



Spain is a reliable place for arbitration

Judgment of the Constitutional Court of 15 June 2020

The interpretation of the “public order” concept as ground for annulment of arbitration awards has been a controversial topic for many years.

Background

This Judgment resolves a constitutional appeal against the annulment by the High Court of Justice of Madrid (TSJM) of an arbitration award on the basis that such award was contrary to “public order” (the appellant had claimed that the arbitration court lacked the required neutrality).

The TSJM took this decision despite the fact that no party had requested the annulment of the award for “public order” grounds, and that both parties had requested the withdrawal of the annulment proceeding because an agreement had been reached on the substance of the case.

The TSJM dismissed parties’ requests and argued that if a “public order” infringement is observed, the annulment proceeding becomes imperative (there is a public interest to be protected) and out of the control of the parties. The parties did not agree with this ruling and filed an appeal before the Constitutional Court alleging an infringement of the right to an effective judicial protection recognized in the Spanish Constitution.

Judgement of the Constitutional Court (TC)

The TC upholds the appeal: dismissing the parties’ claim to withdraw the case was not reasonable and was definitively contrary to the parties’ right to an effective judicial protection. The TC also rejects the interpretation of “public order” made by the TSJM. In this respect, the TC recalls that:

- (i) in civil/private matters, parties are free to settle or otherwise terminate their dispute at any time, even after the award has been rendered by the arbitration court (no procedural rule forbids this option);
- (ii) in a judicial proceeding for the annulment of an arbitration award, the Court cannot review the substance of the matter (otherwise the very nature of the arbitration proceeding would be affected). “Public order” cannot be used by the Court as a pretext for such purposes.

Take-home message

Judgments like this strengthen confidence in arbitration; help to reduce the overuse of “public order” as a ground to review the merits of a case and/or annul an award; and improve the image of Spain as a reliable seat for arbitration proceedings.