



Reason ahead of impulses: public order and arbitral award

Judgments of the High Court of Justice of Madrid, of 19 July 2019, and of the High Court of Justice of Catalonia, of 23 May 2019

Judicial control of arbitral awards

It is a well established principle that parties that agree to submit to arbitration are obliged to comply with the arbitrator's award.

Notwithstanding the foregoing, applicable legislation contemplates the possibility to request the judicial annulment of the award under certain very specific grounds. Such grounds mainly relate to the arbitral proceeding itself and not the substance of the award. Generally speaking, the courts are not authorized to carry out a substantive review of the award.

Violation of public order as grounds for annulment

Public order is an undetermined legal concept which can be defined as the set of principles, general governing rules and basic fundamental rights that are non-derogable by the will of the parties and that inspire the political, social and economic organization of the country where they apply.

Due to the legally undetermined nature of this ground for annulment, it is not unusual for a party that wishes to annul an arbitration award by questioning the substance of the same, to claim that the award is contrary to public order.

However, as recalled by the High Court of Justice of Madrid, when a Court examines

whether a particular award should be annulled on the grounds of a potential violation of public order, the Court should not evaluate whether the award complies with applicable regulations but analyze if the same incurs in such a lack of legal rationale that leads to arbitrariness.

Lack of legal rationale

An example of an arbitral award that incurred in a lack of legal rationale comparable to arbitrariness can be found in the judgment of the High Court of Justice of Catalonia of 23 May 2019. According to such judgment an award lacks the sufficient legal rationale when it:

- (i) determines, without any explanation, and contrary to the allegations of the parties, the prescription or limitation of actions submitted to its decision;
- (ii) arbitrarily determines the applicable law;
- (iii) rejects claims submitted to its decision with a simple "it is not relevant" motivation, without offering any further justification.

In this case, the lack of motivation of the arbitral award implied such lack of legal rationale (comparable to arbitrariness) that led the High Court of Justice of Catalonia to the annulment of the award.