

**Three recent decisions about the concept of public policy in relation to the  
exequatur of foreign awards**

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Spanish courts tend to favor the exequatur of foreign awards, even while they are subject to challenge before the courts of the country of origin. However, they seem to take for granted that an award that has been vacated in the country of origin is not capable of being recognized through an exequatur in Spain.

One of the most common grounds to oppose a request of exequatur in Spain is that the award violates the *public policy* within the meaning of article V.2.b of the New York Convention ("**NYC**").

The Catalonia and Madrid High Courts of Justice ("**CHCJ**" and "**MHCJ**", respectively) have issued in the last months three judgments that touch upon the notion of *public policy* in relation to requests of exequatur of foreign awards.

On 19 December 2016, the CHCJ said that the *public policy* of a country is a *variable, elastic and flexible* concept in that it is made up by the *legal principles -public and private, economic and political, moral and even religious- that are absolutely indispensable to preserve the social order at a certain country at a certain point in time.*

Therefore, according to the CHCJ, public policy is, by definition, *a relative concept, dependent on the social and political ideas of each period in history.* The CHCJ went on saying that *in the international field, the notion of public policy must be interpreted restrictively,* confirming the traditional Supreme Court distinction between domestic and international public policy.

In another decision rendered on 15 December 2016, the CHCJ claimed that the concept of public policy has a *procedural aspect* (i.e., *the constitutional principle of due process provided for in article 24 of the Spanish Constitution*) and a *material aspect* (i.e., *those principles that are commonly accepted as fundamental in a certain society*).

Finally, MHCJ handed down a decision on 28 September 2016 in which it said that public policy goes beyond *procedural fundamental rights and guarantees* and refers to *those principles, general rules and fundamental rights with a legal or economic dimension that are protected by the Spanish Constitution.*

According to the MCHJ the courts of the country where recognition of the award is sought can -under exceptional circumstances leading to a breach of the constitutional right of defence- review the general reasoning and findings of the arbitral tribunal to determine whether the public policy has been violated.

Additionally, MCHJ' judgment emphasizes that a request for exequatur of a foreign award must not be inconsistent with the attitude of the requesting party during the arbitral proceedings (*estoppel*).