

# Spanish Constitutional Court vacate Madrid Court decision to set aside award for infringement of public policy

by *Practical Law Arbitration*, with *Cuatrecasas*

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## Speedread

*Alberto Fortun and Lucia Perez-Manglano, Cuatrecasas*

The Spanish Constitutional Court has vacated a judgment and an order (the decision) of the Madrid High Court in which the High Court had set aside an arbitral award on grounds of public policy infringement. The Constitutional Court declared the High Court's decision null and void for making an expansive interpretation of the notion of public policy and for violating fundamental due process rights. The judgment reconfirms that a broad interpretation of the notion of public policy set out in article 41 of the Spanish Law 60/2003 on Arbitration may entail an infringement of due process rights under article 24.1 of the Spanish Constitution and that the ordinary courts cannot revise the arbitrator's findings or application of the law while deciding adjudicating an annulment action. (*Amparo 3956/2018 (15 February 2021)*.)

The Spanish Constitutional Court has vacated a judgment and an order of the Madrid High Court in which it set aside an arbitral award on grounds of public policy infringement. The Constitutional Court declared the High Court's decision null and void for making an expansive interpretation of the notion of public policy as set out in article 41 of the Spanish Law 60/2003 on Arbitration (SAA) and for violating fundamental due process rights according to article 24.1 of the Spanish Constitution (SC).

A dispute arose from a family owned company (Mazacruz), which went to arbitration. The award found in favour of the now applicants (Amparo) because the arbitrator held that the main shareholder of the family company (the eldest brother) had abused his corporate rights with their partners. Accordingly, the arbitrator declared the dissolution and winding up of Mazacruz.

The Madrid High Court had held that the award was contrary to public policy because, in accordance with the Spanish Supreme Court, ordering the dissolution and winding-up of a company without concurring statutory grounds constituted an infringement of economic and corporate public policy. In order to decide if such an infringement occurred, the Madrid High Court considered that it had to review the merits of the arbitrator's decision to confirm whether the reasoning of the award was sufficient as a matter of public policy as per article 41 of the SAA or not.

Against this background, the Constitutional Court reasoned that:

- Judicial control of arbitral awards and, particularly, public policy control does not give the judicial body the possibility to supplant the arbitral tribunal in its function of applying the law. If the arbitral decision cannot be held to be arbitrary, illogical, absurd or irrational, the award is valid and does not breach the notion of public policy.
- Article 37.4 of the SAA provides that "the award shall always state the reasons", but it does not expressly require the arbitrator to decide on every argument the parties presented or to refer to each piece of evidence on which its decision was based.
- Since the arbitrator had examined and evaluated all evidence proposed by the parties, the Constitutional Court concluded that the Madrid High Court's discrepancy with the arbitrator's findings was irrelevant for the purposes of setting aside the award.

Further, awards can only be set aside due to errors in procedure; a set aside motion cannot lead to a review of the application of substantive law.

This judgment of the Constitutional Court reconfirms that a broad interpretation of the notion of public policy set out in article 41 of the SAA may entail an infringement of due process rights (*article 24.1, SC*) and the ordinary courts cannot revise the arbitrator's findings or application of the law while deciding an annulment action.

Case: *Amparo 3956/2018 (15 February 2021)*.

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