



An arbitral award cannot be annulled in the enforcement proceeding of such award

Decision of the Court of Appeals of Barcelona, of 19 December 2018

Introduction

The efficacy of arbitration as an alternative dispute resolution mechanism is based, inter alia, on the fact that arbitral awards are binding on the parties. In this regard, one can compare an arbitral award to a court judgement. From the moment in which such award is final, the parties must comply with it. In case of non-compliance, the affected party can request the enforcement of the arbitral award before court.

An arbitral award ceases to be binding only when it is annulled by a competent court. The chances of this happening are very limited. In order to decide about the annulment of an arbitral award, an action must be filed before the court within 2 months of the notification of the award. Furthermore, the annulment is only possible under certain grounds set out in the law. One of these grounds is that a party is not duly notified during the arbitration.

The filing of the annulment action does not suspend the enforcement procedure. To obtain such suspension, the concerned party must request the suspension as a preliminary measure within the annulment procedure.

Court's decision

In this case, the winning party of an arbitration requested the competent Court to enforce the arbitral award which, among other issues, obliged the losing party to make certain payments. The losing party opposed the

enforcement arguing that the arbitral award was null because it had not been notified of neither the demand for arbitration nor the arbitral award.

The Court dismissed the opposition stating that whether the arbitral award is declared null or not, is not a matter to be decided in the enforcement procedure.

The position of this Court has been confirmed by the Court of Appeals of Barcelona. The Court of Appeals has expressed that the annulment of the award should have been sought in a separate annulment action that could have been filed when the request for enforcement was notified to the affected party.

Final thought

Arbitral awards are as mandatory as judicial decisions. It is well-known that if the party affected by a court judgment fails challenge it when possible, then such party will not be able to do so in the future.

When it comes to arbitration, the same principle must apply. If the party affected by an arbitral award does not file an annulment action in due course, then such party cannot claim that the award should be annulled in the enforcement proceeding.

In our opinion, judicial decisions such as this one enhance trust in arbitration.