Pérez-Llorca

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Arbitration News

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What Spanish courts are saying

SPAIN

– The High Court of Justice of Catalonia, in its Order of 15 June, establishes that a request for the partial recognition of a foreign award is not permissible when the requesting party seeks only the recognition of the provisions that benefit itself, but not those provisions of the award that are unfavourable to it.

– The High Court of Justice of Madrid, in its Judgment of 23 June, rules on a claim for the judicial appointment of an arbitrator in a case in which the parties disagreed as to whether the arbitration should be in law or *ex aequo et bono*, given the existence of a pathological clause. The Court states that, in the absence of an agreement, Articles 15.1 and 35.1 of the Arbitration Act establish a certain preference for arbitration in law.

– The High Court of Justice of Galicia, in its Judgment of 4 July, dismisses a request to set aside an arbitration award, in which it was alleged that the defendant had not been correctly notified of the arbitration proceedings. The Court states that notifications whose frustration is due to the passivity or lack of interest of the notified party are fully effective.

What is happening outside Spain

INTERNATIONAL

– The UK Supreme Court, in its Judgment of 26 July, rules on "Litigation Funding Agreements" ("**LFAs**"), reasoning that they constitute "Damages-based Agreements" ("**DBAs**"). The Court concludes that, for an LFA to be valid, it must comply with the legal regime applicable to DBAs.

– The Amsterdam Court of Appeal, in its Judgment of 29 August (summary available here), rejects Poland's request to stay an arbitration initiated by a Dutch investor under the Netherlands-Poland BIT (the "**BIT**"). Poland invokes *Achmea* and considers that the arbitration agreement is contrary to EU law. The Court of Appeal notes that an intra-EU claim under the BIT is not necessarily abusive or unlawful, even if it is contrary to EU law, and that it is for the arbitral tribunal to decide on its own jurisdiction.

– The Court of Appeal of England and Wales, in its Decision of 7 September (summary available here) grants an anti-suit injunction against a Russian company, ordering it to abandon legal proceedings brought before the Russian courts in violation of the arbitration agreement. The Court of Appeal states that, although the seat of arbitration is in France and not England, and although there is no anti-suit injunction under French law, England was the appropriate forum to issue this order.

Some interesting publications and events

ACADEMIC WORLD

– The English Commission for the reform of the Arbitration Act 1996 published, on 6 September, its Final Report, which includes the following proposals: (i) the codification of the obligation of the arbitrator to disclose all circumstances that reasonably give rise to doubts as to the arbitrator's impartiality; and (ii) the introduction of a rule by virtue of which, where the parties have not established the law governing the arbitration agreement, the applicable law shall be the law of the seat of arbitration.

What we have been up to at Pérez-Llorca

PLL

– Our Litigation and Arbitration team has welcomed Felipe Nazar as a new partner in the New York office. Felipe joins with more than 15 years of experience in arbitration and cross-border disputes, strengthening Pérez-Llorca's international arbitration practice.

– On 18 September, Ignacio Santabaya (Litigation and Arbitration partner at Pérez-Llorca) participated as moderator in the round table discussion "Grantors, concessionaires and EPC contractors: a well-matched triangle or three's a crowd?", in the framework of the Annual Conference of the Construction and Engineering Law Club.