



The Constitutional Court rules in favour of arbitration once again

Constitutional Court Judgment of 15 February 2021

Introduction

In 2018 the High Court of Justice of Madrid passed a judgment that annulled an arbitration award which ordered the dissolution and liquidation of an important private company as a solution to the confrontation existing between the two groups of shareholders.

The High Court of Justice of Madrid justified such decision on the grounds that the award was contrary to public order, as it was not properly reasoned. In the judgment, it criticised the fact that the award had not assessed the evidence that had been presented in a proper manner since it had not considered certain legal consequences resulting from such evidence.

The parties affected by the ruling of the High Court of Justice of Madrid appealed such decision to the Constitutional Court. In the judgment we are commenting on, the Constitutional Court upheld the constitutional appeal filed by the affected parties and held that the High Court of Justice of Madrid had exceeded its authority by making an interpretation of public order that went beyond the powers granted by law.

Public order as a ground for annulment

In this judgment, the Constitutional Court reiterates its previous doctrine and once again warns about the risks that an interpretation of public order such as the one made by the High Court of Justice of Madrid generates for arbitration.

The judgment states that ordinary courts may indeed verify if an award is in accordance with public order but they cannot replace the arbitrator function of applying the law and/or resolving the dispute. The annulment action cannot turn into a second instance for reviewing the facts and rules applied in the award, nor a mechanism for reviewing the correct application of case-law.

The Constitutional court says that the mere discrepancy on the legal conclusions that the court may draw from the practice of evidence does not *per se* imply a violation of public order, even more so when the parties have submitted their dispute to arbitration *ex aequo et bono*, which enables the arbitrator to adopt the solution that it deems fairest and most equitable, without having to resort to legal rules, or even being able to depart from the legal conclusions that may be derived from them.

In the present case, according to the judgment of the Constitutional Court by just reading the challenged award, it could be noted that it was reasoned, logical and did not contain any inconsistency or contradiction that justified its annulment for infringement of public order. Consequently, it should not have been annulled.

As it has done in previous cases, the Constitutional Court once again limits the expansive interpretation of public order as a ground for annulment of awards and reinforces Spain's position as a safe arbitration seat.