastructure). The portion of the FGF entrusted by the KIA to the KIO represents the vast majority of assets entrusted to the KIO. It is managed directly by the investment professionals employed by the KIO in London (§§29-30). Following the entrusting of this task by the Minister of Finance to the KIA under Article 2 of the 1982 Law, a small proportion of the funds managed by the KIO are held on behalf of two clients which do not form part of the State of Kuwait, namely the Kuwait Petroleum Corporation ("KPC"), a state-owned natural resources company, and the Kuwait Foundation for the Advancement of Science, "a private non-profit organization". Otherwise, the KIO does not have commercial clients or third-party customers (§§31-32).

f.The Claimant, a Kuwaiti national then working in Dubai, was employed by the KIA under a contract of employment dated 5 April 2018. He was appointed to the role of 'CEO of the Kuwait Investment Office in London' with effect from 4 May 2018. His appointment was approved by the KIA's Board of Directors and a resolution was issued by the Managing Director of the KIA to that effect (§§44-45, 47).

g. The Claimant's job description included the following duties: (i) to be "the first and foremost responsible person for the activities and operations of the [KIO], the progress of its work and the achievement of its objectives", (ii) to serve as the chief representative of the KIO in the UK and abroad, (iii) to act as the formal channel of communication between the KIA and the KIO to ensure coordination of the KIO's activities and policies with those of the KIA and (iv) to supervise the setting and implementation of investment policies in accordance with decisions made by the KIO and the KIA (§48).

h. Neither the Claimant's contract of employment nor the Board resolution approving his appointment mentioned him being given diplomatic status (§46). However, as a matter of established practice, Kuwaiti secondees from the KIA to the KIO have diplomatic status (§49). The KIO's CEO had the status of Financial Attaché to the diplomatic mission of Kuwait in London (§56). Therefore:

(i) On 9 April 2018, the Managing Director of the KIA wrote to the Kuwaiti Deputy Minister for Foreign Affairs, asking that he instruct the relevant authority to issue diplomatic passports to the Claimant and his family. The letter in question referred to "*the diplomatic nature of this role*" and "*the established procedures in this regard*". The Claimant's diplomatic passport stated, "Chief Executive Officer of the Kuwait Investment Office in London" (§50).

(ii) The Ministry of Foreign Affairs will then have informed the Kuwaiti Embassy in London of the Claimant's appointment as a diplomatic agent (§51).

(iii) The Claimant was listed on the London Diplomatic List as a Financial Attaché during his employment by the KIA. A certificate issued under the Diplomatic Privileges Act 1964, certified that he had been accepted by the UK Government as a member of the diplomatic staff of the Embassy of the State of Kuwait. The certificate described him as, "Mr Saleh Alateeqi - Financial Attaché (Head of the Kuwait Investment Office)". The Claimant was issued with a Diplomatic ID card by the FCDO which specified that the Claimant's "Designation" was "Head of The Kuwait Investment Office – Financial Attache" (§§56-57).

(iv) As CEO of the KIO, the Claimant met Government Ministers such as Robert Jenrick. The KIO, and its senior staff members, including the CEO, have various formal and informal interactions with the Kuwaiti Embassy, foreign Embassies and the FCDO. The Claimant was invited to a US Embassy dinner. He could "stand-in" for the Ambassador of Kuwait for events he was unable to attend. The Claimant was also invited by the Kuwaiti Ambassador to attend other events such as a Book Prize Ceremony and an event celebrating 100 years of friendship between the UK and Kuwait (§§58-59).

(v) The Claimant, as a Financial Attaché, was exempt from income tax and national

insurance contributions in the UK. He was provided with a diplomatic vehicle with diplomatic plates and a chauffeur, with the chauffeur's car also having diplomatic plates (§60).

(vi) As part of his duties as CEO, the Claimant line managed 19 other employees who were also serving diplomatic agents (§62).

i. When the Claimant was dismissed, on 21 July 2022, the Chairman of the KIA issued a resolution terminating his contract of employment with immediate effect. The resolution did not itself terminate the Claimant's appointment as a diplomatic agent. However, since he had only been appointed a diplomat because he had been appointed as CEO of the KIO, his diplomatic status was revoked upon his dismissal. On 25 July 2022, the Chairman of the KIA wrote to the Deputy Minister of Foreign Affairs, asking him to arrange for the Claimant's diplomatic passport to be cancelled (§§52-55).

(ii) Section 14(2)(a): exercise of sovereign authority

17. Having decided that the KIA is a "*separate entity*", the next question for the ET was whether the first condition in s. 14(2) was satisfied: did the proceedings relate to anything done by the KIA in the exercise of sovereign authority? The ET directed itself (§102) in accordance with the well-known analysis of Lord Wilberforce in **The I Congreso del Partido** [1983] AC 244 as to the "*ultimate test*" for identifying a "*sovereign act*": "*…it is not just that the purpose or motive of the act is to serve the purposes of the state, but that the act is of its own character a governmental act, as opposed to an act which any private citizen can perform*" (p.269B-C). According to the ET, "*[t]he question of whether an act involves the exercise of "sovereign authority" is therefore to be answered by considering whether or not the act was one which a private actor could do*" (§103).

18. The ET also relied upon the analysis of Lord Sumption in **Benkharbouch***e*, §§53-55 in the particular context of employment claims:

"53. As a matter of customary international law, if an employment claim arises out of an inherently sovereign or governmental act of the foreign state, the latter is immune. It is not always easy to determine which aspects of the facts giving rise to the claim are decisive of its

correct categorisation, and the courts have understandably avoided over-precise prescription. The most satisfactory general statement is that of Lord Wilberforce in **The I Congreso del Partido**, at 267:

> "The conclusion which emerges is that in considering, under the 'restrictive' theory whether state immunity should be granted or not, the court must consider the whole context in which the claim against the state is made, with a view to deciding whether the relevant act(s) upon which the claim is based, should, in that context, be considered as fairly within an area of activity, trading or commercial, or otherwise of a private law character, in which the state has chosen to engage, or whether the relevant act(s) should be considered as having been done outside that area, and within the sphere of governmental or sovereign activity."

54. In the great majority of cases arising from contract, including employment cases, the categorisation will depend on the nature of the relationship between the parties to which the contract gives rise. This will in turn depend on the functions which the employee is employed to perform.

55. The Vienna Convention on Diplomatic Relations divides the staff of a diplomatic mission into three broad categories: (i) diplomatic agents, i.e. the head of mission and the diplomatic staff; (ii) administrative and technical staff; and (iii) staff in the domestic service of the mission. Diplomatic agents participate in the functions of a diplomatic mission defined in article 3, principally representing the sending state, protecting the interests of the sending state and its nationals, negotiating with the government of the receiving state, ascertaining and reporting on developments in the receiving state and promoting friendly relations with the receiving state. These functions are inherently governmental. They are exercises of sovereign authority. Every aspect of the employment of a diplomatic agent is therefore likely to be an exercise of sovereign authority. The role of technical and administrative staff is by comparison essentially ancillary and supportive. It may well be that the employment of some of them might also be exercises of sovereign authority if their functions are sufficiently close to the governmental functions of the mission. … However, I find it difficult to conceive of cases where the employment of purely domestic staff of a diplomatic mission could be anything other than an *act jure gestionis*. The employment of such staff is not inherently governmental. It is an act of a private law character such as anyone with the necessary resources might do."

19. The ET accepted that "*the Claimant was not employed by the KIA as a diplomatic agent but as CEO*". Nevertheless, "*his appointment as a diplomat was because of his employment as CEO*" (§111). "*In essence, the Claimant's diplomatic role and his role as President and CEO of the KIO were one and the same*" (§113). In support of the latter conclusion, the ET also stated (§117): "*The Claimant had no other functions other than his role as CEO of the KIO. The diplomatic immunities and privileges given to him were to ensure his functions as CEO of the KIO*".

20. The ET's conclusions on the s. 14(2)(a) issue are in §§118-122:

> "118. Given that the Kuwaiti government appointed the Claimant as a diplomat because he was CEO of the KIO and that the UK Government recognised him as a diplomat also because he was CEO of the KIO, I considered that he was recognised, as between the UK and Kuwait as a diplomat in relation to his employment as CEO by the KIO. As between the UK and Kuwait, therefore, his status as a diplomat, as CEO of the KIO, is properly characterised as a sovereign or governmental act of Kuwait, which is not a matter upon which the UK courts will adjudicate, applying Lord Wilberforce's statement of the principle of state immunity in *I Congreso del Partido* [1983] AC 244 (HL).
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> 119. For the purposes of s14(2)(a) SIA 1978 the separate entity (as opposed to some other person or entity) must have done the act "in the exercise of sovereign authority". There could be a distinction between the Claimant's employment "done by the Respondent" and Kuwait's exercise of sovereign authority in his appointment as a diplomat. However, I consider that his position as CEO and his status as a diplomat were functionally indistinguishable. While there were small differences of timing in his appointment as CEO and as a diplomat, those roles were effectively coextensive.
>
> 120. In reality, when the KIO appointed the Claimant as CEO, it did so to a position to which diplomatic status attached, as recognised by both Kuwaiti and the UK governments.
>
> 121. Appointing someone to a role to which diplomatic status attaches is a sovereign act, which a private actor could not do, in accordance with *I Congreso del Partido* [1983] AC 244 (HL).
>
> 122. The Claimant's employment as CEO, to which diplomatic status attached, was therefore done by the Respondent in the exercise of sovereign authority. The proceedings directly relate to

that employment and the test in s14(2)(a) SIA is satisfied."

21. Although it was not necessary for it to do so, the ET then considered and rejected two other possible bases on which s. 14(2)(a) had been argued by the KIA to be satisfied. First, because the nature of the protected disclosures and of the detriments allegedly inflicted upon the Claimant engaged the sovereign interests of Kuwait. The disclosures included allegations that the KIA had made misleading announcements concerning its performance figures, that there had been misuse of public funds by the KIA, that a KIA employee (a Mr Legbelos) had unlawfully disclosed information about the KIA's assets, including to the *Financial Times*, and had divulged secrets regarding the economic interests of Kuwait to external parties, conspired with the intention of harming a major Kuwaiti facility, divulged Future Generations Fund secrets and communicated and/or conspired with a foreign country (§65). The alleged detriments included, as well as dismissal, complaints made against the Claimant by Mr Legbelos, refusing to investigate the Claimant's allegations against Mr Legbelos and showing confidential correspondence to other employees and encouraging them to make complaints against the Claimant (§66).

22. The ET rejected this argument, on the basis that none of the disclosures or detriments were things which a private actor could not do, citing *I Congreso del Partido*. The disclosures could have been done by any private employee (§126). The decision-making involved in the detriments did not involve an exercise of sovereign authority. The claim raised issues "*similar to any protected disclosure detriment claim made by a private employee against a financial institution*" (§127).

23. The ET then considered and rejected the argument that the proceedings related to the KIA's management of assets on behalf of the State of Kuwait, which was done in the exercise of sovereign authority. In its view, "*the management of assets on behalf of clients – including clients which happen to be States – is an activity which private actors, such as investment banks, can and do undertake*" (§129). It was "*not relevant*" that the KIA was managing assets entrusted to it by the State of Kuwait for the benefit of that state because, according to *I Congreso del Partido*, the proper focus was on the character of an act and not on the purposes for which it was done (§130).

(iii) Section 14(2)(b): would the State of Kuwait have been immune?

24. This issue required an analysis by the ET of the provisions of the SIA which are concerned with contracts of employment. Section 4(1) disapplied the immunity in s. 1 (see §10 above), but s.

4(2)(a) reinstated that immunity because the Claimant is a Kuwaiti national, subject to whether the work in question was "*for an office, agency or establishment maintained by the State in the United Kingdom for commercial purposes*" within s. 4(3).

25. The ET noted that s. 4(2)(a) had been held to be incompatible with Article 6 ECHR in *Lorenzo* (at that time, by the EAT, whose judgment was subsequently upheld by the Court of Appeal, which also made a formal s. 4 HRA declaration). It was not possible to avoid that incompatibility in the present case by reading down s. 4(2)(a) pursuant to s. 3(1) HRA, because the wording of s. 4(2)(a) is unambiguous (§152). The only way to avoid incompatibility was through the interpretation of "*commercial purposes*" in s. 4(3) so that s. 4(3) disapplied s. 4(2)(a). The ET accepted the Claimant's submission that "*it is possible to read s4(3) as applying to an entity maintained "for commercial purposes" if any part of its work is for the purposes of such transactions or activities as are mentioned in s3(3), even if the office, agency or establishment also serves other purposes*" (§160). According to the ET, the KIO's purpose is "*to engage in the investment and growth of state assets*" and "*the investment and growth of assets is a commercial purpose*". The KIO is "*an office maintained in the UK for the purposes, or at least in part for the purposes of managing assets and engaging in transactions, otherwise than in the exercise of sovereign authority, applying the definition of commercial transaction in s. 3(3) SIA*" (§164). It was not appropriate to apply case-law such as **SerVaas Incorporated v Rafidain Bank and others** [2013] 1 A.C. 595 whereby money held in a bank account would only be regarded as for "*commercial purposes*" if it was held exclusively for use in commercial transactions, as this would narrow the scope of s. 4(3) and exclude the claims of a broader range of employees, contrary to Article 6 ECHR (§163). It followed that "*the KIA would not be entitled to immunity in respect of the Claimant's employment claims [pursuant to s. 4 SIA], subject to s. 16 SIA*" (§166).

26. However, the ET then held that s. 16(1)(a) and 16(1)(aa) would have operated to exclude the application of s. 4 if he had been employed by the State of Kuwait (§172). That was because (§§170-171):

> "I have decided, above, that the Claimant's his position as CEO of the KIO and his status as a diplomat were functionally indistinguishable. In reality, when the KIO appointed the Claimant as CEO, it did so to a position to which diplomatic status attached, as recognised by both Kuwaiti and the UK governments. His appointment to the role, to which diplomatic status attached, was a sovereign act, which a private actor could not do, in accordance with *I Congreso del Partido* [1983] AC 244 (HL).

> As I have decided above, his status as a diplomat, as CEO of the KIO, as a sovereign or governmental act of Kuwait, is not a matter upon which the UK courts will adjudicate, applying Lord Wilberforce's statement of the principle of state immunity in *I Congreso del Partido* [1983] AC 244 (HL)."

27. Therefore, the requirements of s. 14(2)(b) were satisfied and the defence of state immunity succeeded.

Appeal Ground 1: exercise of sovereign authority

(i) The Claimant's submissions

28. Ground 1 argues that the ET erred in law in deciding that the Claimant's employment as CEO was done by the KIA in the exercise of sovereign authority, within s. 14(2)(a). The Claimant focuses on the submission rejected by the ET in §119, that there is a distinction between the appointment of the Claimant by the KIA as CEO of the KIO, and the exercise of sovereign authority by the State of Kuwait in appointing the Claimant to be a diplomat. The Claimant submitted that the juridical nature of the act done by the KIA was to enter into a contract to employ an individual as CEO of an office managing investments on behalf of clients, which included a state. An act of that nature can be done by a private person, such as an investment bank or fund management business. On the authority of *I Congreso del Partido* and subsequent cases, the KIA's act therefore cannot have been done "*in the exercise of sovereign authority*".

29. Further, it was submitted that it was irrelevant that the KIA entering into a contract of employment with Mr Al-Ateeqi led to the State of Kuwait appointing him as a diplomatic agent. The KIA, not being part of the State of Kuwait, had no power to confer diplomatic status on any individual. The fact that a private actor does something which prompts a state to do an act in the exercise of sovereign authority does not mean that the private actor has itself done any act in the exercise of sovereign authority. The Claimant relied upon **Estrada v Al-Juffali** [2016] EWCA Civ 176, [2017] Fam 35, which concerned a Saudi national who had sought and obtained a diplomatic appointment from St Lucia, with the aim of gaining immunity from suit in matrimonial proceedings. It was also pointed out that there is nothing which prevents a private actor from employing a person who has diplomatic status.

30. The Claimant recognised the relevance to the s. 14(2)(a) issue of the dictum of Lord Sumption

in **Benkharbouche** that "*every aspect of the employment of a diplomatic agent is… likely to be an exercise of sovereign authority*". He argued, however, that that remark was made in the context of a case about employment of staff by Sudan's diplomatic mission, which did not say anything about the relationship between: (i) an employer (the KIA) which is not a diplomatic mission; and (ii) an employee who happens also, alongside their employment with the employer, to be a member of the staff of a diplomatic mission.

31. The Claimant also submitted that it was necessary for an exercise of sovereign authority by a separate entity to be "*for and on behalf of*" the state to which that authority belonged, citing **Bank of Credit and Commerce International (Overseas) Ltd (in liquidation) v Price Waterhouse (a firm)** [1997] 4 All ER 108 (ChD), 112g-h ("BCCI"), and **Dynasty Co for Oil and Gas Trading Ltd v Kurdistan Regional Government of Iraq** [2021] EWHC 952 (Comm), [2022] QB 246, §§36 and 42-44. This was not a condition which the ET considered. Had it done so, it would have been clear that in employing the Claimant, the KIA did not act for and on behalf of the State of Kuwait, just as an investment bank which manages assets on behalf of state and non-state clients does not employ its staff for and on behalf of such clients.

(ii) Discussion

32. Section 14(2)(a) requires the Court to consider "*whether the acts performed by [the separate entity] to which the proceedings relate were performed in the exercise of sovereign authority, which here means acta jure imperii (in the sense in which that expression has been adopted by English law from public international law)*" (**Kuwait Airways Corporation v Iraqi Airways Co** [1995] 1 WLR 1147, 1156F-G). In deciding whether an act is *jure imperii*, it is necessary to identify the act which forms the basis of the claim and then decide whether it is a "*sovereign or public act*" or a "*private act*", which means "*an act of a private law character such as a private citizen might have entered into*" (*I Congreso del Partido* at 262E). Further, "*the court must consider the whole context in which the claim against the state is made*" (*I Congreso del Partido* at 267B) and the "*ultimate test of what constitutes an act jure imperii is whether the act in question is of its own character a governmental act, as opposed to an act which any private citizen can perform*" (*Kuwait Airways* at 1160A). The classification of the relevant act depends upon its juridical character and not on the state's purpose in doing it, save in cases where that purpose throws light on its juridical character (*Benkharbouche*, §8; and, more recently, **Argentum Exploration v The Silver** [2024] UKSC 16, [2025] AC 555, §104, confirming the primacy of the juridical character of an act).

33. These proceedings relate to the contract of employment between the Claimant and KIA: see s. 17(4A) which confirms that claims in respect of statutory employment rights are claims relating to a contract of employment. They may also be said to relate to the employment of the Claimant as CEO of the KIO, his treatment whilst in employment and his dismissal from that employment. The question raised by s. 14(2)(a) is whether any of these acts by the KIA were performed in the exercise of sovereign authority.

34. The principle stated in **Benkharbouche** that "*every aspect of the employment of a diplomatic agent is… likely to be an exercise of sovereign authority*" applies the tests set out in §32 above to the particular context of employment of an individual who, like the Claimant, is or was a diplomatic agent. *Benkharbouche* did not concern employment by a separate entity and it may well be that Lord Sumption did not have in mind the very particular facts of the present case, whereby a diplomat is employed by a separate entity but has diplomatic status by virtue of that employment. However, the principle to which he referred reflects a long-established position that the employment of diplomats lies at the heart of the sovereign functions of a state and on the words which he used, the principle applies as much to the Claimant as to a diplomat who is directly and only employed by a state. As Lord Sumption explained in §54 of *Benkharbouche*, the dividing line between sovereign and non-sovereign acts in the case of persons serving a diplomatic mission is generally drawn according to the functions which the employee is employed to perform. If the defence of state immunity were to be held not to apply to the Claimant's claim, this would be an unusual, if not unprecedented, case where immunity did not apply to the dismissal from employment and consequent loss of diplomatic status of a person whose relevant functions were those of a senior diplomat.

35. I reject the Claimant's attempt to distinguish *Benkharbouche* (as set out in §30 above). This is not a case of an employee who, alongside his employment, also happened to be a member of staff of a diplomatic mission or of a private employer employing someone who happened to be a diplomat. That submission runs contrary to many of the factual findings of the ET including that (a) the Claimant was appointed by the KIA to a role to which (it was known) diplomatic status attached, (b) the Claimant's position as CEO and his status as a diplomat were effectively coextensive in time and were functionally indistinguishable, and (c) the Claimant did not merely manage the day to day business of the KIO but undertook duties such as meeting UK Government ministers and standing-in for the Ambassador at events he was unable to attend (which, I accept, would typically be duties of a diplomat). Far from the Claimant happening to be a diplomat, as if this were a mere coincidence, or even just an incident of his employment, his diplomatic status was, on the findings of the ET,

inseparable from and integral to his role as CEO of the KIO.

36. The position might have been a little clearer if the Claimant's contract of employment with the KIA had stated that his position as CEO of the KIO carried diplomatic status, and that he would be a Financial Attaché at the Embassy of Kuwait in London. However, this was not a difference in substance in circumstances where that status was not a new development but a matter of established practice which both parties, and the Government of Kuwait, expected to apply to the Claimant.

37. Further, on the findings of the ET, there was no discretionary decision taken, or to be taken, by the Government of Kuwait as to whether or not the Claimant would be appointed to be a diplomat, once he had been appointed CEO of the KIO, and whether his diplomatic status would end once he was dismissed from that position. The ET found that, after the Claimant's appointment, the KIA requested that the Ministry of Foreign Affairs issue the Claimant with a diplomatic passport and, having done so, the Ministry will have notified the Kuwaiti Embassy in London of this; and that after his dismissal the KIA requested that the Ministry of Foreign Affairs cancel the Claimant's diplomatic passport (§§51-52). There was evidence before the ET that these were, in effect, automatic steps which followed from appointment and dismissal (§§21-22 of the witness statement of James Stuart). Holding a diplomatic passport is not, in any event, constitutive of diplomatic status. Rather, diplomatic status is constituted, and diplomatic immunity will begin, when a diplomat takes up his post or when his appointment is notified to the receiving state, here, the FCDO (see *Estrada*, §27). The reverse would have applied for the Claimant to lose his diplomatic status once the KIA had decided to dismiss him.

38. The ET's account of the process surrounding the Claimant's appointment as a diplomat may not be comprehensive. For example, the 24 June 2024 letter from the Kuwaiti Ambassador referred to in §51 of the Reasons states that, upon his appointment, the Embassy in London "made an immediate request for Mr Al-Ateeqi to be granted diplomatic status", which was only granted from 4 May 2018 (which was approximately two weeks after his diplomatic passport was issued on 19 April 2018). It is not entirely clear whether that request was said to have been made of the Kuwaiti Ministry of Foreign Affairs or of the FCDO. The ET does not refer to it. That may be because the ET considered this request not to have any separate status from the other steps which it does mention, or to be of no legal significance.

39. Critically, however, there is no suggestion in the ET's analysis of the Claimant's appointment

and dismissal that any separate decision-making process regarding the Claimant's diplomatic status had taken place within the Kuwaiti Ministry of Foreign Affairs on his recruitment as CEO of the KIO or upon him ceasing to hold that post. That is significant in circumstances where it was at the heart of the Claimant's case that there were separate decisions and separate appointments regarding his diplomatic status. On the factual findings of the ET, it was necessarily the case that the Claimant would be a Financial Attaché at the Embassy of Kuwait in London by virtue of him taking up employment as CEO of the KIO and that he would cease to have that status upon the termination of his employment. Certain formalities required to be completed at the beginning and end of his employment, according to established procedures, but there was a single, operative decision at each stage, that of the KIA.

40. In her excellent submissions for the Claimant, Ms Macdonald KC emphasised that the ET's decision that the proceedings related to something done in the exercise of sovereign authority was a decision of law, or at least mixed fact and law, and did not require to be challenged only on grounds of perversity. I agree that there was a significant legal content to the ET's ruling under s. 14(2)(a), but it was a ruling founded on the ET's factual analysis of the Claimant's appointment and dismissal, and of the relationship between his role as CEO of the KIO and his diplomatic status, which has not been argued to be perverse and cannot be overturned before this tribunal.

41. It follows that I agree with the ET's central conclusion in §§121-122 of the Reasons that appointing the Claimant to a role to which diplomatic status attached, and dismissing him from that role, were sovereign acts, which a private actor could not do. It is correct, as the Claimant submits, that, on one view, the KIA was simply appointing a CEO of its London office and a private actor could also appoint a CEO to oversee its trading and investment activities. However, when applying the test from *I Congreso del Partido* and *Kuwait Airways* as to whether an act is a governmental act or one which any private citizen can perform, it is necessary to consider the overall context of the acts in question. It was, in my judgment, a critical part of the overall context in this case that this particular CEO would necessarily be, and was, a diplomat who performed significant diplomatic duties. There will be many instances where an act, if defined narrowly, will appear to be one which a private actor could have done. But where, if one takes into account the context of the act, and so adopts a broader definition of the act, it will be correctly seen as one which a private actor could not perform. That is the case here. On the findings of the ET, the Claimant's appointment and dismissal, like that of any other diplomat, could not have been done by a private actor and could only have been done in the exercise of sovereign authority. The ordinary rule stated in §55 of *Benkharbouche*, that

all aspects of the employment of a diplomatic agent are likely to be exercises of sovereign authority, applies.

(iii) Was the KIO part of the diplomatic mission in London?

42. The KIA urged me to make the further finding, not made by the ET, that the KIO is part of the diplomatic mission of the State of Kuwait in London. A finding to that effect would rebut the remainder of the Claimant's attempt to distinguish *Benkharbouche* (see §30 above), which was premised upon his employer not being part of a diplomatic mission. In **Kuwait Investment Office v Hard** [2022] EAT 51, [2022] ICR 1111, this tribunal (Ellenbogen J) held that the KIO had not been expressly recognised by the UK Government as forming part of the Kuwaiti mission in London (§§107-108 of *Hard*), and that there was no scope for implied recognition of that status in the absence of express recognition (§110). Amongst the documents Ellenbogen J was asked to consider as potentially constituting express recognition was a Note from the FCDO dated 7 November 2005 in which it gave consent to the Kuwaiti Embassy for premises known as Wren House "*to be deemed diplomatic premises, to be used for the purposes of the Kuwait Investment Office*". She did not accept the submission (set out in §19.2) that this Note constituted express recognition of the KIO's offices as forming part of the diplomatic mission. Ellenbogen J also noted that an appellate tribunal is not the appropriate forum in which to conduct an inquiry as to whether the KIO in fact forms part of the Kuwaiti mission (§115).

43. I could not depart from the decision on recognition which was taken in *Hard* given the limited circumstances in which it could be appropriate for this tribunal to depart from one of its previous decisions (see **British Gas Trading Ltd v Lock** [2016] ICR 503). I was asked by the KIA to consider a 17 July 2025 Note from the FCDO, which was produced subsequent to the Claimant's dismissal and had not been before the ET, in which it had given consent for further premises, at Lexicon House, to be deemed diplomatic premises, for use by the KIO. This Note was in similar terms to that governing Wren House which was considered in **Hard**. I do not regard it as taking matters any further than that Note did and I do not admit it as new evidence. In addition, I share the reluctance of Ellenbogen J to conduct a fact-finding enquiry into an issue which was not investigated and ruled upon by the ET. I also decline to admit new evidence which the Appellant sought to adduce in response to the 17 July 2025 Note.

44. In any event, it seems to me that it is not necessary for me to conclude that the KIO is part of

the Kuwaiti diplomatic mission in order to reject the Claimant's submission that there is a difference in principle between the position of the KIO and the position of the Kuwaiti mission for the purposes of the present case. On any view, the relationship between the mission and the KIO is a close one. The KIO operates from diplomatic premises, a large number of its staff, which the KIA has appointed, are diplomats and the Claimant, the KIO's CEO, performed at least some functions which were obviously for and on behalf of the Embassy (whatever the correct characterisation of the KIO's trading activities). The KIO is plainly not a private employer in the usual sense of that term, but is closely related to the Kuwaiti diplomatic mission even if it has not yet conclusively been recognised as part of that mission.

(iv) Estrada

45. The unusual case of *Estrada* is of no assistance to the Claimant. In **Estrada**, a Saudi national (Dr Al-Juffali) was held, in principle, to have diplomatic immunity from divorce proceedings brought against him as a result of having secured his appointment as the representative of St Lucia to the International Maritime Organisation, with the sole intention of defeating the proceedings. This was said by the Claimant to demonstrate that a private actor may prompt a state to do an act in the exercise of sovereign authority (the diplomatic appointment of Dr Al-Juffali) without the private actor itself doing any act in the exercise of sovereign authority. That submission is correct in principle: Dr Al-Juffali persuaded the Government of St Lucia to appoint him, in the exercise of its sovereign authority. But that does not undermine the ET's findings on the quite different arrangements in the present case where the putative private actor has close, institutional connections with the Government in question and routinely appoints staff who thereby become diplomats subject only to the completion of formalities.

(v) "For and on behalf of"

46. As for the Claimant's submission that the ET failed to consider whether the KIA had acted "*for and on behalf of*" the State of Kuwait when appointing and then dismissing the Claimant:

> a. The authorities relied upon for the proposition that this is a separate requirement of the test in s. 14(2)(a) are both instances of acts by entities having governmental responsibility for territories within a larger state. *BCCI* concerned the ruler of Abu Dhabi, a constituent territory of the United Arab Emirates ("UAE"). The UAE is a state recognised by the UK of which

the ruler was also president. The ruler had diplomatic immunity as head of state of the UAE but not state immunity because his relevant acts had been in a public capacity on behalf of Abu Dhabi, a separate entity which was subject to s. 14(2), and had not been in exercise of the sovereign authority of the UAE. Similarly, *Dynasty* concerned proceedings against the Kurdistan Regional Government of Iraq rather than the state of Iraq. Butcher J applied the "*for and on behalf of*" test from *BCCI*, holding that in the case of constituent territories or political subdivisions of a state, the correct approach will be to look at whether the constitution, properly regarded, confers on the constituent territory an authority to act on behalf of the state in a sovereign matter (§55). He also stated that in the case of other "separate entities" such as private or state-owned companies, "*there will usually be no question of their acting 'for and on behalf of' the state, unless they are doing so at the direction of the state through its government*" (§51).

b. It is readily understandable that in the case of a constituent territory which has not been equated with a state pursuant to the order-making power in s. 14(6), it is necessary to conduct a discrete check as to whether the allegedly sovereign act has been in exercise of the territory's authority or of the authority of the state of which it forms part. It is more questionable whether a similar check must always be conducted in relation to other types of "separate entity" who may well not have any governmental powers under the constitution or laws of the state and whose status may be such that they could only have done the act in question with the permission of the state whose sovereign authority is in question. There may of course be evidence in a particular case that a separate entity had gone beyond its authority; if so, that would no doubt raise other significant issues regarding the legality of its actions.

c. In the present case, the KIA had authority pursuant to the laws of Kuwait to appoint its own staff, some of whom would be diplomats in London. In the case of its CEO, his appointment was approved by the KIA's Board of Directors, chaired by the Minister of Finance of Kuwait and the instrument dismissing him was signed by the Minister. There were "*established procedures*" whereby certain KIO appointees would acquire diplomatic status. In the absence of any evidence that the KIA had exceeded its authority, it is an obvious inference that the State of Kuwait has authorised, and is content with, the situation whereby some of its diplomats in London, including the CEO of the KIO, are appointed by the KIA. To that extent, the sovereign authority to appoint individuals to diplomatic positions which would ordinarily be exercised by the Government of Kuwait is, in the case of certain London

diplomats, exercised by the KIA. There was no suggestion that the KIA had gone beyond its authority; indeed, the KIA's positive case in these proceedings, no doubt approved by the Government of Kuwait, and supported by correspondence from the Kuwaiti Ambassador to London, has been that the KIA exercises sovereign authority when appointing and dismissing the CEO of the KIO, whether as part of the Kuwaiti State, or as a separate entity.

d. For those reasons, I would not criticise the ET for not giving separate consideration to whether what it regarded as the sovereign acts of the KIA were "*for and on behalf of*" the State of Kuwait. Had it given such consideration, the answer would have been clear that they were. Contrary to the Claimant's submissions (see §31 above), that is not because an investment bank ordinarily appoints staff for and on behalf of its clients but because the KIA was appointing and then dismissing a member of staff who would be, and was at the point of dismissal, a senior diplomat attached to the Kuwaiti mission in London. It is the appointment of the Claimant to a post carrying diplomatic status and then the dismissal of a serving diplomat which was for and on behalf of the Kuwaiti state. Again, the position would, no doubt, have been clearer if the Claimant had been appointed and dismissed by the Ministry of Finance, rather than by a separate entity for which the Minister of Finance was the Chairman of the Board of Directors. Similar formalities, involving the Kuwaiti Embassy in London and the Ministry of Foreign Affairs, would have followed in order to establish, and remove, the Claimant's diplomatic status. Again, however, I do not consider this to be a matter of substance on the facts of the present case. On the facts found by the ET, the KIA had authority to appoint, and dismiss, a diplomat, entailing first the acquisition and then the loss of diplomatic status, just as, on my counterfactual, the Ministry of Finance would have done.

47. I therefore dismiss Ground 1.

Appeal Ground 2: would the State of Kuwait have been immune?

48. As I have explained (see §26 above), the ET held that s. 14(2)(b) was satisfied because s. 16(1)(a) and 16(1)(aa) would operate to exclude the operation of s. 4, the employment exception, if the Claimant had been employed by the State of Kuwait. The reasoning of the ET on this issue was brief and essentially repeated in summary form its analysis under s. 14(2)(a): the Claimant had been appointed to a position to which diplomatic status attached.

49. The Claimant relies on the findings of the ET that the Claimant "*was not employed by the KIA as a diplomatic agent*" (§111) and that the resolution which terminated his contract of employment "*did not itself terminate the Claimant's appointment as a diplomatic agent*" (§52). It is therefore clear, submits the Claimant, that he was not employed as a diplomatic agent under the contract of employment to which the proceedings relate, which is the relevant condition in s. 16(1)(a). According to the Claimant, the point can be tested by considering what the position would have been if the Ministry of Foreign Affairs had declined to appoint Mr Al-Ateeqi as a diplomatic agent (or terminated that appointment while he remained employed by the KIA). This would not have affected his contract of employment or given him any claim for breach of that contract against the KIA.

50. I make three preliminary points, accepting submissions made by the Claimant. First, I do not understand, and the ET did not explain, how s. 16(1)(aa) could apply as well as s. 16(1)(a). If the ET's analysis is correct in principle then it is clear to me that s. 16(1)(a) would be applicable (as the Claimant was a diplomatic agent) and s. 16(1)(aa) would not (because he was not "*a member of a diplomatic mission (other than a diplomatic agent)*"). Second, in its brief reasoning on s. 14(2)(b), the ET did not expressly engage with the wording of s. 16(1)(a) and, in particular, did not explain in terms why the Claimant was "*employed under the contract [to which the proceedings relate] as a diplomatic agent*". Third, as a result of s. 14(2)(b), the assumption on which s. 16(1)(a) fell to be applied is that the Claimant had been employed by the State of Kuwait as CEO of the KIO. Although that assumption was acknowledged by the Claimant, many of his submissions, including that summarised in the third sentence of §49 above, in fact proceeded on the basis that the Claimant had been employed by the KIA. On the correct assumption, it would seem more problematic for the Claimant to separate his appointment (by the Government of Kuwait) as CEO of the KIO from his appointment (also by the Government of Kuwait) as a diplomat.

51. The high point of the Claimant's case under Ground 2 is that his contract of employment did not stipulate that he would become a diplomat attached to the Kuwaiti mission in London. However, I have rejected that point under Ground 1 (see §36 above) and, as I have just said, it is a more difficult point on the necessary assumption that the Claimant's contract of employment, and his diplomatic appointment, were both by or with the Government of Kuwait. In my judgment, there was no error of law in the ET's conclusion that, had the Claimant been employed by the Government of Kuwait, he would have been a diplomatic agent "under" that contract of employment, in circumstances where (a) his appointment as CEO of the KIO was, as a matter of established practice, one to which diplomatic status attached, (b) the evidence was that his confirmation as a diplomat was effectively

automatic once he had been appointed as CEO of the KIO (and likewise his loss of diplomatic status once he had been dismissed from that role), and (c) the Claimant was unable to point to any legal instrument other than his contract of employment on which his diplomatic role depended. Neither party was able to point to any specific authority on the meaning of "*under the contract*" in s. 16(1)(a) and it would seem to me to be an unduly narrow, and artificial, interpretation of that phrase to restrict it to cases where the contract provides expressly for appointment as a diplomat, as opposed to where such appointment (a) is a matter of established practice which was within the contemplation of both parties when the contract of employment was entered into and (b) followed in effect automatically from the entry into the contract.

52. Accordingly, I dismiss Ground 2 and I dismiss the appeal and uphold the judgment of the ET that the KIA is immune from the jurisdiction of the ET in respect of these proceedings.

Other issues

53. Both parties made a host of other submissions, in lengthy written arguments, and orally, in relation both to s. 14(2)(a) and s. 14(2)(b). It is not necessary for me to decide any of the other points raised, and I am reluctant to do so, in particular points of more general application, which are liable to affect other cases, but on which my views would be entirely *obiter*. However, I expect that the Claimant will at least attempt to appeal further and, should this be permitted, the Court of Appeal may find it useful to have my views on the principal arguments which remain outstanding, which are contained within the cross-appeal. Given their *obiter* status, I express these views somewhat more shortly than I might have done if they were material to the disposal of the appeal.

(1) Section 14(2)(a): the activities of the KIO

54. Ground 2 of the KIA's cross-appeal contends that the ET erred in rejecting the alternative submission that the proceedings related to something done in the exercise of sovereign authority within the meaning of s. 14(2)(a) because the investment and financial management activities of the KIA, including the KIO, by their very nature involve the exercise of sovereign authority. The proceedings related to the employment of the CEO of the KIO to oversee its sovereign activities and so related to those activities. As I have explained (see §23 above), the ET rejected that submission on the grounds that the KIA's management of assets on behalf of clients is something that a private actor, such as an investment bank, can do, and the fact that it does so for the benefit of the State of Kuwait

went only to the purpose of its actions, which was irrelevant. The Claimant supports the reasoning of the ET. For its part, the KIA submitted that whilst asset management may be private law in character where a state or separate entity acts as an ordinary investor, it will be sovereign in character where, as in its case, the entity administers state reserves, a sovereign wealth fund, or public financial assets pursuant to governmental authority. It submitted that the ET had been wrong, in §131 of the Reasons, to distinguish dicta to that effect in **AIG Capital Partners Inc. v Republic of Kazakhstan** [2005] EWHC 2239 (Comm), [2006] 1 WLR 1420.

55. In **AIG**, the claimants sought to enforce an arbitral award against cash and securities held by financial institutions in England on behalf of the National Bank of Kazakhstan (referred to in the judgment as "the London Assets"). A claim of immunity from enforcement, by virtue of s. 14(4), was upheld by Aikens J (as he then was). Section 13(4) permits enforcement of a judgment or arbitral award against property which is in use or intended for use for commercial purposes. Section 14(4) provides:

> "Property of a State's central bank or monetary authority shall not be regarded for the purposes of subsection (4) of section 13 above as in use or intended for use for commercial purposes; and where any such bank or authority is a separate entity subsection (1) to (3) of that section shall apply to it as if references to a State were references to the bank or authority."

56. Aikens J held that s. 14(4) applied to all property of a central bank, whether the central bank was part of the state or a separate entity and irrespective of the capacity in which the central bank holds it, or the purpose for which the property is held (§61 of *AIG*). All such property, including the London Assets, was to be regarded as not held for commercial purposes and so could not be enforced against pursuant to s. 13(4). There had been an alternative argument before him that even if s. 14(4) was not applicable to the London Assets then they were in any event not held for commercial purposes within s. 13(4). He did not need to decide this point but nevertheless expressed the firm view that the London Assets were not in use or intended for use for commercial purposes at any stage (§92). That was because:

> a. The London Assets formed part of the National Fund of Kazakhstan. That Fund was a natural resources fund, established in common with other states rich in resources such as oil or natural gas. Natural resources funds could be used as "stabilisation funds" (which help to smooth out government spending by receiving revenues when commodities prices are high, and transferring funds for government spending when prices are low) or as "savings funds"

which store up wealth for future generations (§11). The National Fund had both stabilisation and savings functions (§12) and had been created to assist in the management of the economy and government revenues of Kazakhstan both in the short and long term. Management of a state's economy and revenue must constitute a sovereign activity (§92(1)).

b. The National Fund had to be managed by the National Bank in accordance with statute. This required investment in financial assets in order to secure, amongst other things, high profitability levels of the National Fund in the long term at reasonable risk levels. The securities held in London were actively traded at all times and the National Bank obtained commission from the Government of Kazakhstan on good results and paid a penalty for poor ones. That was not inconsistent with the National Fund being used or intended for use for sovereign purposes because the aim was at all times to enhance the National Fund (§92(2)).

c. Trading in the securities elements of the London Assets in order to make profits did not fall within the definition of "commercial purposes" in s. 17(1) read with s. 3(3) because the purpose was at all times to benefit the National Fund. These dealings were "*all part of the overall exercise of sovereign authority by the Republic of Kazakhstan*" (§92(3)).

57. In **Koo Golden East Mongolia v Bank of Nova Scotia** [2007] EWCA Civ 1443, [2008] QB 717, the Court of Appeal held that the central bank of Mongolia (MongolBank), a "separate entity", had state immunity in proceedings relating to a contract it had entered into with the defendant bullion bank, with the effect that the defendant bank itself was also immune. The relevant provision of the SIA was s. 3(1) (set out in §13 above): MongolBank would be immune if the proceedings related to a transaction or activity of a commercial, financial or other similar character into which it had entered in the exercise of sovereign authority. The transactions in question, for the refining of gold and the placing of a quantity of refined gold on the bank's unallocated precious metals account, were held to be for the purposes of increasing Mongolia's currency reserves, which was an exercise of sovereign authority within the meaning of the SIA (§42). That conclusion was said by Sir Anthony Clarke MR to be entirely consistent with that of Aikens J in §58 of **AIG** (where he had said that "*when a central bank or a State's monetary authority is performing its key functions of acting as guardian and regulator of the State's monetary system, it will be exercising governmental or sovereign authority; it will not be acting for commercial purposes*").

58. **SerVaas Inc v Rafidain Bank** [2012] UKSC 40, [2013] 1 AC 595 was another claim which turned on s. 13(4), and whether property was in use or intended for use for commercial purposes. The property in question was debts owed to the defendant bank which had been acquired by the

Government of Iraq, the dividends from which the Government intended to pay to the Development Fund of Iraq, a fund established by the UN Security Council in the wake of the deposing of Saddam Hussein. The Supreme Court held that neither the debts nor the dividends expected from them were in use or intended for use for commercial purposes as "*[n]either is connected to, or destined for use in, any mercantile or profit-making activity by Iraq*" (§32).

59. In §131 of the Reasons, the ET distinguished **AIG** on the grounds that the *obiter* findings set out in §56 above applied s. 13(4) which contains "*a diametrically different test to the test in s. 14(2)(a), which is concerned with the legal character of an act, and not the purpose for which it is done*". I do not agree that the reasoning in **AIG** can safely be distinguished on this basis:

a. It is correct that the test in s. 13(4) focuses on whether property is used or intended for use for commercial purposes, whereas the s. 14(2)(a) test for identifying the exercise of sovereign authority is focused upon the juridical character of an act or transaction. However, the purpose for which a transaction is done is not necessarily irrelevant to sovereign authority. As I have noted in §32 above, the purpose of an act will be relevant insofar as it sheds light on its juridical nature. Put another way, the purpose of a transaction may, in a particular case, form part of the overall context which must be considered when deciding upon its juridical character. Those propositions are consistent with the definition of "*commercial transaction*" in s. 3(3) (see §13 above), which expressly contemplates that a transaction of a commercial character can be entered into in the exercise of sovereign authority. On the ET's narrow analysis, it is difficult to see how that could ever be the case. On the ET's analysis, a commercial transaction such as buying or selling securities is - no matter what its purpose - something that a private actor could do and therefore not capable of being in the exercise of sovereign authority.

b. Although *obiter dictum*, §92 of *AIG* provides support for the proposition that commercial transactions which are entered into by a state or separate entity will be exercises of sovereign authority where they are for the purposes of, or in support of, a sovereign wealth fund. *Koo* provides further support, at Court of Appeal level, for that proposition. In that case, the commercial transactions, if viewed narrowly as liquidating gold bullion assets, could have been carried out by a private actor. In context, however, they were transactions for the purpose of enhancing the state of Mongolia's currency reserves and, as such, were held to have been done in the exercise of sovereign authority.

c. §58 of *AIG*, cited in *Koo*, is also on point. There is an analogy between a central bank acting as guardian and regulator of a state's monetary system by, in that case, seeking to increase foreign currency reserves, and a sovereign wealth fund seeking to maximise state resources for future generations.

d. *Koo* also provides some answer to the reliance placed by the Claimant upon the fact that the KIA uses private sector fund managers for some of its investment work. This does not establish that all of the KIA's investment activities are necessarily private law acts but rather – see §47 of *Koo* - that such transactions entered into by private sector fund managers could also attract state immunity on the footing that the agent of a state or separate entity should not have lesser immunity than the state or separate entity itself.

e. *SerVaas* also tends towards the same conclusion: assets consisting of claims and dividends expected from those claims which were destined for transfer to a government development fund, as opposed to for trading activities, were held not to be in use or intended for use for commercial purposes.

f. There are similarities between the FGF which is managed by the KIO and the savings function of the National Fund of Kazakhstan, the sovereign wealth fund which was at issue in *AIG*. Other monies, specifically entrusted to it by the Ministry of Finance, comprise a much smaller proportion of the funds managed by the KIO. The other characteristics of the KIO mentioned in §16.d above also support its activities not being in the nature of ordinary, private investment activities. That impression is strengthened if the focus is broadened from the KIO to the KIA as a whole, which manages, in addition, the GRF, a treasury account more closely analogous to the stabilisation function of the National Fund of Kazakhstan and to the central bank holdings at issue in *Koo*. I can see no principled basis for distinguishing between the activities of the KIA in managing the GRF and the FGF and those of the KIO in respect of the FGF alone.

g. Contrary to §129 of the Reasons, it is misleading to compare the KIA or the KIO to a private investment bank some of whose clients "*happen to be States*". The KIA was established by the State of Kuwait in order to manage state funds and it fulfils that mandate in part through the KIO. To the extent that the KIO manages funds for others (to a limited extent), that is only because it has been directed to do so by the State of Kuwait.

60. I acknowledge that there is no conclusive authority on the issue of whether a sovereign wealth fund, whether as part of a state or as a separate entity established by the state, exercises sovereign authority rather than having commercial functions, because of its responsibility for safeguarding, stabilising and/or enhancing the resources of the state. There are, moreover, good reasons for reserving a decision on this point for a case where it matters to the outcome. Notwithstanding those reservations, it seems to me that, contrary to the view of the ET, the effect of the relevant authorities is that the sovereign wealth fund management activities which are entrusted to the KIA by the law of Kuwait, and by the KIA to the KIO, are in the exercise of the sovereign authority of the State of Kuwait. Insofar as it arises as a separate issue for consideration, I would conclude that those activities are carried out for and on behalf of the State of Kuwait – the State of Kuwait has expressly conferred legal powers and obligations on the KIA to manage (*inter alia*) the FGF in the interests of the people of Kuwait.

61. The next question, applying s. 14(2)(a), is whether these proceedings can properly be said to be proceedings relating to the exercise of sovereign authority consisting in the management of sovereign wealth funds (a point which was not decided by the ET: see §128). The words "relating to" are capable of having a broad or a narrow meaning depending on the context (**NML Capital Ltd v Argentina** [2011] UKSC 31, [2011] AC 495, §26). The context, in the case of s. 14(2)(a), is a broadly worded provision under which the proceedings must relate to anything done in the exercise of sovereign authority (as opposed to, say, having to relate to a particular transaction, as under s. 3(1)). Section 14(2)(b) then narrows down that potentially broad category with reference to matters in respect of which the state would have been immune. It is under s. 14(2)(b) that provisions such as s. 3(1), which have been narrowly interpreted in some cases, may fall to be applied. I also proceed on the basis that the concept of proceedings relating to the exercise of sovereign authority in s. 14(2)(a) requires focus upon the allegations made in the proceedings, and on the question whether the allegations arise out of the exercise of sovereign authority (see **Holland v Lampen-Wolfe** [2000] 1 WLR 1573, 1587F-G and **London Steam-Ship Owners' Mutual Insurance Association Ltd v Kingdom of Spain** [2021] EWCA Civ 1589, [2022] 1 WLR 3434, §§44-47).

62. On that basis, the proceedings do, in my judgment, arise out of and so relate to something done in the exercise of sovereign authority, for two reasons in particular. First, because the proceedings are concerned with the employment, treatment and dismissal of the most senior person who had been appointed to be responsible for, and to oversee, the (sovereign) activities of the KIO. Second, because the main substantive issues in the proceedings concern the making of disclosures by

the Claimant which complained in several respects about the effectiveness and propriety of the KIO's performance of its functions in managing the FGF and the consequences which were allegedly visited upon him as a result of making those complaints (see §21 above). On the hypothesis that the day-to-day activities of the KIO consisted of sovereign acts, these have a close relationship to the pleaded allegations in the claim and go beyond merely general context or background to the claim. The KIA has not yet pleaded a substantive defence to the claim – its defence to date consists only of a state immunity defence. However, the elements of a protected disclosure claim include, significantly, that a claimant must have a reasonable belief that a disclosure relied upon is made in the public interest and tends to show, for example, that a person (here, the KIA) has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (see s. 43B(1)(b) ERA). Given that, it is likely, if the claim were to proceed, that the ET would have to investigate and adjudicate, to some degree at least, upon the propriety of activities and decisions of the KIA which are sovereign acts. That would run contrary to the rationale for the doctrine of state immunity (see *I Congreso del Partido* at 262C) and is itself a strong indication that the proceedings relate to the exercise of sovereign authority.

(2) Section 14(2)(a): the nature of the protected disclosures and detriments

63. I have taken into account the nature of the protected disclosures in my reasoning in §62 above. If, contrary to my reasoning above, neither the employment of the Claimant in a position which carried diplomatic status nor the activities of the KIO in managing a sovereign wealth fund constituted relevant exercises of sovereign authority, the subject matter of the Claimant's disclosures and their consequences could not, in and of themselves, satisfy the test in s. 14(2)(a). I therefore agree with the ET's finding in §127 of the Reasons.

(3) Section 14(2)(b): immunity of the State of Kuwait pursuant to s. 4

64. I have summarised in §25 above the ET's reasoning rejecting the KIA's submission under s. 14(2)(b) that, had the claim been against the State of Kuwait, it would have been immune by virtue of s. 4. The ET's starting point was that s. 4(2)(a) is incompatible with Article 6 ECHR, as per *Lorenzo*, and that it was necessary in order to avoid that incompatibility to adopt a broad interpretation of "commercial purposes" in s. 4(3).

65. In my judgment, the ET erred in considering that there would be incompatibility with Article

6 in the Claimant's case such as to require the application of s. 3 HRA and thereby depart from the ordinary meaning of s. 4(3):

> a. The incompatibility identified by the EAT in *Lorenzo*, and the declaration of incompatibility made by the Court of Appeal, do not automatically require a conclusion that there would be incompatibility in the Claimant's case as well. On well-established HRA methodology, only a "*victim*" of an actual or potential breach of a Convention right is entitled to rely upon that right (s. 7(1) HRA) and whether or not the application of s. 4(2)(a) would give rise to incompatibility with Article 6 ECHR rights, thereby satisfying the victim requirement, will depend upon the facts and circumstances of the individual claimant in each case (see, for example, *Taylor v Lancashire County Council* [2005] EWCA Civ 284, [2005] 1 WLR 2668, §§37-44).
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> b. In *Lorenzo*, there were two reasons why the application of s. 4(2)(a) was held not to be justified by any rule of customary international law and so was incompatible with Article 6. First, because s. 4(2)(a) ensured the immunity of Spain by virtue of Ms Lorenzo's Spanish nationality, even though the acts complained of in that case were not sovereign acts (primarily due to the nature of her employment as the Spanish Ambassador's social secretary and later as an administrative assistant) (§29 of the Court of Appeal's judgment). Second, because Ms Lorenzo was a locally recruited member of staff who happened to have dual British-Spanish nationality (§30 of the Court of Appeal's judgment). Neither of these factors applies to the Claimant. He was a diplomatic agent, whose employment the ET had held to be a sovereign act, and he is a Kuwaiti national who was not recruited in the UK but was posted here.
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> c. There is no direct support, either in *Benkharbouche* or in *Lorenzo*, for a conclusion that the application of s. 4(2)(a) in the case of a diplomatic agent such as the Claimant is not justified by any rule of customary international law, such that there would be a violation of Article 6 ECHR if s. 4(2)(a) were applied to him. The Claimant would not be a victim of any such violation and it follows that the ET should not have held that the application of s. 4(2)(a) would give rise to incompatibility with the Claimant's Article 6 rights. Section 4(3) should have been given its natural and ordinary meaning rather than being read through the lens of s. 3 HRA, with the aim of ensuring that s. 4 served to remove immunity in the Claimant's case.

66. The next issue was whether, if he had been employed by the State of Kuwait, the Claimant's work would have been for "*an office, agency or establishment maintained by the State in the United*

Kingdom for commercial purposes" within s. 4(3). If yes, then s. 4(2)(a) would be disapplied and the State of Kuwait would not have been immune pursuant to s. 4. The ET held that, applying s. 3 HRA, an entity would be maintained "*for commercial purposes*" if any part of its work is for the purposes of transactions or activities set out in s. 3(3), even if the entity also serves other purposes (§160). However, the ET appeared to consider that all of the KIO's activities were for commercial purposes. The commercial transactions entered into by the KIO when investing state assets were "*in the nature of private transactions, and not governmental acts*" (§159).

67. As I have explained in §§59-61 above, I consider that the KIO's activities in engaging in commercial transactions in order to maximise the sovereign wealth of the State of Kuwait for the benefit of future generations of Kuwaitis constitute sovereign acts. These purposes are not commercial purposes. The case-law on which that conclusion was based concerns other provisions of the SIA which refer to commercial use or commercial purposes, the same concept as appears in s. 4(3), and so applies more directly to s. 4(3) than to s. 14(2)(a) and the case-law underpinning it. The work of the KIO for the two organisations which are not emanations of the State of Kuwait (see §16.e) above) is, considered in isolation, more likely to have a commercial purpose. However, given that the relevant funds represent a small minority of the funds which the KIO manages, I could not conclude that this work itself justifies the conclusion that the KIO is maintained for commercial purposes. The ET cited (in §§139-140) case-law, in particular, *SerVaas,* to the effect that for a bank account to be in use for commercial purposes within s. 13(4) it must be earmarked solely for the settling of liabilities incurred in commercial transactions. I am doubtful that that case-law can be read as establishing that s. 4(3) will only apply where the entity in question has entirely commercial purposes. However, a rule to that effect would not be necessary to justify the conclusion in the present case that the KIO is not maintained for commercial purposes when its commercial as opposed to sovereign work represents, at best, only a very small proportion of its overall activities.

68. Accordingly, had it been necessary to do so, I would have concluded that the condition in s. 14(2)(b) is satisfied on the basis that the State of Kuwait would have been immune on the correct construction of ss. 4(2)(a) and 4(3).

69. For the avoidance of doubt, if s. 14(2)(a) is satisfied because the proceedings relate to the KIO's activities in managing a sovereign wealth fund of the State of Kuwait (see §§54-62 above), the same issues arise under s. 14(2)(b) as were considered by the ET on the footing that s. 14(2)(a) was satisfied only because of the inextricable link between the Claimant's employment as CEO of the

KIO and his appointment as a diplomat. That is because, whatever the basis for s. 14(2)(a) being satisfied, the same issue arises as to whether s. 4 would be applicable to disapply the s. 1 immunity of the State of Kuwait if it had employed the Claimant.

Conclusions

70. For the reasons given above, I dismiss the appeal and the cross-appeal.