

Liability of the Spanish State for lack of cooperation in the enforcement of a judgment against the US

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Last June the Spanish Supreme Court (SC) partially upheld a claim for the insufficient cooperation of the Spanish Ministry of Foreign Affairs (MFA) in the enforcement of a final judgment against the United States Government¹.

In 1998 a first instance court ordered the US Government to pay nearly EUR 1 million to a Spanish contractor (Montasa) for certain works carried out at the Rota naval base in Spain. For more than two decades after the judgment became final and given the US Government's refusal to comply, the court repeatedly sought the MFA's assistance in identifying assets located in Spain that were not immune from execution.

Over the years, the MFA merely transmitted a number of verbal notes to the US embassy in Spain, requesting either voluntary compliance with the judgment or the identification of assets subject to seizure, and informed the court that several assets the latter had sought to attach at different times were immune from execution, relying on the US embassy's statements to that effect.

In 2021 Montasa filed a claim against the Spanish State seeking compensation exceeding EUR 2 million for the harm allegedly caused by the "impossibility of enforcing" the judgment as a result of the defective operation of public services.

In 2022 the Council of Ministers of Spain dismissed the claim on the grounds, *inter alia*, that the US, like any foreign State, was protected by the rules on immunity and the MFA could not take measures that may be regarded as "unlawful" under international law in order to secure enforcement of a judgment.

Montasa then filed an appeal with the SC, arguing that the MFA should have "cooperated" in enforcing the judgment but did very little. The State attorney countered that the action taken by the MFA was "sufficient" and met "the required standard", since it made multiple demarches through diplomatic channels, thus "amply" fulfilling its duty of cooperation, and enforcement was not possible because the US Government enjoyed immunity from execution.

The SC emphasised that the enforcement of judgments is an integral part of the constitutional right to effective judicial protection and, therefore, cooperation for enforcing judgments against foreign States is a "public service" which the Spanish State has a duty to provide in an "active and intense" manner by adopting "all ordinary dispute resolution mechanisms available to it in order to compel the foreign State to comply with them".

It also noted that the Spanish State's inactivity in this regard could not be justified by foreign States' immunity from execution, since State immunity is not absolute and

¹ Judgment 729/2025 of 9 June (SC's contentious-administrative chamber).

applies only to assets serving sovereign functions, not to those used for “industrial and commercial activities carried out without exercising sovereign authority, but under the rules of private-law transactions”, namely acting “in the same way as a private party”.

The SC found that:

- The MFA had failed to cooperate properly with the court, as it had taken no steps to actively identify US Government’s assets located in Spain that were not immune from execution and had not used all means at its disposal to facilitate enforcement of the judgment (for instance, it did not refer the matter to the permanent committee provided for in the 1988 bilateral agreement on defence cooperation).
- The MFA’s “passivity” caused damage to Montasa, albeit to a much lesser extent than it claimed, since there was no certainty that proper action by the MFA would have ensured enforcement of the judgment and, therefore, the harm should be limited to “the loss of the opportunity that, had the public service been duly performed, enforcement might have been achieved” (the SC assessed the damages, “on a prudent basis”, at EUR 100,000).