

## Supreme Court dismisses state immunity arguments to contest arbitration awards

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Foreign governments cannot rely on state immunity to contest arbitration awards against them when they had submitted to the jurisdiction of the English courts, the Supreme Court ruled today.

Spain and Zimbabwe were each the subject of multi-million pound adverse arbitration awards under the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). The states argued they could rely on their sovereign immunity to set aside the registration of those awards in the High Court under the Arbitration (International Investment Disputes) Act 1996.

Spain was ordered to pay €112m, later reduced by €11m, plus interest and costs to energy companies in 2018. In 2021, the High Court granted the companies' application to register the award under the Arbitration Act despite Spain's objection on the basis of state immunity.

Zimbabwe was ordered to pay US\$124m as well as interest and US\$1m in moral damages and costs to a company which had invested in land that was expropriated without compensation. Zimbabwe's application to have the award annulled was dismissed by the ICSID committee. The companies applied to the High Court to register the award, which was granted in 2021 and served on Zimbabwe the following year. Zimbabwe appealed the dismissal of its set aside application.

## **The Court of Appeal dismissed both appeals**

In today's judgment, Lord Lloyd-Jones and Lady Simler, with whom Lord Briggs, Lord Sales and Lord Leggatt agreed, said: 'Once there is a binding award, recognised and to be enforced like a final judgment, adjudication has already taken place and the scope for reliance on immunity from adjudicative jurisdiction has passed.'

The Supreme Court noted the obligations under the ICSID Convention to 'recognise and enforce consented to by the contracting states' was 'inconsistent with the maintenance of immunity'.

'A contracting state (such as Spain or Zimbabwe) cannot simultaneously agree that the United Kingdom "shall" recognise and enforce an ICSID award rendered against them, whilst also claiming immunity from recognition and enforcement that would prevent the United Kingdom from complying with its own ICSID obligations.'

Dismissing the appeals, the Supreme Court said Spain and Zimbabwe 'have submitted to the jurisdiction by virtue of article 54 of the convention and consequently, they may not oppose the registration of ICSID awards against them on the grounds of state immunity'.

Neil Newing, partner at Signature Litigation, described the decision as an 'important affirmation of the pro-arbitration approach of the English courts'. He added: 'The decision should ensure that, going forwards, ICSID awards can be registered for enforcement purposes in an efficient and straightforward manner, and so avoid the cost and delay involved in having that registration challenged. This does not, however, affect a state's right to claim that particular assets may be immune from execution.'

<https://www.lawgazette.co.uk/news/supreme-court-dismisses-state-immunity-arguments-on-arbitration-awards/5126079.article>