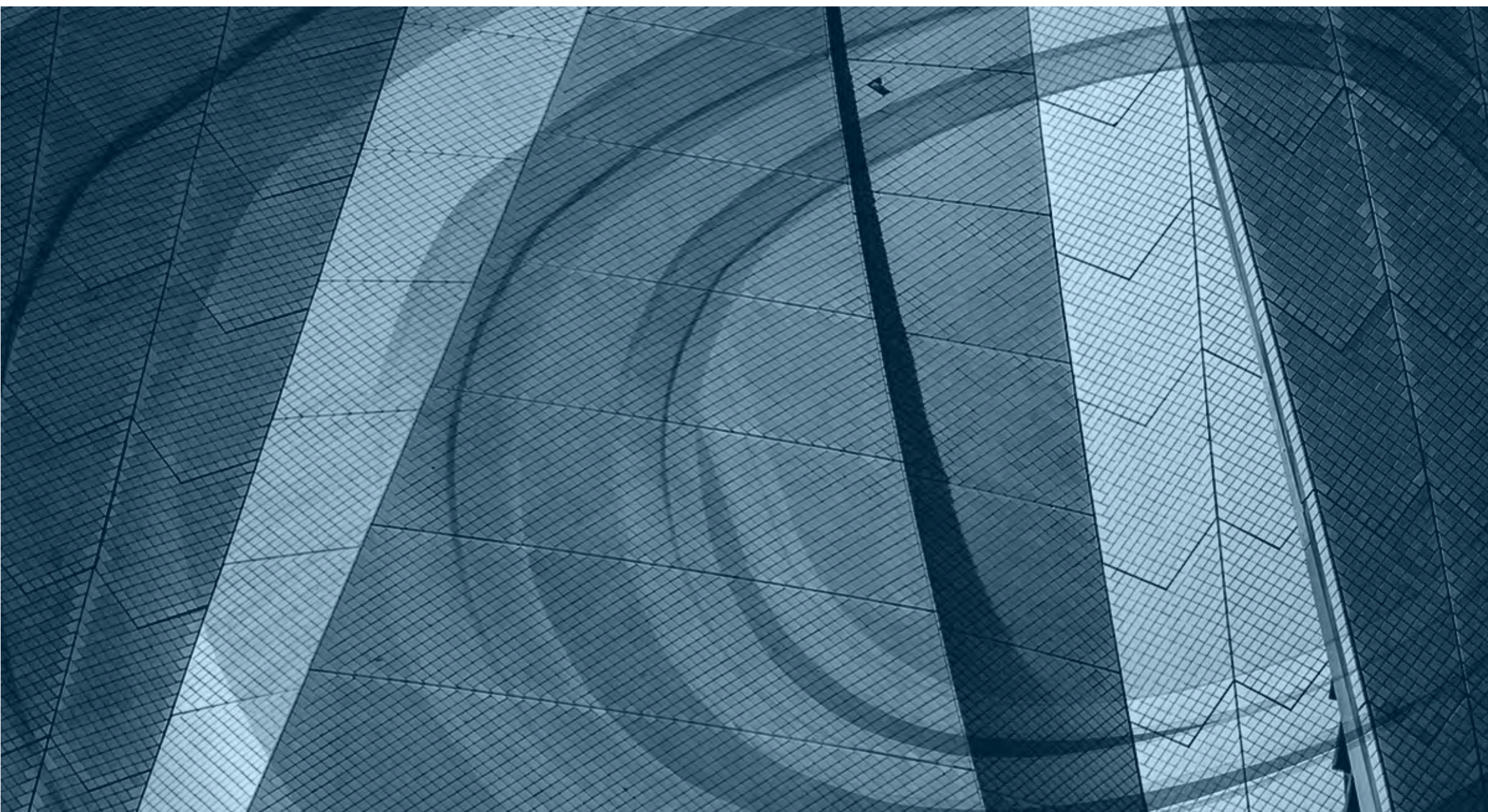


Pérez-Llorca

YEAR IN REVIEW 2024

Arbitration News



Ignacio Santabaya

Partner, Litigation and Arbitration at Pérez-Llorca

**Celia Cañete and
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Associates, Litigation and Arbitration at Pérez-Llorca



What Spanish courts are saying

SPAIN

- The High Court of Justice of the Balearic Islands, in its [Judgment of 4 December](#), dismisses a claim that sought the judicial appointment of an arbitrator on the grounds that the dispute in question did not fall within the material scope of application of the arbitration clause. After accepting that the arbitration agreement could be interpreted in different ways, the Court opts for the most restrictive interpretation, on the basis that arbitration would constitute a waiver of jurisdiction.
- The High Court of Justice of Madrid, in its [Judgment of 5 December](#), dismisses a request to set aside an arbitration award based, inter alia, on alleged defects in the procedure for the judicial appointment of the arbitrator. The Court rejects the argument as untimely, as the annulment proceeding against the judgment appointing the arbitrator had not been brought, and therefore said judgment has the effect of res judicata.
- The High Court of Justice of Castilla-La Mancha, in its [Judgment of 21 December](#), upholds a request to set aside an award in which the proceedings are dismissed due to an out-of-court settlement and the arbitrator's fees and administration costs are paid out of the provision of funds. The Court holds that the quantification of the fees contained in the award would infringe public policy, as it would be “preventing the right to challenge their amount, either as undue or excessive”.



What is happening outside Spain

INTERNATIONAL

- The German Supreme Court, in its [Judgment of 12 December](#) (summary available [here](#)), partially enforces an award that orders India to pay compensation to a German investor. Contrary to India's claim, the Supreme Court finds that the CJEU's judgment in the *Achmea* case does not extend to bilateral investment treaties signed by European Union states with third States.
- The Paris Court of Appeal has issued a new judgment in the saga between the Heirs of the Sultan of Jolo and the State of Malaysia. In this case, the sole arbitrator issued a partial award declaring itself competent, and then issued a final award ordering Malaysia to compensate the Heirs. Currently: (i) the partial award is before the French Supreme Court for recognition and enforcement; and (ii) the final award is before the Paris Court of Appeal for annulment. In its [Order of 9 January](#), the latter suspends the annulment proceedings of the final award until the recognition and enforcement of the partial award is resolved.



Some interesting publications and events

ACADEMIC WORLD

- On 1 January 2024, the new arbitration rules of the [Madrid International Arbitration Center](#) (CIAM) and the [China International Economic and Trade Arbitration Commission](#) (CIETAC) entered into force.
- The Spanish and Ibero-American Arbitration Club (CEIA) has organized the III Edition of the [Contest of Articles on Arbitration](#), which seeks to promote research and the exchange of ideas in the areas of arbitration and mediation.



What we have been up to at Pérez-Llorca

PLL

- Fernando Bedoya, Francisco Paniagua, Matilde Sánchez Ballestero, José Luis Ruiz de Castañeda and Javier García Urbano (Litigation and Arbitration partner and lawyers at Pérez-Llorca) have published a compendium of commentaries on relevant Spanish arbitration case law, contained in [volume XV](#) of the Commercial and Investment Arbitration Journal (*Revista de arbitraje comercial y de inversiones*).
- Javier Sánchez Villegas (Litigation and Arbitration lawyer at Pérez-Llorca) was appointed, on 19 January, member of the [new coordination](#) of Madrid Very Young Arbitration Practitioners (MAD VYAP).



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.

What Spanish courts are saying

SPAIN

- The High Court of Justice of Madrid, in its [Judgment of 20 December](#), dismisses a request to set aside an award based on Art. 41.1.f) of the Arbitration Act, on the grounds of procedural defects in the handling of the proceedings. The Court considers that even if such defects existed, they are insufficient to set aside the award as, in this case, they did not give rise to material defencelessness.

What is happening outside Spain

INTERNATIONAL

- The CJEU, in its [Judgment of 14 March](#), holds that the United Kingdom breached European Union law by allowing the enforcement of the ICSID award issued in the *Micula v. Romania* case.
- The High Court of Justice of England and Wales, in its [Judgment of 29 February](#), refuses to enforce an award issued in an arbitration administered by the Kuwait Chamber of Commerce and Industry Commercial Arbitration Centre, alleging that both the award and the arbitration had been an invention.
- The Paris Court of Appeal, in its [Judgment of 13 February](#), establishes that non-participating third parties in an investment arbitration initiated under a BIT, in favour of which rights to the award had been assigned, may participate in the enforcement of the award. This regardless of the fact that such third parties were not “investors” within the meaning of the BIT.

Some interesting publications and events

ACADEMIC WORLD

- ICSID published, on 11 March, the [Updated Background Paper on Annulment](#), which analyses precedents and details of how the annulment process works in practice.
- The Council of the European Union approved, on 7 March, a [coordinated exit](#) from the Energy Charter Treaty, although the final decision rests with the European Parliament. Portugal has also announced that it will [leave](#) the Treaty, effective as of 2 February 2025.

What we have been up to at Pérez-Llorca

PLL

- Félix J. Montero (Litigation and Arbitration partner at Pérez-Llorca) participated as a speaker, on 21 March, at the [“X Meeting of the Central American and Caribbean Arbitration Group”](#) in the Dominican Republic.
- Felipe Nazar (Litigation and Arbitration partner at Pérez-Llorca) participated as a moderator, on 18 March, at the event [“Innovations in Cross-Border Dispute Resolution”](#) hosted by Pérez-Llorca.
- Fernando Bedoya (Litigation and Arbitration partner at Pérez-Llorca) participated as a speaker, on 14 March, at the conference [“International Arbitration in a Changing World”](#) organised by Leaders League.
- Celia Cañete and Javier García Urbano (Litigation and Arbitration lawyers at Pérez-Llorca) published, on 5 March, the Spanish chapter of [“2023 Arbitration Year in Review”](#), coordinated by Jus Mundi.
- Félix J. Montero, Fernando Bedoya, Daragh Brehony and Celia Cañete (Litigation and Arbitration partners and lawyers at Pérez-Llorca) have published “Evidence in international arbitration: due process, equality, right to be heard, and right to challenge” and “Memory under scrutiny: fact witnesses in international arbitration”, in the book [“Arbitraje y Jurisdicción. Homenaje a Miguel Ángel Fernández-Ballesteros”](#).
- Pérez-Llorca participated in the ninth edition of the Madrid Vis Pre-Moot on 28 and 29 February. [The Firm hosted twelve universities which competed in six hearings](#), conducted by tribunals composed of lawyers from the Firm and external colleagues.
- Felipe Nazar, Silvia de Paz and María de Arcos (Litigation and Arbitration partner and lawyers at Pérez-Llorca) published, on 25 February, [“ISDS and ESG: Friends or Foes?”](#) on Kluwer Arbitration Blog.



What Spanish courts are saying

SPAIN

- The High Court of Justice of Madrid, in its [Judgment of 27 February](#), upholds an action for the annulment of an award based on the lack of independence and impartiality of the institution that conducted the arbitration. The Court concludes that there was a close link between the institution and the association that included the arbitration agreement in the rent guarantee policy. It further notes that, at the time the arbitration agreement was signed, the claimant's husband was both the president of the institution and the president of the association.
- The High Court of Justice of Madrid, in its [Judgment of 6 March](#), upholds an action for the annulment of an award on the grounds that the arbitrator had improperly disregarded additional evidence that was crucial to the resolution of the dispute, as it was considered to have been filed belatedly. According to the Court, the respondent-counterclaimant (which had proposed the aforementioned additional evidence) had not been aware of the reason for an alleged breach until the response to the counterclaim, and, therefore, the evidence should have been admitted.



What is happening outside Spain

INTERNATIONAL

- The Svea Court of Appeal (Stockholm), in its [Judgment of 27 March](#) (summary [here](#)), sets aside an award issued under the Energy Charter Treaty, which ordered Spain to compensate an investor for changes to the renewable incentives regime. The Court considers that upholding the award would contravene both the CJEU judgment in the *Achmea* case and Swedish public policy.
- The Regional Court of Essen (Germany), in its [Judgment of 12 April](#), dismisses a claim by the Kingdom of Spain requesting that the German investor RWE be ordered to cease the enforcement of an ICSID award for EUR 28 million. The Kingdom of Spain had requested the imposition of fines and up to two years imprisonment for RWE's senior management in the event that RWE did not cease enforcement.
- The Swiss Federal Tribunal, in its [Judgment of 3 April](#), confirms the competence of an arbitral tribunal to settle a dispute between a French investor and the Kingdom of Spain, initiated under the Energy Charter Treaty. The Court refers to the judgment issued by the CJEU in the *Komstroy* case, stating that it is not bound by that decision and that, in any case, it is not convinced by it.



Some interesting publications and events

ACADEMIC WORLD

- The European Parliament [approved](#), on 24 April, a coordinated exit from the Energy Charter Treaty, following the decisions of the Commission and the Council of the European Union.



What we have been up to at Pérez-Llorca

PLL

- Javier Tarjuelo and Javier García Urbano (Litigation and Arbitration lawyers at Pérez-Llorca) published, on 8 April, the article "[The negative exequatur of foreign awards in Spain](#)" in the magazine *Iurgium*.
- Felipe Nazar (Litigation and Arbitration partner at Pérez-Llorca) participated as a speaker, on 10 April, in the panel "[ESG in Dispute: Rethinking Investor-State Arbitration in a Sustainable World](#)" at Berkeley Law.
- Félix J. Montero (Litigation and Arbitration partner at Pérez-Llorca) participated as a speaker, on 25 April, in the panel "[Is it necessary to regulate the use of AI in arbitration? What regulations are in place?](#)" held as part of the XVIII IPA International Arbitration Congress.
- Ignacio Santabaya and Daragh Brehony (Litigation and Arbitration partner and associate at Pérez-Llorca) participated, on 25 April, as speaker and moderator, in the event "[Bridging the gap between common law and civil law in international arbitration](#)" organised by Arbitration Ireland at Pérez-Llorca.



What Spanish courts are saying

SPAIN

- The High Court of Justice of La Rioja, in its [Judgment of 14 March](#), partially upholds a claim seeking: (i) primarily, the appointment of the Bar Association of La Rioja as the institution administering the arbitration; and (ii) subsidiarily, the appointment of an arbitrator. The Court rejects the main claim, on the grounds that the arbitration clause did not contain any agreement on the administrative institution, and instead upholds the subsidiary claim.
- The High Court of Justice of Madrid, in its [Judgment of 12 March](#), dismisses an action to set aside an award that had been rendered outside the time limits set by the applicable arbitration rules, in accordance with article 37.2 of the Spanish Arbitration Act.



What is happening outside Spain

INTERNATIONAL

- The US Court of Appeals (District of Columbia), in its [Judgment of 14 May](#), upholds the recognition of the award rendered in the Micula case, in which Romania was ordered to pay compensation to Swedish investors. This is despite the fact that in 2015 the European Commission ruled that the payment of the compensation ordered to Romania in the award, would be contrary to the European Union regulation on State aid. The Court of Appeals upholds the interpretation of the District Court of Columbia, which held that European Union law did not apply to the dispute.
- The Svea Court of Appeal, in its Judgment of 27 May (summary [here](#)), sets aside an award rendered under the Energy Charter Treaty condemning Italy to compensate a Dutch investor. The Court holds that the arbitration agreement contained in the ECT is incompatible with European Union law and, therefore, that upholding the award would be incompatible with the basic principles of the Swedish legal system. Including this decision, the Swedish Courts have already set aside at least six awards by applying the decisions rendered by the CJEU in *Achmea* and *Komstroy* (see [Arbitration News compilation for the year 2023](#), as well as [Arbitration News April 2024](#)).



Some interesting publications and events

ACADEMIC WORLD

- The Silicon Valley Arbitration & Mediation Center published, on 30 April, the “[Guidelines on the Use of Artificial Intelligence in Arbitration](#)”. These guidelines deal with aspects such as the possibility of delegating functions to an artificial intelligence, or confidentiality and responsibility in its use.
- On 14 May, the Kingdom of Spain [withdrew](#) from the Energy Charter Treaty. The withdrawal will enter into force on 17 April 2025. However, [Article 47\(3\) ECT](#) provides that it shall continue to apply for a period of twenty years from the date on which the withdrawal takes effect.
- The ICC has published the “[ICC Dispute Resolution Bulletin 2024 No. 1](#)” in May, which compiles the main global recent developments and case law in arbitration.
- The Hong Kong International Arbitration Centre (HKIAC) has published its [new arbitration rules](#), effective as of 1 June, which aim to increase efficiency and integrity in arbitration proceedings.



What we have been up to at Pérez-Llorca

PLL

- Celia Cañete (Litigation and Arbitration lawyer at Pérez-Llorca) participated, on 24 May, in the [conference](#) organised on the occasion of the final rounds of the 3rd edition of the [Sports Arbitration Moot](#), in her capacity as co-founder.



What Spanish courts are saying

SPAIN

- The High Court of Justice of Castilla y Leon, in its [Judgment of 10 May](#), dismisses an action for annulment based on the non-existence of the arbitration agreement. According to the Chamber, the Spanish Land Transport Management Act establishes an *ope legis* submission to arbitration for disputes arising in relation to the performance of land transport contracts with a value not exceeding EUR 15,000, provided that none of the intervening parties express contrary views.
- The High Court of Justice of Galicia, in its [Judgment of 30 April](#), dismisses an action for annulment partially based on the overextension of the award. The Chamber considers that the claimant should have previously exhausted the arbitration procedure, in the sense that it should have requested the rectification of the partial overextension of the award, in accordance with Article 39.1.d) of the Spanish Arbitration Act.



What is happening outside Spain

INTERNATIONAL

- The Svea Court of Appeal, in its [Judgment of 17 June](#) (summary [here](#)), once again sets aside an award issued under the ECT which ordered Italy to compensate two investors from Denmark and Luxembourg. This is the second annulment achieved by Italy at said Court in the last two months.
- The Supreme Court of Justice of Panama, in its [Judgment of 7 May](#), confirms that foreign lawyers may practice in international arbitrations seated in Panama.
- The Swiss Federal Court, in its [Judgment of 18 April](#) (summary [here](#)), rejects the annulment of an ICC award based on the repeated appointments of an arbitrator by the same law firm. The Court notes that the “relatively small circle” of international arbitration lawyers leads to such situations but does not imply bias.



Some interesting publications and events

ACADEMIC WORLD

- The Council and the European Union Commission sent, on 27 June, [two written notifications](#) to the Government of Portugal, the official depositary of the ECT, notifying the withdrawal of the European Union and Euratom from the ECT. This withdrawal will take effect within one year.
- The European Union and its Member States reached, on 25 June, an [agreement](#) to put an end to the continuation of intra-EU arbitration proceedings initiated under the ECT, following the CJEU’s ruling in *Komstroy*.
- ICSID published, on 18 June, the study “[Compliance with and Enforcement of ICSID Awards](#)“, which analyses the compliance with, recognition and enforcement of awards rendered until 31 December 2021.



What we have been up to at Pérez-Llorca

PLL

- Daragh Brehony and Alberto Trueba (Litigation and Arbitration lawyers at Pérez-Llorca) published, on 27 June, the article “[What can we anticipate from the UK’s signature of the 2019 Hague Convention?](#)“ (in Spanish) in Legal Today.
- Celia Cañete (Litigation and Arbitration lawyer at Pérez-Llorca) participated, on 9 June, in the workshop “Status of international arbitration. Opportunities for young professionals” at the [17th CEIA-40 Meeting](#).
- Daragh Brehony (Litigation and Arbitration lawyer at Pérez-Llorca) moderated, on 8 June, the round table “European experiences” at the [2nd CEIA Mediation Meeting](#), organised at Pérez-Llorca.



What Spanish courts are saying

SPAIN

- The High Court of Justice of Madrid, in its [Judgment of 24 May](#), dismisses an action for annulment of an arbitration award. The dissenting opinion interprets the case law of the Constitutional Court, and argues that judicial control over the reasoning of awards cannot be limited to recognising whether the award has been reasoned, but must extend to ensuring that such reasoning is not arbitrary nor unreasonable.
- The High Court of Justice of Madrid, in its [Judgment of 28 May](#), dismisses an action for annulment of an arbitral award in which the exception of compulsory joinder of defendants was raised on the grounds that the institution and the arbitral tribunal should have been sued. This exception is rejected by the Court, which considers that neither the institution nor the arbitrators hold legitimate interests in annulment proceedings.



What is happening outside Spain

INTERNATIONAL

- The Paris Court of Appeal, in its [Judgment of 4 June](#), asserts that French courts can examine facts related to corruption, even if they were not raised by the parties in the arbitration proceedings. The Court dismisses the action for annulment, among other reasons, because the alleged corruption was not proven.
- The Brussels Court of Appeal, in its [Judgment of 18 June](#), orders the seizure of the receivables of a Spanish public company, Enaire, against Eurocontrol. The seizure, amounting to USD 32 million, is the result of Spain's failure to pay an award in favour of a European investor under the Energy Charter Treaty.
- The Svea Court of Appeal, in its [Judgment of 28 June](#) (summary [here](#)), sets aside an award issued under the Energy Charter Treaty condemning Spain to compensate investors from Luxembourg, Italy and Denmark with EUR 48 million. This is the fifth annulment ordered by this Court in 2024 based on *Komstroy*.



Some interesting publications and events

ACADEMIC WORLD

- The European Commission published, on 22 July, a [report](#) addressed to the European Parliament and the Council on the functioning of Regulation (EU) No 912/2014 establishing a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party. The report analyses claims brought against Member States and the European Union in recent years.
- The ICC has published the “[2023 ICC Dispute Resolution Statistics](#)”, which analyses the Court's main statistics in recent years. In 2023 alone, the ICC registered 890 new arbitrations.



What we have been up to at Pérez-Llorca

PLL

- Javier Tarjuelo (Litigation and Arbitration lawyer at Pérez-Llorca) participated, on 2 July, in “[Dialogues for the future of the judiciary. LXXXIV. Special Arbitration](#)” published in Diario La Ley.
- Fernando Bedoya and Ignacio Santabaya (Litigation and Arbitration partners at Pérez-Llorca) delivered, on 5 July, a workshop on cross-examination as part of the [GoArb 2024: Landing on Your First International Arbitrations](#) course. Celia Cañete (Litigation and Arbitration lawyer at Pérez-Llorca) participated as organiser of the course.
- Daragh Brehony and Sofia Pinheiro (Litigation and Arbitration lawyers at Pérez-Llorca) published, on 13 July, the article “[Preliminary determinations in international arbitration](#)” in *Economist & Jurist*.



What Spanish courts are saying

SPAIN

- The High Court of Justice of Madrid, in its [Judgment of 9 July](#), upholds a claim for the judicial appointment of an arbitrator, despite the dissolution of the arbitration court designated in the arbitration agreement.
- The High Court of Justice of Castilla y León, in its [Judgment of 20 June](#), sets aside an award for violation of public policy on the grounds that the arbitral tribunal issued the award without examining the merits of the case, even though the claimant had indeed provided the necessary elements for the arbitral tribunal to hear the dispute.
- The High Court of Justice of Madrid, in its [Judgment of 9 April](#), sets aside an award due to the arbitrator's lack of jurisdiction. The Chamber considers that the parties had waived arbitration by previously submitting the same dispute to judicial jurisdiction.



What is happening outside Spain

INTERNATIONAL

- The US District Court for the District of Columbia, in its [Memorandum Opinion of 26 September](#), authorises the enforcement of an ICSID award in which Spain was ordered to pay EUR 23.5 million under the Energy Charter Treaty, in favour of the assignee of the award.
- The Paris Court of Appeal, in its [Judgment of 10 September](#), refuses the intervention in the enforcement proceedings to those who acquired the rights to the award, but were not party to the arbitration.
- The heirs of the Sultan of Sulu have initiated an USD 18 billion arbitration against Spain before ICSID (summary available [here](#)), claiming that Spain has obstructed the enforcement of the award against Malaysia, amounting to a denial of justice. The request for arbitration was filed on 15 August 2024, but has not yet been registered by ICSID.
- An ICSID *ad hoc* committee, in its [Decision of 14 August](#), dismisses a request for annulment made by Spain against the intra-EU award in favour of the investor Renergy.
- The Supreme Court of British Columbia (Canada), in its [Judgment of 1 August](#), confirms that, when a court is deciding on the existence of an arbitration agreement, it may issue an interim injunction preventing the commencement of arbitration proceedings until it decides on the existence of the agreement.



Some interesting publications and events

ACADEMIC WORLD

- The Spanish National Markets and Competition Commission (CNMC) approved, on 3 September, its [Arbitration Rules](#) to resolve disputes between economic operators.
- Working Group III of UNCITRAL published, on 8 July, a [draft](#) of the Multilateral instrument on ISDS reform. The Multilateral instrument aims to establish mechanisms for states to modify existing BITs.
- CIAM-CIAR presented, in July, a new report prepared by the Working Group on international arbitration on experts, concerning [“The calculation of interest in arbitration proceedings”](#).



What we have been up to at Pérez-Llorca

PLL

- Fernando Bedoya (Litigation and Arbitration partner at Pérez-Llorca) participated as a speaker, on 16 September, at the breakfast organized at Pérez-Llorca “Similarities and differences in arbitration practices between Europe and Asia”, which was attended by Kevin Nash, Registrar of the Singapore International Arbitration Centre (SIAC).
- Celia Cañete (Litigation and Arbitration lawyer at Pérez-Llorca) participated as a speaker, on 21 of September, in the webinar [“The experience of Sports Arbitration Moots”](#) organised in Lima.



What Spanish courts are saying

SPAIN

- The High Court of Justice of Islas Baleares, in its [Judgment of 26 July](#), dismisses an action to set aside an award since it was filed after the limitation period had expired. The action to set aside had initially been filed before the Court of First Instance No. 1 of Palma, which issued an order to discontinue the proceedings due to a lack of objective jurisdiction. The Court held that the limitation period was not interrupted by the filing of the first lawsuit.
- The High Court of Justice of Pais Vasco, in its [Judgment of 25 June](#), dismisses an action to set aside an award and confirms the arbitrability of disputes arising between cooperatives, as well as between cooperatives and their members. The Court clarifies that the termination of the membership of those who have resorted to the arbitral proceeding does not affect the arbitration clause.



What is happening outside Spain

INTERNATIONAL

- Two ICSID tribunals, in Awards dated 11 October (summary [here](#)), have dismissed two claims brought by European investors against Spain under the Energy Charter Treaty, on the grounds that they lacked jurisdiction.
- The Supreme Court of the United Kingdom, in its [Judgment of 18 September](#), confirms that English courts have the power to grant anti-suit injunctions in support of foreign arbitrations when the arbitration agreement is governed by English law. The Court analyzes the procedure for determining the applicable law to arbitration agreements in absence of an express agreement based on the cases *Enka Insaat ve Sanayi AS v. OOO Insurance Company Chubb* and *Carpatsky Petroleum Corpn v. PJSC Ukrnafta*.
- The French Court of Cassation, in its [Judgment of 18 September](#), states that an arbitral tribunal's refusal to grant a party's request for document production is not sufficient grounds to set aside an arbitral award.
- The Constitutional Court of Peru, in its [Judgment of 14 June](#), confirms that it is not possible to recourse to constitutional protection (amparo) when there is an arbitration agreement, indicating that arbitration is “*a fast and effective way*”.



Some interesting publications and events

ACADEMIC WORLD

- The Civil and Commercial Court of Arbitration (CIMA) held, on 16 and 17 October, the III CIMA Conference on the occasion of its 35th anniversary, named “[Arbitration in a State governed by the Rule of Law](#)”.
- Global Arbitration Review has published “[The Guide to Aviation and Space Disputes](#)” which aims to provide an overview of the main features, regulation and opportunities of these two industries.



What we have been up to at Pérez-Llorca

PLL

- Fernando Bedoya and Belén Lassala (partner and lawyer at Pérez-Llorca) published, on 30 September, the article “[States should take a prudential approach to the implementation of GLoBE rules to avoid ISDS](#)” in *Columbia FDI Perspectives*.
- Félix J. Montero, Fernando Bedoya and María Antonia Pérez (partners and lawyer at Pérez-Llorca) participated as speakers, on 23 October, in the event “[Practical aspects of parallel proceedings: arbitration and jurisdiction](#)” which took place at Pérez-Llorca.
- Julia González and Celia Cañete (counsel and lawyer at Pérez-Llorca), have participated as co-authors in the book “[Arbitration in Mexico](#)” published by Wolters Kluwer, with their chapters “[The Rise in Mexico's Energy Disputes: A Focus on Oil and Gas Cases](#)” and “[Concluding Thoughts on Arbitration in Mexico](#)”. Cañete has also participated as Associate Editor of the book.

What Spanish courts are saying

SPAIN

- The High Court of Justice of Pais Vasco, in its [Judgment of 24 October](#), dismisses an action to set aside an award, on the grounds that it is not its role to verify the correct application of the law in matters other than its basic principles. The Court criticized the use of public policy for the purpose of appealing an award.
- The High Court of Justice of Pais Vasco, in its [Judgment of 24 October](#), dismisses an action to set aside an award where a violation of essential procedural principles was alleged on the grounds that a minimum evidentiary basis was not provided to prove the alleged procedural breaches and material defencelessness suffered in relation to the service of the writ of claim. The Court holds that the case law criteria necessary to conclude that there had been material defencelessness that affected public policy were not met.

What is happening outside Spain

INTERNATIONAL

- The French Court of Cassation, in its [Judgment of 27 November](#), suspends a procedure to set aside an award which ordered to compensate Yemen with USD 30 million. The Court is going to request a preliminary ruling from the CJEU on whether the sanctions imposed by the European Union against Yemen in 2014 would prevent the payment of the award.
- The European Court of Human Rights, in its [Judgment of 26 November](#), upholds a claim brought by a Polish investor against North Macedonia, on the grounds that the investor had not been guaranteed the right to a fair trial in the proceeding for the enforcement of an ICC award.
- An ICSID tribunal, in its [Award of 12 November](#), orders Colombia to compensate a Spanish investor the amount of USD 380 million for a violation of the fair and equitable treatment standard.
- The French Court of Cassation, in its [Judgment of 6 November](#), upholds the decision of the Paris Court of Appeal, which refused to recognize the award rendered by a Spanish arbitrator ordering Malaysia to compensate the heirs of the Sultan of Sulu.
- The Stockholm Chamber of Commerce Arbitration Institute (SCC), in its [Report of 5 November](#), announces a change in its policy regarding the designation of the seat in an investment arbitration where it had not been determined. Unless otherwise agreed by the parties, the SCC will locate the seat of arbitration in a State that is not a member of the European Union, in light of the complexities arising from the CJEU's position on intra-EU arbitration, and in order to ensure the enforcement of the issued awards.

Some interesting publications and events

ACADEMIC WORLD

- The latest update to the report on compliance with investment arbitration awards has been published, "[Report on Compliance with Investment Treaty Arbitration Awards 2024](#)", prepared by Prof. Nikos Lavranos. The report: (i) reveals that Spain is the State with the highest number of unpaid awards (*i.e.* 24 awards for an amount of approximately EUR 1.6 billion); and (ii) highlights the complexities arising from the recognition and enforcement of intra-EU awards, citing the most relevant judgments rendered by courts of the concerned jurisdictions.

What we have been up to at Pérez-Llorca

PLL

- Javier Tarjuelo and Pablo Orts (Litigation and Arbitration lawyers at Pérez-Llorca) have published the article "[The IBA Guidelines on conflicts of interest in the case law of the High Court of Justice of Madrid: some considerations regarding the release of the new 2024 Guidelines](#)", in the journal *Iurgium*.
- Celia Cañete (Litigation and Arbitration lawyer at Pérez-Llorca) participated as a speaker, on 29 November, in the panel "[Work Hard Play Harder: Why participate in Moots as a student](#)", at Carlos III University.



What Spanish courts are saying

SPAIN

- The Constitutional Court, in its [Judgment of 2 December](#), states that external judicial review of arbitral awards is permissible in cases where rules declared to be of public policy by the Court of Justice of the European Union are not applied, without allowing the arbitrators' decision on the merits to be replaced.
- The High Court of Justice of Cataluña, in its [Judgment of 17 July](#), confirms that only natural persons can be arbitrators, as set forth in Article 13 of the Arbitration Act, in a case where an auditing company had been appointed as arbitrator, without the latter appointing a natural person to perform such function.



What is happening outside Spain

INTERNATIONAL

- The US Court of Appeals (District of Columbia), in its [Judgment of 2 December](#), despite the intervention of the European Union, rejects Spain's request to review the decision which confirmed the validity of three awards condemning Spain to compensate foreign investors with EUR 358 million.
- The Svea Court of Appeals, in its Judgment of 12 November (summary [here](#)), interprets restrictively the most-favored-nation (MFN) clause contained in an BIT, rejecting its application to jurisdictional issues.
- The Paris Court of Appeals, in its [Judgment of 3 October](#), establishes that the opening of insolvency proceedings may justify the stay of an award enforcement proceeding, when the enforcement may cause serious harm to the creditors of the condemned party.



Some interesting publications and events

ACADEMIC WORLD

- The Court of Arbitration of Madrid (CAM) has published its new Arbitration Rules (available in Spanish [here](#)), which came into force on 1 January 2025. They are inspired by the Rules of the Madrid International Arbitration Center - Ibero-American Arbitration Center (CIAM-CIAR) and, among other new features, they remove certain procedural rules, regulate in greater detail the inclusion of third parties and the joinder of proceedings, and introduce a highly expedited procedure.
- The Singapore International Arbitration Centre (SIAC) has published: (i) its new [Arbitration Rules](#), which came into force on 1 January 2025 and introduce new procedures, broaden the scope of expedited proceedings, improve emergency arbitration, and include provisions to encourage mediation between the parties; and (ii) a draft of the "[Insolvency Arbitration Protocol](#)" for public consultation until 17 January 2025, which proposes a mechanism tailored to disputes in the context of insolvencies, offering an efficient procedure based on the SIAC rules, designed in collaboration with insolvency and arbitration experts.
- The ICC Task Force on Corruption published, on 1 November, "[Red flags or Other Indicators of Corruption in International Arbitration](#)", which recommends a procedure for identifying and assessing red flags of corruption in international arbitration proceedings.



What we have been up to at Pérez-Llorca

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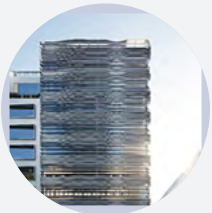
- Javier Tarjuelo and Jaime López (Litigation and Arbitration lawyers at Pérez-Llorca) have published "[The ELI principles regarding third-party litigation funding](#)" in El Derecho.
- Javier Tarjuelo (Litigation and Arbitration lawyer at Pérez-Llorca) has been [appointed coordinator](#) of the Spanish and Ibero-American Arbitration Club -40 (CEIA-40) for the period of 2025-2026.

YEAR IN REVIEW 2024

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