

Arbitration News

JULY 2023

What Spanish courts are saying

SPAIN

- The High Court of Justice of Madrid, in its [Judgment of 6 June](#), dismisses a claim for setting aside an arbitral award and its additional award, where the claimant alleged: (i) *extra petita* inconsistency; (ii) an irrational, illogical and absurd assessment of the evidence; and (iii) a breach of public economic policy. The Court notes that an application for setting aside cannot be filed to question the correctness of an arbitrator's application of the law, or to carry out a new assessment of the evidence; rather, it is an exceptional remedy aimed at reviewing procedural defects and/or fundamental rights.
- The High Court of Justice of the Basque Country, in its [Order of 21 June](#), recognises an award issued in Paris and emphasises that, in order to refuse recognition of a foreign award on the grounds of breach of public policy, it is necessary to prove a manifest violation of an essential rule, or of a right recognised as fundamental by the legal system of the State where recognition is sought.

What is happening outside Spain

INTERNATIONAL

- The Paris Court of Appeal, in its [Judgment of 27 June](#), (summary in English available [here](#)) rules on the protection granted by bilateral investment treaties (BITs) to investors with dual nationality. The Court dismisses an application for setting aside brought by Venezuela against an award in which the arbitral tribunal declared itself to have jurisdiction, despite the fact that the two investors -of Venezuelan and Spanish nationality- had not yet acquired Spanish nationality when they first invested in Venezuela.
- The European Commission, in its [Declaration of 7 July](#), has formally proposed a coordinated withdrawal of the European Union, its Member States and Euratom, from the Energy Charter Treaty.
- The Swedish Supreme Court, in its [Judgment of 10 July](#), dismisses an appeal filed by an investor against a judgment of the Court of Svea which set aside an award ordering Spain to compensate the investor under the Energy Charter Treaty. In this case, the award had been issued before the CJEU judgment in the *Achmea* case.
- The German Supreme Court, in three [Judgments of 27 July](#), holds that, under the doctrine established by the CJEU in the *Achmea* and *Komstroy* cases, the arbitration clause contained in the Energy Charter Treaty is contrary to European Union law; and, therefore, under section 1032(2) of the German code of civil procedure, German courts can be asked to declare intra-European Union arbitration proceedings invalid.

Some interesting publications and events

ACADEMIC WORLD

- Wolters Kluwer has published the new edition of the [Journal of International Arbitration](#) (vol. 40, issue 4), which contains five multi-jurisdictional articles on international commercial and investment arbitration.

What we have been up to at Pérez-Llorca

PLL

- Ignacio Santabaya (Litigation and Arbitration partner at Pérez-Llorca) delivered, on 7 July, a workshop on cross-examination as part of the course [GoArb 2023: Navigating Your First Arbitrations](#), co-organised by International Arbitration Seminars & Courses (IASC) and Universidad Carlos III de Madrid (UC3M). Celia Cañete (Litigation and Arbitration associate at Pérez-Llorca) participated as organizer of the course.