

Arbitration News

MAY 2023

What Spanish courts are saying

SPAIN

- The High Court of Justice of Madrid, in its [Judgment of 10 April 2023](#), rejects an application for setting aside a partial award based on an alleged breach of public policy. The Court held there was no material *res judicata* arising from a claim submitted in the statement of defence to a previous arbitration and not raised by way of counterclaim. A dissenting opinion was issued, stating that the award should have been set aside for being contrary to the public policy, as well as for breach of the compensation rules.
- The High Court of Justice of the Basque Country, in its [Judgment of 25 April 2023](#), dismisses a claim for setting aside an arbitral award, stating that the decision of an *ex aequo et bono* arbitration on the grounds of a legal argument, does not affect public policy.

What is happening outside Spain

INTERNATIONAL

- The Permanent Court of Arbitration, in its [Award of 13 March 2023](#), dismisses a EUR 700 million claim brought by the Del Valle family against the Kingdom of Spain, in relation to the collapse of Banco Popular. The Court held that the claimants were aware of the bank's financial situation at the time of the investment, and that Spain acted in accordance with Spanish and European regulations.
- The District Court of Columbia, in its [Memorandum Opinion of 29 March 2023](#), dismisses a petition for enforcement of an award against Spain, considering that, in accordance with the doctrine of the *Achmea* case, the arbitration agreement was not valid and, therefore, the court lacked jurisdiction to enforce the award. This decision contradicts two recent judgments handed down by another judge of the same court on the same issue.
- The High Court of England and Wales, in its [Judgment of 24 May 2023](#), concludes that Spain cannot invoke sovereign immunity and the precedents of the CJEU in the *Achmea* and *Komstroy* cases, to prevent the recognition and enforcement of a EUR 120 million ICSID award under the Energy Charter Treaty.

Some interesting publications and events

ACADEMIC WORLD

- UNCITRAL Working Group III published, on 28 April 2023, its draft [“Code of conduct for arbitrators in international investment dispute resolution and commentary”](#), which will be submitted for adoption in the [July 2023](#) sessions of the UNCITRAL Commission.
- The Energy Charter Treaty Secretariat published, on 1 May, its [statistics](#) on investment arbitrations instituted over the last 20 years under this Treaty.

What we have been up to at Pérez-Llorca

PLL

- Félix J. Montero (Litigation and Arbitration partner at Pérez-Llorca) participated, on 26 May, in the conference [“Early Dismissal and Preliminary Determination: Efficiency v Due Process”](#), which took place within the framework of the 6th edition of the seminar [“International Arbitration, Current Perspectives”](#) organised by the UIA.
- Celia Cañete (associate at Pérez-Llorca) participated, on 28 April, in the [conference](#) organised on the occasion of the final rounds of the 2nd edition of the [Sports Arbitration Moot](#).