

DISPUTE RESOLUTION

Non-compliance with Antisuit Injunctions – When Does it Amount to Criminal Contempt?

Introduction

Can the pursuit of foreign court proceedings, in the face of an anti-suit injunction ("**ASI**"), amount to criminal contempt of court? This issue was considered by the England and Wales Court of Appeal (Civil Division) ("**EWCA**") in its recent decision in *BHP Group v Municipio De Mariana* [2026] EWCA Civ 294.

Brief Facts

Following the collapse of the Fundão dam in Brazil, more than 600,000 claimants, including 46 Brazilian municipalities (the "**MCs**"), brought proceedings against the BHP group of companies ("**BHP**") in the English Technology and Construction Court ("**TCC**"). The BHP group included BHP Brazil, which formed half of the joint venture that owned and operated the dam. BHP challenged the jurisdiction of the English courts, but the challenge was dismissed and the claims proceeded in England.

Given the scale and complexity of the litigation, the English proceedings were case-managed in stages. One issue for the first-stage trial was whether the MCs had standing to sue outside Brazil. BHP argued that, under Brazilian law, the MCs were organs of the Brazilian state and could not bring foreign proceedings without proper Federal authorisation.

The issue of standing was not confined to the English proceedings. It was also raised in Brazil before the Brazilian Supreme Federal Court ("**STF**") by the Brazilian Mining Association ("**IBRAM**"), which sought relief that would, if granted, stop or suspend the MCs' English claims. The complication was that, although IBRAM was the claimant on the face of the Brazilian proceedings, the MCs' case was that BHP had procured and funded those proceedings. It was on that footing that the MCs obtained an ASI consent order against BHP before the English courts, requiring it not to take steps to progress the Brazilian proceedings and to procure BHP Brazil to ask IBRAM to stop the proceedings. BHP complied with those obligations, but the Brazilian proceedings continued because the constitutional issue had already been placed before the STF. The contempt application against BHP therefore proceeded on the basis that, if BHP was behind the IBRAM proceedings, their continuation could be attributed to BHP.

The MCs sought criminal contempt orders, alleging that BHP had procured the IBRAM claim to interfere with the administration of justice in England. BHP applied to strike out that application. After failing below, BHP appealed to the EWCA and succeeded.

Key Issue

The key issue was whether the continuation of the IBRAM claim in Brazil, despite the ASI consent order, amounted to criminal contempt under English law.

Decision of the Court

The Court of Appeal began by emphasising the distinct purposes served by anti-suit injunctions and criminal contempt. An anti-suit injunction is directed towards the protection of private rights. It restrains foreign proceedings that are unconscionable, vexatious, oppressive, or brought in breach of contractual or equitable obligations. Criminal contempt serves a different function. It is concerned not with protecting a litigant from forensic disadvantage, but with protecting the public interest in the due administration of justice.

That distinction shaped the Court's analysis. Conduct which may justify anti-suit relief does not necessarily amount to criminal contempt. The fact that foreign proceedings place pressure on English litigation, or even seek to hinder it, does not by itself make the conduct criminally improper. For criminal contempt to arise, there must be conduct that improperly interferes, or creates a sufficient risk of interference, with the administration of justice itself.

The Court considered that question against the backdrop of comity. Where a foreign court is asked to determine an arguable issue falling within its own jurisdiction, the English court will ordinarily respect that process, even if the foreign proceedings may have significant consequences for ongoing litigation in England. It followed that the invocation of a foreign court's jurisdiction will not ordinarily be treated as criminally improper merely because it is capable of affecting English proceedings. It is only in exceptional cases that recourse to foreign anti-suit relief will cross the threshold from legitimate litigation strategy into criminal contempt.

Application

Applying those principles, the EWCA treated the IBRAM claim as an arguable attempt to have the STF determine a Brazilian constitutional issue: whether the MCs, given their public-law status, could pursue claims outside Brazil.

Because that issue was properly arguable and was placed before Brazil's highest court, the continuation of the STF proceedings could be treated as a good-faith invocation of that court's jurisdiction, not as a criminal interference with the English proceedings.

The timing of the IBRAM claim, shortly before the English trial, increased its practical impact on the TCC proceedings. However, timing alone did not convert an arguable foreign constitutional claim into criminal contempt.

The EWCA therefore allowed BHP's appeal and struck out the MCs' application for permission to bring committal proceedings for criminal contempt.

Practical Takeaways

1. **Foreign ASI relief will rarely amount to criminal contempt.** The conduct must be improper and must interfere, or risk interfering, with the administration of justice. The ordinary remedy for breach of an ASI remains civil contempt.
2. **ASIs and criminal contempt protect different interests.** ASIs protect private litigant interests; criminal contempt protects the public interest in the administration of justice. Oppressive or vexatious conduct for ASI purposes is not automatically criminal.
3. **Timing alone is insufficient.** Late commencement of foreign proceedings may increase practical interference with English proceedings, but does not by itself establish the elements of criminal contempt.
4. **Comity remains central.** Where a foreign court has competent jurisdiction and the claim is properly arguable, English courts will be slow to characterise the foreign process as criminally improper.

Conclusion

The EWCA's decision confirms that criminal contempt is not a routine enforcement tool for ASIs. Even where foreign proceedings affect English litigation, criminal sanctions will be reserved for exceptional cases involving improper interference with the administration of justice. Good-faith proceedings before a competent foreign court will rarely meet that threshold.

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