

Pérez-Llorca

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YEAR IN REVIEW 2023

# Arbitration News



**Ignacio Santabaya**

Partner, Litigation and Arbitration at Pérez-Llorca

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**Celia Cañete and  
Javier García Urbano**

Associates, Litigation and Arbitration at Pérez-Llorca



## What Spanish courts are saying

SPAIN

- The Supreme Court, in its [Judgment of 1 December](#), analyses the effects of the declaration of the insolvency judge suspending the effectiveness of the arbitration clause during insolvency proceedings.
- The High Court of Justice of Madrid, in its [Order of 1 December](#), considers that the dispute between the Heirs of the Sultan of Sulu and the State of Malaysia is closed and, consequently, rejected the request of the State of Malaysia that the final award be declared legally non-existent.
- The High Court of Justice of the Balearic Islands, in its [Judgment of 12 December](#), sets aside an award for infringement of public procedural order, considering that the arbitral tribunal violated the principle of a bilateral hearing.



## What is happening outside Spain

INTERNATIONAL

- The Svea Court of Appeal, Stockholm, in its [Judgment of 13 December 2022](#), sets aside an award which ordered Spain to compensate an investor, applying the judgments of the CJEU in the Achmea and Komstroy cases.
- The Court of Appeal of Singapore, in its [Judgment of 6 January 2022](#), holds that the arbitrability of a dispute is determined both by the law of the seat of arbitration and by the law applicable to the arbitration agreement; and examines the procedure for establishing the latter.
- The Court of Appeal of Paris, in its [Judgment of 10 January 2023](#), sets aside an award on the grounds that there was a “close and personal” relationship between the president of the arbitral tribunal and the counsel of one of the parties. This relationship was highlighted when the president of the tribunal dedicated a eulogy to Emmanuel Gaillard, who had led the representation of one of the parties.
- The Court of Appeal of Paris, in its [Judgment of 10 January 2023](#), sets aside the award in Komstroy v. Moldova for the second time, and gives an interesting interpretation of the concept of investment. It was first set aside by [decision of 12 April 2016](#).



## Some interesting publications and events

ACADEMIC WORLD

- In December 2022, the International Chamber of Commerce published Issue 3 of the [ICC Dispute Resolution Bulletin](#).
- The Spanish Arbitration Club -40 is offering a new edition of its [Arbi-Talks](#), in which Alejandro Garro (Professor at Columbia University) talks about procedural and quasi-procedural aspects of international arbitration.
- Wolters Kluwer Arbitration published [volume XLVII of the ICCA Yearbook Commercial Arbitration \(2022\)](#).



## What we have been up to at Pérez-Llorca

PLL

- In December 2022, the Pérez-Llorca Legal Journal published the article [“The law applicable to the arbitration clause: an international landscape in contrast with the situation in Spain”](#).
- On 15 December 2022, Ignacio Santabaya (partner at Pérez-Llorca) participated as a speaker in the event [“How to deal with a construction arbitration? Survival kit for your first cases”](#), organised by MAD VYAP at the Madrid Court of Arbitration.



## What Spanish courts are saying

SPAIN

- The High Court of Justice of Madrid, in its [Judgment of 24 January 2023](#), sets aside an award on the grounds that the arbitration clause did not exist and was contrary to public policy. The arbitration clause had been set aside by the French Court of Cassation. Although the arbitration went ahead and an uncontested award of jurisdiction was granted, the High Court of Justice of Madrid considers that the prior annulment of the agreement by the French Court of Cassation must be given effect.
- The High Court of Justice of Madrid, in its [Judgment of 17 January 2023](#), partially upholds an application to set aside an arbitral award on the grounds that the arbitrator had decided on an issue that had not been submitted by the parties. Judge Santos Vijande issues an extensive dissenting opinion on the limits to judicial control of the reasoning of awards.
- The High Court of Justice of the Canary Islands, in its [Judgment of 22 December 2022](#), upholds the validity of an arbitration agreement contained in a resolution of a meeting of owners, adopted without amending the bylaws of the owners' association; and allows it to be enforced against those who did not attend the meeting of owners in question.



## What is happening outside Spain

INTERNATIONAL

- The U.S. District Court for the District of Columbia, in [two rulings on 15 February 2022](#), issues injunctions to stop Spain from preventing the enforcement of two ICSID awards.
- The U.S. Court of Appeals for the Third Circuit, in its [Judgment of 3 November 2022](#), holds that an arbitration clause arising from the exchange of e-mails between two contracting parties, is valid under the New York Convention.
- The Court of Appeal of Paris, in its [Judgment of 7 February 2023](#), rejects the application to set aside an award allegedly rendered in an equity arbitration (*ex aequo et bono*), highlighting the conditions that must be met in order to consider that an *ex aequo et bono* award has been rendered, and its possible annulment.



## Some interesting publications and events

ACADEMIC WORLD

- The International Centre for Settlement of Investment Disputes (ICSID) published its [“ICSID Caseload - Statistics”](#).
- Jus Mundi published the [Arbitration 2022 Year in Review](#), which summarises the main developments in commercial and investment arbitration in Spain in 2022.
- On 7 February, the United Nations Commission on International Trade Law (UNCITRAL) published its [report](#) on the session of Working Group III: Investor-State Dispute Settlement Reform, which took place on 23-27 January 2023 in Vienna.



## What we have been up to at Pérez-Llorca

PLL

- On 20 February, Sonsoles Centeno (partner at Pérez-Llorca) participated as a moderator in the event [“The implications of Spain withdrawing from the Energy Charter Treaty”](#) organised by FIDE.
- On 21 February, Celia Cañete (associate at Pérez-Llorca) participated as a speaker at the round table discussion on “Soft law and uniform law”, organised within the framework of the [International Congress of Estudio Mario Castillo Freyre’s Arbitration Library](#).

## What Spanish courts are saying

SPAIN

- The High Court of Justice of Murcia, in its [Judgment of 2 March 2023](#), reiterates that the time limit for filing a claim for the annulment of an arbitration award is an expiry period and not a limitation period, meaning that it is calculated from date to date, without excluding the month of August or public holidays.
- The High Court of Justice of Catalonia, in its [Judgment of 12 December 2022](#), rejects the request for the judicial appointment of an arbitrator on the grounds that the subrogation of one of the parties to the arbitration agreement had not been verified.
- The High Court of Justice of the Basque Country, in its [Judgment of 23 December 2022](#), declares that it was valid for an arbitrator to appoint liquidators, when deciding on the dissolution of a company.

## What is happening outside Spain

INTERNATIONAL

- The District Court of Amsterdam, in its [Decision of 8 March 2023](#), rejects Poland's request to order the termination of an intra-European Union arbitration. The arbitration was initiated by a Dutch investor against Poland and seated in London.
- An ICSID ad hoc committee, in its [Decision of 2 March 2023](#), confirms a €31 million award in favour of a group of European investors, in an arbitration brought against the Kingdom of Spain under the Energy Charter Treaty. The committee held that the arbitration tribunal gave substantive reasons for departing from the judgment of the Court of Justice of the European Union in the *Achmea* case.
- The Court of Appeal of Paris, in its [Judgment of 21 February 2023](#), sets aside an arbitration award on the grounds that the arbitral tribunal wrongly declined its jurisdiction by concluding that, in a dispute arising under the UK-Uruguay Bilateral Investment Treaty (“**BIT**”), the claimants were not investors nor was there an investment in accordance with the BIT.

## Some interesting publications and events

ACADEMIC WORLD

- The Spanish Arbitration Club published the 46th issue of the Spain Arbitration Review, which will soon be available on its [website](#).
- The American Review of International Arbitration (Columbia Law School) published “[The Recent Amendment of Italy's Arbitration Law and the Ongoing Review of the English Arbitration Act: Two Arbitration Reforms in Comparison](#)”, in which a comparative analysis is provided of the arbitration regulation reforms being carried out in England and Wales, on one hand, and Italy, on the other.
- Global Arbitration Review published “[Will Switzerland face treaty claims over Credit Suisse?](#)”, in which it analyses the scope for international investors to sue Switzerland for losses resulting from the sale of Credit Suisse to UBS.

## What we have been up to at Pérez-Llorca

PLL

- On 3 March 2023, Pérez-Llorca took part in the eighth edition of the Madrid Vis Pre-Moot. [The Firm hosted eight universities that competed in four hearings](#), conducted by panels composed of lawyers from within the Firm and external colleagues.
- Daragh Brehony (lawyer at Pérez-Llorca) participated as a speaker at the conference “[Corruption in International Arbitration](#)” co-organised by MAD VYAP and ACMEY in the framework of the VIII Madrid Vis Pre-Moot.



## What Spanish courts are saying

SPAIN

- The High Court of Justice of Galicia, in its [Judgment of 17 March 2023](#), annuls an arbitration award for manifest failure to provide reasons. The arbitral tribunal had found a company and its director jointly and severally liable, without the latter having been a party to the proceedings.
- The Supreme Court, in its [Judgment of 21 March 2023](#), reiterates that the suspension of the effects of an arbitration agreement by an insolvency judge does not alter the general rules of determining jurisdiction, nor does it entail a right on the part of the insolvency judge to take over the matter.
- The High Court of Justice of Madrid, in its [Judgment of 28 March 2023](#), holds that control of abusiveness and qualified control of transparency of an arbitration clause, do not apply when the contracting parties are natural persons and there is no professional-consumer relationship.



## What is happening outside Spain

INTERNATIONAL

- The High Court of England and Wales has issued [three interim payment orders](#) against Spain for the enforcement of an award, ordering the precautionary seizure of certain assets and rights of the Instituto Cervantes and the Agencia per a la Competitivitat de L'Empresa in London.
- The High Court of Australia, in its [Judgment of 12 April 2023](#), holds that Spain cannot invoke sovereign immunity to prevent the recognition and enforcement of an ICSID award, as Spain's accession to the ICSID Convention is tantamount to a waiver of such immunity.
- The Court of Cassation of France, in its [Judgment of 22 March 2023](#), dismisses a claim brought against the International Chamber of Commerce for allegedly unfair conduct on the part of the arbitration institution. The Court holds that the claimant's request was not based on the performance of the arbitration institution, but on the arbitral tribunal's handling of the arbitration.



## Some interesting publications and events

ACADEMIC WORLD

- The International Bar Association (IBA) held its annual conference in Lisbon on 13 and 14 April, on the occasion of the [24th IBA Arbitration Day](#).
- Kluwer Arbitration Blog, on 16 April, published the article [“Recognizing Annulled Awards in the U.S. Court of Appeals for the Tenth Circuit: Compañía de Inversiones Mercantiles SA v. Grupo Cementos de Chihuahua SAB de CV”](#) regarding the recognition and enforcement of awards that have been, or may be, annulled at the seat of arbitration.



## What we have been up to at Pérez-Llorca

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- On 18 April, Pérez-Llorca presented its book [“Estudios Jurídicos sobre Sostenibilidad: Cambio Climático y Criterios ESG en España y la Unión Europea”](#). The publication contains a chapter on the trends and impact of ESG investment in investor-state arbitration.
- On 18 April, Celia Cañete (lawyer at Pérez-Llorca) spoke at the conference [“Metaverso y juegos psicológicos en el arbitraje”](#).
- On 20 April, Pérez-Llorca hosted the [quarter-final rounds of the XV edition of the Moot Madrid](#).
- On 26 April, Daragh Brehony and Alberto Trueba (lawyers at Pérez-Llorca) published their article [“El arbitraje como mecanismo de resolución de controversias relacionadas con criptomonedas”](#) in *Economist & Jurist*.



## What Spanish courts are saying

SPAIN

- The High Court of Justice of Madrid, in its [Judgment of 10 April 2023](#), rejects an application for setting aside a partial award based on an alleged breach of public policy. The Court held there was no material *res judicata* arising from a claim submitted in the statement of defence to a previous arbitration and not raised by way of counterclaim. A dissenting opinion was issued, stating that the award should have been set aside for being contrary to the public policy, as well as for breach of the compensation rules.
- The High Court of Justice of the Basque Country, in its [Judgment of 25 April 2023](#), dismisses a claim for setting aside an arbitral award, stating that the decision of an *ex aequo et bono* arbitration on the grounds of a legal argument, does not affect public policy.



## What is happening outside Spain

INTERNATIONAL

- The Permanent Court of Arbitration, in its [Award of 13 March 2023](#), dismisses a EUR 700 million claim brought by the Del Valle family against the Kingdom of Spain, in relation to the collapse of Banco Popular. The Court held that the claimants were aware of the bank's financial situation at the time of the investment, and that Spain acted in accordance with Spanish and European regulations.
- The District Court of Columbia, in its [Memorandum Opinion of 29 March 2023](#), dismisses a petition for enforcement of an award against Spain, considering that, in accordance with the doctrine of the *Achmea* case, the arbitration agreement was not valid and, therefore, the court lacked jurisdiction to enforce the award. This decision contradicts two recent judgments handed down by another judge of the same court on the same issue.
- The High Court of England and Wales, in its [Judgment of 24 May 2023](#), concludes that Spain cannot invoke sovereign immunity and the precedents of the CJEU in the *Achmea* and *Komstroy* cases, to prevent the recognition and enforcement of a EUR 120 million ICSID award under the Energy Charter Treaty.



## Some interesting publications and events

ACADEMIC WORLD

- UNCITRAL Working Group III published, on 28 April 2023, its draft “[Code of conduct for arbitrators in international investment dispute resolution and commentary](#)”, which will be submitted for adoption in the [July 2023](#) sessions of the UNCITRAL Commission.
- The Energy Charter Treaty Secretariat published, on 1 May, its [statistics](#) on investment arbitrations instituted over the last 20 years under this Treaty.



## What we have been up to at Pérez-Llorca

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- Félix J. Montero (Litigation and Arbitration partner at Pérez-Llorca) participated, on 26 May, in the conference “[Early Dismissal and Preliminary Determination: Efficiency v Due Process](#)”, which took place within the framework of the 6<sup>th</sup> edition of the seminar “[International Arbitration, Current Perspectives](#)” organised by the UIA.
- Celia Cañete (Litigation and Arbitration associate at Pérez-Llorca) participated, on 28 April, in the [conference](#) organised on the occasion of the final rounds of the 2<sup>nd</sup> edition of the [Sports Arbitration Moot](#).



## What Spanish courts are saying

SPAIN

- The High Court of Justice of Madrid, in its [Judgment of 4 May](#), dismisses a claim for setting aside an arbitral award for the alleged violation of public policy, based on the absence of a necessary passive joinder. The Court emphasises that an application for setting aside cannot be alleged to review the merits of an award, and states that the reasoning of the award was not arbitrary, illogical or contrary to the principle of joinder of parties. The reporting judge Santos Vijande, issues a dissenting opinion stating that the award disregards the duty to review ex officio that the procedural relationship had been constituted in accordance with the law.
- The High Court of Justice of Madrid, in its [Judgment of 18 May](#), rejects an application for setting aside an arbitral award for the alleged violation of public policy, as the award had been issued disregarding the existence of parallel criminal proceedings. The Court referred to the fact that the arbitrator reasoned their decision to deny the suspension of the arbitration procedure due to the parallel criminal proceedings. Citing the Constitutional Court's doctrine on external review in proceedings for the setting aside of awards, the Court concluded that the statement of reasons could not be described as arbitrary, illogical, absurd or irrational.



## What is happening outside Spain

INTERNATIONAL

- Two new judgments have been issued in the saga between the Heirs of the Sultan of Jolo and the State of Malaysia. Firstly, the Paris Court of Appeal, in its [Judgment of 6 June](#), rejects a request for the recognition and enforcement of a jurisdictional award on the grounds that the arbitration agreement on which the arbitration was based is null and void, and that the arbitrator lacked jurisdiction. Secondly, the Hague Court of Appeal, in its [Judgment of 27 June](#) (summary available [here](#)), rejects an application for the recognition and enforcement of the final award for the same reasons.
- The Paris Court of Appeals, in its [Judgment of 13 June](#), rejects an application for setting aside a partial award where an arbitral tribunal decided in favour of consolidating several claims in a single arbitration proceeding, and declared itself competent over all the parties. The Court of Appeals shares its view regarding consolidation of contracts with different arbitration clauses and the extension of such clauses to non-signatory parties.



## Some interesting publications and events

ACADEMIC WORLD

- The Madrid International Arbitration Centre (MIAC) held, on 16 June, the [1st Meeting of the MIAC Working Groups](#), an event that brought together more than 200 experts at the Palace of Santoña to discuss arbitration in different sectors, with seven round tables.
- The Spanish and Ibero-American Arbitration Club (CEIA) organised, from 18 to 20 June, the XVII International Congress "[Arbitration in Times of Crisis and Disruption](#)" in Madrid, bringing together more than 500 arbitration practitioners from all over the world.



## What we have been up to at Pérez-Llorca

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- Félix J. Montero (Litigation and Arbitration partner at Pérez-Llorca) participated, on 22 June, in the congress "[Spain, a market of opportunities](#)" organised by Pérez-Llorca and IE Law School, within the framework of the Pérez-Llorca/IE Chair and in collaboration with LLYC, moderating the round table "Spain as a forum for international dispute resolution".
- Fernando Bedoya (Litigation and Arbitration partner at Pérez-Llorca) participated as a Faculty Member, on 22 June, in the practice sessions on opening statements and witness examination organised as part of the [2023 International Arbitration Skills Masterclass](#) held by the American Bar Association.



## 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 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

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- 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.





## What Spanish courts are saying

SPAIN

- The High Court of Justice of Catalonia, in its [Order of 15 June](#), establishes that a request for the partial recognition of a foreign award is not permissible when the requesting party seeks only the recognition of the provisions that benefit itself, but not those provisions of the award that are unfavourable to it.
- The High Court of Justice of Madrid, in its [Judgment of 23 June](#), rules on a claim for the judicial appointment of an arbitrator in a case in which the parties disagreed as to whether the arbitration should be in law or *ex aequo et bono*, given the existence of a pathological clause. The Court states that, in the absence of an agreement, Articles 15.1 and 35.1 of the Arbitration Act establish a certain preference for arbitration in law.
- The High Court of Justice of Galicia, in its [Judgment of 4 July](#), dismisses a request to set aside an arbitration award, in which it was alleged that the defendant had not been correctly notified of the arbitration proceedings. The Court states that notifications whose frustration is due to the passivity or lack of interest of the notified party are fully effective.



## What is happening outside Spain

INTERNATIONAL

- The UK Supreme Court, in its [Judgment of 26 July](#), rules on “Litigation Funding Agreements” (“**LFAs**”), reasoning that they constitute “Damages-based Agreements” (“**DBAs**”). The Court concludes that, for an LFA to be valid, it must comply with the legal regime applicable to DBAs.
- The Amsterdam Court of Appeal, in its [Judgment of 29 August](#) (summary available [here](#)), rejects Poland’s request to stay an arbitration initiated by a Dutch investor under the Netherlands-Poland BIT (the “**BIT**”). Poland invokes *Achmea* and considers that the arbitration agreement is contrary to EU law. The Court of Appeal notes that an intra-EU claim under the BIT is not necessarily abusive or unlawful, even if it is contrary to EU law, and that it is for the arbitral tribunal to decide on its own jurisdiction.
- The Court of Appeal of England and Wales, in its Decision of 7 September (summary available [here](#)) grants an anti-suit injunction against a Russian company, ordering it to abandon legal proceedings brought before the Russian courts in violation of the arbitration agreement. The Court of Appeal states that, although the seat of arbitration is in France and not England, and although there is no anti-suit injunction under French law, England was the appropriate forum to issue this order.



## Some interesting publications and events

ACADEMIC WORLD

- The English Commission for the reform of the Arbitration Act 1996 published, on 6 September, its [Final Report](#), which includes the following proposals: (i) the codification of the obligation of the arbitrator to disclose all circumstances that reasonably give rise to doubts as to the arbitrator’s impartiality; and (ii) the introduction of a rule by virtue of which, where the parties have not established the law governing the arbitration agreement, the applicable law shall be the law of the seat of arbitration.



## What we have been up to at Pérez-Llorca

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- Our Litigation and Arbitration team has welcomed [Felipe Nazar](#) as a new partner in the New York office. Felipe joins with more than 15 years of experience in arbitration and cross-border disputes, strengthening Pérez-Llorca’s international arbitration practice.
- On 18 September, Ignacio Santabaya (Litigation and Arbitration partner at Pérez-Llorca) participated as moderator in the round table discussion “[Grantors, concessionaires and EPC contractors: a well-matched triangle or three’s a crowd?](#)”, in the framework of the Annual Conference of the Construction and Engineering Law Club.

## What Spanish courts are saying

SPAIN

- The High Court of Justice of Madrid, in its [Judgment of 12 September](#), partially upholds a request to set aside an award in which the arbitrator had failed to rule over one of the claims. The Court holds that the failure to provide a decision with respect to one of the claims amounts to a breach of procedural public policy.
- The High Court of Justice of Madrid, in its [Judgment of 19 September](#), dismisses a request to set aside an award based on an alleged lack of impartiality of the arbitrator. According to the Court, the principle of impartiality is not violated if the arbitrator makes inappropriate or vexatious remarks during the arbitration, because the arbitrator may sometimes need to point out the bad faith or recklessness of the litigant.

## What is happening outside Spain

INTERNATIONAL

- A Hong Kong Court of First Instance, in its [Judgment of 5 October](#), rejects an application for the enforcement of an award on the grounds of the arbitrator's inattention. The Court finds that it would be contrary to public policy to allow the enforcement of an arbitral award when, during the hearings, the arbitrator (connected by videoconference) moved around several rooms, spoke to other people, and even drove a car.
- The England and Wales High Court, in its [Judgment of 6 October](#), refuses to enforce a Spanish Supreme Court's judgment ordering the insurer of the Prestige to pay compensation of EUR 855 million to Spain. It concludes that such enforcement would be irreconcilable with the previous recognition of two awards by the English courts, even though in [June 2022](#) the CJEU held that the Spanish judgment should be enforced.
- An ICSID arbitral tribunal, in its [Award of 6 October](#), finds Spain in breach of the Energy Charter Treaty and orders it to pay compensation to a group of German investors as a consequence of the reforms to the economic incentive scheme for the renewable energy sector.
- The England and Wales High Court, in its [Judgment of 23 October](#), sets aside an arbitral award against Nigeria on the grounds that it was fraudulent and contrary to public policy. The Court finds that the award had been obtained through false evidence and the bribery of witnesses, noting the particular gravity of the case and its impact on the reputation of arbitration as a dispute resolution mechanism.

## Some interesting publications and events

ACADEMIC WORLD

- The Madrid International Arbitration Center (MIAC) published new [Rules](#) that will enter into force on 1 January 2024. Among others, the new Rules incorporate the following changes: (i) the introduction of a hyper-abbreviated procedure; (ii) new regulations on the optional challenge procedure of the award; and (iii) more detailed provisions on multi-party and contract arbitrations.

## What we have been up to at Pérez-Llorca

PLL

- Joaquín Ruiz Echaury (Insurance partner at Pérez-Llorca), Felipe Nazar and Andrés Vargas (Litigation and Arbitration partner and lawyer at Pérez-Llorca) published, on 18 October, the article "[Insurance against Non-Payment of Arbitral Awards](#)", included in the latest edition of the Insurance Legal Update, published by Pérez-Llorca.
- Felipe Nazar and Celia Cañete (Litigation and Arbitration partner and lawyer at Pérez-Llorca) published, on 20 October, the legal briefing "[Third-Party Funding: Practical Considerations and Challenges](#)".
- Félix J. Montero (Litigation and Arbitration partner at Pérez-Llorca) participated as a speaker, on 27 October, on the panel "International disputes: A look at disputes in the Spain - USA - Latin America axis", held within the framework of the [Iberoamerican Forum in Madrid](#).



## What Spanish courts are saying

SPAIN

- The Provincial Court of Las Palmas, in its [Judgment of 14 July](#), considers that both the arbitral institution and the arbitrators who have acted in an arbitration proceeding have standing to legally claim the payment of fees from the parties involved in the arbitration.
- The High Court of Justice of Navarra, in its [Judgment of 9 October](#), rejects a request for the court appointment of an arbitrator, on the grounds that an arbitration clause in a company's articles of association that submits “*any dispute between the shareholders and the company or between the shareholders themselves*” to arbitration, does not include claims against a director. According to the Court, such a clause should not be interpreted extensively.
- The High Court of Justice of Madrid, in its [Judgment of 19 October](#), partially upholds a request to set aside an award for breach of public policy. The Court criticises the “*radical deficit of reasoning and assessment of the copious body of evidence in the case file*”, which leads to the partial setting aside of the award. The judgment has two separate opinions, one concurring and the other dissenting.
- The High Court of Justice of Madrid, in its [Judgment of 25 October](#), upholds a request to set aside an award on the grounds of the non-existence of an arbitration agreement. In this case, the parties signed a contract with an arbitration clause and, the following day, signed a new contract with a jurisdictional clause. The Court considers that the intention to submit the disputes to arbitration had not been established.



## What is happening outside Spain

INTERNATIONAL

- An arbitral tribunal, in its [Award issued on 5 October 2023](#), rejects the Democratic Republic of Congo's application for revision of an ICC award issued 10 years ago, under the pretext that the president of the tribunal had allegedly received bribes.
- Two new relevant decisions on sovereign immunity: (i) the Federal Court of Australia, in its [Judgment of 24 October](#), holds that the Republic of India cannot invoke immunity to prevent the enforcement of an \$111 million award; and (ii) the United States District Court for the District of Columbia, in its [Judgment of 17 November](#), holds that Russia cannot invoke immunity to prevent the enforcement of several awards worth \$60 billion, in the context of the *Yukos* case.



## Some interesting publications and events

ACADEMIS WORLD

- Jus Mundi published the guide “[Enforcement of ICSID Awards Around the World: A Guide](#)”, which analyses the regulation on the enforcement of ICSID awards in 28 jurisdictions around the world.
- Nicholas Emiliou (Advocate General of the CJEU), in his [non-binding Opinion](#) of 9 November, finds that the United Kingdom Supreme Court would have breached general principles of European Union law by allowing the enforcement of the ICSID award issued in the *Micula* case, despite the fact that the European Commission has already stated that the payment of the award would constitute State aid.
- The Madrid Bar Association launched, on [28 November](#), its Arbitration Section. In the session, the topic “Arbitration, its improvements today: new challenges to decongest Courts” was discussed.



## What we have been up to at Pérez-Llorca

PLL

- Daragh Brehony (Litigation and Arbitration lawyer at Pérez-Llorca) participated as a speaker, on 17 November, at the [Dublin International Arbitration Day 2023](#).
- Felipe Nazar (Litigation and Arbitration partner at Pérez-Llorca) published, on 22 November, his opinion article “[International arbitration in Madrid: the new Miami?](#)” in *Expansión Jurídico*.

## What Spanish courts are saying

SPAIN

- The High Court of Justice of Castilla-La Mancha, in its [Judgment of 21 November](#), grants a request for the judicial appointment of an arbitrator to decide on the nullity of the general meetings of a company. The defendant company rejected the submission of this type of dispute to arbitration and argued that the arbitration clause was not valid because it referred to the 1988 Arbitration Act. However, the Court holds that the arbitration clause should be interpreted integrally, stating that the will of the parties to submit corporate disputes to arbitration prevails.
- The High Court of Justice of Valencia, in a Decision issued in December (summary in Spanish available [here](#)), refuses to recognise a CIETAC award. The Court relies on the IBA Guidelines on Conflict of Interest and concludes that the participation of the president of the tribunal in previous proceedings between the parties, relating to the same contract, gives rise to a “reasonable doubt” as to his impartiality and, consequently, is contrary to Spanish public policy.

## What is happening outside Spain

INTERNATIONAL

- The Paris Court of Appeal, in its [Judgment of 5 December](#), analyses whether an arbitral tribunal may order the payment of interest even though it had not been requested by the parties in their pleadings. The Court establishes that, although the pleadings did not expressly mention the specific interest claimed, the arbitral tribunal had the power to order the payment of interest accrued on the payment of damages and the costs of the arbitration.

## Some interesting publications and events

ACADEMIC WORLD

- The Courts and Tribunals Judiciary of the United Kingdom published, on 12 December, “[Artificial Intelligence \(AI\) Guidance for Judicial Office Holders](#)”, which deals with the use of artificial intelligence.
- The MIAC, on 19 December, [presented its new Arbitration Rules](#), at an event that brought together more than 100 experts and professionals from the sector.
- The CEIA has published [Iurgium](#), the new edition of what was previously known as the “Spain Arbitration Review”, which includes publications of national and international interest, as well as the winning articles of the II Competition of articles on arbitration organised by CEIA -40.
- The ICC has published Issue 3 of the “[ICC Dispute Resolution Bulletin](#)”, which devotes a section to the centenary of the ICC, reviews the most relevant issues in international arbitration, and offers several practical guidelines and comments on procedural issues.
- GAR has published the fifth edition of its [Guide to Construction Arbitration](#), which compiles the main substantive and procedural issues in construction arbitration in key jurisdictions.

## What we have been up to at Pérez-Llorca

PLL

- Felipe Nazar, Alberto Trueba and Sofia Pinheiro (Litigation and Arbitration partner and lawyers at Pérez-Llorca) published, on 4 December, their article “[Análisis del nuevo Reglamento del CIAM](#)” in Diario La Ley.
- Javier Tarjuelo and Pablo Orts (Litigation and Arbitration lawyers at Pérez-Llorca) published, on 12 December, their article “[La prueba ilícita en arbitraje: algunas consideraciones tras la Sentencia del Tribunal Superior de Justicia de Madrid de 14 de junio de 2023](#)” in El Derecho.
- Celia Cañete (Litigation and Arbitration lawyer at Pérez-Llorca) participated, on 12 December, in the hybrid event “[VYAP Connect - 2023 in Review: France, Spain and Portugal](#)” co-organised by PVYAP in Paris, PTVYAP in Lisbon, and MAD VYAP in Madrid.



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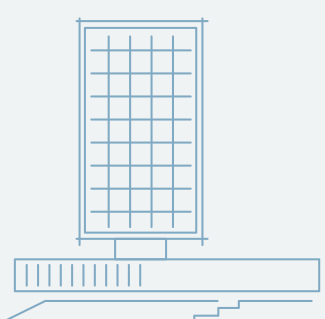
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