

GÓMEZ JENE, Miguel, *International Commercial Arbitration in Spain*, Wolters Kluwer International, The Netherlands, 2019, 380 pp.

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Until the publication of this excellent book, there was no systematic study of international commercial arbitration in the Spanish legal doctrine. This book fills, with undoubted success, this particular gap and is already an obligatory reference in the field.

Its particular importance lies in the fact that it is mainly written from a *private international law* perspective. Therefore, questions relating to the international sources of international arbitration, the economic criterion issue by the legislator to determine when an arbitration is international (*interest of international commerce*), the arbitrability of matters, the applicable law to the arbitration agreement, the validity of asymmetrical clauses, the contract of arbitration, the international jurisdiction and the applicable law to the liability of the arbitrators, the necessary application of the Rome I Regulation by the arbitrators, the scope of application of the Brussels I Regulation *recast* to matters related to arbitration (e.g., adoption of interim measures), and, finally, questions relating to the regime of recognition and enforcement of foreign arbitral award in Spain, are -all of them- questions which has been studied in particular depth from the mentioned perspective.

The study of the above questions and others of equal relevance is done in twelve chapters. Specifically, the chapters have been distributed as follows: (1) The Importance of Arbitration in International Trade: The Spanish Perspective; (2) General Theory of International Commercial Arbitration: *Territorial* and *Transnational* Conceptions; (3) The Sources of International Commercial Arbitration; (4) The International Character

of Arbitration; (5) The Arbitrability of Matters in International Arbitration; (6) Communications, Service and Computation of Time Limits; (7) Limitation of Judicial Intervention and Court Jurisdiction for Intervention in Providing Support and Control over Arbitration; (8) The Arbitration Agreement; (9) The Arbitrators; (10) Arbitration Procedure; (11) The Arbitral Award; and (12) Judicial Review in International Commercial Arbitration.

The first three chapters delimit the legal and conceptual framework that defines, from the Spanish perspective, international commercial arbitration. At least two ideas are relevant in this context: the first idea is that, although the Spanish Arbitration Act contains certain solutions inspired by the *anational* theory of international arbitration, the truth is that Spanish case law, in interpreting the mentioned Act, has assumed a *territorial* approach. The second idea that stands out is that not only the New York Convention and the Geneva Convention can be considered as international sources of international commercial arbitration; the European Convention on Human Rights is also a source of the same. It is therefore important to consider the case law of the European Court of Human Rights in interpreting the Convention in cases involving arbitration. An important example, well developed by the author in chapter 8, is the *Suda v. Czech Republic* judgment, which interprets submission to arbitration from the perspective of article 6 of the mentioned Convention.

The remaining chapters (4 to 12), undertake a rigorous technical analysis of the rules applicable to each issue as well as an in-depth analysis of

Spanish and comparative jurisprudence dictated in the interpretation of the aforementioned rules.

In this context, among other interesting issues addressed, the following deserve special attention.

- (i) The *contract to arbitration* (chapter 9): this is the first study in Spanish doctrine on the *contract* that binds the arbitrator to the parties. The legal qualification of this contract is not a straightforward task, rather the contrary. However it must be assumed that under Spanish law, such contract must be qualified as a *sui generis* one.
- (ii) The *liability of the arbitrators* (chapter 9): it is already well known that the Spanish Supreme Court has been one of the few Supreme Courts worldwide that has condemned arbitrators for civil liability. Therefore, the author studies with particular interest this issue, making an interesting division between the areas where the responsibility of the arbitrator can be expressed. In this vein, the author delimits the responsibility of the arbitrators in those cases where the arbitrator acts in his non-judicial function and in those cases where the arbitrator acts in his judicial function. For those cases where the arbitrator acts in his judicial function, the immunity of the arbitrator must be particularly broad.
- (iii) It is also particularly relevant to note –as mentioned by the author (chapter 9)- that

the Spanish Supreme Court has assumed a “weak interpretation” of the *Kompetenz-Kompetenz* principle, in virtue of which, the judgment regarding the validity of an arbitration agreement challenged by virtue of a plea as to jurisdiction must be complete and not merely superficial.

- (iv) The relationship between EU *private international law* and arbitration is studied in particular detail throughout different chapters of the book (chapters 5, 10 and 12). In this point, special mention should be made to the strong arguments used by the author to consider - contrary to the opinion of another doctrinal sector - that the Rome I Regulation, as the imperative rule that it is, must be applied by the arbitrators in an arbitration with a seat in Europe.
- (v) Finally, in the field of recognition and enforcement of foreign arbitral awards (chapter 12), mention should be made to the special feature established by Spanish case law in this area: the possibility of applying for *non-recognition* of a foreign arbitral award as a principal claim.

The issues described above are only a few of examples that demonstrate the relevance of this book. As I pointed out at the beginning of this review, this is an essential book for those specialists interested in international commercial arbitration in general, and international commercial arbitration from the Spanish perspective in particular.