Cuatrecasas Arbitration Highlights

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CUATRECASAS

Editorial Note

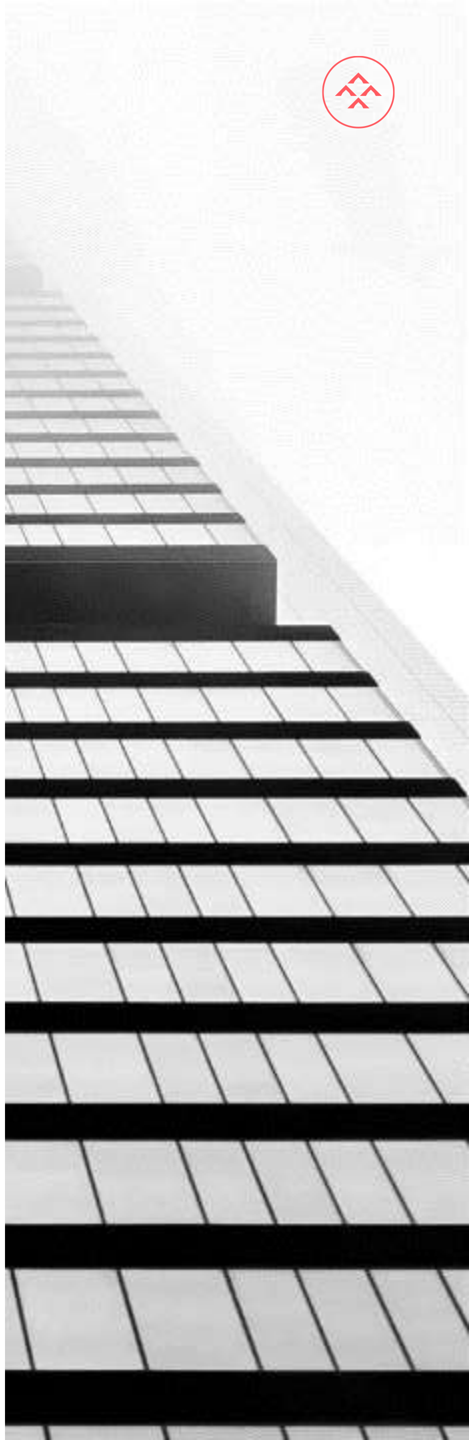
Our fifth edition is published just days after the release of the 2024 statistical reports by the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA). The ICC report confirms the growing prominence of Latin America in international arbitration. Spain ranks third globally in terms of the number of parties involved (137), and Madrid, with 33 cases, is among the ten most popular arbitration seats—consolidating its position as a key arbitration hub for ICC cases. Mexico and Brazil, with 30 arbitrations each, also reflect the growing confidence in the region for the resolution of complex and high-value disputes.

Spanish remains relevant in global arbitration practice, ranking as the second most used language in ICC awards —with 36 decisions issued in 2024—while Portuguese ranks as the fourth most used language—with 18 decisions issued in 2024—, reinforcing the relevance of both languages for the global arbitration practice. The LCIA highlights both the international nature of its cases and the diversification in the choice of applicable laws and seats outside the UK. However, the presence of Latin American parties remains marginal in this court, and the center's other indicators point to its detachment from the region.

The first half of 2025 also saw the alliance between the Madrid International Arbitration Center – Ibero-American Arbitration Center (CIAM – CIAR) and the Arbitration and Mediation Center (CAM Santiago) in Chile.

The Cuatrecasas international arbitration team believes that all the data from the first semester is positive for our practice and indicative of a clear path forward—always in the interest of businesses.

Alberto Fortún and Santiago Rojas



1 Our Jurisdictions

Our lawyers in Chile, Colombia, Spain, Mexico, Peru, and Portugal explain the most relevant court decisions and developments that could affect our clients in the field of international arbitration

Chile / Spain – Elia Raboso

The CIAM–CIAR and CAM Santiago Alliance in the context of international arbitration

On April 2, 2025, the Arbitration and Mediation Center (CAM Santiago) of the Santiago Chamber of Commerce and the Madrid International Arbitration Center – Ibero-American Arbitration Center (CIAM–CIAR) signed an agreement under which CAM Santiago will integrate its international arbitration activity into CIAM–CIAR.

CAM Santiago is a non-profit institution founded in 1992 that offers arbitration, mediation, and dispute board services for dispute resolution. With nearly 7,000 national and international arbitrations and mediations to its name, it has become a benchmark for alternative dispute resolution methods in Latin America.

CIAM–CIAR is an international arbitration institution resulting from the merger in 2020 of the international activities of the Madrid Court of Arbitration (CAM) of the Madrid Chamber of Commerce, the Spanish Court of Arbitration (CEA) of the Spanish Chamber of Commerce, and the Civil and Commercial Court of Arbitration (CIMA), with the Madrid Bar Association (ICAM) and the Ibero-American Arbitration Center (CIAR) as strategic partners.

Under this agreement, CAM Santiago becomes part of CIAM–CIAR with respect to its international arbitration activity, holding the same status as CIAM–CIAR's founding courts.

As a result of this alliance, CAM Santiago will refer the administration of its international arbitration cases to CIAM–CIAR. To that end, it will amend its rules to include, for contracts signed on or after July 1, 2025, a referral clause directing such cases to CIAM–CIAR. For international arbitration proceedings arising from contracts signed prior to that date, CAM Santiago will offer the parties the option of submitting their cases to CIAM–CIAR. At the same time, CAM Santiago will continue to carry out its domestic arbitration activities, as well as mediation and dispute board services at both the national and international levels.

This agreement consolidates CIAM-CIAR's Ibero-American identity and reinforces the commitment of Spanish and Latin American chambers of commerce to promote a leading institution in international arbitration.

According to a joint statement issued by both institutions, the alliance will generate synergies at the international level, fostering the exchange of resources, knowledge, and institutional relationships, and promoting a more accessible, efficient arbitration model tailored to the needs of the Latin-American market.

Colombia – Juan Sebastián Lombana and Andrés Nossa

Colombia's Council of State allows suspension of an arbitral award's effects at the request of a public entity, even if it did not file for annulment

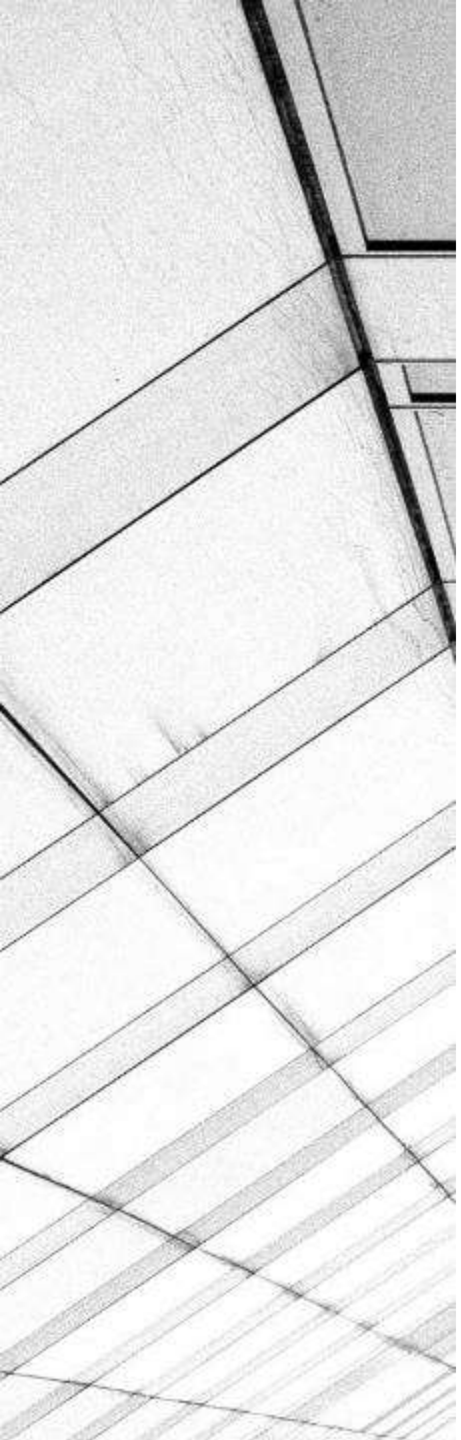
On May 12, 2025, the Council of State—Colombia's highest administrative court—issued an order in the context of annulment proceedings brought against an arbitral award rendered in a dispute between *Comunicación Celular Comcel S.A.* (Comcel) and the public utility *Empresas Municipales de Cali EMCALI EICE ESP* (EMCALI).

EMCALI requested the suspension of the award's effects—a right granted under Colombian law to public entities, which they may exercise without posting a bond. Although the Council of State dismissed EMCALI's application for annulment, it granted the request to suspend the effects of the award. Comcel challenged this decision, arguing that since EMCALI's annulment action had been rejected, there was no basis for granting the suspension.

The Council of State held that the **suspension of an arbitral award's** effects is subject to two conditions: (1) it must be requested by a public entity; and (2) annulment proceedings must be pending**—** even if the public entity is not the party that filed for annulment. Accordingly, the request for suspension does not depend on the outcome of the annulment action.

This decision sets an important precedent regarding the requirements for suspending the effects of arbitral awards, clarifying that a public entity need not be the party that filed for annulment in order to request such suspension.

(Order of May 12, 2025, issued in case No. 11001-03-26-000-2024-00076-00, File No. 71396. Reporting Judge: Nicolás Yepes Corrales).



Colombia – Alberto Zuleta and Santiago Rodríguez

Colombia's Council of State defines time limits and admissibility of annulment actions against provisional awards issued by emergency arbitrators

On May 13, 2025, the Council of State of Colombia issued an order admitting (i) an annulment action against a provisional award issued by an emergency arbitrator; and (ii) an annulment action against a partial final award rendered by the arbitral tribunal. Both awards were issued in the context of a dispute between *Perimetral Oriental de Bogotá S.A.S.* (POB) and the National Infrastructure Agency (*Agencia Nacional de Infraestructura,* ANI).

The provisional award on interim measures was issued on February 9, 2021, and the partial final award on the merits of the dispute was rendered on December 18, 2024.

ANI filed annulment actions against both awards, which the Council of State initially admitted. POB challenged the admission order, arguing that the annulment action against the provisional award was time-barred. Regarding the partial final award, POB contended that the annulment action did not meet the legal requirements for admissibility.

The Council of State ultimately rejected the annulment action against the provisional award, declaring it untimely, as it had been filed more than four years after the award was notified to the parties.

As for the partial final award, the court found that the annulment action invoked valid legal grounds and therefore upheld its admissibility.

(Order of May 13, 2025, issued in case No. 110010326000-2025-00050-00, File No. 72663. Reporting Judge: María Adriana Marín).

Colombia – Alberto Zuleta and Juan Esteban Castañeda

Colombian Congress approves bill establishing arbitral enforcement proceedings

On June 18, 2025, both chambers of the Colombian Congress approved the conciliation report for Bill No. 211 of 2024 (House of Representatives) – 008 of 2023 (Senate), *"introducing arbitration for enforcement proceedings, with the aim of easing the burden on the judiciary*." The bill now awaits presidential sanction to become law.

The bill specifically regulates matters such as the arbitration agreement (including specific provisions for consumer relationships), the procedure for these types of proceedings, a special time limit for filing annulment actions, and the issuance and enforcement of interim measures. Below, we highlight the most relevant developments.

Enforcement of enforceable instruments may be pursued before arbitral tribunals, provided there is a valid arbitration agreement under Colombian arbitration law. The arbitration agreement must expressly state that the parties submit both the enforcement of the instrument and any disputes arising from the underlying transaction to arbitration. This entails a waiver of the right to bring such claims before the ordinary courts. The arbitration clause cannot be included in the enforceable instrument itself (e.g., a negotiable instrument); instead, it must appear in a separate document that refers to the instrument.

The bill also introduces the figure of a preliminary interim measures arbitrator, which is not provided for in other domestic arbitrations. It further establishes that all such proceedings must be institutional—expressly excluding ad hoc arbitration in arbitral enforcement proceedings.

In addition, the bill allows domestic arbitral awards to be enforced before the same tribunal that rendered them.

Annulment actions against awards issued in these proceedings must be filed within 10 days of notification of the award or of the decision resolving any request for clarification, correction, or supplementation.

This reform marks a significant shift in how clear, express, and enforceable obligations can be enforced in Colombia. The firm's arbitration team is available to advise on the implementation of and adaptation to this new regulatory framework.

Spain – Manuel Franco and Elia Raboso

Madrid High Court grants exequatur to an award issued in Santiago de Chile and reaffirms the external review standard set by the Constitutional Court

On January 17, 2025, the High Court of Justice of Madrid (TSJ) granted exequatur to an arbitral award issued in Santiago de Chile by an arbitrator appointed by the Madrid International Arbitration Center (CIAM) in April 2024 (Order No. 1/2025).

After verifying compliance with the formal requirements set out in article IV of the 1958 New York Convention and Spain's Act 29/2015, the court focused on the grounds for opposition raised by the respondent, which were based on an alleged violation of Spanish public policy. The respondent argued that the award contained contradictory findings and exceeded the scope of the claims (*incongruencia extrapetita*).

The TSJ rejected these objections based on established constitutional jurisprudence.

First, it concluded that the foreign award did not infringe Spanish domestic public policy.

Second, it recalled that, according to the Constitutional Court's case law, judicial review of arbitral awards—particularly foreign awards that have not been challenged in their country of origin—must be limited to an external review.

Applying this standard, the TSJ found that the arbitrator had provided a detailed and well-reasoned decision, supported by the evidence and applying Spanish law, as agreed by the parties. It found no indication of the alleged inconsistency or excess of jurisdiction.

As none of the limited grounds for refusing recognition were met, the court granted the exequatur.

We are pleased to report this decision and its outcome, which represents a success for the Cuatrecasas International Arbitration team.

Mexico – Elisa Legorreta and Iván Esquivel

In a landmark decision, Federal Court partially annuls ICC arbitral award for violating public policy

On January 10, 2025, the 14th Collegiate Civil Court of the First Circuit (Mexico City) partially annulled an arbitral award, finding that the enforcement of a contractual penalty violated public policy in its dimension of fair compensation.

The case arose from an ICC arbitration in which the tribunal, among other findings, ordered one party to pay a contractual penalty based on an expansive interpretation of the relevant clause.

In the annulment proceedings, the losing party argued that the tribunal's decision was manifestly unjust and legally incorrect. Although a 2016 precedent from the Mexican Supreme Court had established that interpretative errors in arbitral awards do not justify annulment—except in cases of manifest injustice or violations of fundamental legal institutions—this was the first reported case in which that standard was applied. Notably, Mexican arbitration law mirrors article 34(2) of the UNCITRAL Model Law on International Commercial Arbitration, which sets out the grounds for annulment.

Acting as the final instance in the annulment proceedings, the Federal Court partially annulled the award, dismissing the other grounds for annulment raised by the claimant.

The court found that the alleged breach did not trigger the contractual penalty. It held that the sanction imposed by the arbitral tribunal lacked a direct connection to the principal obligation, which is a necessary condition for the enforceability of such penalties.

Under Mexican law—and more broadly within the civil law tradition—penalty clauses are accessory in nature and must be directly linked to the principal obligation. Imposing a penalty without that connection constitutes a violation of public policy, as it may result in unjust enrichment and unfair compensation, contrary to the fundamental principles of the Mexican legal system.

The court also reasoned that article 21(3) of the American Convention on Human Rights does not permit excessive compensation arising from a contractual relationship, as this distorts the right to fair compensation.

Accordingly, the court concluded that enforcing a contractual penalty that was inapplicable to the specific facts of the case amounted to an "*interpretation that disrupts public policy in its dimension of fair compensation*." It further found that the arbitral tribunal's decision was not justified under the applicable legal norms or contractual provisions, as it departed from the text of the agreement.

With this ruling, the Federal Court became the first reported authority to apply the Supreme Court's standard for annulling an award that exceeds the boundaries of the legal system and its core principles, due to the severity of the error.

This decision sets a significant precedent in Mexico, suggesting that institutions such as contractual penalties—given their compensatory nature—may infringe upon the fundamental rights of the parties.

As a result, the court annulled the portion of the award ordering payment of the contractual penalty.

Peru – Domingo Rivarola and Laia Valdespino

Lima Superior Court rules on timeliness of awards in UNCITRAL annulment proceedings

On April 30, 2025, the Second Civil Chamber specialized in Commercial Matters of the Superior Court of Justice of Lima annulled both a final arbitral award and a supplementary award, issued under the UNCITRAL Arbitration Rules.

The arbitration arose from a claim filed by *Telefónica del Perú S.A.A.* (Telefónica) against the Ministry of Transport and Communications (MTC) and *Osiptel*, concerning two concession contracts (classified as "contract-laws") for the provision of telecommunications services. Telefónica alleged that the state entities had imposed regulatory contributions for services not covered by the concession and not classified as public telecommunications services. The MTC and *Osiptel* argued that the contributions were taxes, and therefore excluded from arbitration, and that the contract-laws did not grant Telefónica tax stability.

The arbitral tribunal issued a final award addressing the preliminary objections and the first claim. Later, at Telefónica's request, it issued a supplementary award resolving the remaining claims.

The Superior Court found that the supplementary award was untimely under article 63(1)(g) of the Peruvian Arbitration Law, as there had been no prior decision admitting the post-award request—a procedural requirement that, according to the court, should have been met before issuing the supplementary decision.

Regarding timeliness, the court reaffirmed that any objection based on the late issuance of an award must be raised before the award is rendered. Otherwise, the losing party could invoke this ground after learning of the content of the decision, thereby undermining procedural good faith.

Although the respondents challenged both the supplementary and the final awards on grounds of untimeliness, the court upheld this objection only with respect to the supplementary award. Though the final award would be overturned on other grounds, the challenge against it based on untimeliness was dismissed as unfounded, as it was filed several days after the award had been notified.

This decision is significant because it introduces the requirement that a tribunal must issue a formal decision on the admissibility of post-award requests before rendering a supplementary award—even if the arbitration rules do not explicitly require it.

It also reinforces the principle that objections based on timeliness must be raised before the award is issued, consolidating prior case law on this point.

Peru – Domingo Rivarola and Laia Valdespino

Arbitral tribunal enforces performance guarantee in **renewable energy case due to concessionaire's failure** to finance the project

In a recent award issued under the Arbitration Rules of the Lima Chamber of Commerce (CCL), a tribunal—by majority—ordered the enforcement of a performance bond against a hydroelectric subsidiary of the Spanish company IBT (part of the *Eurofinsa* group). The case involved *Hydrika 6 S.A.C.* (Hydrika) and the Ministry of Energy and Mines (MINEM), representing the Republic of Peru, in connection with a hydroelectric project tendered under the Third Renewable Energy Resources (RER) Auction in 2013, pursuant to the RER Act.

This case is one of six arbitrations initiated before the CCL by IBT in 2021, after an ICSID tribunal declined jurisdiction for failure to meet the minimum claim threshold. In addition to Hydrika, several other concessionaires from the Third and Fourth RER Auctions had initiated their own arbitrations—the most prominent being the *Mamacocha* case, decided by an ICSID tribunal in late 2023.

In this dispute, IBT's subsidiary claimed that the Peruvian State had frustrated the project by delaying the issuance of necessary permits and titles. According to IBT, the State's conduct prevented the hydroelectric plant from becoming operational by the contractual deadline of December 31, 2018. As a result, IBT sought the return of the performance bond and compensation of approximately PEN 42 million.

The Ministry, in turn, filed a counterclaim, arguing that the project's failure was entirely attributable to IBT. It contended that IBT had opted to seek a single joint financing arrangement for all six of its projects, rather than securing separate financing for each. According to the Ministry, this "bundling" strategy made it more difficult to obtain project-specific funding. Since the project had not come into operation, the Ministry argued that the contract should be automatically terminated under a condition subsequent tied to the operational deadline.

The arbitral tribunal ultimately declared the contract terminated due to the triggering of the condition subsequent. It found that the lack of financing was attributable to IBT, which constituted sufficient grounds to enforce the guarantee. The tribunal also denied IBT's claim for damages, finding no liability on the part of the State.

In its conclusions, the tribunal determined that the dispute was strictly contractual in nature. It held that MINEM was not liable for delays attributable to other state entities, nor was it required to approve unilateral amendments to the contract. The tribunal also clarified that response deadlines were not governed by Peru's general administrative procedure law, thereby reaffirming the contractual autonomy of the parties. This reasoning echoed the approach taken by the tribunal in the *Mamacocha* case.

Portugal – Miguel de Almada and Miguel Pereira da Silva

The Supreme Administrative Court clarifies the scope of party-defined claims in construction arbitration

On May 29, 2025, the Supreme Administrative Court (STA) overturned a ruling by the Southern Central Administrative Court (TCAS), which had annulled an arbitral award on the grounds that the tribunal had exceeded the scope of the claims and thus violated the principle that it is for the parties to define the subject matter of the dispute.

In the arbitration, which was decided on the basis of equity, the contractor was awarded compensation for cost overruns and an extension of the construction deadline—albeit for an amount lower than that claimed.

The TCAS annulled the arbitral award, finding that the tribunal had exceeded its jurisdiction by granting relief based on facts that, although alleged, had not been invoked as the direct cause of the damages ultimately claimed.

The STA disagreed. It held that there was no excess of jurisdiction, as the tribunal had not granted relief on a different legal basis or for an amount exceeding the total claim. Although the claimant had not explicitly linked certain facts to the damages claimed, those facts formed part of a complex cause of action and were sufficiently connected to the subject matter of the dispute. The STA also emphasized that the tribunal had awarded less than the total amount claimed, further supporting the conclusion that there had been no overreach.

Importantly, the STA highlighted the role of equity: when parties agree that the tribunal may decide *ex aequo et bono*, the tribunal is afforded greater flexibility in assessing the facts and reasoning its decision—without necessarily violating the principle that the parties define the scope of the dispute.

Accordingly, the STA reversed the annulment and upheld the validity of the arbitral award, rejecting the alleged excess of jurisdiction. The decision reinforces the autonomy of arbitral tribunals to assess facts and apply equity (when so authorized), provided they respect the overall boundaries of the claim and safeguard the parties' right to be heard.

Portugal – Miguel de Almada and Afonso Moucho Diogo

Supreme Court of Justice rules on the application of arbitration clauses in interrelated contracts and the allocation of jurisdiction between arbitral tribunals and the courts

In a decision dated March 13, 2025, the Portuguese Supreme Court of Justice (STJ) addressed a dispute arising from two interrelated contracts: a share purchase agreement and an escrow agreement, both signed by multiple companies.

The share purchase agreement included an arbitration clause providing for ICC arbitration seated in Lisbon. The escrow agreement, signed by all parties, contained a forum selection clause granting exclusive jurisdiction to the courts of Lisbon for any disputes related to that agreement. This duality of dispute resolution mechanisms raised the central issue of jurisdiction.

The STJ held that the arbitration clause was binding only on the parties to the share purchase agreement. Therefore, any dispute arising from or related to that contract must be resolved through arbitration, and the courts lack jurisdiction over such matters. Conversely, the courts are competent to hear disputes concerning the escrow agreement, which expressly provides for their jurisdiction.

The court also clarified that the existence of a joint and several claim against both defendants—one of whom was not bound by the arbitration clause—does not preclude the division of the dispute. The arbitral tribunal has jurisdiction over the party subject to the arbitration clause, while the court retains jurisdiction over the other. According to the STJ, this division does not create a risk of contradictory decisions, as the arbitral award on the first defendant's entitlement to certain funds would precede and condition the judicial decision on the escrow agreement.

In conclusion, the STJ dismissed the appeal and upheld the lower court's decision: the objection to the court's jurisdiction was correctly upheld—meaning the dispute concerning the share purchase agreement must proceed in arbitration, while the claim related to the escrow agreement may continue before the judicial courts.

Portugal – Miguel de Almada and Miguel Pereira da Silva

Supreme Court of Justice rules on recognition of ICSID award and limits of state immunity and public policy

On July 9, 2025, the Portuguese Supreme Court of Justice (STJ) ruled on an appeal filed by the Bolivarian Republic of Venezuela against a decision by the Lisbon Court of Appeal (*Tribunal da Relação de Lisboa*) recognizing an international arbitral award rendered in France in favor of *Gold Reserve Inc.*, under the ICSID Additional Facility Rules.

The arbitration concerned Venezuela's unlawful termination of mining concessions, in breach of the Canada-Venezuela BIT. The award ordered Venezuela to pay over USD 735 million in compensation, plus interest and costs. Following the award, the parties signed a settlement agreement in which Venezuela acknowledged the debt and expressly waived jurisdictional immunity before competent courts for enforcement purposes.

In its appeal before the STJ, Venezuela argued that recognition of the award should be denied on several grounds: violation of its jurisdictional and enforcement immunity; incompatibility with Portuguese international public policy (alleging that the award prioritized economic interests over environmental protection and the rights of local communities); breach of the principle of proportionality; and abuse of rights.

The STJ rejected all of Venezuela's arguments. First, it held that jurisdictional immunity is a waivable privilege, and that Venezuela had expressly consented to arbitration and to the recognition of the award under international treaties. As such, it could not invoke immunity from jurisdiction in Portugal. The STJ also distinguished between jurisdictional immunity and immunity from enforcement, noting that the proceedings in question concerned only recognition—not enforcement—and that a waiver of jurisdictional immunity does not automatically entail a waiver of enforcement immunity.

Regarding public policy, the STJ emphasized that recognition of a foreign arbitral award may only be refused if its outcome is manifestly incompatible with the fundamental principles of the Portuguese legal order—a standard that must be interpreted restrictively, requiring a "clear, obvious, or flagrant" violation.

The STJ found that the award's financial implications for Venezuela did not affect its territory and therefore could not be said to harm the environment or local communities.

The STJ also dismissed the argument that the award violated the principle of the State's higher interests or the principle of non-interference.

The STJ further rejected the claim of disproportionality in the compensation, noting that Venezuela had acknowledged the debt and agreed to the payment terms in the settlement agreement.

Finally, it found no evidence of abuse of rights, as there was no indication that recognition of the award was being pursued to obtain an undue advantage or cause disproportionate harm.

Accordingly, the STJ upheld the recognition of the ICSID award in Portugal, reaffirming the importance of party autonomy in international arbitration, the narrow interpretation of public policy exceptions, and the limits of state immunity where express consent has been given.

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Key cases for our practice

Beyond our own jurisdictions, our team of lawyers highlights the foreign and international judicial decisions with the greatest impact on our international arbitration practice

ICSID – José Ángel Rueda

ICSID award annulled due to arbitrator's failure to disclose past criminal proceedings in the respondent State.

On June 2, 2025, an *ad hoc* committee constituted under Article 52 of the ICSID Convention annulled the award rendered on August 23, 2022, in *Rockhopper Italia SpA and others v. Italy* (ICSID Case No. ARB/17/14). The committee unanimously found that the arbitrator appointed by the claimants should have disclosed that he had previously been prosecuted and convicted in Italy. The failure to do so led to the annulment of the award on the ground of improper constitution of the tribunal under Article 52(1)(a) of the ICSID Convention.

The criminal proceedings dated back to the 1990s and were linked to the collapse of Banco Ambrosiano—a major economic and political scandal that shook Italy in 1982. In 1996, the arbitrator was convicted by a Milan court and sentenced to two years in prison for fabricating documentary evidence and aiding and abetting perjury in his role as legal counsel to one of the accused. The conviction was later annulled by the Italian Court of Cassation in December 1999 due to the statute of limitations.

In its annulment decision, the committee emphasized that ICSID Arbitration Rule 6 requires arbitrators, upon accepting their appointment, to disclose "*(a) [their] past and present professional, business and other relationships (if any) with the parties and (b) any other circumstance that might cause [their] reliability for independent judgement to be questioned by a party*." Despite the passage of two decades between the events and the appointment, the committee held that the conviction and subsequent annulment thereof were sufficiently relevant to warrant disclosure.

The committee also noted that the *IBA Guidelines on Conflicts of Interest in International Arbitration* are not applicable in ICSID proceedings absent party agreement, that the scenarios they cover are not exhaustive, and that they are designed for more typical arbitrator circumstances. Nonetheless, General Standard 3 of the Guidelines supports disclosure where there is any doubt about whether a fact or **circumstance might call into question the arbitrator's independence** or impartiality.

The decision underscores ICSID's distinct approach to arbitrator challenges, separate from the more recent trends codified in the IBA Guidelines, and it sets a precedent favoring full disclosure of any circumstance that could reasonably affect an arbitrator's independence or impartiality.

United States – Borja Álvarez

U.S. Supreme Court confirms FSIA does not require proof of **“minimum contacts” with the U.S.**

In a unanimous judgment issued on June 5, 2025, in the case concerning the ICC award in *Devas v. Antrix*, the U.S. Supreme Court clarified that, in proceedings brought in the United States against foreign States or sovereign entities under the Foreign Sovereign Immunities Act (FSIA), plaintiffs are not required to establish that the defendant has “minimum contacts” with the United States in order to assert personal jurisdiction.

The case arose from an ICC arbitration seated in Delhi, in which *Devas Multimedia Private Ltd.* obtained an award against *Antrix Corporation Ltd.*, a state-owned Indian company, following the termination of a satellite lease agreement. Devas sought confirmation of the award (amounting to USD 1.29 billion including interest) before the federal courts in Washington State. While the district court confirmed the award, the Ninth Circuit Court of Appeals reversed the decision, holding that Antrix lacked sufficient “minimum contacts” with the U.S. According to the Ninth Circuit, even where an exception to sovereign immunity applies and service of process is properly accomplished—as was undisputed in this case—the action must also satisfy the “minimum contacts” test established in *International Shoe* and its progeny.

In its June 2025 judgment, the Supreme Court overturned the Ninth Circuit’s decision.

The Court reasoned that § 1330(b) FSIA is unequivocal: “*personal jurisdiction* [...] *shall exist*” when (1) an exception to immunity applies and (2) service of process is accomplished in accordance with the FSIA. Accordingly, the statute conditions the exercise of jurisdiction by U.S. federal courts solely on the fulfillment of these two requirements. The FSIA does not require proof of “minimum contacts,” as the Ninth Circuit had held. The Supreme Court added that introducing such a requirement would amount to reading into the statute a condition that Congress deliberately excluded—emphasizing that the FSIA was intended to clarify the immunity regime, not to “hide the ball.”

The Court thus confirmed that the only jurisdictional requirements under the FSIA are those expressly set out in the statute: (1) the application of an exception to the relative or restrictive immunity of States or sovereign entities (among those provided for in the FSIA); and (2) proper service on the defendant entity, in accordance with the FSIA.

France – Santiago Rojas Molina

Paris Court of Appeal confirms that interim measures may be enforced against a state-owned company acting as an extension of the Libyan State

On June 19, 2025, the *Cour d'Appel de Paris* upheld a lower court's decision authorizing interim measures against the assets of Libya's *National Oil Corporation* (NOC), in connection with the enforcement of an arbitral award in *Olin Holdings Limited v. Libya*. The court found that NOC functioned as an "extension" (*émanation*) of the Libyan State, and that its assets could therefore be subject to enforcement.

The dispute arose from an ICC arbitration in which the Libyan State was ordered to compensate the Cypriot company *Olin Holdings Limited* for the loss of a food production facility. Following Libya's failure to comply with the award, Olin obtained authorization from the *Tribunal judiciaire de Paris* to impose interim measures on NOC's assets. NOC challenged the decision on appeal.

The *Cour d'Appel* assessed the case under article L.111-1-1, 3º of the French Code of Civil Enforcement Procedures, which incorporates the *UN Convention on Jurisdictional Immunities of States and Their Property*. Under this provision, enforcement against a foreign State's property is permitted only if the assets are not allocated to sovereign (non-commercial) purposes and if there is a sufficient connection between the property and the entity targeted.

Because NOC was not a party to the arbitration, the court had to determine whether it could nonetheless be treated as an extension of the Libyan State. It held that two cumulative conditions must be met: (1) lack of functional independence (i.e., absence of structural, organizational, and decision-making autonomy); and (2) lack of financial independence (i.e., commingling or lack of separation of assets between the entity and the State).

Applying a set of indicators (*faisceau **d'indices***) approach, the court concluded that NOC lacked both functional and financial independence. Among other factors, it noted that: NOC was created by statute and operates under the supervision of the Ministry of Petroleum; its mandate is to manage Libya's oil resources in accordance with State policy; the State appoints its board members and approves key decisions, including budgets and financial statements; NOC is entirely funded by the State, and its profits are transferred to the national treasury; and it relies on the State for staff remuneration and approval of significant transactions.

Having found that NOC is effectively an extension of the Libyan State, the *Cour d'Appel* confirmed that its assets may be used to enforce the arbitral award. The decision marks a significant development in the interpretation of sovereign immunity from enforcement for States and their instrumentalities under French law.

France – Santiago Rojas Molina

Cassation Court clarifies the presumption of diplomatic use and immunity from enforcement over state-owned real estate

In a judgment dated June 12, 2025, the *Cour de Cassation* clarified the scope of sovereign immunity from enforcement over real estate owned by foreign States when such property is claimed to serve diplomatic functions.

The case arose from enforcement proceedings brought by creditors of the Republic of the Congo, who sought to seize several properties owned by the Congolese State in France to satisfy outstanding arbitral awards and court judgments.

In a 2021 decision, the *Cour d'Appel* had authorized the sale of one property, which the Congolese State claimed was the private residence of its ambassador to UNESCO. At the same time, the court upheld immunity over another property used by the Congolese payroll office (*paierie*) in France. Both the State and one of the creditors appealed.

The *Cour de Cassation* upheld the appellate decision in full. Referring to the 1961 Vienna Convention on Diplomatic Relations (the Vienna Convention) and the interpretation adopted by the International Court of Justice in *Equatorial Guinea v. France* (2020), the Court emphasized that a foreign State cannot unilaterally designate a property as diplomatic premises—as such designation requires "*mutual consent*" between the sending and receiving States. Nevertheless, under French procedural practice, **a State's assertion that a property is** used for diplomatic purposes gives rise to a presumption of diplomatic use, which shields the property from enforcement.

This presumption, however, is rebuttable—but only through a specific evidentiary mechanism. Creditors must obtain a formal response from the French Ministry of Foreign Affairs confirming either: (i) that the property was not declared as diplomatic premises; (ii) that the Ministry objected to the designation; or (iii) that the required authorization was not granted (only for premises located outside the mission's main headquarters). In other words, the burden of proof lies with the creditor, but the only way to rebut the presumption is through the express intervention of the French diplomatic authority.

In this case, the Ministry confirmed that the ambassador's residence had not been declared, thereby rebutting the presumption and allowing enforcement. The Court also clarified that the presence or absence of official emblems on the property is legally irrelevant, as States are entitled—but not obliged—to display such symbols.

By contrast, the payroll office benefited from a diplomatic tax exemption under the Vienna Convention, which was sufficient to establish its diplomatic function and uphold its immunity from enforcement.

This decision provides important clarification on the contours of the presumption of diplomatic use over state-owned real estate in France, and the limited procedural avenues available to creditors seeking to challenge it.

Antin v. Spain: European Commission finds that the ICSID award constitutes unlawful State aid – Alberto Fortún and Elia Raboso

On June 25, 2025, the Official Journal of the European Union published Commission Decision (EU) 2025/1235 of March 24, 2025, concerning State aid measure SA.54155 (2021/NN) implemented by Spain. In this decision, the European Commission concluded that the ICSID award rendered in favor of *Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V.* (Antin), in the context of a dispute under the Energy Charter Treaty (ECT), constitutes State aid incompatible with EU law.

The award, issued by an ICSID tribunal, ordered Spain to pay EUR 101 million plus interest and costs to Antin, as compensation for changes to the legal framework governing energy sector investments.

After reviewing submissions from Spain, Antin, and third parties, the Commission assessed whether the award—or its enforcement—met the criteria for State aid under article 107(1) of the Treaty on the Functioning of the European Union (TFEU).

It concluded that the measure is attributable to the Spanish State, as it stems from Spain's voluntary ratification of the ECT and the ICSID Convention; confers a selective economic advantage on Antin; is financed through State resources; and is capable of distorting competition and affecting trade between Member States.

The Commission emphasized that, in line with the CJEU's case law in *Achmea* and *Komstroy*, investor-State arbitration mechanisms in intra-EU treaties—such as those under the ECT—are incompatible with EU law, particularly with articles 19(1) TEU, 267 and 344 TFEU, and the principle of autonomy of the EU legal order. As a result, the award lacks legal basis and cannot produce effects or be enforced within the EU.

Accordingly, the Commission ordered Spain not to pay, enforce or comply with the award, and to take all necessary measures to prevent its recognition or enforcement, both within the EU and in third countries. The decision has drawn significant criticism and stands in contrast to Spain's payment to a non-EU investor in a similar case.

3 In the spotlight

Our team of lawyers explain recent developments that will continue to impact our international arbitration practice in the future

Costa Rica updates its arbitration legislation – Sara Moro

On April 2, 2025, Costa Rica's new arbitration law—[Act No. 10535 on the harmonization of Costa Rican arbitration law]—entered into force, following its approval by the Legislative Assembly on September 10, 2024.

While maintaining certain distinctions between domestic and international arbitration, the new Act aims to consolidate the country's arbitration framework under a unified legal regime. This marks a significant shift from the previous dualist system, which separately governed domestic arbitration (under Act No. 7727 of 1997 on alternative dispute resolution and the promotion of social peace) and international arbitration (under Act No. 8937 of 2011 on international commercial arbitration). The new legislation adopts a monist approach, establishing a single legal framework.

Inspired by the UNCITRAL Model Law, the new Act applies to both domestic and international arbitrations seated in Costa Rica, reinforcing the country's position as an arbitration-friendly jurisdiction.

Key features of the harmonization Act include:

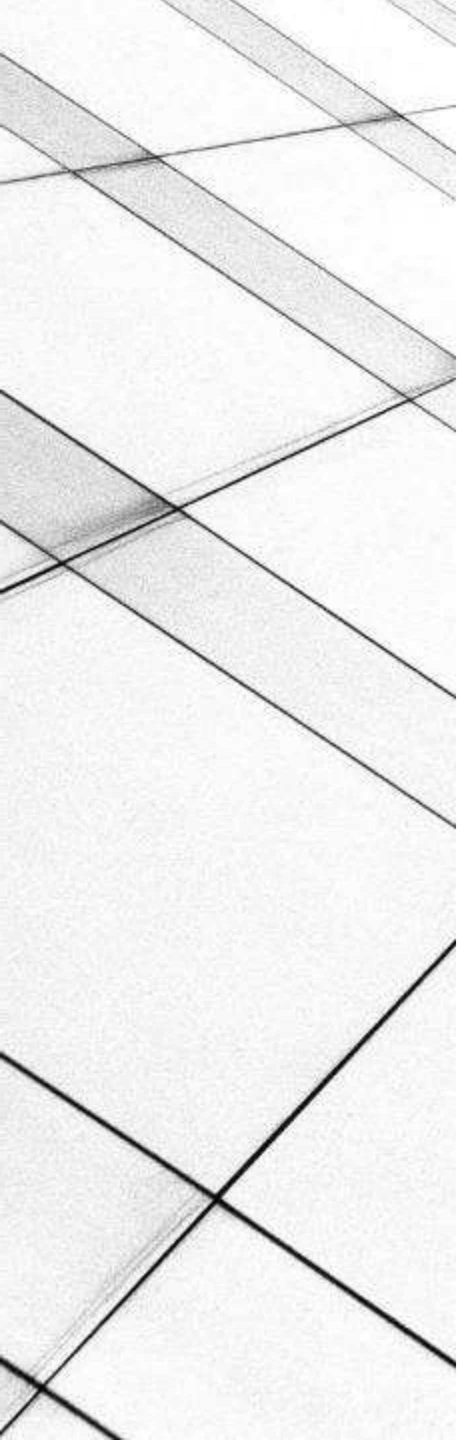
i. Interim measures: the Act strengthens the regime for interim relief. It empowers arbitral tribunals to order interim measures in domestic arbitrations and allows parties to agree on the appointment of a specific tribunal to issue such measures prior to the commencement of arbitration.

ii. Time limits: in domestic arbitration, parties have 5 days to request interpretation of the award and 15 days to seek annulment. In international arbitration, the respective time limits are 30 days and 3 months.

iii. Constitution of the arbitral tribunal: in the absence of party agreement, domestic arbitrations will be conducted by a sole arbitrator, while international arbitrations will be heard by a three-member tribunal.

iv. Arbitrator qualifications: for domestic arbitration, arbitrators must be licensed attorneys with at least five years of professional experience and bar membership. This requirement does not apply to international arbitration.

v. Extension of the arbitration agreement to non-signatories: the Act expressly allows for the extension of arbitration agreements to third parties who did not sign them.



Compatibility of CAS awards with EU law (Case C-600/23, *Football Club Seraing*) – Borja Álvarez and Elia Raboso

On January 16, 2025, the Advocate General (AG) of the Court of Justice of the European Union (CJEU) issued her non-binding Opinion in Case C-600/23, a preliminary reference from the Belgian Court of Cassation in proceedings involving *Royal Football Club Seraing* (the appellant), FIFA, UEFA, and the Royal Belgian Football Association (URBSFA) (respondents), and *Doyen Sports Investment Ltd*., a Maltese investment fund (intervening in support of the Club).

The dispute arose from contracts signed in 2015 between Club Seraing and Doyen Sports concerning the transfer of economic rights of several players. FIFA found the agreements to be contrary to its Regulations on the Status and Transfer of Players (STP Regulations) and imposed disciplinary sanctions. After exhausting FIFA's internal appeals, the Club brought the case before the Court of Arbitration for Sport (CAS), which upheld the validity of the STP Regulations and partially reduced the sanctions in an award dated March 9, 2017. The award was confirmed by the Swiss Federal Tribunal in February 2018.

In parallel, Doyen Sports and Club Seraing initiated proceedings before Belgian courts, arguing that FIFA's prohibition violated EU law, including the free movement of capital, services, and workers, as well as competition law. The Brussels Court of Appeal held that the CAS award was final and had the force of *res judicata*. The Club appealed to the Belgian Court of Cassation, which referred a preliminary question to the CJEU.

The referring court asked whether a rule of national law that recognizes the *res judicata* effect of an arbitral award is contrary to EU law where the court that reviewed the award's conformity with EU law (in this case, the Swiss Federal Tribunal) is not a court of a Member State and therefore cannot refer questions to the CJEU.

In her Opinion, the AG concluded that such a rule must be set aside to allow a court of a Member State to exercise full judicial review of the compatibility of FIFA rules with EU law—particularly in the context of mandatory sports arbitration.

While the AG's Opinion is not binding, the CJEU generally follows such recommendations. The Court's final decision is expected in August 2025 and could have a significant impact on the dispute resolution system in European sports.

Enagás increases its ICSID award compensation against Peru to over USD 300 million – Domingo Rivarola and Laia Valdespino

Recent developments have taken place in ICSID Case No. ARB/18/26, brought by *Enagás S.A.* and *Enagás Internacional S.L.U.* (together, Enagás) against the Republic of Peru. The case concerns Enagás's investment in the Southern Peruvian Gas Pipeline (GSP) and the repatriation of dividends from its stake in *Transportadora de Gas del Perú* (TGP).

In December 2024, the tribunal issued a final award finding that Peru had breached its obligations under articles 4(1) and 5 of the Spain–Peru BIT (2003), and ordering it to pay Enagás USD 176 million, plus simple interest at an annual rate of 1.44% from January 24, 2018, capitalized semi-annually until payment. As of the award date, the total amount due was approximately USD 194 million.

The tribunal also found that restrictions imposed by Peruvian authorities under Act No. 30737—which prevented Enagás from repatriating dividends from its subsidiary TGP—violated the fair and equitable treatment standard under article 4(1) of the BIT. Since then, Enagás has maintained deposits in Peruvian financial institutions totaling USD 65 million, equivalent to the guarantee required by Peruvian authorities under Act No. 30737 and its implementing regulations.

In January 2025, the claimants filed a request for rectification of the award to correct the damages calculation. In May 2025, the tribunal issued a rectification decision increasing the compensation by USD 104 million (including interest). As a result, the total amount owed by Peru now exceeds USD 300 million.

Enforcement of the award is currently suspended. On June 2, 2025, the ICSID Secretariat registered Peru's application for annulment and notified the parties of the provisional stay of enforcement.

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