



Proceedings against Meliá regarding the management of hotels on Cuban soil are closed for lack of jurisdiction of Spanish courts

The Court of First Instance no. 24 of Palma de Mallorca has declared its lack of jurisdiction to hear the lawsuit filed against the hotel chain Meliá based on "unjust enrichment" in accordance with Spanish doctrine and case law.

On 3rd June 2019, Central Santa Lucía L.C. brought an action before the court of Palma de Mallorca against Meliá Hotels Internacional, S.A., based on the concept of unjust enrichment, which, according to Spanish doctrine and case law, is a situation in which a person experiences an increase in his or her assets at the expense of another person, without there being a legal reason for such an increase in assets. In other words, there is an attribution of assets without just cause and without there being a legal or conventional link between the parties.

Central Santa Lucía is a North American company that is the successor of the Santa Lucía Company, S.A. and the civil company Sánchez Hermanos, which in turn owned and operated land known as "Ingenio Santa Lucía", related to the exploitation of sugar cane. Meliá currently manages and exploits part of this land, where several hotels of the Spanish chain have been built in the area known as Playa Esmeralda, in the province of Holguín.

In September 2019, the Court declared that it lacked jurisdiction, which was appealed by the plaintiff and overturned by the Provincial Court of the Balearic Islands in March 2020. The Provincial Court considered that the Court did have jurisdiction as the State of Cuba was not a party to the proceedings and no claims had been made

against it or its assets. Once the continuation of the proceedings had been agreed, Meliá filed - and was admitted - a plea of lack of necessary passive co-consortium, for which reason Central Santa Lucía was requested to extend its claim, also directing it against the State of Cuba and the company Gaviota, S.A. The latter is a company 100% controlled by the Cuban government, which has been attributed the management and ownership of the land that is the object of the claim.

After the extension of the claim was filed in January 2021, the Court, ex officio and since the State of Cuba now held the status of defendant, reiterated its lack of jurisdiction and international competence, and informed the Ministry of Foreign Affairs and Cooperation so that it could issue the report provided for in Article 27.2 of the Law on International Legal Cooperation in Civil Matters. In its report, the Ministry argued that the nationalisation of the land agreed by the Cuban government in 1960 is an act iuri imperii protected by immunity of jurisdiction before Spanish courts and tribunals. However, it also argued that the contractual relations between Meliá and Gaviota, S.A. could be subject to its jurisdiction.

In its recent decision, dated 3rd May 2021, the Court has revised the approach of the claim after the inclusion of the State of Cuba and Gaviota, S.A. It has recalled that all foreign States and their assets enjoy jurisdictional immunity before Spanish courts, although not all acts of States are protected by this immunity. A distinction is made between acts that are a manifestation of sovereignty (acta iuri imperii) and those that derive from

an activity of a private nature (*acta iure gestionis*), with only the former enjoying immunity.

The Court considers that the assessment as unlawful of the act of nationalisation that caused the land in question to become the property of the Cuban State is a prerequisite and indispensable requirement to sustain Central Santa Lucia's claims. The exception to immunity from jurisdiction is not applicable to the case because the commercial transactions are not the main object of the case, but rather the plaintiff's claim of the alleged illegality of the ownership title that Cuba holds over the land of Playa Esmeralda. However, the plaintiff itself acknowledged that the "confiscation" (in its words) of the land was an act of expression of the sovereignty of the Cuban State. Moreover, as of today, neither the Cuban State nor Gaviota, S.A. have appeared in the proceedings, so this cannot be interpreted as a tacit waiver of their immunity.

Given that the plaintiff raised unjust enrichment as a basis for its claims, the Court ruled in its assessment that, although some of the circumstances of unjust enrichment could be met, it is not possible to put forward such an argument without the plaintiff proving that it has legitimate ownership of the land. Given that this point is indispensable, the Court considers that the claim cannot succeed without a legal assessment of the lawfulness of the acts carried out by a subject protected by jurisdictional immunity (the Cuban State) within the framework of its sovereignty. In addition, the claims are made in relation to property owned by that State, and the Court therefore considers that the Spanish courts do not have jurisdiction to hear the case.

For this reason, the declinatory action for lack of jurisdiction filed by Meliá has been upheld, and once this has been declared, the Court does not consider it necessary to rule on its international jurisdiction over the case, as jurisdiction is a precondition for competence. Consequently, the proceedings have been closed and the case has been dismissed. However, the applicant has twenty days in which to appeal.

It should be recalled that, although the Spanish courts have been hearing the case and the legal arguments put forward are in accordance with Spanish law, this lawsuit has been contextualised by the activation by the Donald Trump administration of Title III of the Helms Burton Act in 2019; a rule that allows companies and individuals who are using ("trafficking") assets confiscated by the Cuban government from US nationals after Castro's revolution to sue in US courts.

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