Appeal No. EAT/276/97

EMPLOYMENT APPEAL TRIBUNAL

58 VICTORIA EMBANKMENT, LONDON EC4Y 0DS

At the Tribunal
On 4 June 1997
Judgment delivered on 22 July 1997

Before

HIS HONOUR JUDGE J HULL QC

MR D A C LAMBERT

MR T C THOMAS CBE

MS D BERTOLUCCI APPELLANT

EUROPEAN BANK FOR RECONSTRUCTION & DEVELOPMENT
& OTHERS RESPONDENTS

Transcript of Proceedings

JUDGMENT

Revised

APPEARANCES

For the Appellant	MISS COLLIER (of Counsel) Messrs Rischon de Reya Solicitors 21 Southampton Row London WC1B 5HS
For the Respondents	MR HUMPHRIES (of Counsel) Messrs Linklaters & Paines Solicitors Barrington House 59-67 Gresham Street London EC2V 7JA

JUDGE HULL QC: Ms Bertolucci was first employed on 4th August 1994 by the first respondent, the European Bank for Reconstruction and Development. At first she was employed as a Grade 8 employee in the Independent Control Unit of the Controller's Department. Eventually, in April 1996, she was appointed a Funds Accounting Officer in the same department. The second respondent, Mr Keane, was Principal Manager of the Independent Control Unit. The third respondent, Mr Kerby, was Director and Deputy Controller. By an Originating Application dated 8th July 1996 Ms Bertolucci complained of sexual discrimination by all the respondents. She complained that the second respondent had bullied and intimidated her, made unjustified criticisms of her work, and reduced her job tasks and work status, all because of her sex. She further complained that the third respondent had given her inadequate support when she complained about the second respondent's behaviour and sought his assistance, and that he had failed to investigate or act upon her complaint properly. She averred that both men had made degrading and detrimental comments to her because of her sex and that the first respondent's Human Resources Department had failed to support her or investigate or act upon her complaints. She gave many particulars of these complaints and by an amendment dated 4th October 1996 averred that the second and third respondents were at all material times acting in the course of their employment. She also alleged that she had been discriminated against because she had made complaints of discrimination. On 6th November 1996, her contract of employment not having been renewed on 25th September 1996, she presented a further complaint of discrimination and victimisation.

By their Notices of Appearance, the respondents averred merely that the first respondent was immune from suit and legal process pursuant to Clause 5(2) of the European Bank for Reconstruction and Development (Immunities and Privileges) Order 1991, and that the second and third respondents were immune from suit and legal process pursuant to Clause 13(1) of the same Order, so that the Industrial Tribunal had no jurisdiction to hear the complaints.

On 19th December 1996 the Chairman of the Industrial Tribunal, Mr Heggs, held a preliminary hearing without the industrial members at Stratford. He concluded that his tribunal was without jurisdiction to hear the complaints. He reached that conclusion after referring to the instruments which created and regulate the first respondent ["the Bank"] and the cases of **Mukoro v European Bank for Reconstruction & Development [1994] ICR 897** and **Re International Tin Council [1987] BCLC 272**.

The first respondent is undoubtedly an international organisation owing its existence to treaty obligations undertaken by a large number of sovereign states. In the **International Tin Council** case, Millett J, having cited from the *Proper Law of International Organisations* [1962] by Dr Wilfred Jenks, observed at page 288:

> **"In my judgment, the position can be considered broadly. An international organisation like the ITC, whether incorporated or not, is merely the means by which a collective enterprise of the member states is carried on, and through which their relations with each other in a particular sphere of common interest are regulated. Any attempt by one of the member states to assume responsibility for the administration ... of the organisation would be inconsistent with the arrangements made by them as to the manner in which the enterprise is to be carried on and the relations with each other in that sphere regulated. Sovereign states are free, if they wish, to carry on a collective enterprise through the medium of an ordinary commercial company incorporated in the territory of one of their number. But if they choose instead to carry it on through the medium of an international organisation, no one member state, by executive legislative or judicial action can assume the management of the enterprise and subject it to its own domestic law. For if one could, then all could; and the independence and international character of the organisation would be fragmented and destroyed."**

We must therefore consider the documents establishing the Bank. The agreement establishing the European Bank for Reconstruction and Development was executed in Paris on 29th May 1990 when it was signed by a large number of sovereign states including the United Kingdom, and in addition by the European Community and the European Investment Bank. The agreement stated that the purpose of the

Bank was to foster the transition towards open market oriented economies and to promote private and entrepreneurial initiative in the Central and Eastern European countries committed to and applying the principles of multi-party democracy, pluralism and market economics. Article 44 of the agreement provided that to enable the Bank to fulfil its purpose and the functions with which it was entrusted, the status, immunities, privileges and exemptions set forth in Chapter 8 of the agreement should be accorded to the Bank in the territory of each member country. Article 45 provided that the Bank was to possess full legal personality. Article 51 provided *inter alia* that all officers and employees of the Bank should be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waived immunity, and should enjoy inviolability of all their official papers and documents. The Article also provided that this immunity should not apply to civil liability in the case of damage arising from a road traffic accident caused by any such officer or employee. Article 55 provided that the immunities, privileges and exemptions conferred were granted in the interest of the Bank. The Board of Directors might waive any of the immunities, privileges and exemptions where such action would, in its opinion, be appropriate in the best interests of the Bank. The President should have the right and duty to waive any immunity, privilege or exemption in respect of any officer or employee where, in his or her opinion, the immunity, privilege or exemption would impede the course of justice and could be waived without prejudice to the interests of the Bank.

On 15th April 1991 the Government of the United Kingdom entered into a "Headquarters Agreement" with the Bank. Article 4 of that agreement was entitled "Immunity from Judicial Proceedings" and provided:

> **"(1) Within the scope of its official activities the Bank shall enjoy immunity from jurisdiction, except that the immunity of the Bank shall not apply ...**

(c) in respect of a civil action by a third party for damage arising from a road traffic accident caused by an officer or an employee of the Bank acting on behalf of the Bank.

(d) in respect of a civil action relating to death or personal injury caused by an act or omission in the United Kingdom ..."

Article 15, headed "Privileges and Immunities for persons connected with the Bank" provided:

"... (2) Persons connected with the Bank shall:-

(a) be immune from jurisdiction and legal process including arrest and detention, even after termination of their mission or service in respect of acts performed by them in their official capacity, including words written or spoken by them; this immunity shall not apply, however, to a civil liability in the case of damage arising from a road traffic accident caused by any such person ..."

Article 19 of the Agreement, entitled "Object of immunities, privileges and exemptions; waiver" made provision for waiver and the duties of the President in terms similar to those contained in the Agreement establishing the Bank.

The object of the Headquarters Agreement was of course to regularise and facilitate the setting up of the Headquarters of the Bank in the United Kingdom. It was expressly provided that the Headquarters Agreement was to be regarded as implementing and supplementing certain provisions of the Agreement establishing the Bank and it was not to be regarded as modifying or derogating from the provisions of that Agreement, particularly Chapter 8 thereof.

Under the **International Organisations Act 1968**, s.1 is to:

"(1) ... apply to any organisation declared by Order in Council to be an organisation of which-

(a) the United Kingdom, or Her Majesty's Government in the United Kingdom, and

(b) any other sovereign Power or the Government of any other sovereign Power,

are members."

Subsection (2) provides that such an Order in Council may provide that the organisation shall have the privileges and immunities set out in Part I of the first Schedule to the Act, and confer the privileges and immunities set out in Part III of the Schedule on officers and servants of the organisation.

Part I of the first Schedule to the Act provides for immunity from suit and legal process for the organisation itself, and Part III for immunity from legal process in respect of things done or omitted to be done in the course of the performance of official duties of staff.

Pursuant to the statute and to the agreement to which we have referred, the European Bank for Reconstruction and Development (Immunities and Privileges) Order 1991 was made on 20th March 1991. Under Article 5 of the Order it is provided:

"(2) ... the Bank shall, within the scope of its Official Activities, have immunity from suit and legal process, except that the immunity of the Bank shall not apply-

...

(c) in respect of a civil action by a third party for damage arising from a road traffic accident caused by an Officer or an Employee of the Bank acting on behalf of the Bank;

(d) in respect of a civil action relating to death or personal injury caused by an act or omission in the United Kingdom ..."

Article 13 provides:

"13.-(1) A Person Connected with the Bank shall enjoy-

(a) immunity from suit and legal process, even after the termination of his mission or service, in respect of acts performed by him in his official capacity including words written or spoken by him, except in respect of civil liability in the case of damage arising from a road traffic accident caused by him; ..."

Under Article 1 of the Order:

"... (k) "Official Activities of the Bank" includes all activities undertaken pursuant to the Agreement establishing the Bank, ... including its administrative activities; and

(l) "Persons Connected with the Bank" means ... Officers and Employees of the Bank ..."

The Order contains provisions for waiver in accordance with the Agreements to which we have referred and the Act of 1968.

After considering these provisions, Mr Heggs concluded that the tribunal had no jurisdiction to entertain Ms Bertolucci's complaints. He said:

"10. The tribunal has regard to the fact that domestic legislation must be construed so as to give effect, so far as possible, to the obligation to provide Ms Bertolucci with an effective remedy for sex discrimination assured to her by the principles of the European Union law and also to give effect to the intended effect of the treaty obligations entered into between the United Kingdom Government and the other sovereign Powers (see *Re International Tin Council* [1987] BCLC 272 per Millett J at p.289 para.g). The tribunal concludes that the intention of the contracting Powers was to establish the Bank as a free-standing international organisation having immunity from suit in domestic courts in all countries except to the extent permitted by the international agreement establishing the Bank incorporated in the provisions of 1991 Order. If it had been intended that immunity should not extend to proceedings arising out of an employment relationship this could have been expressly provided as an exception in the agreement and in the Order. The difference between Ms Bertolucci's case and the case of *Mr Matthew Mukoro* [1994] ICR 897 is that Mr Mukoro complained of racial discrimination, which is not regulated by European Union law, while Ms Bertolucci complains of sex discrimination in contravention of the Equal Treatment Directive. However, the tribunal does not accept that the Bank is an emanation of the United Kingdom or any other Member State of the European Union for the purpose

of rendering the Directive directly enforceable against the Bank in proceedings before a United Kingdom domestic judicial tribunal."

The learned Chairman then made certain observations concerning judicial policy and the position of Industrial Tribunals which the respondents do not seek to support, saying that they were not material to the learned Chairman's decision. He continued:

"11. ... The tribunal concludes that the issues are straightforward. Ms Bertolucci's complaints in these proceedings arise out of claimed mistreatment by managers of the Bank during the course of her employment. The tribunal concludes that staff management falls within the acts performed by managers in their official capacity, whether or not it was performed in a discriminatory manner, and the employment of staff and management of staff relations falls within the official activities of the Bank. The tribunal sympathises with Ms Bertolucci but her remedy, if any, is against the Bank under its grievance and appeals procedure and, if that is ineffectual, by way of representation to the Governors and Secretary General of the Bank. It is the decision of the tribunal that the scope of the immunity conferred by paragraphs 5(2) and 13(1)(a) of the 1991 Order is clear and that there is no jurisdiction to consider Ms Bertolucci's complaints against any of the respondents."

In **Mukoro v European Bank for Reconstruction and Development and another [1994] ICR 897**, Mr Mukoro, who was a Nigerian, made a number of unsuccessful approaches to the Personnel Department of the Bank seeking employment, and in August 1991 he made a complaint of unlawful racial discrimination against both the Bank and an employee in the Personnel Department. The Industrial Tribunal upheld the Bank's contention that they had no jurisdiction to hear the complaint on the ground that the Bank and its employee were immune from suit and legal process by virtue of Articles 5 and 13 of the Order of 1991, and they dismissed the complaint. Mr Mukoro appealed to the Employment Appeal Tribunal on the grounds that the immunity conferred by the Order of 1991 did not extend to unlawful acts of racial discrimination in the selection of staff and that the Order was *ultra vires* the Act of 1968. This tribunal dismissed his appeal. Mummery J, as he then was, giving the judgment of our tribunal, said at 903D:

"A claim to immunity from suit and legal process must be carefully scrutinised since, if established, the bank and its employees are exempt from the jurisdiction of the industrial tribunal in respect of complaints under the Race Relations Act 1976, the Sex Discrimination Act 1975 and the employment protection legislation. Those with complaints under the legislation are disabled from having those complaints investigated by the industrial tribunal and from obtaining any remedy from the industrial tribunal. The existence of internal grievance procedures may provide some remedy for those employed by the international organisation. A person such as the applicant, who has not succeeded in becoming an employee of the organisation, would have no such remedy.

As immunity from suit and legal process conferred on foreign states, diplomats, international organisations and their officers may produce severe disabilities for individuals in respect of fundamental rights, it can only be justified by an overriding public policy or interest. In the case of an international organisation, such as the bank, immunity from suit and legal process may be justified on the ground that it is necessary for the fulfilment of the purposes of the bank, for the preservation of its independence and neutrality from control by or interference from the host state and the effective and uninterrupted exercise of its multinational functions through its representatives. Those considerations, as well as the severity of the disability suffered by a potentially aggrieved individual, must be borne in mind in the interpretation of the relevant provisions of the International Organisations Act 1968 and the Order of 1991."

The tribunal went on to consider a submission made on behalf of Mr Mukoro that:

"An unlawful act of racial discrimination does not fall within the scope of the acts which enjoy immunity, because that would be inconsistent with the fundamental principles to which the member states agreed they were committed in establishing the bank. Those who established the bank stated that they were committed to the fundamental principles of "the rule of law" and "respect for human rights". It is not consistent with those fundamental principles for the bank to enjoy immunity from investigation into the alleged commission of an unlawful act of racial discrimination."

Mummery J continued at page 905:

"(1) The bank and its employees were granted immunity from suit and legal process for acts done "within the scope of its official activities".

(2) "Official activities" include all activities undertaken pursuant to the agreement establishing the bank "including its administrative activities". The selection of staff for employment by the bank is an administrative activity undertaken pursuant to the agreement and appropriate to fulfil the bank's purpose and functions. The relevant activity is the selection of staff for employment. The applicant's complaint is about the alleged unlawfulness of the *manner* in which the activity of selecting staff for employment was carried out. In our view, it is not correct to argue that the relevant activity is that of unlawful discrimination and that that was not an official activity. The correct question to pose under the Order of 1991 and the headquarters agreements is whether the selection of

staff for employment was within the "official activities" of the bank. To pose the question in the form: "is unlawful racial discrimination within the official activities of the bank?" confuses, on the one hand, the activity of selecting staff for employment with, on the other hand, the mode of performance of the activities and the consequences of performance. If Mr Scott's interpretation of the Order of 1991 was correct, the immunity from suit and legal process conferred by article 5(2) would be meaningless. It would only apply where, after an industrial tribunal had exercised jurisdiction and conducted an investigation into the complaint, it concluded that no unlawful act had been committed by the bank, in which case it would be unnecessary to confer or claim any immunity. The purpose of conferring immunity is to protect the relevant organisation from having legal proceedings brought against it for alleged wrongs, whether those wrongs have actually been committed by the organisation or not."

On the face of it, the present case falls fairly and squarely within the principle of the decision in **Mukoro v European Bank for Reconstruction and Development** and is therefore not maintainable as a matter of law. We have, however, carefully considered the arguments put forward by Miss Collier for saying that this consequence should not follow. These arguments are clearly put forward in Miss Collier's 20 page skeleton argument, for which we are exceedingly grateful.

Miss Collier's first ground is that the Industrial Tribunal was in error in finding that the Bank's acts and omissions were matters within the scope of "official activities". Official activities could not include such matters as bullying and intimidation on grounds of sex, degrading and detrimental comments, or refusal to speak to an employee or to acknowledge her presence. These, said Miss Collier, were free-standing acts of discrimination, entirely separate from administrative activities. Indeed some of them had no connection at all with administrative activities. The same argument applied to the decision to dismiss Ms Bertolucci for discriminatory reasons, and her unfair dismissal.

In our view, this argument is directly contrary to the ratio in **Mukoro's** case. If that were not so, then our tribunal would have found it necessary to indicate, both for the purposes of that case and for the guidance of Industrial Tribunals in other cases, that it was necessary on any such complaint to look to see which acts of discrimination were incidental to the official activities of the Bank and which were, to

use Miss Collier's expression, "free-standing". Moreover, this appears to us to be an argument which ignores the actual wording of the Order of 1991:

> **"The Bank shall, within the scope of its official activities, have immunity from suit and legal process ..."**

The order does not provide that the Bank shall have immunity from suit and legal process for its official activities - but "within the scope of its official activities". We think that this is not a mere circumlocution but is intended to mean something like "in the course of" or "in and about" or "in relation to" its official activities. This conclusion is reinforced by the terms of some of the exceptions to the immunity. Thus under paragraph (d) of Article 5(2) the immunity of the Bank shall not apply in respect of a civil action relating to death or personal injury caused by an act or omission in the United Kingdom. Why should such an exception be provided if Miss Collier's argument is right? Presumably the infliction of death or personal injury, whether deliberately, recklessly or accidentally, is not one of the official activities of the Bank.

Moreover the argument from convenience is overwhelmingly against Miss Collier's suggested construction of the Order. The immunity would have little purpose if the Industrial Tribunal or Court were required in every case to find what acts of discrimination, or other unlawful behaviour, had been committed by the staff of the Bank, and then go on to sort them into free-standing unlawful acts in respect of which no immunity could be claimed and acts which were merely incidental to the official activities of the Bank, with which the Court or tribunal could no longer concern themselves. We therefore reject this submission, both on authority and on principle. It appears to us that the administration of the Bank, whether or not it is carried out in a way which involves acts of unlawful discrimination or indeed other civil wrongs, is one of the Bank's official activities.

There was another limb to Miss Collier's argument under this heading. She said that the matters complained of by Ms Bertolucci included omissions, including failure to support her in her complaint of discrimination or to investigate or take action on her complaints; failure to protect her from discrimination, including victimisation; and failure to supply written reasons for her dismissal despite a request to do so. Omissions, said Miss Collier, clearly did not fall within the scope of the Order. The Order granted immunity to the first respondent within the scope of its official activities. If Parliament had intended omissions to be included it would have made this clear as in the **Sex Discrimination Act 1975**, s.82 and the **International Organisations Act 1968** itself, in Schedule 1, paragraph 14, which provides for immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.

It appears to us, as it appeared to the Industrial Tribunal in the present case, that this is an impossible contention. A great many wrongs can be viewed either as positive acts or negative omissions. Most people would say that "careless driving" is a wrongful act; but it is charged as driving without due care and attention, grammatically and conceptually an omission. Indeed the entire jurisprudence of human rights, racial and sexual discrimination, unfair dismissal and so on involves such a duality. Native English jurisprudence is a jurisprudence of wrongs not rights. Absent obligations in contract or arising under a trust, or statutory obligations, the great majority of personal obligations in English law fall under the law of tort; which as its name suggests is and always has been a law of wrongs not rights. The jurisprudence of continental Europe, and indeed of the constitution of the United States, appears to be founded upon "rights", as indeed the French and German names for law in the formal sense clearly imply. The concepts of both jurisprudences are to be found together in employment law, as well as the law of racial and sexual discrimination. Thus s.94(1) of the **Employment Rights Act 1996** provides that an

employee has the right not to be unfairly dismissed by his employers; but asserting the right normally involves the establishment of the fact that the employer has committed a wrong, which is very often a positive act and very often an omission and indeed often both. The construction urged by Miss Collier would in our belief render the Order meaningless and indeed is contradicted by the terms of Article 5(2)(d) to which we have already referred:

> **"personal injury caused by an act or omission in the United Kingdom".**

We must therefore reject Miss Collier's first submission to us.

Miss Collier's second submission is a complaint that the Industrial Tribunal found that the acts and omissions of the second and third respondents were "acts performed by them in their official capacity". It is true that Miss Collier appears to have submitted to the learned Chairman that the acts and omissions of these two respondents were not "acts performed by them in their official capacity", but it does not appear to us that the Chairman decided the case on that basis. If he had done, he would have been in error. Article 13(1) provides that a person connected with the Bank shall enjoy immunity from suit and legal process "in respect of" acts performed by him in his official capacity, except in respect of civil liability in the case of damage arising from a road traffic accident caused by him. The words "in respect of" are wide ones; it appears to us that they are certainly apt to include wrongs committed in the course of carrying out official acts. If that were not so, it would hardly be necessary to except civil liability in the case of damage arising from a road traffic accident caused by the officer or servant concerned. Miss Collier conceded that if the phrase "in respect of acts performed by him in his official capacity" meant "in the course of his employment" her argument could not be maintained: see **Jones v Tower Boot Co. Ltd [1997] IRLR 168**. She submitted that the phrase "in respect of acts performed

by him in his official capacity" must bear some meaning other than "in the course of his employment". We are not sure why that that should be so, because "a person connected with the Bank" includes a large number of persons who may have no contract of employment - Governors, representatives of members, Directors, the President, the vice-presidents and experts performing missions for the Bank. In those circumstances, it was of course necessary for the draftsman of the Order to find an appropriate expression to cover the situation of these officers and others "connected with the Bank" and it is far from clear that the expression "a person connected with the Bank shall enjoy immunity ... in respect of acts performed by him in his official capacity" is any narrower, in the case of an employee, than the expression "in the course of his employment". For these reasons, and for the reasons of logic and convenience which we have referred to in rejecting Miss Collier's first submission, we feel obliged to reject her second submission also, including the ancillary submission that the Order does not grant immunity to persons connected with the first respondent in respect of omissions.

Miss Collier's third submission was that the Industrial Tribunal should have found that it was possible to construe the Order in such a way as to provide Ms Bertolucci with a remedy for sex discrimination to which she was entitled under European Community law. She said first that national courts must, whereever possible, construe national legislation in a manner which is consistent with European Community law. We accept that general proposition, which was not contested by Mr Humphries on behalf of the respondents. However, we are of opinion that that principle of construction, and indeed the substantive proposition that national courts are under an obligation to ensure that individuals have a right to an effective remedy to enforce and protect their rights under European Community law, have no application in the present case. In the **International Tin Council** case to which we have referred, we have particular regard to the part of Millett J's judgment which we have

already read and to the passage from Dr Jenks's textbook from which he read with approval; at page 288:

> **"It may well be considered an essential element in the concept of an international body corporate that the extent to which its operations within the jurisdiction of a particular States are subject to the law of that State is limited by the obligations accepted by the State in recognising it as an international body corporate ... In such event the personal law of the international body corporate, so far from yielding to the territorial law, will by virtue of its character as an international obligation of the State concerned, determine the extent of operation of the territorial law."**

Many of the signatories to the establishment agreement setting up the Bank are not members of the European Community and the Bank might, of course, and probably does, carry on operations and establish a presence in countries which are not members of the European Community. It seems to us wholly anomalous that simply because the Bank has chosen to set up its headquarters in the United Kingdom the national courts should be under an obligation to ensure that members of the staff have a right to an effective remedy to enforce and protect their rights under European Community law, or to construe the Order of 1991 in a manner consistent with European Community law. Indeed, the alleged obligation falling on national courts of the United Kingdom would presumably extend to any individual complaining that the Bank or its officers or employees had committed an actionable wrong against him.

Miss Collier continued this part of her argument by referring to the provisions of the United Nations Charter, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the European Convention on Human Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women, and she further observed that the establishing agreement stated that the parties were committed to respect for human rights.

It appears to us that the duty of any English court, when construing the provisions of the Order of 1991, is to give it its plain and obvious meaning; and in particular to make sure (if necessary) that that meaning is such as to give practical efficacy to the Order's provisions. We would observe finally that if this submission were correct, the effect would be to give an extraordinary primacy to European Community law. Thus Ms Bertolucci, and indeed any other potential complainant or plaintiff, might assert in vain all manner of causes of action or complaints against the Bank or its officers or servants, and be met successfully by the provision for immunity from suit; whereas that provision would not avail the Bank if the plaintiff or complainant could assert that the wrong complained of amounted to sexual discrimination.

Grounds 4 and 5 of Miss Collier's submissions related to observations made by the learned Chairman in the last paragraph of his reasons, which Mr Humphries did not seek to support. In our view, as Mr Humphries said, these observations were in the nature of *obiter dicta* and were not the foundation of his decision. We have already dealt with Ground 6, in the course of this decision.

Finally, Miss Collier complained of the learned Chairman's finding that the Bank was not a emanation of the State for the purpose of rendering the Equal Treatment Directive directly enforceable against it in proceedings before a United Kingdom domestic judicial tribunal.

In considering Miss Collier's submission on this point, we at first understood her to say that the Bank was an emanation of the United Kingdom. Pressed on this point, she said that it was an emanation of all the States who were members, and added that it was emanation of <u>each</u> of them. It appears to us, however, that the Protean entity so described by Miss Collier is not an "emanation of the State" as that expression is understood in English or European law; indeed it appears to us that the entire argument

rests upon a misunderstanding of the ratio of the **International Tin Council** case. So far from being an emanation of the State the Bank is an international organisation which owes its existence to the agreement of 1990. As Millett J said in that case:

> **"Sovereign states are free, if they wish, to carry on a collective enterprise through the medium of an ordinary commercial company incorporated in the territory of one of their number. But if they choose instead to carry it on through the medium of an international organisation, no one member state, by executive legislative or judicial action, can assume the management of the enterprise and subject it to its own domestic law."**

It appears to us that that proposition, and the passage in Dr Jenks's textbook which it approves, apply just as much to the European Community as to the United Kingdom.

In our judgment, therefore, this appeal must fail. We reach that conclusion primarily on the authority of **Mukoro v European Bank for Reconstruction and Development** **[1994] ICR 897**, and have rejected the arguments by which Miss Collier sought to distinguish that case. We have of course assumed for the purposes of this judgment that Ms Bertolucci can establish the allegations which she makes. If she could in fact establish those allegations, or any substantial part of them, then that must be a source of grave concern to those responsible for the Bank's activities in the United Kingdom. We should like to express the hope that the Bank (if it has not already done so) will conduct a proper investigation of these allegations, and if it should emerge that they or any substantial part of them are substantiated, will take effective action to make sure that nothing of the sort happens again and that the person or persons responsible are left in no doubt about their responsibilities towards young women employees. Immunity from suit involves serious responsibilities.