

The High Court of Justice of Madrid has recently rendered four Judgments, annulling four different arbitration awards granted by Arbitration Courts. These Judgments arose from a discussion about the powers held by the Courts in order to annul arbitration awards.

The Judgments were rendered in November 2014, January 2015, with two rendered in April 2015.

These Judgments nullify those arbitration awards granted by the Arbitration Court of the Chamber of Commerce and Industry in Madrid. Three of them refer to conflicts arising from and between the Spanish Bank BBVA and retail customers that contracted Swaps, with the Arbitration Court issuing a judgment in favor of the Bank.

In the Judgment rendered on November 2014, the arbitration award had resolved a conflict between a Spanish company and the IFEMA in favor of the latter, a company shared at 30.72% by the Madrid Chamber of Commerce and Industry. The defendant applied to the High Court of Justice for the annulment based on the grounds of a lack of neutrality by the Arbitration Court.

The Court stated that the arbitration award shall be annulled pursuant to Article 41.1(a) of the Spanish Arbitration Law Act (lack or invalidity of the arbitration agreement) because the principle of equality was infringed when the arbitration was attributed to an institution, in this case to the Chamber of Commerce and Industry, that had an interest, or at least an indirect interest, in the results of the proceedings.

In the other three Judgments, the arbitration awards have been annulled pursuant to Article 41.1(f) on the grounds of infringement of the economic public order. The Court understood that the arbitration awards infringed imperative rules, including Article 79.3 of the Spanish Stock Market Act governing the duties of information that banks rendering this kind of investment services must adopt.

More specifically, and taking into account the Case Law stated by the Spanish High Court by virtue of the Judgment issued on 20 January 2014, the Court has stated that the arbitration awards have not considered that the relevant issue is not whether the retail client had a generic understanding of the contracted financial product or not, but the actual risks derived from the contract or the possible costs that could arise from the different possible scenarios.

Thus, the Arbitration Court has not stated clearly in the respective arbitration awards the details or circumstances by which it was considered that the contracting parties were aware about the essential issues requested by the imperative regulation or case law. For such reason, the arbitration awards fell into arbitrariness and lack of motivation infringing the public order and Article 24 of the Spanish Constitution.

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