

News



Many of our engagements involve matters in which our clients face significant public attention. The following is a list of news stories about the firm, our clients, cases and the results we have achieved.

Kobre & Kim Successfully Defeats Spain's Sovereign Immunity Challenge in UK High Court in Landmark International Enforcement Case

May 24, 2023

In one of the most significant judgments on state immunity and international arbitration in decades, the Commercial Court (High Court) in London has dismissed Spain's challenge to the recognition of an ICSID arbitration award (the *Antin Award*) based on grounds of sovereign immunity and European Union case law.

Kobre & Kim's **Nick Cherryman** and **Richard Clarke**, alongside Patrick Green KC, represented the successful claimant investors (*Infrastructure Services Luxembourg S.À.R.L* and *Energia Termosolar B.V.*) at a four-day hearing in the High Court in March 2023, instructed by **Kunhee Cho** and **Erika Saluzzo**.

In a 56-page detailed judgment published on May 24, 2023, Mr. Justice Fraser dismissed all of Spain's grounds of set aside, upholding Mrs. Justice Cockerill's Registration Order of June 29, 2021, which orders Spain to pay the claimants approximately EUR €120 million for breaches of the Energy Charter Treaty.

The judgment provides welcome clarity to a long running global legal debate on the validity of intra-EU arbitration awards in the wake of the Court of Justice of the European Union's (CJEU) decisions in the cases of *Achmea* and *Komstroy*. The London High Court held those cases do not affect enforcement of the *Antin* ICSID Award.

It has also been determined for the first time in an English court that the combined effect of Article 54 of the ICSID convention and s.2(2) of the State Immunity Act 1978 acts as a submission by a signatory state to the jurisdiction for the registration of ICSID Awards in England.

"We are pleased to see the Court's unequivocal judgment in our client's favour," Mr. Cherryman said. "As the Court acknowledges, the judgment will have wide-reaching ramifications for international arbitration practitioners, ECT parties, award holders, and States (and their advisors), on questions of immunity from recognition of awards. In light of this judgment, our clients hope Spain will now finally honour the judgment debt owed to our clients."

The judgment is likely to be welcomed by international arbitration practitioners and enforcement specialists around the common law world, providing guidance as it does on many issues of the interaction between UK primary legislation, international customary law, the ICSID convention and EU law.

A copy of the judgment is available [here](#). (*Infrastructure Services Luxembourg S.À.R.L & Anor. v Kingdom of Spain* [2023] EWHC 1226 (Comm)).