

Algeria defeats claim over housing project

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An exterior wall of a pre-fabricated house (Credit: Shutterstock/lbrix)

An ICSID tribunal has dismissed a US\$46 million claim brought by a Spanish construction group against Algeria over a project to build pre-fabricated homes.

Algeria's counsel Shearman & Sterling announced today that the state had defeated the claim brought by Ortiz Construcciones y Proyectos, which is part of Spain's Grupo Ortiz.

According to the statement, a tribunal chaired by Brazilian-Swiss arbitrator **Laurent Lévy** issued the 151-page award on 29 April. He was joined by Canadian arbitrator **Yves Fortier** and Hanotiau & van den Berg's Belgian co-founder **Bernard Hanotiau**, appointed by Ortiz and Algeria respectively.

Ortiz was represented by Herbert Smith Freehills, while Algeria used regular counsel Shearman & Sterling and Chemloul & Associés in Algiers.

In 2013, Ortiz entered into a joint venture with Algerian state company OLA to build at least 5,000 pre-fabricated housing units over five years as part of a public program to develop affordable homes. This followed an agreement signed between Algeria and Spain to encourage Spanish building companies to invest in Algerian public construction projects.

The joint venture built a prefabrication plant for the project however it ultimately failed to secure a contract to sell the housing units with various Algerian authorities.

Ortiz filed its ICSID claim in 2017, arguing that Algeria had violated the Spain-Algeria bilateral investment treaty by denying its legitimate expectations to be awarded a contract for the purchase of the housing units.

Shearman says the tribunal rejected all of Ortiz's claims, including its core claim concerning legitimate expectations.

The tribunal concluded that Ortiz could not have had the expectation of receiving a series of contracts for the construction of the housing units as it still had to negotiate with the entities awarding the contracts, "which implied the risk of not securing a deal if its offers were not competitive enough in terms of price and performance."

Shearman also says the panel found that the Algerian companies involved in the project were not instrumentalities of the state and that the state did not otherwise breach its obligations under the BIT.

Despite rejecting the claim, GAR understands that the tribunal rejected Algeria's claim that the proceedings were frivolous and ordered the parties to equally split the administrative costs and to bear their own legal costs – on the basis that the claim had been brought in good faith and had raised complex legal issues.

Maude Lebois, Paris-based partner at Shearman, says the award "sends the right message to the market: investment treaties do not operate as an insurance policy against commercial risk." The firm's head of international arbitration **Emmanuel Gaillard** says the award is a "great victory" for Algeria and confirms that the state "always treats its investors fairly."

Mohammed Chemloul of Chemloul & Associés says that the latest award means that, to date, Algeria has defeated all known investment treaty claims it has faced.

In February, Algeria defeated a €420 million treaty claim brought at the Permanent Court of Arbitration by insolvent Italian telecoms company Consutel Group. Later that month, French water and sanitation services provider Saur and its subsidiary Stereau discontinued an ICSID claim against the state.

Algeria used Chemloul & Associés in the PCA case and had not instructed external counsel in the ICSID matter.

In 2017, Shearman helped Algeria defeat a US\$4 billion ICSID claim brought by a company owned by Egyptian billionaire Naguib Sawiris – which is now seeking to have the award annulled.

Ortiz Construcciones y Proyectos SA v People's Democratic Republic of Algeria (ICSID Case No. ARB/17/1)

Tribunal

- **Laurent Lévy** (Brazil/Switzerland) (chair)
- **Yves Fortier** (Canada) (appointed by Ortiz)
- **Bernard Hanotiau** (Belgium) (appointed by Algeria)

Counsel to Ortiz

- Herbert Smith Freehills

Of counsel **Manuel Rivero** and associates **Cecilia Tilve** and **Mélissa Sanchez Mansencaut** in Madrid and partner **Laurence Franc-Menget** and associates **Gregory Travaini**, **Lisa Stefani**, **Merlin Papadhopulli** and **Tiphaine Leverrier** in Paris

Counsel to Algeria

- Shearman & Sterling

Partners **Emmanuel Gaillard** and **Maude Lebois** and associate **Charles Bouttier** in Paris

- Chemloul et Associés

Partner **Mohammed Chemloul** and **Amel Chemloul** in Algiers