

Arbitration News

FEBRUARY 2024

What the Spanish courts are saying

SPAIN

- The High Court of Justice of Madrid, in its [Judgment of 10 January](#), upholds a claim for the annulment of an award rendered in a case involving a claim for wages by two football coaches against their former club. The Court held that the award breached Art. 41.1.e) of the Arbitration Act (“AA”), as it dealt with a matter that could not be arbitrated. Judge Santos Vijande issued a dissenting opinion in which he stated that the Court should have declared that it lacked jurisdiction in accordance with Art. 1.4 of the AA because of the subject matter.
- The High Court of Justice of Madrid, in its [Order of 31 October](#), dismisses an application for exequatur seeking the recognition of an award rendered in Warsaw, on the grounds, inter alia, that: (i) the defendant had not been duly notified; and (ii) the arbitration agreement was contrary to Spanish public policy. The contract attributed the payment of costs to one of the parties, regardless of the outcome of the arbitration. The Court holds that this agreement would be contrary to the principle of equality.

What’s happening outside Spain

INTERNATIONAL

- An ICSID committee, in its decision of 6 February (summary [here](#)), refuses to annul an award issued under the Energy Charter Treaty (“ECT”), ordering Spain to pay a Japanese investor Euro 23.5 million in compensation for changes to the incentive regime for renewable energies.
- The US Department of Justice, in its [Amicus curiae brief of 2 February](#), has taken a position in favour of Spain in a proceeding in which the enforcement of three awards ordering Spain to compensate European investors under the ECT is at issue. It is pointed out that the granting of anti-suit injunctions against Spain in 2023 by the US courts was not correct, given that: (i) they should have considered the existence of an arbitration agreement; and (ii) a State does not waive its immunity by the mere fact of adhering to the NYC or the ICSID Convention.
- The Paris Court of Appeal, in its [Judgment of 23 January](#), holds that EU Competition law is part of the notion of international public policy and, therefore, a breach of this law can lead to the annulment of an award.

Interesting publications and events

ACADEMIC WORLD

- The new “[IBA Guidelines on Conflicts of Interest in International Arbitration \(2024\)](#)”, have been published, as well as the [compared text](#) with respect to the 2014 version.

What we’re doing in Pérez-Llorca

PLL

- Daragh Brehony and Sofia Pinheiro (Litigation and Arbitration lawyers at Pérez-Llorca) published, on 10 February, “[Analysis of the recommendations of the Final Report of the Commission for the Reform of the English Arbitration Act 1996 and some comparisons with the Spanish Arbitration Act](#)” in *Economist & Jurist*.
- Silvia de Paz and Javier Tarjuelo (Litigation and Arbitration lawyers at Pérez-Llorca) participated, on 22 February, in the event “[Tertulias Arbitrales: recognition, enforcement and annulment of awards](#)” organised by the CEIA at Pérez-Llorca.
- Félix Montero (Litigation and Arbitration partner at Pérez-Llorca) participated as a speaker, on 28 February, in the [presentation](#) of the book “40 under 40 International Arbitration (2024)” organised at Pérez-Llorca. Francisco Paniagua (Litigation and Arbitration lawyer at Pérez-Llorca) is co-author of the book, with his chapter “[The importance of persuasion in international arbitration: how to build a persuasive case](#)”.
- Felipe Nazar (Litigation and Arbitration partner at Pérez-Llorca) participated as a speaker, on 29 February, in the conference “[Challenges in International Disputes](#)” organised at Harvard Law School.