

## The Spanish Constitutional Court finally clears up the confusion on the annulment of arbitral awards on public policy grounds

Madrid, April 2021

The Spanish Constitutional Court (SCC) has issued three relevant judgments<sup>1</sup> (the Judgments) clearing up the confusion on arbitral awards and public policy caused by several judgments rendered by the High Court of Madrid (HCM) over the last years.

The Judgments confirm three arbitral awards that had been annulled by the HCM, essentially, because the SCC found that the HCM had exceeded its scrutiny powers when examining the validity of the arbitral awards following an annulment action based on public policy grounds.

The Judgments clarify and confirm the following principles:

- (i) Arbitration is “jurisdictionally equivalent”<sup>2</sup> to judicial proceedings only because arbitral awards, like judicial decisions, have *res iudicata* effects and are enforceable. However, arbitration and judicial proceedings are based on different constitutional provisions: while the roots of the former are articles 1 and 10 of the Spanish Constitution (SC), that provide for individual freedom and party autonomy, the latter is founded on article 24 SC, that sets forth the right to effective judicial protection; hence, arbitration and judicial proceedings are subject to different rules and standards.
- (ii) The standard for judicial review of arbitral awards on public policy grounds is extremely narrow and should be limited to verifying whether the “fundamental procedural guarantees” have been respected. Therefore, judicial courts can exceptionally annul awards on public policy grounds when (a) fundamental due process “guarantees” have been breached, (b) the award lacks any reasoning or has one that is “arbitrary, illogic, absurd or irrational”, (c) “imperative legal rules” have been breached or (d) the invariability of a previous final ruling (*resolución firme anterior*) has been infringed.

It is thus unlawful to annul an award only because the High Court considers that the conclusions reached by the arbitral tribunal are “mistaken or insufficient or simply because the court would have reached a different decision should the dispute have been submitted before it”. Courts are not entitled to review “the substantive matter or assess the evidence, legal reasoning or conclusions reached by the arbitrator” and the annulment action cannot be used, *de facto*, as a second instance review of the award.

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<sup>1</sup> Judgments of the SCC dated 15 February 2021 (appeal No. 3956/2018), 15 March 2021 (appeal No. 976/2020), and 15 March 2021 (appeal No. 2563/2019).

<sup>2</sup> As stated in the SCC judgment of 15 February 2021, this expression, which was first used in a SCC judgment of 26 January 1989, seems to be the origin of the confusion spread by the HCM, which has annulled several arbitral awards based on public policy grounds, ultimately because the HCM found that the awards’ reasonings were grossly erroneous.

- (iii) The duty of reasoning of arbitral awards derives from a legal provision (article 37.4 of the Spanish Arbitration Act) rather than from the SC and hence it is not part of a constitutional fundamental right. To confirm whether the standard of reasoning of arbitral awards has been met it is “only necessary to verify whether the award contains reasons, although these are deemed mistaken by the judge in charge of hearing the challenge”. Therefore, courts cannot examine the “correctness, sufficiency or adequacy” of the grounds of an award. A decision shall not be deemed reasoned when *prima facie* it is based on premises that do not exist or are blatantly mistaken or when the reasoning itself contains such errors that the conclusions reached cannot be based on any of the reasons alleged.
- (iv) The parties have the right to withdraw an action to set aside an arbitral award before the court has handed down its decision, in accordance with the principle that parties are free to start and terminate civil proceedings.

The Judgments represent good news for arbitration in Spain, as they seem to clarify once and for all the doubts casted by a number of unfortunate judgments rendered by the HCM over the last years and confirm that Spain is an arbitration-friendly jurisdiction for both domestic and international arbitration.