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The View From Europe: What's New in European Arbitration?

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Recent Decisions by National Courts

FRANCE

In a judgment of 17 December 2020 (docket no. RG 18/01504), the Paris Court of Appeal (the "**Court**") refused to enforce an arbitral award because the Arbitral Tribunal had designated the seat of arbitration and decided that the arbitration should be *ad hoc* instead of institutional, without first hearing submissions on these issues from the parties. The Court found that the Arbitral Tribunal's conduct met the high standard required to justify a refusal to enforce, amounting to a "manifest, effective and concrete" breach of international public policy.

Background

The case concerned a contract between a Qatari businessman, Khaled Nasser Ben Abdallah Al Misnad, and the Société d'Entreprise et de Gestion - Qatar

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("**SEGQ**"), a Qatari subsidiary of a Lebanese construction group, for the construction of two tower blocks in Doha, Qatar. Disputes arose under the contract, and the parties signed a side letter containing an arbitration clause, which provided that "*in the case of a dispute a local arbitrator(s) shall be assigned to resolve the conflict*".

Mr. Al Misnad sought to trigger this clause by filing a request for arbitration with the Qatar International Center for Arbitration ("**QICA**"). SEGQ objected, claiming that the QICA did not have jurisdiction because the Center was not named in the arbitration clause. It nevertheless nominated an arbitrator, and an Arbitral Tribunal was then duly constituted under the QICA rules (the "**First Tribunal**").

The First Tribunal held a meeting in Cairo without the parties present. Given the terms of the arbitration clause, which did not refer to a seat of arbitration nor to any arbitral institution, the First Tribunal decided that the seat of arbitration should be in Tunis, that hearings should take place in Cairo, and that the arbitration should be *ad hoc* rather than under the aegis of the QICA. Mr. Al Misnad objected to these decisions and successfully applied to the QICA to replace the President of the First Tribunal. He subsequently nominated a second arbitrator to replace his previous choice, and obtained an order from the Qatari courts allowing the QICA to appoint another third arbitrator, meaning that an entirely new arbitral tribunal was constituted under the aegis of the QICA to hear the dispute (the "**Second Tribunal**").

The First Tribunal (with one of its members having resigned and been replaced by order of a Tunisian court) nevertheless continued to sit in parallel with the Second Tribunal and in due course rendered an award ordering Mr. Al Misnad to pay SEGQ a sum of approximately EUR 22 million. The Second Tribunal also rendered its own award, ordering Mr. Al Misnad to pay SEGQ approximately EUR 6.5 million.

SEGQ then obtained an *ex parte* order enforcing the award of the First Tribunal from the Paris first instance court. On appeal, Mr. Al Misnad argued that the order for enforcement should be set aside for several reasons; namely that: (1) the First Tribunal lacked jurisdiction as SEGQ had accepted the application of the QICA Rules, so the First Tribunal did not

have jurisdiction to decide sitting in its capacity as an *ad hoc* tribunal, nor to establish the seat of the arbitration in Tunis; (2) the First Tribunal was irregularly constituted because it refused to sit under the QICA Rules, despite the parties' agreement to these rules; (3) the First Tribunal failed to comply with the mandate conferred on it because it usurped the authority of the Second Tribunal, failed to issue its award on time, and failed to comply with the procedural rules chosen by the parties; (4) the First Tribunal did not respect due process because it made a unilateral decision concerning the seat of arbitration and the *ad hoc* nature of the arbitration; and (5) the enforcement of the award would be contrary to international public policy.

In response, SEGQ maintained that the First Tribunal was the only arbitral tribunal competent to decide the dispute, was properly constituted and had taken its decision in a proper manner. The arbitration clause did not provide for a particular institutional arbitration and SEGQ had never accepted the jurisdiction of the QICA, so the First Tribunal had been correct to sit as an *ad hoc* tribunal. Further, given that the arbitration clause did not specify a seat of arbitration, the Tribunal had been at liberty to choose Tunis as the seat of the arbitration.

Decision

The Court set aside the first instance order enforcing the award. It based its decision solely on the fifth ground cited by Mr. Al Misnad, to the effect that enforcing the award would be contrary to international public policy. The Court therefore did not reach a decision on the other grounds cited by Mr. Al Misnad.

The Court noted that it was clear from the terms of the First Tribunal's procedural order that it had made the decision not to apply the QICA Rules and to designate Tunis as the seat of the arbitration without obtaining the agreement of the parties and without inviting their submissions on these points. Although SEGQ had presented its arguments regarding the way in which the arbitration clause should be interpreted, the First Tribunal had not invited Mr. Al Misnad to respond to these submissions before making its decision. The Court considered this contrary to the rules of natural justice and as showing a lack of impartiality on the part of the Tribunal.

The Court held that these breaches were sufficiently serious to amount to a breach of the fundamental values and principles which the French courts were required to uphold, even in an international context. The Court therefore found that the award should be set aside for a breach of public policy and allowed the appeal, awarding costs to Mr. Al Misnad.

Comment

Although the Court did not itself refer to this, the judgment was issued against a highly charged political backdrop. The three members of the First Tribunal had, in 2018, been the subject of criminal proceedings in Doha arising out of their role in the arbitration, and had been convicted and sentenced in absentia to three years' imprisonment. The Doha criminal court found that the arbitrators had participated in a criminal scheme to cause intentional harm to Mr. Al Misnad, who is an uncle to the current Emir of Qatar.

The ambit of the decision of the Court was considerably narrower. The Court did not find any intentional wrongdoing on the part of the First Tribunal. Significantly, it chose not to address Mr. Al Misnad's arguments that an arbitral tribunal that is appointed by an arbitral institution but then decides not to apply the institution's rules either provokes a jurisdictional objection, is not properly constituted, or fails to comply with its mandate. The Court instead focussed on the question of due process, basing its judgment on the fact that the First Tribunal made its decisions without first canvassing the views of both parties. A more difficult question would have arisen if the First Tribunal had sought the views of the parties, but then decided not to apply the relevant institutional rules despite the objection of one of the parties—one can only speculate what decision the Court would have reached in such circumstances.

The French courts have consistently emphasised the high threshold for the annulment of an arbitral award, or a refusal to enforce an award, on public policy grounds: there must be a breach that is "manifest, effective and concrete" and where the award is international, the breach must be such as to offend principles that the French courts consider to be a matter of public policy in an international (and not merely a domestic) context.

Nevertheless, on the unusual facts of this case, the Court considered that the threshold had been reached.

GERMANY

In a judgment of the Higher Regional Court Frankfurt (the "**Frankfurt Court**") from 25 March 2021, the Court upheld an ICC arbitral award that was rendered in an arbitration concerning the wrongful termination of a license and manufacturing agreement regarding a drug treating rare forms of blood cancer (decision of 16 October 2020, Docket No. 26 Sch 18/20).

Background

An Austrian pharmaceutical company specialising in drugs for the treatment of rare diseases ("**Claimant**") and a Taiwanese biotech company ("**Respondent**") entered into a license and manufacturing agreement regarding a drug treating an orphan disease in 2009. Under this agreement, Respondent granted Claimant a license to use the drug in clinical studies and to market the drug in Europe. In return, Claimant agreed to cover all costs related to retaining the necessary license for conducting clinical studies in Europe.

The dispute arose after Respondent had caused extensive delays in the drug's approval and market entry and attempted to terminate the agreement between the two parties numerous times over an alleged claim for data and documents resulting from the clinical studies. Claimant then commenced arbitration requesting declaratory relief that Respondent's terminations are invalid and without effect and in order to recover damages resulting from the delays in the drug approval process. The arbitral tribunal found that the license and manufacturing agreement was in full effect and Respondent had unlawfully attempted to terminate that agreement. The arbitral tribunal also found Respondent liable for an intentional breach of duty resulting in delays in the drug's approval and market entry. Accordingly, the tribunal ordered Respondent to pay Claimant approximately EUR 140 million in damages.

After Claimant applied for a declaration of enforceability, Respondent requested that the arbitral award be set aside. Respondent argued that the

arbitral tribunal violated its right to be heard when it ordered a report by the German Institute for Quality and Efficiency in Healthcare regarding the drug's added therapeutic benefits to not be discussed during the hearing, but in two rounds of post-hearing briefs. In determining the amount of damages, this report played a central role as it stated that the drug in question had no added therapeutic benefits, substantially lessening the amount of damages to be paid. Respondent claimed that the arbitral tribunal's denial to present the report during the hearing infringed upon Respondent's right to present its case and thus also its right to be heard and, therefore, the award should not be upheld.

Similarly, Respondent claimed that its right to be heard was violated when the arbitral tribunal visited a website of a public health services association more than a month after it had declared the proceedings closed. The arbitral tribunal subsequently relied on the information available on the website for its price calculations used to assess damages. Respondent claimed that the arbitral tribunal's reliance on this information found following the conclusion of the proceedings similarly infringed upon Respondent's right to be heard and therefore, the award should not be upheld.

Decision

In its judgment on 16 October 2020, the Frankfurt Court dismissed Respondent's claims and upheld the arbitral award.

The Frankfurt Court dismissed Respondent's claim that the arbitral tribunal violated its right to be heard when it ordered the contentious report not be discussed at the hearing, but in two rounds of post-hearing briefs. The Frankfurt Court held that the right to be heard did not require a party to be heard at the earliest opportunity, but rather the right to be heard is satisfied if the opportunity to be heard is provided eventually. The Frankfurt Court also determined that the arbitral tribunal had reserved the parties' right to be heard and the "equality of arms" principle as the order had effected both parties comparably.

Respondent had further argued that it should have been granted an opportunity to respond to Claimant's legal opinion on the report, which was submitted in its rebuttal post-hearing brief. The Frankfurt Court held that

it was not in a position to review whether the arbitral tribunal had wrongly admitted belated evidence. It drew a comparison to a corresponding rule of civil procedure that restricts such review of lower court judgments. The Frankfurt Court justified this comparison by emphasizing that the admission of belated evidence seeks to uncover the truth and the interest in determining the correct outcome is higher than the interest in observing procedural rules concerning belated evidence. The Frankfurt Court held that this reasoning should apply to the review of awards, unless there is a divergent agreement of the parties.

The Frankfurt Court also dismissed Respondent's claim that the arbitral tribunal violated its right to be heard when the arbitral tribunal visited a website following the conclusion of the proceedings and thereafter relied on information from the website. The Frankfurt Court rejected this claim, citing the arbitral tribunal's authorization "*to establish the facts of the case by all appropriate means*" (Article 25 of the ICC Rules). Thereby, the Frankfurt Court also placed emphasis on the fact that Respondent had referred the arbitral tribunal to this website. Additionally, the Frankfurt Court stated that the tribunal has statutory discretion with regard to the procedural rules absent an agreement addressing such rules between the parties (Section 1042(4) 1st sentence German code of Civil Procedure). Therefore, the Frankfurt Court found that Respondent's right to be heard was not violated and the award was upheld.

Comment

The Frankfurt Court's decision confirmed its pro-arbitration stance when reviewing arbitral awards as it affirmed both the arbitral tribunal's ability to independently establish facts and its statutory discretion regarding procedural rules. The Frankfurt Court helpfully demonstrated the necessary balancing process between uncovering the truth and adhering to procedural rules as the ability of the arbitral tribunal to act independently as truth-seekers is not limitless and can require the reopening of proceedings. However, if sufficiently connected to the proceedings and when not otherwise possible, the tribunal is entitled to independently establish the facts as provided by many arbitration rules, including Article 25 of the ICC Rules,

and the tribunal is able to allow belated evidence without fearing review by courts.

THE NETHERLANDS

In a judgment of the Court of Appeal of The Hague on 2 March 2021, the Court upheld an ICC Award that was rendered in a multi-contract arbitration (Surpass v. Bariven).

Background

Surpass Commercial Corp is a subsidiary of the state-owned China Poly Group Corporation. Bariven is a subsidiary of PDVSA, the Venezuelan state-owned oil company.

The dispute arose after Bariven left 26 purchase orders for equipment and heavy trucks unpaid. Each of the 26 purchase orders included an identical arbitration agreement providing for ICC arbitration in The Hague. Surpass argued, based on Article 9 of the ICC Rules (allowing for the possibility of multi-contract arbitration), that the parties agreed to resolve the dispute in a single ICC arbitration procedure. Subject to the conditions of Articles 6(3)-6(7) of the ICC Rules, the primary requirements under Article 9 are that (a) the arbitration agreements under which those claims are made must be compatible, and (b) all parties to the arbitration have agreed that those claims can be determined together in a single arbitration. Surpass argued that those requirements were met, while Bariven opposed this argument. The Secretary General did not use its discretion under Article 6(3) of the ICC Rules to refer the matter to the Court for its decision pursuant to Article 6(4) of the ICC Rules—a decision which would have been based on whether the same requirements ((a) and (b) mentioned above) are *prima facie* met. Consequently, the arbitration continued.

In its award of 27 May 2019, the arbitral tribunal considered that, for the sake of argument, it had to apply the criteria of Article 6(4) of the ICC Rules. The arbitral tribunal agreed that the arbitration clauses in the 26 contracts were compatible since they were identical and part of a series of nearly identical purchase agreements. The main, if not only, difference lay in the particular goods sold and the corresponding purchase prices. The arbi-

tral tribunal also found that Surpass' claims concerned general issues of fact and law between the same parties, under purchase agreements made under the same regulated bidding processes, under the same general conditions, under the same applicable law, under the same governmental corporation program and all within the same industry. From this, the arbitral tribunal found that it must be inferred, in the absence of facts to the contrary, that the 26 agreements were not only compatible with each other, but also that the parties, when concluding the 26 contracts, agreed to deal with any disputes arising from the purchase orders in a single arbitration. The arbitral tribunal, in its award of 27 May 2019, largely upheld Surpass's claims under the 26 purchase orders and also dismissed a counterclaim that Bariven had put forward. Bariven initiated setting aside proceedings before the Court of Appeal of The Hague, arguing that the parties had not agreed to the possibility of resolving multiple contracts in a single arbitration, and also on that basis, the arbitral tribunal had violated its mandate and the award was against public policy.

Decision

In its judgment of 2 March 2021, the Court of Appeal denied Bariven's request and upheld the arbitral award.

The Court of Appeal started its decision with a preliminary remark about the question the arbitral tribunal faced, namely whether it could adjudicate the claims arising from the 26 purchase agreements in a consolidated manner. It stated that it was a procedural question that directly implicated the arbitral tribunal's mandate, a question which lends itself to review under Dutch Arbitration Law. However, the Court of Appeal, in line with that principle, found that such review should be done with caution because the Court may not go as far as giving its own assessment of the application of the relevant procedural rule, and to substitute that of the arbitral tribunal in its entirety. On that basis, the Court of Appeal denied Bariven's argument that the facts and circumstances on which the arbitral tribunal based its decision that the parties agreed to multi-contract arbitration were wrong. In addition, the Court of Appeal found that the test applied by the arbitral tribunal, namely the test provided by Article

6(4) of the ICC Rules, was already a test on the margins as it is a *prima facie* test.

The Court of Appeal also found that Bariven did not argue against the application of the commentary of the Secretariat's Guide to ICC Arbitration. In both the arbitration and setting aside proceedings, Surpass had referred to the commentary of the Secretariat's Guide to ICC Arbitration on Article 6(4) of the ICC Rules which provides that consent to multi-contract arbitration may be given not only explicitly but also implicitly. According to the Secretariat's Guide to ICC Arbitration, the (implicit) consent must be determined on the basis of objective factors. According to the Guide, similarities between arbitration clauses in different contracts between the same parties provide a *prima facie* indication of consent to multi-contract arbitration. The Court of Appeal also found that Bariven, except for one minor non-material circumstance, did not argue that the above mentioned facts and circumstances on which the arbitral tribunal had based its determination of consent were wrong.

Finally, the Court of Appeal found that for the sake of argument, even if the arbitral tribunal had violated its mandate, it would not have been sufficiently serious to warrant the annulment of the arbitral award. In response to Surpass' assertion that Bariven had no interest (i.e., had suffered no harm) in arbitrating the disputes under the 26 purchase agreements in different arbitration proceedings, Bariven merely argued that the consolidation had been undertaken in spite of its non-agreement which had impaired its autonomy, and that this was by definition serious. The Court of Appeal disagreed, finding that Bariven did not indicate what interest it would have had in 26 separate arbitrations either in the arbitration or the setting aside proceedings.

Comment

Both the arbitral award and the decision of the Court of Appeal confirm the efficient use of the ICC Rules when it comes to disputes that relate to multiple contracts. In this case, the Secretary General did not refer the matter to the ICC's Court for a decision on the basis of the requirements of Article 6(4) of the ICC Rules and therefore the arbitration continued un-

interrupted. The arbitral tribunal decided nevertheless to apply the same test as provided by Article 6(4) of the ICC Rules. The decision of the arbitral tribunal and of the Court of Appeal show that when the same parties have entered into multiple contracts, with each contract containing an identical (or likely similar) ICC arbitration clause, the threshold of Article 9 of the ICC Rules is met and disputes in relation to these contracts can be submitted in a single arbitration.

SPAIN

In recent years, journals and international practitioners have repeatedly reported set asides of arbitral awards in Spain. Based on those reported cases, practitioners concluded that Spanish courts usually interfere in arbitration. This conclusion is wrong as their analysis neglects that most Spanish decisions confirmed the validity of arbitral awards and were consistent with the Spanish Arbitration Law 60/2003 ("**SAL**"), which follows the UNCITRAL Model Law and international standards. Their concerns were, however, justified because the Madrid Superior Court's approach (**"MSC"**)[1] to the review of a few arbitral awards departed from well-established principles. The Constitutional Court is the only competent judicial body that could remedy such a deviation and set binding instructions on the MSC and the other 16 Superior Courts that are competent to review motions to set aside arbitral awards in Spain. And indeed, that correction has happened very recently, endorsing Spain and, particularly, Madrid, as a seat of arbitration.

In four recent decisions (the "**Decisions**"), rendered on 15 June 2020 (STC 46/2020, *AEADE*), 15 February 2021 (STC 17/2021 *MAZACRUZ*), and 15 March 2021 (STC 55/2021 *IZO* and STC 65/2021 *BANCO SANTANDER*), the Constitutional Court annulled four judgments of the MSC in which the MSC had set aside arbitral awards. It has rectified the exorbitant deviation of the MSC and reconfirmed that courts cannot review arbitrators' decisions on the assessment of evidence or on the application

[1]The Madrid Superior Court is 1 out of 17 Superior Courts in Spain. The other 16 Superior Courts had not given rise to any concern as to the interpretation of the SAL and its conformity with the UNCITRAL Model Law and International Standards. Due to the relevance of Madrid as seat of arbitration, the position of the Madrid Superior Court is particularly relevant and the Constitutional Court reversal is significant.

of the law based on public policy grounds (STC 17/2021 *MAZACRUZ* and STC 65/2021 *BANCO SANTANDER*). The Constitutional Court has also confirmed that the principle of party autonomy controls and therefore, the parties are free to reach a settlement agreement and withdraw an annulment action (STC 46/2020, *AEADE* and STC 55/2021 *IZO*). Thus, the Constitutional Court has rejected the broad interpretation of "public policy" that the MSC applied in a handful of cases as an arbitral award can only be set aside based on public policy grounds in very exceptional circumstances. The public policy "control" does not allow the courts to substitute an arbitral tribunal's analysis and judgment with their own when reviewing the arbitrator's reasoning. The principle of party autonomy is also a guiding principle for restraining judicial intrusion.

Background

STC 46/2020, 15 June 2020, AEADE. Following non-payment under a lease agreement, arbitration commenced under the auspice of the European Arbitration Chamber ("**EAC**", in Spanish "**AEADE**") and an award was rendered for the landlord. Subsequently, the tenants filed a motion with the MSC to set aside the arbitral award, arguing that the arbitration agreement violated Spanish consumer laws. *Ex officio*, the MSC examined the possible infringement of public policy due to the EAC's lack of "objective impartiality." The parties then filed a joint motion requesting the MSC to terminate the annulment proceeding. The MSC rejected the request, given that there is a general interest in purging any awards contrary to public policy. The MSC concluded that following the initiation of annulment proceedings, in which reasons for annulment are also assessed *ex officio*, the parties cannot withdraw. The MSC set aside the award on public policy grounds as it found the arbitral institution lacked "objective impartiality". The Constitutional Court annulled the MSC judgment finding the decision not to terminate the annulment proceeding unreasonable and the interpretation of public policy too broad.

STC 17/2021, 15 February 2021, MAZACRUZ. Following the claim that Mr. Gutiérrez abused his rights as majority shareholder, the dispute was submitted to arbitration. The arbitrator resolved the dispute

by declaring the dissolution and winding up of the company. Mr. Gutiérrez filed a motion to set aside the award before the MSC, alleging that the dissolution and winding-up of the company without concurring statutory grounds is a violation of economic public policy. The MSC set aside the award holding that the arbitrator's reasoning did not comply with the standard of reasonableness, internal consistency, logical rules and absence of manifest error. After reviewing the arbitrator's assessment of evidence, the MSC concluded that the award had not (i) considered the evidence in its entirety, (ii) addressed all the issues that were raised in the arbitration, and (iii) provided a sufficient legal reasoning to reach such an important conclusion as the dissolution of the company. The Constitutional Court annulled the MSC judgment finding it unreasonable to set aside an award solely because the MSC did not agree with the arbitrator's reasoning and the interpretation of public policy too broad.

STC 55/2021, 15 March 2021, IZO. Due to non-payments, Izo Corporate S.L. (Spain) terminated its contract with Socialtech and commenced an ICC arbitration, alleging that Socialtech had breached the non-compete post-contractual clause included in the contract, and claiming the outstanding amounts. The sole arbitrator held Socialtech liable. Socialtech sought to (partially) set aside the arbitrator's decision on the violation of the non-compete clause before the MSC, arguing that his finding violated public policy and mandatory rules of competition law. Before the MSC rendered a decision on annulment, the parties jointly requested the termination of the annulment proceeding. The MSC denied the parties' request and upheld Socialtech's motion and partially set aside the award. The MSC decided that the reasoning of the award was arbitrary and thus set aside the award on public policy grounds (art. 41.2 SAL). Referring to its decision 46/2020, the Constitutional Court annulled the MSC judgment finding the decision not to terminate the annulment proceeding unreasonable and the interpretation of public policy too broad.

STC 65/2021, 15 March 2021, BANCO SANTANDER. Following the execution of a swap contract, Casa Depot S.L. ("**Casa Depot**") brought an arbitration claim *ex aequo et bono* against Banco Santander S.A. ("**Banco Santander**"). The arbitral tribunal rendered an arbitral

award partially in favour of Casa Depot, deciding that Banco Santander had breached its legal obligation of information during the pre-contractual phase. However, the tribunal did not award any damages. Casa Depot filed a set aside motion before the MSC, arguing that the arbitral award violated public policy for being arbitrary and inconsistent. The MSC partially set aside the award on public policy grounds, finding the decision inconsistent as Banco Santander was found liable but the claimant was denied compensation. The Constitutional Court annulled the MSC judgment finding (i) it unreasonable to set aside an award solely because the MSC did not agree with the arbitrator's reasoning and (ii) the interpretation of public policy too broad.

Findings

From a joint reading of the Decisions, we can draw the following findings: (1) annulment actions are not appeal mechanisms and therefore, courts cannot review the merits of the award and their intervention should be kept to a minimum; (2) the arbitrators' duty to state reasons does not affect public policy considerations, it is just a legal requirement that does not require the arbitrator to apply the law correctly or to refer to every piece of evidence or argument put forward by the parties; and (3) as the principle of party autonomy controls, the parties are free to dispose of annulment proceedings and withdraw from them.

First, the Constitutional Court emphasized that annulments do not constitute appeal proceedings. It found that proceedings to set aside awards must be limited to analysing potential procedural errors, or finding awards lack reasoning, contain incongruence and infringe on mandatory legal rules, or violate the intangibility of a previous decision.

Second, the Constitutional Court clarified that the duty to state reasons is a formal requirement to arbitral awards. The arbitrators' duty to provide reasons simply requires that an arbitral award should be reasoned in a manner that is not arbitrary, illogical, or manifestly erroneous.[2] It does

[2] Article 37.4 of the Spanish Arbitration Law (Law 60/2003) sets forth: "*The award will state the grounds upon which it is based, except for awards delivered on agreed terms pursuant to the preceding article.*" This official translation of the Spanish Arbitration Law is avail-

not require arbitrators to decide on all arguments raised by the parties, refer to the evidence they relied on to reach a decision on the facts, or to explain their preference for one piece of evidence over another.

Third, the Constitutional Court found that the parties to an annulment action may withdraw from, and request the termination of, the annulment procedure if they have no further interest in litigating. Only in exceptional cases, notably where the arbitrator decided on a matter which could not be submitted to arbitration, may the judicial court overrule the parties' agreement, continue the proceedings, and decide on the annulment of an arbitral award (STC 46/2020).

While there are probably more exceptions that should allow national courts to reject the parties' decision to terminate annulment proceedings (beyond any questions of "arbitrability"), it seems that the Constitutional Court also opened the door for the Spanish legislature to incorporate the possibility for the parties to waive their right to seek annulment into Spanish Arbitration Law. As we know, such possibility has been expressly recognized by the French legislature in art. 1522 of the French Code of Civil Proce-

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able at: https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Act_on_arbitration_(Ley_60_2003___de_arbitraje).PDF.

dure ("**FCCP**")[3] and the Swiss Arbitration Law (*Loi fédérale sur le droit international privé*) so allows it in article 192 PILA[4].

Conclusion

The judgments of the Spanish Constitutional Court confirm that the principle of minimum intervention of courts controls in arbitration. As party autonomy and arbitration go together, the Constitutional Court limited the role of courts when reviewing the validity of arbitral awards. The arbitrator's duty to state reasons is a limited minimum requirement that the legislature could decide to eliminate entirely. The Constitutional Court has held that the concept of public policy does not allow the court to review the arbitrator's assessment of evidence or a wrong application of the law, thus prohibiting an exorbitant exercise of powers. As interpreted by the Constitutional Court, the Spanish legal system of arbitration is fully consistent with the New York Convention. The Constitutional Court's endorsement of arbitration has produced immediate and positive effects on the arbitra-

[3]Article 1522 of the French Law on Arbitration (Decree No. 2011-48) states: "*By way of a specific agreement the parties may, at any time, expressly waive their right to bring an action to set aside. Where such right has been waived, the parties nonetheless retain their right to appeal an enforcement order on one of the grounds set forth in Article 1520 [].*"(https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000023430146/). Translation available at: http://www.parisarbitration.com/wp-content/uploads/2014/02/French-Law-on-Arbitration.pdf.

[4]Article 192 of the Swiss Arbitration Law states:

> *1 If none of the parties has their domicile, habitual residence or seat in Switzerland, they may, by a declaration in the arbitration agreement or by subsequent agreement, wholly or partly exclude all appeals against arbitral awards; they may limit such proceedings to one or several of the grounds listed in Article 190 paragraph 2; the right to a review under Article 190a paragraph 1 letter b may not be waived. The agreement requires the form specified in Article 178 paragraph 1.*
>
> *2 Where the parties have excluded all setting aside proceedings and where the awards are to be enforced in Switzerland, the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards applies by analogy.*

This official translation is available at: https://www.fedlex.admin.ch/eli/cc/1988/1776_1776_1776/fr

tion community. They consolidate Spain's position as a favourable seat of arbitration and ensure legal certainty in setting aside proceedings.

Legislative Developments

SWITZERLAND

On 31 May 2021, the Swiss Chambers' Arbitration Institution (SCAI) was restructured and renamed Swiss Arbitration Centre Ltd. The majority shareholder, the Swiss Arbitration Association, has taken the lead and is working closely with the Swiss Chambers of Commerce, which continue to support the Swiss Arbitration Centre as shareholders. Arbitration agreements referring to the SCAI continue to be operable and arbitrations based on such agreements will be administered by the Swiss Arbitration Centre.

At the same time, with effect as of 1 June 2021, the Swiss Rules of International Arbitration have been revised. The revisions reflect the conversion of the SCAI into the Swiss Arbitration Centre. Key changes concern multi-party and multi-contract proceedings. Further, several amendments and revisions deal with the efficiency of the proceedings, aiming to streamline proceedings, allow for paperless filings, and support remote hearings when needed. These amendments reflect current developments in international arbitration and may also be seen as a reaction to the COVID-19 pandemic.