

Arbitration News

NOVEMBER 2023

What Spanish courts are saying

SPAIN

- The Provincial Court of Las Palmas, in its [Judgment of 14 July](#), considers that both the arbitral institution and the arbitrators who have acted in an arbitration proceeding have standing to legally claim the payment of fees from the parties involved in the arbitration.
- The High Court of Justice of Navarra, in its [Judgment of 9 October](#), rejects a request for the court appointment of an arbitrator, on the grounds that an arbitration clause in a company's articles of association that submits “*any dispute between the shareholders and the company or between the shareholders themselves*” to arbitration, does not include claims against a director. According to the Court, such a clause should not be interpreted extensively.
- The High Court of Justice of Madrid, in its [Judgment of 19 October](#), partially upholds a request to set aside an award for breach of public policy. The Court criticises the “*radical deficit of reasoning and assessment of the copious body of evidence in the case file*”, which leads to the partial setting aside of the award. The judgment has two separate opinions, one concurring and the other dissenting.
- The High Court of Justice of Madrid, in its [Judgment of 25 October](#), upholds a request to set aside an award on the grounds of the non-existence of an arbitration agreement. In this case, the parties signed a contract with an arbitration clause and, the following day, signed a new contract with a jurisdictional clause. The Court considers that the intention to submit the disputes to arbitration had not been established.

What is happening outside Spain

INTERNATIONAL

- An arbitral tribunal, in its [Award issued on 5 October 2023](#), rejects the Democratic Republic of Congo's application for revision of an ICC award issued 10 years ago, under the pretext that the president of the tribunal had allegedly received bribes.
- Two new relevant decisions on sovereign immunity: (i) the Federal Court of Australia, in its [Judgment of 24 October](#), holds that the Republic of India cannot invoke immunity to prevent the enforcement of an \$111 million award; and (ii) the United States District Court for the District of Columbia, in its [Judgment of 17 November](#), holds that Russia cannot invoke immunity to prevent the enforcement of several awards worth \$60 billion, in the context of the *Yukos* case.

Some interesting publications and events

ACADEMIC WORLD

- Jus Mundi published the guide “[Enforcement of ICSID Awards Around the World: A Guide](#)”, which analyses the regulation on the enforcement of ICSID awards in 28 jurisdictions around the world.
- Nicholas Emiliou (Advocate General of the CJEU), in his [non-binding Opinion](#) of 9 November, finds that the United Kingdom Supreme Court would have breached general principles of European Union law by allowing the enforcement of the ICSID award issued in the *Micula* case, despite the fact that the European Commission has already stated that the payment of the award would constitute State aid.
- The Madrid Bar Association launched, on [28 November](#), its Arbitration Section. In the session, the topic “Arbitration, its improvements today: new challenges to decongest Courts” was discussed.

What we have been up to at Pérez-Llorca

PLL

- Daragh Brehony (Litigation and Arbitration lawyer at Pérez-Llorca) participated as a speaker, on 17 November, at the [Dublin International Arbitration Day 2023](#).
- Felipe Nazar (Litigation and Arbitration partner at Pérez-Llorca) published, on 22 November, his opinion article “[International arbitration in Madrid: the new Miami?](#)” in *Expansión Jurídico*.