

# Spanish Constitutional Court finds Madrid Superior Court violated parties' fundamental rights when denying their application to withdraw an annulment action

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In its judgment of 15 June 2020 (*extraordinary appeal - recurso de amparo 3130-2017 – Mr. Alberto and Ms. Nuria against the judgment of 4 May 2017 of the Madrid Superior Court of Justice*), the Spanish Constitutional Court held that the Superior Court of Justice of Madrid had violated the fundamental rights of the parties by denying their application to withdraw an annulment action.

## Speedread

The Spanish Constitutional Court has held that the Superior Court of Justice of Madrid violated the fundamental rights of the parties when it denied their application to withdraw an annulment action.

The parties had agreed to withdraw their application for annulment of an award, which the Madrid court denied. The court then continued the proceedings until declaring that the arbitral award was null and void for lack of impartiality, a ground that had not been raised by the parties. In particular, the Madrid court held that the annulment action was not a procedure that was within the parties' power to dispose of and that there is a general interest in resolving any matter that affects the public policy of Spain.

On extraordinary appeal, the Constitutional Court concluded that the Madrid Court had violated the parties' rights under article 24 of the Spanish constitution. (*Extraordinary appeal - Recurso de amparo 3130-2017 – Mr. Alberto and Ms. Nuria against the judgment of 4 May 2017 of the Madrid Superior Court of Justice*) (15 June 2020) .

In a judgment handed down on 15 June 2020, the Spanish Constitutional Court held that the Superior Court of Justice of Madrid had violated the fundamental rights of the parties when it denied their application to withdraw an annulment action.

A landlord and tenant dispute arose that was subject to arbitration in Madrid (in this case, the AEADE court (Asociación Europea de Arbitraje)). An arbitral award was rendered in favour of the landlord. The tenants challenged the award as they considered that the arbitration agreement was not valid and contrary to consumer protection laws. However, the Superior Court of Madrid decided that the award was contrary to the public policy of Spain for lack of impartiality of the court of arbitration and proposed that the parties file a challenge to annul the award. Neither party had ever raised this argument.

The landlord disagreed with the Madrid court's decision, arguing that the court could not raise this ground for annulment *ex officio*. However, the Madrid court dismissed the landlord's argument and ordered the proceedings to continue.

Shortly thereafter, the parties decided to settle the matter and withdraw the annulment action. The Madrid court did not accept the withdrawal and continued the proceedings until declaring that the arbitral award was null and void for lack of impartiality of the court of arbitration. In particular, the Madrid court held that the annulment action was not a procedure that was within the parties' power to dispose of and that there is a general interest in resolving any matter that affects the public policy of Spain, which is vested in the competent courts to review.

The appellants challenged this decision before the Constitutional Court because they considered that the Madrid Court had failed to state the reasons for not accepting the withdrawal of the action. They contended that this constituted a violation of their rights of defence pursuant to article 24 of the Spanish Constitution. The Constitutional Court agreed with this argument and disagreed with the Madrid court's decision not to accept the parties' withdrawal of the annulment action. The Constitutional Court concluded that the Madrid court had indeed violated the parties' right of defence under article 24 of Constitution. The broad interpretation that the Madrid court gave to the concept of public policy had prevented the appellants from withdrawing the annulment action.

In its reasoning, the Constitutional Court stated that:

"[t]he broadening of the concept of "public order" carried out by the contested resolutions to carry out a substantive review of the dispute by the judicial body, which in its essence belongs to the arbitrators only, goes beyond the scope of the annulment action and despises the powers of disposition of the parties". It also added that:

"[p]recisely because the concept of public policy is vague the risk that it becomes a mere pretext for the judicial body to re-examine the issues discussed in the arbitration multiplies, denaturing the arbitration institution and ultimately violating the parties' will. With the pretext of a purported violation of public policy, the court cannot review the merits of a matter submitted to arbitration and show what is a mere discrepancy with the exercise of the right of withdrawal of parts."

These considerations from the Constitutional Court may be interpreted as a reprimand to the practice that the Madrid court followed in former decisions, some of them already reported in Practical Law (see [Legal update, Two further Madrid Court judgments consider public order ground to set aside award](#), [Legal update, Madrid Court considers public order ground to set aside awards](#) and [Legal update, Award set aside on public policy grounds for arbitrators' failure to consider relevant evidence \(Madrid High Court of Justice\)](#)) and provide clear guidance to the Spanish Superior Courts, including the Madrid Court, for future judgments.

Case: [Extraordinary appeal - Recurso de amparo 3130-2017 – Mr. Alberto and Ms. Nuria against the judgment of 4 May 2017 of the Madrid Superior Court of Justice](#).

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