Published by Global Arbitration Review in association with

Betto Perben Pradel Filhol
BGP Litigation
De Brauw Blackstone Westbroek
Dittmar & Indrenius
FTI Consulting
Heuking Kühn Lüer Wojtek PartGmbB
Jacobacci e Associati Law Firm
Konrad Partners
Liedekerke Wolters Waelbroeck Kirkpatrick
MARCHENKO PARTNERS
Pérez-Llorca
PLMJ Law Firm
Vinge
Wikborg Rein

www.globalarbitrationreview.com

gar

The European Arbitration Review 2021

A Global Arbitration Review Special Report

Reproduced with permission from Law Business Research Ltd
This article was first published in November 2020
For further information please contact Natalie.Clarke@lbresearch.com

© Law Business Research 2020

The European Arbitration Review 2021

Account managers Marta Jurkowska and J'nea-Louise Wright

Production editor Katie Adams
Chief subeditor Jonathan Allen
Subeditor Claire Ancell
Head of content production Simon Busby
Editorial coordinator Gracie Ford

Publisher David Samuels

Cover image credit iStock.com/blackdovfx

Subscription details
To subscribe please contact:
Global Arbitration Review
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL
United Kingdom
Tel: +44 20 3780 4134
Fax: +44 20 7229 6910
subscriptions@globalarbitrationreview.com

No photocopying. CLA and other agency licensing systems do not apply.
For an authorised copy, contact gemma.chalk@globalarbitrationreview.com.

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer–client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as at October 2020, be advised that this is a developing area.

ISBN: 978-1-83862-250-3

© 2020 Law Business Research Limited

Printed and distributed by Encompass Print Solutions
Tel: 0844 2480 112

© Law Business Research 2020

The European Arbitration Review 2021

A Global Arbitration Review Special Report

Published in association with:

Betto Perben Pradel Filhol

BGP Litigation

De Brauw Blackstone Westbroek

Dittmar & Indrenius

FTI Consulting

Heuking Kühn Lüer Wojtek PartGmbB

Jacobacci e Associati Law Firm

Konrad Partners

Liedekerke Wolters Waelbroeck Kirkpatrick

MARCHENKO PARTNERS

Pérez-Llorca

PLMJ Law Firm

Vinge

Wikborg Rein

© Law Business Research 2020

Preface vi

Overviews

Connecting Cause and Effect 1
Meloria Meschi, David Eastwood and Ravi Kanabar
FTI Consulting

Overview: Construction Arbitration in Europe... 11
Bruno Hardy and Arnaud Nuyts
Liedekerke Wolters Waelbroeck Kirkpatrick

The Use of Relative Valuation Methods in Investment Arbitration...... 17
Alexander Davie
FTI Consulting

Country Chapters

Austria...... 23
Christian W Konrad and Philipp A Peters
Konrad Partners

Finland...... 30
Jussi Lehtinen and Heidi Yildiz
Dittmar & Indrenius

France 37
Jean-Georges Betto, Alexandre Reynaud and Laura Canet
Betto Perben Pradel Filhol

Germany: Arbitrational Proceedings and Covid-19...... 44
Daniel Froesch
Heuking Kühn Lüer Wojtek PartGmbB

Italy 47
Emanuela Truffo
Jacobacci e Associati Law Firm

Netherlands 53
Bommel van der Bend and Stefan Derksen
De Brauw Blackstone Westbroek

Norway...... 58
Gaute Gjelsten, Aadne M Haga, Ola Ø Nisja and Kaare A Shetelig
Wikborg Rein

Portugal...... 63
Pedro Metello de Nápoles
PLMJ Law Firm

Russia 69
Alexander Vaneev, Maxim Kuzmin and Nikita Sinitsin
BGP Litigation

Spanish Constitutional Court Judgment On Public Policy: The Right Decision at the Right Moment 74
Fernando Bedoya and Daragh Brehony
Pérez-Llorca

Sweden 79
Fredrik Lundblom and Sebastian Berglind
Vinge

Ukraine 85
Oleh Marchenko
MARCHENKO PARTNERS

© Law Business Research 2020

Welcome to *The European Arbitration Review 2021*, one of *Global Arbitration Review*'s annual, yearbook-style reports.

Global Arbitration Review, for anyone unfamiliar, is the online home for international arbitration specialists everywhere, telling them all they need to know about everything that matters.

Throughout the year, *GAR* delivers pitch-perfect daily news, surveys and features, organises the liveliest events (under our GAR Live banner), covid allowing, and provides our readers with innovative tools and know-how products.

In addition, assisted by external contributors, we curate a series of regional reviews – online and in print – that go deeper into local developments than the exigencies of journalism allow. *The European Arbitration Review*, which you are reading, is part of that series. It recaps the recent past and adds insight and thought-leadership from the pen of pre-eminent practitioners from across Europe.

Across 15 chapters, and 97 pages, it is part invaluable retrospective and part primer on the characteristics of different seats, with a little crystal-ball gazing thrown in for good measure. All contributors are vetted for their standing and knowledge before being invited to take part. Together, they capture and interpret the most substantial recent international arbitration events of the year just gone, with footnotes and statistics.

This edition covers Austria, Finland, France, Italy, the Netherlands, Norway, Portugal, Russia, Spain, Sweden and Ukraine, and has overviews on econometrics; the direction of travel for construction disputes in Europe; and on the use (and non-use) of multiples for valuating things in investment treaty disputes, among other topics.

Among the discoveries for this reader:

- the theory that construction documents may have grown too complex or too technical – to explain certain trends in the statistics;
- one of the clearest explanations so far of how investment treaty tribunals approach damages and how certain cases produced their final numbers;
- the latest figures showing the levels of arbitration annually in Italy and Finland;
- that Norwegian law promotes full joint appointment – as in both sides appoint every member of the tribunal. This is an antidote to the problem of repeat appointments within a small pool of specialists; and
- the revelation that in Russia it is not – yet – a criminal offence to bribe arbitrators (though this is about to change)!

And much, much more. We hope you enjoy the review. If you have any suggestions for future editions, or want to take part in this annual project, my colleagues and I would love to hear from you. Please write to insight@globalarbitrationreview.com.

David Samuels
Publisher
October 2020

© Law Business Research 2020

Spanish Constitutional Court Judgment On Public Policy: The Right Decision at the Right Moment

Fernando Bedoya and Daragh Brehony
Pérez-Llorca

In summary

This chapter addresses the concept of public policy in relation to its use as a ground for annulling arbitral awards in Spain. It explores sources of the public policy annulment ground, and the difficulty that courts have had in defining and applying public policy in annulment proceedings. This issue has formed the basis for an ongoing debate in Spain as to whether a small minority of Spanish courts have been correctly applying public policy in their annulment of certain arbitral awards. The chapter analyses some of the most noteworthy and relevant decisions in this context, as well as the Spanish Constitutional Court's recent pronouncement on this matter.

Discussion points

- Public policy, the New York Convention, the UNCITRAL Model Law, and the Spanish Arbitration Law.
- There has been concern that a small number of Spanish courts have been incorrectly applying the public policy ground in their annulment of arbitral awards.
- The Spanish Constitutional Court overturned a lower court's annulment of an arbitral award finding that the annulment (made on grounds of public policy) violated the parties' right to effective judicial protection.
- The Spanish Constitutional Court stated in its decision that public policy cannot be used a means to re-examine the merits of the underlying dispute and that any attempt to do so violates the will of the parties to submit their dispute to arbitration.
- The Madrid Court of Arbitration, the Civil and Commercial Court of Arbitration, and the Spanish Court of Arbitration, recently came together to jointly establish the Madrid International Arbitration Center.

Referenced in this article

- Superior Court of Madrid, 5 April 2018, No. 15/2018 (Mazacruz)
- Spanish Constitutional Court, 15 June 2020, Decision No. 46/2020
- Spanish Arbitration Law 60/2003 of 23 December
- New York Convention (article V.2)
- UNCITRAL Model Law (article 36(1)(b)(ii))
- Constitution of Spain (article 24.1)
- Spanish Constitutional Court
- Spanish Supreme Court
- Superior Court of Madrid
- Madrid International Arbitration Center

Over the past few years, the Spanish arbitration community has been involved in an ongoing debate concerning the annulment of arbitral awards on grounds of public policy. In a recent judgment, the Spanish Constitutional Court provided clarity on this issue by way of its reversal of a Spanish court decision that had annulled an award for being contrary to public policy. The Constitutional Court decision should serve to further strengthen Spain's appeal as a safe and secure seat in which to conduct international arbitrations. This chapter shall analyse the public policy annulment ground and explain how this came to be an issue of interest in Spain, and further address the Constitutional Court's intervention and its recent pronouncement on this matter, as well as what this means for conducting arbitration in the future in Spain.

In fact, this judgment's publication coincides with the foundation of the Madrid International Arbitration Center ('MIAC' or 'the Center'), an innovative arbitral institution designed for international dispute resolution.

Origins of the public policy annulment ground

Public policy is a concept that is open to, and has received, both wide and narrow interpretations. The term 'public policy' appears in a number of international agreements, conventions and domestic arbitration laws. For example, article V.2 of the New York Convention provides that:

> *Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: (a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or (b) the recognition or enforcement of the award would be contrary to the public policy of that country.*

Thus, the New York Convention essentially performs a *renvoi* to local law, allowing an arbitral award to be annulled where it is contrary to the public policy of the jurisdiction of enforcement, as opposed to any international understanding of what public policy may mean.

Public policy is also referred to in the UNCITRAL Model Law, which provides in article 36(1)(b)(ii) that:

> [r]*ecognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only if the court finds that the recognition or enforcement of the award would be contrary to the public policy of this state.*

Similarly, we see reference here to the public policy of the country of enforcement. The Explanatory Memorandum to the UNCITRAL Model Law notes that the meaning of public policy 'is to be understood as serious departures from fundamental notions of procedural justice.' However, the Explanatory Memorandum does not provide any examples of what may constitute this.

© Law Business Research 2020

The UNCITRAL Model Law forms the basis for the arbitration legislation of approximately 116 jurisdictions.[1] This includes the Spanish Arbitration Law,[2] which provides in its article 41(1)(f) that '[a]n award may be set aside only if the applicant argues and proves that the award is in conflict with public policy.'

Thus, with relatively little international guidance on how one should define and interpret public policy in this context, domestic courts have had the freedom to determine the application and the outer limits of this concept. In a previous chapter, we examined how public policy is interpreted in a number of civil and common law jurisdictions, and how it is challenging to reach a common consensus on its application.[3] For example, federal courts in the United States have long adopted a more stringent standard whereby the public policy annulment ground only applies where enforcement of the award 'would violate the forum state's most basic notions of morality and justice.'[4]

In Spain, this issue has risen to the forefront because of a string of judicial decisions annulling arbitral awards for being contrary to Spanish public policy. The Spanish Supreme Court has previously stated that public policy:

> *is formed by the legal, public and private, political, moral and economic principles, which are absolutely obligatory for the preservation of social order in a population and in a particular time… [and that] [e]ssentially, what must be taken into account today, as forming part of public order, are the fundamental rights contained in the Spanish constitution.*

While this definition closely mirrors the interpretation of public policy that has been adopted by many other jurisdictions, the application and enforcement of the public policy ground by a small minority of Spanish courts has drawn criticism and sparked debate. While courts invariably recite the above definition of public policy from the Spanish Supreme Court, or a definition of similar meaning, there are concerns that the application of this doctrine has been inconsistent.

Spain, however, is not the only country that is grappling with this issue. The difficulty in putting a precise definition on public policy, as well as ensuring its uniform application, can be encapsulated by a quotation from an early English decision[5] where the court stated that:

> *Public policy… is a very unruly horse, and when once you get astride it you never know where it will carry you. It may lead you from the sound law. It is never argued at all but when other points fail.*

This might accurately describe the difficulties that some Spanish courts have had in determining the application of public policy. The fear is that a court may interpret public policy so broadly that an annulment application is converted into a form of judicial appeal.

Spanish courts' annulment of arbitral awards

The Spanish Arbitration Law establishes the procedure for the annulment of arbitration awards. Article 8 of the Spanish Arbitration Law sets out the particular courts that have jurisdiction 'over arbitration assistance and supervision'. With regard to applications to annul an award, it will be the Civil and Penal Branch of the Superior Court of Justice (TSJ) in the Autonomous Region where the arbitration award is delivered that has such power.[6] Thus, the particular TSJ (out of the 17 existing Autonomous Regions in Spain) that has jurisdiction to decide upon an annulment proceeding will be dependent on the Autonomous Region in which the arbitration is seated.

When a party brings an annulment action before the TSJ, that party must set out all of the grounds that support its application, by reference to article 41 of the Spanish Arbitration Law. The TSJ will determine the dispute based on an exchange of written pleadings, as well as the opportunity for an oral hearing, although a hearing is not obligatory in nature. In accordance with Spanish civil procedure law and the Spanish Arbitration Law, once the TSJ has issued its ruling there exists no automatic right of appeal.[7] In other words, the annulment decisions issued by the TSJ are final and binding.

There is, however, one possible option available and that is an appeal to the Spanish Constitutional Court. The Constitutional Court only hears cases of constitutional significance and there is no automatic right of appeal. Statistics published by the Constitutional Court show that in 2019 it only admitted 227 cases out of a total of 6,599 petitions submitted.[8] Therefore, there is little hope for a party seeking to appeal an annulment decision, and the TSJs' interpretations of public policy under article 41 of the Spanish Arbitration Law have, for some time now, been the only point of judicial authority on this issue.

A number of decisions issued by the Madrid Superior Court of Justice (TSJM) during a recent period have drawn criticism regarding the application of the public policy annulment ground and its proper interpretation. As already mentioned, the Spanish Supreme Court has stated that public policy includes principles that 'are absolutely obligatory for the preservation of social order' and relate today to 'fundamental rights contained in the Spanish constitution'.[9] Public policy should therefore be seen as a matter that goes to the very core of the justice system. However, the TSJ's interpretation of public policy in a number of cases would appear to have taken a different view of this standard and there has been concern that the TSJ has been using public policy to reassess the merits of the underlying dispute.

In one particular case before the TSJM,[10] a dispute had arisen between the owner and the contractor of a wind farm project as to whether the parties had included a limitation of liability clause in their contract. The contractor argued that there was a valid limitation of liability clause based on a number of emails that had been exchanged between the parties. The arbitral tribunal, by majority vote, issued an award in favour of the contractor. The owner then sought annulment under article 41(f) of the Spanish Arbitration Law arguing that the majority had 'irrationally assessed the evidence and the applicable law.' The TSJM sided with the owner in annulling the award. It held that the arbitral tribunal had failed to provide sufficient reasoning for its decision and had failed to rely on certain crucial evidence. For that reason alone the award could be annulled. Referring to public policy, the court held that 'under certain circumstances, the assessment of the evidence – as explained in the reasoning – may infringe upon due process and therefore infringe public policy.'

In a slightly earlier and more widely reported decision, the TSJM annulled an arbitral award on identical grounds – for failing to provide adequate reasoning.[11] This case concerned a long-running inheritance battle between the family members of a deceased Spanish businessperson – the Marques of Paul – a member of a prominent Spanish family who held such title until his death in 2004. At issue was the controlling stake in a Spanish company called Mazacruz, a family holding company owning a large portfolio of real estate, as well as valuable artwork and other heirlooms. On one side of the dispute was the son of the Marques who owned 28 per cent of Mazacruz, while on the other side was the second wife of the Marques and her two daughters who collectively owned 72 per cent of the company.

© Law Business Research 2020

After a lengthy court battle it was ultimately determined that the dispute would be dealt with by arbitration (as provided for by Mazacruz's by-laws). The arbitration agreement provided for a sole arbitrator who would decide the case in equity. This is relevant because the arbitrator was therefore not strictly bound by the application of Spanish law. The sole arbitrator issued an award ordering the dissolution of Mazacruz and the division of its assets (worth more than €600 million) in accordance with the respective shareholdings, as opposed to the shareholders' voting rights that disproportionally favoured the son of the Marques.

The son then commenced an annulment proceeding before the TSJM, as the arbitration had been seated in Madrid. The TSJM, analysing the sole arbitrator's award, took issue with a number of points of reasoning. The TSJM began its analysis by deciding that at least in theory an arbitrator in equity is entitled to dissolve a Spanish company, and that this in and of itself does not constitute a breach of public policy. The court then went on to examine the merits of the dispute, as one of the arguments put forward by the son was that the sole arbitrator had arbitrarily and incorrectly analysed and weighed the evidence in the arbitral award. The court stated that even awards in equity have to be reasoned, and that after a thorough revision of the award the court was persuaded that the award was not sufficiently reasoned. In reaching this conclusion, the court noted that the award did not analyse all of the evidence that was presented by the parties and set out a number of facts that it believed the arbitrator did not adequately address in its award. The court stated, in part, that:

> *The award, therefore, does not give an answer to all of the questions presented in the arbitration, it does not evaluate the evidence in its entirety, and it does not contain sufficient reasoning in order to arrive at a conclusion as important as the dissolution of a company.*

Based on this reasoning, the TSJM determined that the award had to be annulled for being contrary to public policy.

We therefore see from this case that the TSJM has adopted a certain degree of flexibility in determining the application of the public policy annulment ground. An inadequately reasoned award, or an award that does not assess all of the evidence presented by the parties (or at least evidence that the TSJM considered to be relevant in this instance), may therefore amount to a breach of Spanish public policy.

The above decisions, along with a number of other decisions from the TSJM over the past number of years,[12] have led to criticism being levelled against the court for improperly applying the public policy annulment ground. In fact, this matter has been debated and discussed at a number of Spanish arbitration conferences and events. It therefore came as a relief to many when the Spanish Constitutional Court granted petitions of appeal (*recurso de amparo*) to hear cases concerning the TSJ's annulment of arbitral awards.

The Spanish Constitutional Court's analysis of public policy

Specifically, the Constitutional Court has granted two different petitions of appeal stemming from annulled arbitral awards. One of these concerns an appeal to the TSJM decision in the Mazacruz case, which is pending a decision. The other appeal has recently been decided upon by the Constitutional Court.

In a decision dated 15 June 2020,[13] the Constitutional Court found in favour of the appellants to a TSJM decision that had annulled an arbitral award. The facts of the case are slightly unusual. In 2014, a lessor and a lessee entered into a commercial property rental agreement that included an arbitration clause for arbitration administered by and in accordance with the rules of the European Arbitration Association (EAA), an arbitration institution based in Madrid. The lessor later commenced arbitration proceedings against the lessee for alleged failure to pay rent due. A sole arbitrator was appointed who finally issued an award in favour of the lessor.

Displeased with the decision reached by the sole arbitrator, the lessee then commenced an annulment action before the TSJM. The lessee argued that they were a consumer and the arbitration clause at issue was therefore abusive in nature. The TSJM then requested that the parties comment on the matter of public policy, which they had not properly addressed in their briefs. Prior to the scheduled trial date, the parties reached a settlement agreement, of which they informed the court, and jointly requested that the case be dismissed. The court, however, refused to dismiss the case, insisting that it must proceed because there was an issue of public policy involved and there existed a 'general interest in assessing [arbitral awards] that may be contrary to public policy'.

The case proceeded without the presence of either party. The TSJM issued a decision dated 4 May 2017 in which it annulled the arbitration award for being contrary to public policy. The specific facts that the court took issue with were that the EAA had direct links with an association called Arrenta (whose object is to promote citizens' access to rental housing), which had had some involvement in the negotiation of the parties' rental agreement, including providing the wording to the arbitration clause. The EAA and Arrenta also had some directors in common, including their president. On this basis, the court found that the EAA, as an arbitral institution, lacked objectivity and the appearance of neutrality which thereby infringed public policy.

The parties then jointly presented a petition for appeal to the Constitutional Court, which the Court in turn granted. The Constitutional Court first addressed the parties' argument that the TSJM's refusal to dismiss the case upon the parties' request infringed their constitutional right to the effective protection (*tutela efectiva*) of the judges and courts.[14] The Constitutional Court agreed with the parties that the TSJM decision was unreasonable and was not based on any Spanish procedural norm. The Court noted that this was a dispute between two private parties that did not have any effect on third parties. The Court dismissed the TSJM's reasoning that parties did not have the right to terminate an annulment proceeding where an issue of public policy was involved. In fact, the Court stated, arbitration is based on the will of the parties. The parties consented for an arbitration to be commenced and for an award to be rendered. It was also up to the will of the parties as to whether or not to execute or enforce an award. It therefore could not be the case that once an award was issued (which may potentially conflict with public policy) the parties lost the will to decide how to proceed with any potential enforcement or annulment action.

The Court then came to the issue of public policy. The Court repeated the general understanding of public policy involving a mixture of legal principles that are public, private, political, moral, and economic in nature, as well as being obligatory for the conservation of an ordered society. Concerning public policy as a ground for annulment, the Court restated that annulment proceedings should be understood as an external control process of the validity of an arbitral award. This does not permit a review or a new analysis of the heart of the dispute. Addressing the TSJM's analysis of public policy, the Court stated:

© Law Business Research 2020

> *The broadening of the concept of 'public policy' that is performed by the contested resolutions leads to carrying out a substantive review of the crux of the dispute by the judicial body, which belongs in essence only to the arbitrators, thereby exceeding the scope of the annulment proceeding and disregarding the power of disposition or the justice requested from the parties to the process.*

We therefore see the Constitutional Court taking a strong stance on the meaning of public policy and its applicability in annulment proceedings. The Court placed significant importance on the will of the parties, who had consented to arbitration. An annulment proceeding should therefore not be a form of judicial appeal, but rather a narrow and limited inquiry into whether the award complies with basic and fundamental principles of justice. The Court, however, takes note of the difficulty in applying this doctrine and goes on to state:

> *Precisely because the concept of public policy is not that clear, the risk is multiplied that it be converted into a mere pretext for a judicial body to re-examine the questions debated in the arbitral proceeding, thereby stripping the arbitral institution of its task and in the end infringing the will of the parties.*

On this basis, the Constitutional Court concluded that the TSJM's decision is unreasonable, not rooted in Spanish procedural law, and an infringement of the parties' constitutional right to effective judicial protection.

This decision has received much attention in the Spanish legal community. In light of the Constitutional Court's strong statements on public policy and the importance of this doctrine not being improperly applied, this also represents a positive signal for appellants awaiting the Constitutional Court's rulings in pending cases.

Spain as an arbitration-friendly jurisdiction

The Constitutional Court's ruling should serve to further promote Spain's position as a safe and secure seat in which to conduct both domestic and international arbitrations. Arbitration practitioners can be assured that any future court intervention in the context of an annulment proceeding should be more limited and controlled in nature.

Spain already boasts a number of well-known and widely used arbitral institutions. Three such institutions (the Madrid Court of Arbitration, the Civil and Commercial Court of Arbitration, and the Spanish Court of Arbitration) have come together to form the Madrid International Arbitration Center, which commenced operations on 1 January 2020. From this date, the Madrid International Arbitration Center will administer international arbitrations that specify the Center directly in their arbitration agreement, or that specify any one of the three founding bodies in instances where the dispute is international in nature.

While arbitration continues its growth in Spain as an attractive and reliable form of alternative dispute resolution, it is likely that with the issuance of the Constitutional Court's pending decisions, the debate on public policy and its application to annulment proceedings will come to a keenly anticipated conclusion.

Notes

1 https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status.
2 Spanish Arbitration Law, 60/2003 of 23 December.
3 https://globalarbitrationreview.com/benchmarking/the-european-arbitration-review-2020/1209805/spain.
4 *Parsons & Whittemore Overseas Co., Inc. v Societe Generale de L'Industrie du Papier*, 508 F.2d 969, 974 (2d Cir.1974). Spanish Supreme Court, 5 April 1966, RJ 1966/1684.
5 *Richardson v Mellish* (1842) 2 Bingham 229 at 252.
6 Article 8(1) of the Spanish Arbitration Law.
7 Article 42 of the Spanish Arbitration Law governs the procedure for an annulment application, and subsection (2) thereof provides that '[t]he court's sentence will not be appealable.'
8 http://www.tribunalconstitucional.es/es/memorias/Estadisticas/ESTADISTICAS-2019.pdf.
9 Spanish Supreme Court, 5 April 1966, RJ 1966/1684.
10 Superior Court of Madrid, 5 April 2018, No. 15/2018.
11 Superior Court of Madrid, 8 January 2018, No. 1/2018.
12 Superior Court of Madrid, 6 April 2015, No. 27/2015; Superior Court of Madrid, 14 April 2015, No. 30/2015; Superior Court of Madrid, 23 October 2015, No. 74/2015; Superior Court of Madrid, 13 December 2018, No. 49/2018.
13 Spanish Constitutional Court, 15 June 2020, Decision No. 46/2020.
14 Article 24.1 of the Spanish Constitution: 'Every person has the right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests, and in no case may he go undefended.' In Spanish: '*Todas las personas tienen derecho a obtener la tutela efectiva de los jueces y tribunales en el ejercicio de sus derechos e intereses legítimos, sin que, en ningún caso, pueda producirse indefensión*.'

© Law Business Research 2020

Fernando Bedoya
Pérez-Llorca

Fernando Bedoya has been partner of Pérez-Llorca's litigation and arbitration practice since January 2018. He joined Pérez-Llorca in 2009, after several years of experience at an international law firm.

Fernando holds a Master's degree in Procedural Law (LLM), Universidad Complutense de Madrid; a Degree in Business Administration, Universidad Pontificia de Comillas, Madrid (ICADE E3) and a Degree in Law, Universidad Pontificia de Comillas, Madrid (ICADE E3). He speaks Spanish, English, French and Italian.

Fernando is an expert in the resolution of particularly large and complex civil and commercial disputes. He represents clients before the Spanish ordinary courts as well as before the main international and Spanish courts of arbitration. He specialises in investment arbitration, contractual disputes (engineering and construction projects, energy and real estate), directors' liability, corporate disputes, post-M&A disputes and damages arising from infringements of competition law.

Fernando is also an arbitrator and active member of the Spanish Arbitration Club, where he was coordinator of the club's under 40 section (CEA-40). He was also a member of the Co-Chairs Circle, an association that connects representatives of the main arbitration associations across the world. He is professor of civil litigation at Universidad Pontificia Comillas and of Arbitration at Universidad de Navarra, and regularly participates as a moderator or speaker at international conferences and seminars on these areas.

He has written several articles for legal journals and specialist publications. In 2017, he coordinated the new edition of the 'Spanish Arbitration Code' published by Aranzadi.

Fernando Bedoya features in various legal directories such as: *Who's Who Legal: Arbitration* (Future Leaders – Partners); Leaders League: Commercial Litigation, and International Arbitration and *Best Lawyers*: Arbitration and Mediation, and Litigation.

Daragh Brehony
Pérez-Llorca

Daragh Brehony joined Pérez-Llorca in 2019 after practising law for several years at an arbitration boutique in Madrid. He is admitted as an attorney in New York, and is also a qualified barrister in Ireland. He obtained his LLM degree from the New York University School of Law, and has been developing his career in the field of litigation and arbitration in Spain for the better part of the past five years.

Daragh specialises in commercial and investment treaty arbitration. He has acted both as counsel and as secretary to arbitral tribunals in arbitrations conducted in accordance with the rules of the ICC, ICSID, ICDR, SCC, LCIA, FIFA, and FIDIC. He has also acted as counsel in federal litigations in the United States.

Daragh is presently an associate professor at Saint Louis University Madrid where he teaches a course on business law. He is also part of the external faculty at Universidad Carlos III de Madrid where he teaches classes on contract law.

Pérez-Llorca

Paseo de la Castellana, 50
28046 Madrid
Spain
Tel: +34 91 436 04 20
Fax: +34 91 436 04 30

Fernando Bedoya
fbedoya@perezllorca.com

Daragh Brehony
dbrehony@perezllorca.com

www.perezllorca.com

Pérez-Llorca is a pre-eminent law firm in Spain. We provide high-end advice to international and domestic clients in connection with the largest and most complex transactions and disputes in Spain or matters with a Spanish component. We pride ourselves on offering unrivalled quality, service and long-term commitment to clients. The majority of our work is cross-border and often involves several jurisdictions. As an independent law firm, we approach multi-jurisdictional work by providing turnkey solutions together with other leading independent firms from Europe, the Americas or Asia. We offer full-service advice on Spanish law and operate from our offices in Madrid, Barcelona, London and New York.

Since our founding in 1983, we have experienced continued growth both in number of lawyers and practice areas. This is down to our innovation, constant adaptation to the needs of our clients and the close attention we pay to market trends.

Our litigation and arbitration practice

This team is principally dedicated to defending the interests of the client companies, with lawyers acting before all legal forums throughout Spain. This team focuses on both commercial litigation and international and domestic arbitration. Its members have broad experience in complex cases relating to unfair competition, intellectual property, energy, construction, engineering, banking, tort liability, distribution and agency contracts. In addition, partners of the firm are regularly appointed as arbitrators in significant international and domestic arbitration proceedings.

© Law Business Research 2020

an **LBR** business

ISBN 978-1-83862-250-3