

Decoding Arbitral Disputes: UK Awards Versus EU Judgments

By **Josep Galvez** (January 16, 2025)

This article is part of a regular column that delves into the most critical cross-border investment and commercial European disputes over arbitral award enforcement. In this installment, we look at the Court of Appeal of England and Wales' recent ruling in Spain v. London Steam-Ship Owners' Mutual Insurance Association Ltd.



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The legal dispute between the Kingdom of Spain and the London Steam-Ship Owners' Mutual Insurance Association — the London P&I Club — has culminated in a landmark decision by the Court of Appeal of England and Wales, handed down on Dec.12.

This long-running case, which arose from the catastrophic sinking of the M/T Prestige in 2002, highlights critical tensions between international arbitration, sovereign immunity and European Union law. The Court of Appeal's judgment is particularly significant for its detailed analysis of the enforceability of foreign judgments that conflict with arbitration awards rendered in England.

The Prestige incident, one of Europe's worst oil spills, caused extensive damage to the Spanish and French coastlines. In response, Spain sought to recover damages from the club by bringing direct claims in its domestic courts, resulting in an €855 million (approximately \$880 million) judgment in 2019.

The club, in turn, relied on earlier London arbitration awards and English court judgments enforcing those awards, which had limited its liability and required Spain to arbitrate its claims in London. These clashing outcomes raised complex jurisdictional and public policy issues ultimately addressed by the Court of Appeal.

The appeal hearings were held over multiple days in late 2024, from Oct. 29 to Nov. 6, reflecting the case's intricate legal and factual issues. In its judgment, the Court of Appeal tackled questions relating to the interaction between the Brussels I Regulation, the English Arbitration Act and state immunity under the State Immunity Act.

The decision offers profound implications for the enforcement of foreign judgments in England and the broader legal framework governing international arbitration.

Background to the Dispute

The events giving rise to this dispute began on Nov. 19, 2002, when the M/T Prestige sank off the Spanish coast during a voyage from St. Petersburg to the Far East. Carrying approximately 70,000 metric tonnes of fuel oil, the vessel's sinking caused an environmental catastrophe, with oil slicks polluting large stretches of the Spanish and French coastlines.

The ship was insured by the London P&I Club under a policy containing two critical clauses: a mandatory arbitration clause requiring disputes to be resolved in London under English law and a pay to be paid clause, which made the club's liability contingent on the insured first satisfying claims out of its own funds.

Following the disaster, Spain started criminal proceedings through its domestic courts and pursued compensation from the club, arguing that it was liable under Article 117 of the Spanish Penal Code and the International Convention on Civil Liability for Oil Pollution Damage 1969, as amended by the 1992 Protocol.

Concurrently, the club initiated arbitration proceedings in London, obtaining an award that affirmed its limited liability and declared Spain's obligation to arbitrate its claims in accordance with the insurance policy.

Spain, however, refused to participate in the arbitration, contending that the arbitration clause in the club's rules was not binding upon it as it had not expressly agreed to arbitrate its claims under English law.

In 2013, the club obtained enforcement of the arbitration award through English courts under Section 66 of the Arbitration Act 1996. These decisions, affirmed by the Court of Appeal in 2015, established binding issue estoppels that precluded Spain from relitigating matters already decided in the arbitration.

Despite this, in 2019, the A Coruña Provincial Court in Spain entered the €855 million final judgment against the club, which Spain sought to enforce in England under the Brussels I Regulation. The Spanish judgment stood in stark conflict with the prior arbitral awards and English court rulings, setting the stage for the contentious proceedings resolved by the Court of Appeal in 2024.

The Decision of the Court

The Court of Appeal delivered a comprehensive judgment, addressing the competing claims of Spain and the club. Central to the decision were questions of whether the Spanish judgment could be enforced under the Brussels I Regulation and whether the club could obtain equitable remedies against Spain for breaching its arbitration obligations.

The court rejected Spain's claim that the Brussels I Regulation mandated recognition of its judgment in England. It held that the arbitration exception in Article 1(2)(d) of the Regulation applied, as the underlying claims arose from disputes subject to an arbitration agreement.

Moreover, the prior Section 66 judgments enforcing the arbitration awards created binding issue estoppels, precluding the registration of the Spanish judgment under Article 34(3) of the Brussels I Regulation. The court observed that "[Recognition of the Spanish judgment] would be manifestly contrary to public policy because it would involve the English court acting inconsistently with its own decisions and the principle of *res judicata* that arises from those decisions."

The club also successfully invoked the public policy defense under Article 34(1) of the Brussels I Regulation. The court reasoned that recognizing the Spanish judgment would contravene English public policy, which strongly upholds the finality of arbitration awards.

The judgment reaffirmed that

it is contrary to public policy for English courts to act inconsistently with decisions of their own courts and to permit enforcement of foreign judgments inconsistent with the principle of *res judicata* in circumstances where the English court has given

permission to enforce an arbitration award that excludes liability for the relevant claims.

In addressing the role of the Court of Justice of the European Union, which had previously ruled in favor of Spain's interpretation of Article 34(3), the Court of Appeal adopted a critical stance. It acknowledged the court's authority but held that its decision could not compel English courts to disregard domestic public policy considerations.

The court concluded: "The court was entitled, if not bound, to conclude that recognition of the Spanish judgment would be manifestly contrary to public policy under Article 34(1)." This marked an important assertion of judicial independence in a post-Brexit context, where English courts increasingly weigh EU law against domestic legal principles.

However, the court overturned earlier rulings that had granted the club equitable compensation for Spain's breach of the arbitration clause. It held that such remedies were inappropriate where sovereign immunity precluded the issuance of an injunction or damages in lieu.

The judgment clarified that equitable compensation could not bypass the limitations imposed by the State Immunity Act 1978, which shielded Spain from liability in this context.

The club's arguments based on human rights violations were similarly dismissed. The court found that while there were procedural irregularities in the Spanish proceedings, they did not amount to manifest breaches of English public policy. The judgment emphasized the importance of judicial comity while safeguarding arbitration agreements as a cornerstone of English law.

Takeaways for Practitioners

The Court of Appeal's judgment provides crucial guidance for practitioners navigating the complexities of cross-border disputes involving arbitration agreements and sovereign states.

It reaffirms the primacy of arbitration agreements under English law, even in the face of conflicting foreign judgments. Practitioners should ensure that arbitration clauses are meticulously drafted to maximize enforceability and consider the implications of sovereign immunity in disputes involving state entities.

The decision also underscores the ongoing tension between EU law and English public policy, particularly in the post-Brexit landscape. Although the Brussels I Regulation applied to this case as a pre-Brexit legacy dispute, the judgment highlights the interplay between EU law obligations and the public policy defenses available under English law, reaffirming the primacy of arbitration agreements recognized under the Arbitration Act 1996.

Sovereign immunity remains a significant obstacle to obtaining equitable remedies against states. Practitioners must carefully assess the procedural and substantive immunities available under domestic and international law when pursuing claims against sovereign entities.

The ruling also highlights the challenges of enforcing arbitration awards and foreign judgments in multijurisdictional contexts, underscoring the need for proactive strategies to mitigate enforcement risks.

Undoubtedly, this judgment cements England's reputation as a jurisdiction that strongly

supports arbitration while balancing broader considerations of public policy and judicial comity.

For practitioners, it serves as a timely reminder of the enduring importance of arbitration agreements and the need to navigate the intersecting complexities of international law, state immunity, and cross-border enforcement.

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