

Commercial Arbitration. Recent Decision from the Mexican Supreme Court of Justice Regarding the Constitutionality of Prohibiting a Judicial Review of the Merits of an Arbitration Award

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On December 9th, 2022, two binding case law decisions were published by the First Chamber of the Mexican Supreme Court of Justice, under numbers 1a. XXXII/2022 (10a.) and 1a. XXX/2022 (10a.), confirming the constitutionality of articles 1457, section I, paragraph b), and 1434 of the Commercial Code, as they refer to the violation of the rights to equal treatment and defense through the full opportunity to assert the rights of parties in a commercial arbitration proceeding, but do not refer to violations attributed to the arbitral decision on the merits of the award, thus confirming the judicial criteria of not allowing a judicial review of the merits of the arbitral award.

In such case law decisions, the First Chamber confirmed that the country's jurisdictional authorities are not empowered to review the merits of an arbitration award, since such power is exclusively vested in the arbitrators who exercise their contractual responsibilities, as stipulated by the parties to an arbitral proceeding.

The grounds for annulment established in articles 1457, section I, subsection b), and 1434 of the Commercial Code, which states as a basis for annulment of the arbitration award that one of the parties has not been able to exercise its rights, refers exclusively to an instrumental right of the parties to show submit case before the arbitral tribunal. For this reason, the fact that a party initiates a special lawsuit on commercial transactions and arbitration invoking this ground for annulment - but stating that it arises because the arbitral tribunal failed to evaluate certain evidence or argument - does not comport with the above mentioned hypothesis of annulment, since this implies a review of the merits of the award by the Judge.

Thus, with respect to the constitutionality of those articles, the Supreme Court's First Chamber pointed out the fact that it is not possible to analyze the merits of the arbitral decision under the protection of such legal rules. The First Chamber stated that its decision does not make arbitral proceedings unconstitutional in connection with the right to due process, applying by analogy the core of essential formalities of the procedure provided by Article 14 of the Constitution for the judicial process. This is because, although it is true that commercial



arbitration does not commonly provide for a review of the merits of the award by a different arbitral tribunal (similar to an ordinary appeal in a judicial proceeding before a public authority) it is also true that there is no legal prohibition or impossibility for the parties, when designing the arbitration proceeding, to agree on this possibility in accordance with the principle of conventionality. Also, the fact that Mexican commercial law itself does not provide for judicial review of the decision that constitutes the merits of the award through an ordinary appeal, is in accordance with the nature and purpose of arbitration as a constitutionally recognized alternative means of dispute resolution.

These case law precedents join a trend of the Mexican Supreme Court of Justice and the Collegiate Circuit Courts favoring the application of commercial arbitration, limiting the grounds for annulling awards to issues that are not substantive and establishing criteria which favor its application as an effective and recognized method of dispute resolution.