



IN THE COURT OF APPEAL, CIVIL DIVISION



(GS 05.07.18)

REF: A2/2019/0057 & A

(SEAL)

The Queen, on the application of

KOSTAKOPOULOU -v- UNIVERSITY OF WARWICK & ORS

**ORDER made by the Rt. Hon. Lord Justice Lewison:**

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal against:

- i) an Order of the Employment Appeal Tribunal under rule 3(7ZA) or
- ii) a direction by the Employment Appeal Tribunal under rule 3(10) that no further action shall be taken on the notice of appeal.

**Decision: REFUSED. APPLICATION REFUSED.**

An order granting permission may limit the issues to be heard or be made subject to conditions

Permission to appeal:  Granted  Refused

OR

The test for the grant of permission to appeal is satisfied.

The notice under rule 3(7ZA) or (as the case may be) the direction under rule 3(10) shall be of no effect. The appeal shall proceed in the Employment Appeal Tribunal as if the notice or direction had not been given or made.

**Reasons**

1. There is no doubt that Prof Kostakopoulou is correct in saying that natural justice (whether at common law or under art 6 of the ECHR or the EU Charter or the ET Rules) is of fundamental importance.
2. But none of these fundamental principles preclude the ET from managing a case so as to progress it in a way that is (a) efficient (b) proportionate and (c) cost effective.
3. Neither the ET nor the EAT has definitively refused Prof Kostakopoulou's request for information. What they have said is that it is not necessary at this stage in the proceedings. Although the question *whether* to order further information to be provided may engage the fundamental rights mentioned above; the question raised here is not *whether* to make such an order but *when* to make it.
4. That is essentially a question of case management. The ET has been attempting for some time to list a preliminary hearing to deal with certain specific issues. It has taken the view that Prof Kostakopoulou does not need the requested information to deal with those specific issues. I cannot see anything in the grounds of appeal or the skeleton argument which could show that the ET made a legal error in coming to that conclusion.
5. So far as documents are concerned, the University states that it does not have further documents of the kind requested. An obligation to disclose documents relates to documents that exist or have existed. It does not require the creation of new documents. I have not seen anything that cogently contradicts that position.
6. An appeal would have no real prospect of success.
7. The jurisdiction of the Court of Appeal is limited to errors of law made by the EAT. The application to adduce further evidence is not relevant to the question whether the EAT made an error of law on the materials before it.

**Information for or directions to the parties**



**Mediation:** Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)?

Yes/No (delete as appropriate)

**Pilot categories:**

- All cases involving a litigant in person (other than immigration and family appeals)
- Personal injury and clinical negligence cases;
- Boundary disputes;
- Inheritance disputes.
- EAT Appeals