



Press Summary

4 March 2026

The Kingdom of Spain (Appellant) v Infrastructure Services Luxembourg S.À.R.L. and another (Respondents); Republic of Zimbabwe (Appellant) v Border Timbers Ltd and another (Respondents)

[2026] UKSC 9

On appeal from: [2024] EWCA Civ 1257

Justices: Lord Lloyd-Jones, Lord Briggs, Lord Sales, Lord Leggatt and Lady Simler

Background to the Appeals

These appeals concern whether the Kingdom of Spain and the Republic of Zimbabwe, each the subject of arbitration awards rendered pursuant to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“**the ICSID Convention**”), can rely on their sovereign immunity to set aside the registration of those awards in the High Court under the Arbitration (International Investment Disputes) Act 1966 (“**the 1966 Act**”).

Section 1 of the State Immunity Act 1978 (“**the SIA 1978**”) gives foreign states immunity from the jurisdiction of courts of the United Kingdom, except as provided for in sections 2 to 11 of the SIA 1978. The exceptions relevant in these appeals are sections 2 and 9. Section 2(2) provides that a state is not immune regarding proceedings in respect of which it has submitted to the jurisdiction of the courts of the United Kingdom by a prior written agreement. Section 17 of the SIA 1978 explains that an agreement includes international treaties. Section 9(1) provides that a state is not immune, if it has agreed in writing to submit a dispute to arbitration, as respects proceedings which relate to arbitration.

Infrastructure Services Luxembourg S.À.R.L. and Energia Termosolar BV (together “**Infrastructure**”) are companies domiciled in Luxembourg and the Netherlands respectively. Infrastructure claimed that changes made by Spain to its regulatory regime governing its energy market breached the Energy Charter Treaty (“**the ECT**”) in respect of their investments in

renewable energy facilities in Spain. Arbitration proceedings commenced in 2013. By an award dated 15 June 2018, Spain was ordered to pay €112 million in compensation (later reduced by €11 million).

Separately, the case against Zimbabwe arises out of investments in land made by Border Timbers Ltd and Hangani Development Co. (Private) Ltd, which Zimbabwe later expropriated without compensation. The companies initiated arbitral proceedings against Zimbabwe pursuant to a bilateral investment treaty with Switzerland, which provided for the submission of disputes to arbitration under the ICSID Convention. Arbitration proceedings were commenced and, in an award dated 28 July 2015, the arbitral tribunal ordered Zimbabwe to pay US\$124m together with interest, and a further US\$1m in moral damages and costs.

The companies involved in the arbitration with Spain and Zimbabwe respectively successfully applied to the High Court of England and Wales to register the relevant award under the 1966 Act as if it were a final judgment of the High Court. The states in both cases applied to set aside the registration order on the basis that they were immune from the adjudicative jurisdiction of the English courts under section 1(1) of the SIA 1978.

In relation to Spain, on 24 May 2023 Fraser J held that, by virtue of consenting to article 54(1) of the ICSID Convention and article 26 of the ECT, Spain had submitted to the jurisdiction of English courts by prior written agreement under section 2(2) of the SIA 1978. In the alternative, Spain was precluded from contesting the existence of an arbitration agreement between itself and the companies, such that section 9(1) of the SIA 1978 was automatically satisfied.

In relation to Zimbabwe, on 19 January 2024 Dias J held that article 54(1) of the ICSID Convention constituted a general waiver of immunity but did not meet the elevated threshold of submission to jurisdiction for the purposes of section 2(2) of the SIA 1978. The judge also held that section 9 of the SIA 1978 required the English court to make its own determination of whether Zimbabwe had agreed to arbitration. In any event, the judge held that registration of an ICSID award is a purely administrative act and therefore not an exercise of adjudicative jurisdiction, such that the SIA 1978 did not apply at all to registration proceedings under the 1966 Act.

Both Spain and Zimbabwe appealed the decisions against them. The Court of Appeal held that registration of an ICSID award under section 1 of the 1966 Act engages the adjudicative jurisdiction of the English courts. In relation to section 2(2) of the SIA 1978, the Court of Appeal held that article 54(1) of the ICSID Convention constitutes a prior written agreement by which the contracting states to the ICSID Convention submitted to the jurisdiction of the courts of other contracting states. Article 54(1) was a sufficiently express and clear submission to the jurisdiction to satisfy section 2(2) and displace the immunity afforded by section 1(1) of the SIA 1978 in respect of each appellant state.

The Court of Appeal considered it unnecessary to decide whether section 9 applied, but it indicated that it was difficult to interpret that provision as other than imposing a duty on the English court to satisfy itself that the state in question has in fact agreed in writing to submit the dispute in question to arbitration. Spain and Zimbabwe now appeal to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeals. It holds that Spain and Zimbabwe have submitted to the jurisdiction of the English courts under section 2(2) of the SIA 1978 by virtue of article 54(1) of the ICSID Convention and, consequently, they may not rely on state immunity to oppose the registration of ICSID awards against them. Lord Lloyd-Jones and Lady Simler give the judgment, with which Lord Briggs, Lord Sales and Lord Leggatt agree.

Reasons for the Judgment

Issue 1: Did Spain and Zimbabwe waive state immunity and submit to the jurisdiction of the English courts by agreement within the meaning of section 2(2) of the SIA 1978 by becoming signatories to article 54(1) of the ICSID Convention?

Two questions arise under Issue 1. The first is what is the test for deciding whether there has been a prior written agreement to submit to the jurisdiction under section 2(2) of the SIA 1978. This is a matter of domestic law [42]. The Court held that a waiver of immunity by treaty requires a clear and unequivocal expression of the state's consent to the exercise of jurisdiction. An expression of consent does not require explicit words such as "waiver" or "submission". The test for considering a waiver of state immunity by treaty is whether the words used necessarily lead to the conclusion that the state has submitted to the jurisdiction [69].

The second question concerns the correct interpretation of articles 53 to 55 of the ICSID Convention as a matter of customary international law, and whether article 54(1) meets the test under section 2(2) of the SIA 1978. This depends upon an exercise of treaty interpretation based on the principles found in articles 31 and 32 of the Vienna Convention on the Law of Treaties 1969 ("the Vienna Convention") [73] – [79].

Article 54(1) provides that "Each Contracting State shall" recognise an award as binding and enforce the award within its territories as if it were a final judgment of a court in that state. The ordinary meaning of article 54(1) is that each contracting state consents to awards to which it is a party being recognised and enforced in other contracting states. The mutual and reciprocal obligations under article 54(1) are inconsistent with the preservation of adjudicative immunity [82], [89], [92]. This conclusion is apparent from the express words of article 54(1) and does not involve the implication of terms into the ICSID Convention [93], [95].

The scheme of articles 54 to 55 of the ICSID Convention draws a sharp distinction between recognition and enforcement on the one hand (article 54(1) and (3)) and execution on the other (articles 54(3) and 55). It is significant that only immunity from execution is expressly preserved in article 55 [85] – [88]. Further, there is no basis for limiting the application of article 54(1) to the recognition and enforcement of awards against private investors. On the face of it, article 54(1) applies to awards against both private investors and contracting states [84], [91].

The treaty context reinforces the conclusion that article 54(1) is a waiver of adjudicative immunity. Article 54 is part of a self-contained scheme intended to result in binding and enforceable awards which a national court may not re-examine [97] – [105].

The object and purpose of the ICSID Convention also supports this interpretation of article 54(1). A primary purpose of the ICSID Convention was to encourage the flow of private investment and provide protection against sovereign risk. The Court rejected the submission

that an agreement to exercise jurisdiction can only be a waiver of immunity if otherwise the object and purpose of the treaty would be entirely defeated. The preservation of adjudicative immunity would render valueless the protection afforded by article 54(1) in making enforceable the pecuniary award as if it were a final judgment of a court in a contracting state [106] – [118].

The travaux préparatoires (“preparatory works”) of the ICSID Convention confirm the meaning of article 54(1). Three specific points are relevant in this regard. First, there was a clear intention that state immunity from execution be preserved, which was addressed by the introduction of article 55 for the avoidance of doubt. By contrast, and secondly, there is nothing in the travaux préparatoires that suggests state immunity would preclude the registration of an award before domestic courts. Rather, arbitral awards would be enforceable as a final judgment of the national court, subject only to immunity from execution. Thirdly, it was contemplated throughout the negotiations that article 54 would apply to the enforcement of awards against states by investors, as well as by states against investors, notwithstanding the expectation that states would generally comply with awards [119] – [134].

Finally, the principle of consistent interpretation provides that international treaties should be interpreted by national courts as having the same meaning. The Court identified the broad international consensus in the courts of Australia, New Zealand, Malaysia and the United States that article 54(1) is a waiver of adjudicative immunity by each contracting state [135] – [143].

Issue 2: Did Spain and Zimbabwe agree to arbitrate with the respondent investors within the meaning of section 9(1) of the SIA 1978?

The Court held that it was not necessary to determine Issue 2 in light of the conclusion reached on Issue 1 [20], [146].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)