



RESEARCH ARTICLE

Legal Effect of Unreasoning Arbitral Award in Jordanian Legislation: A Comparative Study

Dr. Ammar Mahmoud Ayoub Al-Rawashed *

Faculty of Law Department: Department of Private Law University, Jerash University Jerash, Jordan

ARTICLE INFO	ABSTRACT
Received: Apr 24, 2024 Accepted: Jul 1, 2024	Reasoned arbitration award is one of the subjects that has not received adequate jurisprudential or legislative attention, despite it being considered one of the most important guarantees of the credibility of the arbitration award, which strengthens the confidence of the opponents in the arbitration award issued, and that it did not violate the fundamental rules of the law. Despite the opinion calling for expanding the powers and rulings of arbitrators that may be unclear or flawed in their reasoning, there is a call to tighten judicial oversight of these rulings that may not be clearly and precisely reasoned or justified. Most of the legislation, including Jordanian legislation, has regulated the reasoned arbitration award in the Jordanian Arbitration Law. Still, regrettably, the regulation is considered insufficient and unclear, as the law did not clearly and explicitly regulate the legal effect resulting from an unreasoned arbitration award. These rules are typically characterised by deficiency and ambiguity. Given the significance of this subject, we are conducting this study to clarify and analyse the adequacy and appropriateness of the rules concerned with regulating the legal effect of unreasoning arbitral awards.
Keywords Reasoning the arbitration award Positive effect Adverse effect	
*Corresponding Author: salahammar650@yahoo.com	

INTRODUCTION

Arbitration has typically occupied a prominent position in resolving commercial disputes that may arise between contractors or dealers. Its importance lies in the fact that it has flexible characteristics in arbitration and that it is carried out with the consent and choice of the disputing parties, compared to the negatives of resorting to the court, which is characterised by complexity, prolonging the dispute and litigation.

However, despite this, a set of fundamental principles that must be available in the judiciary still cast a shadow over arbitration, including the justification of the arbitration award "reasoning". Most legislation related to arbitration laws requires that the arbitration award be justified and reasoned when drafted, as it guarantees reliability and reassurance for the arbitrators.

Despite the importance of the independence of arbitration, there were several attempts by the judiciary, which viewed this matter negatively, to extend its authority over arbitration. Thus, controversy emerged over the issue of a reasoned, unreasoned arbitration award or an inadequate justification for an award.

Due to its significant role in settling disputes that may arise between parties to a contract, arbitration has gained prominence in society, particularly in the business world. The advantages of arbitration over the court system—like avoiding its intricacies and avoiding its tendency to drag out disputes—make arbitration significant. Nevertheless, arbitration remains clouded by a set of fundamental

principles that the judiciary must uphold, including reasoned arbitration. Since it is one of the methods to ensure that the arbitrators can rely on the decision, the majority of arbitration laws require that the arbitration award be well-reasoned when it is produced.

Despite repeated attempts to arbitrate independence from the judiciary and achieve justice in a way consistent with the consent of parties to arbitration rather than following specific law, the judiciary took this matter negatively to expand its authority over the implementation of arbitration. Controversy also arose regarding arbitral reasoning, unreasoning, and the sufficiency of the work of reasoning and justification. Therefore, from this standpoint, most legislation allows taking into account the will of individuals to waive the reasoning for the arbitration award freely, and the judiciary cannot exercise its authority unless the contracting parties agree upon it. Given the importance of this issue and the seriousness of the process of causation for the arbitration decision in the event that the judiciary imposes its authority over this ruling in terms of causation for the arbitration award, we saw the importance of studying, explaining and analysing the principle of arbitral award reasoning.

Problem Statement

It is necessary to have legal rules governing the arbitral award reasoning process so that the legal effect, whether it be an invalidation of the arbitration award or not, is not left to judicial jurisprudence to determine. The absence of explicit and clear texts outlining the consequences of an unreasoned arbitration award could cause instability in the arbitrators' legal positions. Therefore, the deficiency and ambiguity that plagued the arbitration laws regulating the arbitration process led to a debate on the reasoning of an arbitration award in light of the lack of legal rules that define and regulate the general standards and controls for the reasoning process.

Furthermore, a serious issue with the relevant judicial jurisprudence was the misunderstanding between what transpired when the facts were obtained and regarded within the reasons and justification of the rule and the mistake that occurred when the law was applied and regarded as an act of reasoning. Clarifying the legal nature of this causation is one of the research's primary goals. Another is to identify the definitions of arbitral award reasoning, its significance, and the prerequisites for it. A third goal is determining the impact of international agreements and comparative legislation on the reasoning of the arbitration award process.

The problems of this study will be answered by examining the rules of international agreements and some arbitration laws. Given the importance of the arbitral award reasoning issue and the lack of studies on this subject, we have decided to research this topic. This research will be divided into two chapters. The first chapter discusses the legal nature of the principle of arbitral award reasoning and its definition. The second chapter presents the position of international agreements and comparative legislation regarding the principle of the reasoned arbitration award.

Chapter One:

The Legal Nature of A Reasoned Arbitration Award

Without a doubt, the arbitrator's reasonable procedure of issuing an arbitration award leads to accomplishing several objectives, chief among them being the disputing parties' sense of relief from issuing a just decision. Not only does this show how much the arbitrator respected the opponent's rights, but it also allowed the defence to exercise its right to an appeal by showing that they were aware of the legal and factual grounds for the arbitrator's decision. Therefore, making decisions is not merely a formal procedure the arbitrator takes. However, reasoning is deemed as a means for the opponents before the court to verify and justify the fairness of this ruling through the sufficiency and logic that must characterise these reasons.

Therefore, reasoning constitutes a restriction on the authority of the arbitrator or on the arbitration panel whose purpose is to verify the facts and to justify the basis of the rules issued in resolving the dispute, which came as a natural result of a severe and careful examination of the elements of the case, the result of premises he was convinced of and not based on vague ideas.

Furthermore, the reasoning and justification of the arbitration award ensure the sound foundations on which the arbitrator based his decision and ensures that he does not favour one party over the other, achieving a balance between the arbitrator's freedom of conviction and not arbitrarily using this freedom.

In brief, the reasoning of an arbitration award ensures that justice is applied effectively, as deliberation leads to a good assessment of the facts, concluding them, and arriving at the truth through using the law. Given the importance of reasoning in the arbitration process, the legal nature of reasoning for the arbitration award must be stated, and this is what will be presented in the first section.

Section One:

What Is a Reasoned Arbitration Award

Reasoned awards provided parties to dispute with a more satisfactory explanation of why the arbitral tribunal decided a particular decision. Most legislation emphasises the importance of providing reasons in an award to prevent injustice or arbitrariness in reaching conclusions. Given its significance, the concept of reasoning for arbitration awards will be presented in the first section, and in the second section, the importance of reasoning will be discussed.

1. Reasoning in attribution award

From a judicial standpoint, the judge considers several factual and legal factors before deciding to end the dispute. Proof must be connected to tangible evidence, and its presence or absence must be clear. Once the case's legitimacy has been established, it must be submitted to the court in line with the applicable laws. The judge can only substantiate the conclusions drawn from his ruling by providing documentation of the methods followed. However, since they both serve the same purpose in resolving disputes, the judge's decision is binding on the arbitrator.¹

The reasoning is described as an explanation and reasons provided by the court to justify why the court favoured one opinion over the other and to refute the defences presented by the opponents.²

Some have defined it as a manifestation of the ruling's fulfilment of its duty of careful research and consideration to identify the truth revealed by its rulings.³

Reasoning is the explanation of the reasons that convinced the arbitrator to make a particular decision, including the legal arguments and factual evidence on which the ruling was based⁴.

It is described as the presentation of factual and legal evidence that upholds and defends the decision or that the reasons for the decision are the arguments made by the judge or arbitrator to support

<https://aladel.gov.ly/home/?p=1736>.¹

Haider Sadiq (1986) Explanation of the Civil Procedure Law (lectures given to students of the Judicial Institute) printed in NEOM / p. 67

Abu Al-Wafa, Ahmed (1980), Theory of Aggression in the Law of Procedures) Mansha'at Al-Ma'arif in ³ Alexandria, 1st ed., p.1.

Al-Qassas, Eid (The Judgment of Arbitration (An Analytical Study in Egyptian and Comparative Arbitration ⁴ Law), Second Edition, Cairo 2007, Dar Al-Nahda Al-Arabiya, p. 113.

their decision⁵. According to the researcher, reasoning describes what the arbitrator or arbitration panel considers when applying the law and reaching the truth.

Legislatively, in Libya, Egypt, France, and Jordan, it is primarily stated that the arbitral tribunal is required to give a reasoned award; however, they did not define what reasoning means. This definition of reasoning includes articulating the legal and factual justifications, the rationale behind granting significant requests, and the essential defences that guided the judge to his decision.

2. The importance of reasoning

Reasoning is of great importance; it ensures the arbitrators' proper performance of their duties and demonstrates the extent to which they have verified the facts of the dispute, and thus guarantees litigation before the arbitration panel are achieved. Its importance is manifested in the following:

A. The importance of reasoning for opponents

1. Strengthening the parties' trust in the arbitral award, given that reasoning serves as a tool for persuading the opposing parties—after providing them with information about the decision-making process and the reasons behind it—that the verdict is legitimate and fair⁶.
2. Adherence to restrictions that uphold rights to avoid tyranny, arbitrariness, and emotional control. The reasoning is one of his opponents' inherent rights to defence. This approach was seen to help defend rights⁷.
3. Since the act of reasoning brings about respect for the defence's rights, this principle extends beyond the right to confrontation. Rather, the right to defence is realised when the arbitrator or arbitration panel explains the justification behind his decision⁸.

B. Grounds of reasoning:

a. Explicit grounds required in reasoning:

- 1) Arbitration procedures must have a degree of security equivalent to or no less than litigation procedures before the courts.⁹
- 2) The presence of a physical element, either explicitly or implicitly¹⁰, as Article (49/1/7 and 41/B) of the Jordanian Arbitration Law and Article (41) of the Arbitration Law, which spoke about the nullity of arbitration procedures, required that the arbitration award include a refutation of the court's responses to the defences of the party against whom the claim was made in detail and without explaining how it reaches its decision. Therefore, any ruling must be reasoned and unjustified, consistent with the law, and correspond to Article 160, which specifies that a ruling must include justification as in the Code of Procedure. In Jordanian civil trials, the Article requires that the arbitral tribunal state in its ruling the reasons motivating the adoption of this ruling, the allegations and the response to them, the reasons for accepting them, and the defences presented by the opponents, which must be clear and unambiguous, as well as a statement of the legal rules on which the ruling was based and must be done. This is before the ruling is issued¹¹, and these reasons have been considered among the data that

Al-Jarhi, Muhammad (without year of publication), (Causation of Civil Judgments, Research, Judges Club, ⁵ Civil Cassation, p. 564.

Al-Fattah, Azmi, Tasbib Al-Ahkam, p. 21⁶

Al-Fattah, Azmi, Tasbib Al-Ahkam, p. 20⁷

Qazit, Muftah (causation of judgments, studies and research), website of the General People's Committee for ⁸ Justice on the Internet. <https://aladel.gov.ly/home/?p=1736>, p. 5, access date 2/2/2023.

Palestinian Court of Cassation (Ramallah) - Appeal No. 1201 of 2017 - issued on 2-22-⁹

Al-Masarwa, Youssef (2010), Causation of Judgments According to the Code of Civil Procedure, 2nd edition, ¹⁰ Dar Al-Thaqafa for Publishing and Distribution, p. 173.

Jordanian arbitration law¹¹

must be available in the media statements. The Article requires that the arbitration panel state in its ruling the reasons behind adopting this ruling, the allegations and the response to them, the reasons for accepting them, and the defences presented by the opponents clearly and unambiguously, as well as stating the legal rules on which the ruling was based explicitly in the ruling paper. This must be done before issuing the ruling. It must appear through the judge's explanation of the reasons for issuing the ruling, and it must be recorded and written. Therefore, the expression of will must be explicit¹².

- 3) Reasons shall not depend on the arbitrator's personal knowledge; they must be based on the case procedures and evidence¹³.
- 4) Applications for challenge and defences shall be submitted in an understandable, clear, and frank manner that is not waived and must be submitted to the arbitration panel correctly.
- 5) The reasons must be mentioned in the ruling documents. If it is based on reasons mentioned in other rulings, then this reasoning is considered invalid¹⁴.
- 6) Transparent, clear and understandable reasons must justify every request and every payment; otherwise, the ruling will be invalid¹⁵.
- 7) The result should be linked to the motive for this judgment¹⁶.
- 8) The reasoning for the ruling is clearly and explicitly stated in the decision and the ruling document. The arbitrator justifies the award in writing, not verbally or by gesture.
- 9) There is no requirement to write the reasoning in a specific form, whether written via electronic intelligence devices or in the traditional form.

b. Implicit grounds for reasoning:

Although the principle is that the reasoning and payment should be clear and explicit, there is an exception that the reasoning is implicitly within the following conditions:

- 1) The sufficiency of one of the reasons included in this ruling¹⁷ is due to its generality to cover issues that were not answered and responded to in the verdict.
- 2) The possibility of deriving a response to an issue from the reasons present in the ruling, provided that they are clear and explicit¹⁸.

Al-Kik, Muhammad (1988), Principles of Causation of Criminal Judgments in the Light of Jurisprudence and Judiciary 173. ¹²

Al-Aboudi, Abbas, (2000), Explanation of the Provisions of the Civil Procedure Law (Comparative Study), ¹³ Dar Al-Kutub for Printing and Publishing, Mosul, p. 385.

See (Court of Cassation Decision No. 485/Salhiyya/69 of April 19, 1970, Judicial Publication No. 1/S1/April ¹⁴ 1971, p. 23) Al-Yahd pointed out: Ali Ghassan Ahmed: Causation of Civil Judgments, research published in the Journal of the College of Law, Al-Nahrain University, Volume 12, Issue 1, 2010, p. 270

Fahmy, Hamed (1935) (Causing judgments in civil matters, Journal of Law and Economics, Fifth Year, Issue ¹⁵ 6, p. 417.

Al-Sanhouri, Abd al-Razzaq, (1981), The Mediator in Explanation of Civil Law, Sources of Obligations, ¹⁶ Volume One, Al-Aqd, 3rd Edition, p. 217.

Al-Allam Abdul Rahman, (1954), Reasoning for Judgments, research published in the Judiciary Magazine, ¹⁷ No. 4, September, p. 11.

Ahmed, Ali, (2010), Causation of Civil Judgments, research published in the Journal of the College of Law, ¹⁸ Al-Nahrain University, Volume/12/Issue 1

- 3) There is a connection between the requests, which results in the response to the rest of the related requests. If a specific request is accepted and related to many issues, it is regarded as an implicit response to these issues¹⁹.
- 4) The response should not be based on possibility or suspicion, and it should not be in a general or comprehensive manner. Still, it must be free of ambiguity, deficiency, and ambiguity²⁰.

Section Two:

The Position of International Conventions and Arab Legislation on Reasoning

Without a doubt, elucidating the position of international **conventions** and Arab legislation regarding the causation process is crucial for interpreting the legal and regulatory scenarios in legislation and agreements. We will discuss this subject in the following subsection:

1. The position of international convention and arbitration bodies on the principle of reasoning

Agreements are crucial in establishing regulations, standards, and principles for arbitrators or arbitral tribunals to attain justice. Not arbitration procedures, but clear-cut boundaries were the goal of many contracts. Did these agreements expressly state why the arbitration award was made, or did they leave room for interpretation? This will be clarified after examining the contracts that set up the arbitration procedure.

A. New York Convention of 1958

Article 3 of Chapter Three of the New York Convention of 1958 stipulates: "Each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards²¹."

Based on this text, the Convention left the decision of reasoning measures and its obligation to national legislation, while Article 8 of the European Convention on International Commercial Arbitration of 1961 stated: "The parties shall be presumed to have agreed that reasons shall be given for the award unless they (a) either expressly declare that reasons shall not be given, or (b) have assented to an arbitral procedure under which it is not customary to give reasons for awards, provided that in this case neither party requests before the end of the hearing, or if there has not been a hearing then before the making of the award, that reasons be given."²²

B. Arbitration rules established by the United Nations Committee of 1976

Article 32/ 3 of the UNCITRAL pertaining to rules of arbitration awards specifies that "3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given."²³ Additionally, The Model Law on International Commercial Arbitration of the United Nations Committee/ Article 30/31/1985 and the Amman Arab Convention on

Al-Tahwi, Mahmoud, (1999), The scope of the judge's authority to issue a judicial order in accordance with ¹⁹ the Civil and Commercial Procedures Law, New University Publishing House, Alexandria, p. 90.

Abdel Fattah, Azmi, (1984) Reasoning for judgments and the actions of judges, research published in the ²⁰ Journal of Law, Kuwait University, No. 2, No. 8, p. 423.

<http://www.moj.gov.jo/EchoBusV3.0/SystemAssets/cffd55d6-2053-4753-b20a-df1336896981.pdf>.²¹

[/ https://justice-academy.com/european-convention-on-international-commercial-arbitration-geneva](https://justice-academy.com/european-convention-on-international-commercial-arbitration-geneva).²²
[. http://www.aifa-eg.com > unistrac-ag](http://www.aifa-eg.com/unistrac-ag)²³

Commercial Arbitration of 1987 / Article 32/1, as well as the UNCITRAL Arbitration Rule (as revised in 2010) adopted the same opinion as in Article 34: 1.

The arbitral tribunal may make separate awards on different issues at different times. 2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay. 3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

C. The principle of reasoning the arbitration award

The Cairo Regional Center has approved in the developed model that the arbitration award must be reasoned. However, the Milan Chamber of Arbitration, as the American Arbitration Commission did, gave freedom to the parties' will to reason the arbitration award or not in Article 28. Based on the above, these agreements all agreed to provide reasons for the arbitration award unless otherwise agreed between the parties, unless the applicable law does not require reasoning or if the local law does not require reasoning.

2. The position of Arab legislation on the principle of reasoning

First: The position of Jordanian legislation

Even though the Jordanian legislator requires the arbitration panel or the arbitrator to provide reasons for the arbitration award in Article (41/B), as well as the right of the parties, according to Article (45), to request the arbitration panel to explain any ambiguity that occurred in its statement within the thirty days following its receipt of the arbitration award, if the arbitral tribunal fails to state the reasons or explain the arbitration award, the award is not being invalidated. The Jordanian legislator did not clearly state in Articles (48/49/50/51) the legal effect of the unreasoned arbitration award.

Second: The position of the Algerian legislator

In Article (458/13) of the amended Civil Procedure Code, the Algerian legislator requires the arbitration award to include the compelling reasons for the decision and ruling, provided that there is no agreement between the disputing parties to the contrary.

Third: Egyptian legislation:

Article 43/2 of the Egyptian Arbitration Law stipulates that the arbitration award must be reasoned unless the two parties to the arbitration agree otherwise or the law applicable to arbitration procedures does not require stating the reasons for the award²⁴.

Fourth: Qatari legislation stipulates in Article 31 of the Qatari Arbitration Law that the arbitration award must be reasoned unless the parties agree otherwise or the legal rules applicable to arbitration procedures do not require mentioning reasons²⁵.

Fifth: UNCITRAL Model Law

Article 31/1 specifies that an arbitral award shall be reasoned in principle.

These laws' fundamental tenet is that reasons for arbitration awards must be provided in a way that permits oversight of the arbitrator's work, guarantees that he is aware of all the case's components, and indicates that the reasons were instrumental in reaching the award's conclusion rather than being merely formal. These laws, meanwhile, don't specify the effects of the decision without providing reasons for the arbitration award. It necessitates the researcher, despite the abundance of legal texts emphasising the need for reasoning, particularly in the event of a party agreement on that

Law No. 27 of 1994 regarding arbitration in Egyptian civil and commercial matters²⁴
Law No. (2) of 2017 promulgating the Qatari Law of Arbitration in Civil and Commercial Matters²⁵

point, to turn to judicial jurisprudence to explain the impact of the arbitration award's lack of reasoning.

Section Three

The legal effect of the lack of reasoning in judicial jurisprudence

Even though numerous legislations required that the arbitration award be reasoned, such as the Jordanian, Egyptian, Iraqi, and Qatari Arbitration Laws, they did not indicate the legal effect resulting from not reasoning the arbitration award, which left the matter to judicial jurisprudence that supports reasoning or opposes it. Furthermore, there are no straightforward controls that determine the reasoning process and whether it is considered a procedure or not.

In jurisprudence, there has been much debate concerning the reasoning issue. Some advocated for the idea that an unreasoned arbitration award shall be deemed void, while others were against the idea. The following will be a review of these attitudes:

1. The position of the Arab judiciary on the principle of reasoning of the arbitration award

The principle of the reasoning behind an arbitration award has received some support and opposition from Arab and foreign judiciaries. Reasoning issue will be discussed in the following principles:

First: The negative impact of unreasoned arbitration award

Some courts have tightened their decisions in cases where no justifications or reasoning were attached to the arbitration award, including:

A. The position of the Jordanian judiciary

The Jordanian Court of Cassation ruled that it is mandatory to state reasons to explain the reasons upon which the arbitration award was established. It required that the arbitral tribunal's decision be reasoned and justified and not violate the provisions of Article (41) of the Arbitration Law. It ordered the arbitral tribunal to review the evidence and documents presented by the opponents. It must explain and interpret the contract by presenting all the evidence, including the summary of the arbitration agreement, the facts of the dispute and the party's claims, sayings, defences and documents, the text of the ruling (award) based on documents and evidence related to the subject of the case²⁶.

The Court of Cassation stated the considerations that must be present in the reasoned arbitration award, including:

1. Results reached by the arbitration panel shall be consistent with the premises used by the panel in its ruling.
2. Explaining acts performed by the authority, regardless of their validity or invalidity.
3. Stating the evidence and justifications for the arbitral award.
4. Discussing the evidence presented in the case.
5. Corresponding the facts with the evidence and discussing them.
6. Discussing the defences of the parties to the case regarding the essential facts of the case.
7. The result (verdict) shall be related to the legal evidence and based on them reasonably and acceptably.

The Jordanian Court of Cassation in its legal capacity, Case No.: 5766/2022, dated 12/15/2022²⁶

8. The thorough deliberation of the facts, evidence, and defences shall be detailed.

The Court of Cassation established these requirements based on the idea that, since the arbitrator's work entails judicial work, he must adhere to the judicial approach, particularly regarding the dispute resolution process. This means that the arbitration award must contain reasoning that considers the evidence, the facts, and the law so that the arbitrator's decision cannot be tarnished by a lack of reason or rendered invalid.

The Jordanian legislator in the arbitration law did not expressly stipulate the invalidity of the arbitration award; instead, Article (41/) merely specified that the arbitration award must be reasoned, even though international conventions gave the parties the right to agree not to reasoned arbitration award. In this regard, the Jordanian judiciary stipulates that the arbitration award is invalid if the arbitration award is not reasoned. This indicates that there is no connection between this matter and public order, and we also highlight the need for judicial reasoning in the arbitration decision.

It is also important to remember that the proper definition of reasoning is giving the reasons why the arbitrator or arbitration tribunal decided to apply a particular law text to the facts they concluded. The arbitral tribunal's findings and conclusions about these facts are not considered in the reasoning behind the decision; they can only support it. Similarly, it is not deemed reasoning if the decision made by the selected, incorrect legal text is applied to the inferred facts. This is because the specific and correct concept of reasoning is not made clear enough, which causes confusion between misusing the law and making a mistake in factual deductions.

However, suppose the ruling does not clarify the relationship between the facts on which the rule was established and the text of the applicable law; in that case, the rule will be deficient and lack reasoning, especially if only one reason is stated. The arbitrator's process of reasoning begins with a conviction, which he then works to consolidate and persuade the litigants or the convicted party that what he has reached is sound and systematic reasoning. Putting the facts into a legal framework also needs to be logical. The ruling is typically concluded from legal facts.

Accordingly, the lack of reasoning of an arbitral award is realised if the arbitrator or arbitral tribunal does not link the facts obtained with the legal texts.

B. Egyptian judiciary

1. In one of its rulings, the Cairo Court of Appeal stipulated that arbitrators' awards must be reasoned so that in the claim of invalidity, it can identify the defects that may affect the award and lead to its invalidation. Additionally, the reasons on which the award was based must be stated. Since violating this would constitute a formal defect that would nullify the decision. The judiciary of this court tended to consider that whenever the reasoning is distorted, ambiguous, vague, or general in general, suitable for every request, it is deemed an unreasoned rule²⁷.
2. In one of its rulings, the Egyptian Court of Cassation stated that reasoning for the arbitration award is not required when drafting it. In contrast, it is established, in the jurisprudence of this court, that the absence of reasons for an arbitration award is not considered related to public order, as Article (43) of Law 27 of 1994 regarding arbitration permitted an agreement to exempt the arbitration panel from reasoning its issued award²⁸.

This ruling addressed an important issue, which is the reasoned arbitration award. The issue of reasoning for the arbitration award is linked to public order; otherwise, it is not required to state a reason justifying it. Based on the facts reached the Egyptian Court of Cassation decided that the

Cairo Court of Appeal, 62nd Commercial District, Case No. 2240 of 111 BC, session 5/22/1992.²⁷
Egyptian cassation in Appeal No. 17259 of 77 BC - session 11/1/2016.²⁸

disputing parties have the right to exempt the arbitration panel from reasoning the award. Since the Egyptian legislator has given individuals the right to choose whether or not to reason the arbitration award, this confirms that the reasoning process is not within the public order.

C. Kuwaiti judiciary

The judiciary in the Kuwaiti Court of Cassation chose not to stress the issue of stating the reasons for the arbitration award as it does with court rulings. In this regard, the Kuwaiti Court of Cassation ruled that "what is established in the jurisprudence of this court is that the validity of the arbitrator's award shall not be measured by the same criteria by which judicial rulings are measured, as it is sufficient for the arbitration award to be considered valid if it includes among its reasons a summary of the facts concluded in the deliberation between the parties in the dispute in question And if it is correct in signing the legal rules that govern it, and it is not considered a defective rule if it includes reasons in general as long as there is no violation of the law in its subject matter.²⁹"

Accordingly, this judgement has adopted several rules: the arbitrators' decision must not adhere to the judicial method. So, the reasons for arbitration awards need not be stated strictly. As a result, while reasoning and other judicially established standards are required, they are not obligatory for the arbitration award to contain. Instead, violating the law's application was the main emphasis of this award. If the law is not applied correctly, the arbitrator's decisions will be emphasised—not because they were not justified, but rather because they are against the law.

D. Dubai Judiciary

The Dubai Court of Cassation exempted the arbitrator from complying with the regulations regarding the reasoning of judicial rulings as long as he did not violate a rule related to public order. Where its ruling affirmed, "Although the arbitrator's award must be reasoned, he is exempt from following the controls for reasoning for judicial rulings as long as he does not violate a rule related to public order... This exemption also applies to evidentiary procedures, whether they are stated in the Code of Procedure." Civil or Civil Transactions Law or in an independent law.³⁰"

Consequently, the judiciary's rulings regarding the reasoning of arbitration awards have varied between tightening, mitigating, and not requiring reasoning; however, some rulings linked the reasoning to public order. Based on the above, considering a reasoned arbitration award as a part of the public order results in the invalidation of the award. Several judicial rulings followed this path, including the Cairo Court of Appeal³¹. The Supreme Court of Libya also ruled in its decision 18/31 Q dated 2/25/1985 that the arbitration award must be reasoned. If it is not reasoned, it will result in voidness³², as the Jordanian Court of Cassation ruled³³.

Section Three: Positive effect:

Kuwaiti Cassation, Appeal No. 481 of 2011 Commercial 3 - Session 6/5/2012.²⁹

Dubai Cassation, Appeal No. 273 of 2006, Commercial Appeal, Session - 3/5/2007.³⁰

Resolution No. 69/134 dated 9/11/2004 Arbitration Journal (2009). Issue Four, October, p. 504.³¹

Arbitration Journal (2010). Issue 5, p.4³²

The Jordanian Court of Cassation, in its legal capacity, case number: 5766/2022, dated 12/15/2022.³³

The Supreme Court in the Netherlands³⁴ has ruled that failure to reason an arbitration award is not a reason for invalidation³⁵. Notably, the Egyptian Courts of Cassation also followed this approach³⁶. The recent ruling of the Spanish Constitutional Court on February 15 /2021³⁷ also declared that the review of arbitration awards by the High Courts of Justice must be interpreted restrictively, without allowing a review of the merits of the case.

Furthermore, this decision bears little resemblance to the explanations provided by judicial authorities for arbitration awards. This obligation is seen as fulfilled if the standards that were used to make the arbitration award turn out to be accurate. As a result, unlike in court decisions, the statement of reasons does not have to be very broad³⁸.

This ruling came after the Civil and Criminal Chamber of the Supreme Court of Justice in Madrid ("TSJM") issued a decree on January 8, 2018, in a lawsuit to annul an arbitration award, declaring the arbitration award invalid under Article (41/1) of Law 60. /2003, dated December 23 2003 on Arbitration ("LA"). The Chamber based its annulment of the arbitration award on a violation of public policy resulting from a breach of the right to adequate judicial protection under Article (24/1) of the Spanish Constitution due to the failure to state the reasons for the arbitration award, as well as a wrong evaluation of the evidence.

First, The foundations of the request for the enforcement of constitutional rights³⁹

1. Article 41/1 of the European Union Arbitration Law stipulates that the reason for annulling the arbitration award shall not include the arbitration award being reasoned.
2. The fact that the court issued its ruling, despite the arbitration panel not stating the reasons upon which it issued its ruling, contradicts the fact that the arbitration panel ruling differs from the judicial ruling, as the law, in this case, obliges the judiciary to state the reasons upon which it issued its judicial ruling, not its arbitral ruling. Therefore, the court imposing the law of control has to state the reasons that apply to judicial decisions related to decisions, and it contradicts the basis of the arbitration, which is the lack of obligation to use the principle of effective judicial protection (Article 24/1 of the European Union).

Article 1063 - Refusal of Leave for 192 Enforcement 1. Enforcement of an arbitral award may be refused by ³⁴
193

the President of the District Court only if the award or the manner in which it was made is manifestly
contrary
to public policy or good morals, or if enforcement is ordered notwithstanding the lodging of an appeal in
violation of article 1055, or if a penalty for non-compliance is imposed in violation of article 1056. In the
latter case, the refusal shall be limited to the enforcement of the penal sum.

Arab Arbitration Journal (2006). No. 9, Cairo, p. 270 in the case STBank v. Nannini.³⁵
Arab Arbitration Journal (2016). No. 16, previous reference, p. 155, of these decisions of the Egyptian Court ³⁶
of Cassation, numbers 4457, 4463, 4853 of the year 77 BC, session 9/11/2010, and they include that the
absence of reasoning in the ruling is not part of the public order.

The Civil and Criminal Division of the Superior Court of Justice of Madrid ("TSJM") issued a ruling on 8 ³⁷
January 2018, in an action to annul an arbitration award, declaring the arbitration award invalid under
Article (41/1) of Law 60/2003, of 23 December. /December 2003 on Arbitration ("LA"). The Chamber based
its cancellation of the arbitration award on the basis of a violation of public policy resulting from a violation of
the right to effective judicial protection under Article (24/1) of the Spanish Constitution, due to the failure to
mention the reasons for the arbitration award, as well as an incorrect assessment of the evidence.

Constitutionalism
Arbitration and public order in the case to annul arbitration awards in Spain: Review of the Constitutional ³⁸
Court ruling of February 15, 2021 <https://www.gamerobravo.com/en/arbitration-and-public-order-in-the-action-for-annulment-of-arbitral-awards-in-spain-constitutional-court-ruling-of-15-february-2021/>
<https://www.clydeco.com/en/insights/2022/11/the-annulment-of-arbitral-awards-for-violation-of>³⁹

3. Additionally, the principle of the parties' right to give reasons for the arbitration award entails interference within the narrow scope of judicial oversight, as it ruled: In the final document STC 46/2020, dated June 15, FJ 4, to which we now refer:

- Respect for the right of parties to resort to arbitration requires immaterial intervention from judicial bodies (Article 10 C) of the Los Angeles Arbitration Law.
- The scope of the claim of annulment of the arbitration award stated in Article 41 of the Los Angeles Law has been restricted⁴⁰. In fact, the ruling confirms the restrictive nature of the annulment claim, which, when adjudicating a possible violation of public policy, must be limited to reviewing the legality of the arbitration agreement, the arbitrability of the subject matter and the "procedural correctness of the arbitration proceedings".
- Judicial oversight in arbitration legislation should only ensure compliance with arbitration proceedings' rules. It does not allow for a review of the merits of the case the arbitrator decides, and it should not be considered a second court.
- It must be emphasised that the assessment by the competent judicial body of the possibility that the arbitration award is inconsistent with public policy cannot lead to a new analysis of the issue submitted to arbitration, replacing the role of the arbitrator in settling the dispute. Instead, it should be limited to a decision regarding the arbitration agreement's legality, the subject matter's arbitrability, and the arbitration proceedings' procedural correctness.
- Public order is defined as a collection of formalities and principles required for our procedural legal system from a procedural standpoint. An arbitration that deviates from these principles may not be deemed void for violating public order. Consequently, under the fundamentals of due process, the annulment procedure's sole goal can be to examine potential procedural flaws in the arbitration processes.
- In this regard, the Transitional Council cautions against the risks associated with judicial action in arbitration matters that are overly intrusive due to the enlargement of the definition of public order. Consequently, the decision challenged the benchmark established by several national courts:
- Furthermore, there is a need to impose limitations on the interpretation of the idea of public policy and a risk of overextending it as a foundation for annulling arbitral verdicts [Article 41 f) LA]. There is a chance that the parties' particular waiver of ordinary court jurisdiction (Article 24 of the European Code)⁴¹ and freedom of choice (Article 10 EC) might be violated. As a result, it must be demonstrated that the criteria established by the arbitrator cannot be substituted by the courts reviewing the annulment claim on the grounds outlined in Section 41 (1) (f) of the Los Angeles Code. The judiciary cannot replace the arbitral tribunal in enforcing the law due to a future court review of the decision and its policy compliance. It is neither a second court to examine the law and facts of the arbitration award nor a system to ensure that case law is applied correctly.
- The decision, however, only relies on the requirement outlined in Article 37/3 of the Los Angeles Law⁴² and ignores Article 24 of the Arbitration Law when it comes to the obligation

<https://www.twobirds.com/-/media/vertaling-nl-arbitragewet.pdf?la=en>⁴⁰
<https://cour-europe-arbitrage.org/arbitration-rules/>⁴¹

The arbitral tribunal shall render the final award ending the entire dispute within the period of time as⁴² agreed upon by the two parties; failing such agreement, the award shall be rendered within twelve months as of the date of arbitral tribunal is constituted and in all events the arbitral tribunal may, before the expiry of the term, extend it for additional v.1 period or periods provided that the entire [extension period] shall not exceed

to specify the reasons applicable to arbitration verdicts. Because of this, the Transitional Court declares that it is unnecessary for the arbitration ruling to thoroughly analyse every point of contention and piece of information that the parties have provided. Instead, it is sufficient that the arbitration ruling permits awareness of the standards upon which it is based.

- It should also be made clear that, in terms of the argument for arbitration awards, it is not even required to present a thorough and detailed defence of every angle and point of view that the parties may have, including the right to a fair and informed decision regardless of the result, to prevent arbitrariness and unreasonableness. In arbitration, the ruling must have components and reasoning that aren't capricious, enabling disclosure of the legal standards or equitable foundation that support the ruling.

Because it is a prerequisite for the right to effective judicial protection under Article 24 of the Criminal Code in the case of judicial decisions, the obligation to provide reasons does not have the same meaning in these other types of decisions. This requirement is found in Los Angeles Law Article 37/3 regarding arbitration awards. It is a prerequisite for adjudication by law alone, meaning that the legislator may waive it.

The Los Angeles Law's Article (37/3) merely requires that the arbitration award include a justification. It does not, however, expressly mandate that the arbitrator rule on every point of contention raised by the parties, explain the evidence he relied upon to reach his conclusion or reason his choice of particular evidence over another. Because they correspond to the limitations placed on the arbitration award resulting from the provisions of Article (41/1) of the Los Angeles Law on the grounds of annulling the arbitration award, the only legal specifications pertaining to its content are negative. This indicates that the legal provisions do not require that the reasoning be compelling or sufficient, nor that it must inevitably cover all relevant points; instead, they merely require that the arbitration award include a description of the reasons on which the decision is based. This needs to explain arbitration rulings, which are governed solely by law and are not derived from Article (24/1).

The Transitional Court explains that the term "judicial equivalent," which refers to arbitration, does not mean that it must adhere to the requirements of the duty to state reasons for judicial decisions. Instead, the term refers to the effects of the *res judicata* that can be extended to include arbitration awards when determining the basis on which it should be based in reconsidering the duty to state reasons for judicial decisions and decisions.

Lastly, the standard it employs is a kind of modification of the cancelling technique, which ought to be an extraordinary measure used for particular purposes. To attempt to incorporate a notion of public policy along the lines of Article (41/f), which merely entails a review of the arbitrator's assessment of the evidence, is irrational and arbitrary. Since there is an actual change in the cancellation process due to this evidentiary examination, it is a harsh remedy that should only be used under *de facto* isolation, fundamental rights abuses, or the defence of Spanish public order. It could also be based only on official violations.

twelvemonths, unless the parties agree on a term that is longer than that.b. If the arbitral award has not been rendered within the period of time as provided for in paragraph (a) of this article, either party may apply to the Competent Judge to give an order setting another one period or more [for rendering the award] or terminating the arbitral proceedings after [giving the opportunity] to the other party to respond. If the decision was taken to that proceedings, either party may bring an action before the court that originally has jurisdiction over the dispute.<https://www.twobirds.com/-/media/vertaling-nl-arbitragewet.pdf?la=en>

Second: Implications of the ruling of the Spanish Constitutional Court.

1. The Transitional Court guaranteed the legal certainty provided by arbitration to resolve disputes in line with what it had already decided in its previous ruling, No. 46/2020, dated June 15.
2. The Transitional Court links arbitration to implementing the principle of freedom of choice by the parties mentioned in Article 10 of the Convention, strengthening constitutional support.
3. The Transitional Court strengthens its protection through 1. Restricting the procedures taken by the judicial courts charged with deciding on the lawsuit related to the cancellation of the arbitration award, as well as 2. Clarifying the criteria for the duty to state the necessary reasons for arbitration decisions.
4. By definitively establishing Spain's status as a venue for international arbitration, the decision marks a significant turning point in the development of arbitration in Spain. Given the legal certainty provided by the new standards applicable to technical cooperation, as well as the competitiveness and efficiency in managing international arbitration processes offered by the recently established Madrid Centre for International Arbitration, this decision to ratify technical cooperation represents the final push for international investors to choose Spain as a reference seat for arbitration.

Third: Arguments supporting the absence of justification for the arbitration award.

1. The individual performing arbitration work does not have to be knowledgeable about the legal system. He might work as a teacher, engineer, or administrator. As a result, he renders decisions much like a judge or attorney. Consequently, in light of this, the arbitration award does not contain a clause requiring justification for decisions⁴³.
2. National courts are not obligated to review the case's merits and rectify any possible flaws in the arbitration award⁴⁴. The Basque Supreme Court of Justice's decision from April 19, 2012, specifically said that judges could only annul arbitration awards in truly exceptional cases and that their reasoning should have a "reduced role that limits its operability, consistent with its nature." Additionally, the decision could only be made based on a "limited concept of public policy."
3. Arbitration awards should be considered final; therefore, the judicial review of arbitration awards should be kept to a minimum.
4. For an arbitration award to be declared null and void, it must be "arbitrary, illogical, absurd or irrational."
5. The court's role at the annulment stage is not to replace the arbitrator in settling the dispute, as it is not possible to conduct a new analysis of previously decided issues.
6. The primary role of the judiciary is to verify that arbitrators respect due process and procedural safeguards⁴⁵.

Belqadi, Mohamed (Causing the Arbitration Ruling in Algerian and Comparative Legislation) 2011, ⁴³ Communication in the Humanities and Social Sciences, Issue 28/June/p. 32
<https://www.clydeco.com/en/insights/2022/11/the-annulment-of-arbitral-awards-for-violation-of>⁴⁴
<https://www.clydeco.com/en/insights/2022/11/the-annulment-of-arbitral-awards-for-violation-of>⁴⁵

CONCLUSION

Even though the legal texts required the reasoning process since they impacted court decisions and paved the way for judicial jurisprudence regarding the penalty resulting from failure to reason the arbitration award, however, international conventions and national legislation did not specify the penalty resulting from failure to attach the arbitration award with reasons justifying its issuance. Specific legislations rendered the arbitration award null and void for lack of reasoning, while other provisions retained their validity when it was unreasoned.

RESULTS:

The most significant findings of this study are as follows:

1. There is no comprehensive definition for reasoning.
2. The reasoning of an arbitration award provided the litigants with a sense of protection and trust in arbitration. The grounds that must be met in reasoning are not based on specific criteria. International accords mandated the reasoning procedure. The arbitration procedure was mandated by legislation under arbitration laws. There is an absence of precise legal regulations outlining the consequences of the arbitration award's lack of reasoning. There is an inconsistency in court rulings regarding the arbitration award's validity and invalidity.
3. There is confusion between ascertaining the facts and misunderstandings in implementing the legislation and stating the reason for the arbitral award.

Recommendations:

Based on the previous results reached, the recommendations will be as follows:

1. Establish a comprehensive definition of the reasoning.
2. Establishing legal rules requiring arbitrators to inform parties to arbitration about their right to waive reasoning for the arbitration award or for this reasoning to be in specific locations.
3. Setting clear standards that clarify the principles that must be applied in the reasoning process.
4. Clarifying the legal effect of the reasoning process, whether nullification or validation.
5. Concluding international agreements to set regulations regarding the legal effect of reasoning.
6. Establishing special rules to eliminate confusion between the issue of reasoning, obtaining facts, and applying the law.
7. The reasoning for arbitration rulings should be based on a theoretical formulation to ensure that judgment is not based on whims.

REFERENCES

1. Haider Sadiq (1986) Explanation of the Civil Procedure Law (lectures presented to students of the Judicial Institute) printed in NEOM
2. Abu Al-Wafa, Ahmed (1980), The Theory of Aggression in the Law of Procedures) Ma'anfaat Al-Ma'arif in Alexandria, 1st edition,
3. Al-Qassas, Eid (2007) Arbitration Ruling (An Analytical Study in Egyptian and Comparative Arbitration Law), Second Edition, Cairo, Dar Al-Nahda Al-Arabiya,
4. Al-Jarhi, Muhammad (without year of publication), (Causing Civil Judgments), Research, Judges Club, Civil Cassation,

5. Azmy Abdel Fattah (1983), Reasoning for Judgments and the Work of Judges, 1st edition, Cairo University Press,.
6. Azmi, Muftah (causation of judgments, studies and research, website of the General People's Committee for Justice on the Internet. p. 5, date of access 2/2/2023).
7. Al-Masarwa, Youssef (2010), Causation of Judgments According to the Code of Civil Procedure, 2nd edition, Dar Al-Thaqafa for Publishing and Distribution,.
8. Al-Kik, Muhammad (1988), Principles of Causation of Criminal Judgments in the Light of Jurisprudence and Judiciary
9. Al-Aboudi, Abbas, (2000), Explanation of the Provisions of the Civil Procedure Code (Comparative Study), Dar Al-Kutub for Printing and Publishing, Mosul,
10. Fahmy, Hamed (1935) (Causing Judgments in Civil Matters, Journal of Law and Economics, Fifth Year, Issue 6/.
11. Al-Sanhouri, Abdel-Razzaq, (1981), The Mediator in Explanation of Civil Law, Sources of Obligations, Volume One, Contract, 3rd ed.,
12. Al-Allam Abdul Rahman, (1954), Reasoning for Rulings, research published in the Judicial Journal, No. 4, September,
13. Ahmed, Ali, (2010), Causation of Civil Judgments, research published in the Journal of the College of Law, Al-Nahrain University, Volume/12/Issue 1
14. Al-Tahwi, Mahmoud, (1999), The scope of the judge's authority to issue a judicial order in accordance with the Civil and Commercial Procedures Law, New University Publishing House, Alexandria,
15. Abdel Fattah, Azmi, (1984) Causation of judgments and the actions of judges, research published in the Journal of Law, Kuwait University, No. 2, S. 8,
16. Belkadi, Mohamed (2011) (The reasoning for the arbitration ruling in Algerian and comparative legislation), Communication in the Humanities and Social Sciences, Issue 28/June/

Magazine

1. Arab Arbitration Journal (2006). No. 9, Cairo, p. 270 in the case STBank v. Nannini.
2. Arab Arbitration Journal (2016). No. 16, previous reference, p. 155, of these decisions of the 3. Egyptian Court of Cassation, No. 4457, 4463, 4853 of the year 77 BC, session 9/11/2010, and 4. they include that the absence of reasoning in the ruling is not part of the public order.

Laws

1. Jordanian Arbitration Law
2. Law No. 27 of 1994 regarding arbitration in Egyptian civil and commercial matters
3. Law No. (2) of 2017 issuing the Qatari Law of Arbitration in Civil and Commercial Matters.

Case law

1. The Jordanian Court of Cassation in its legal capacity, Case No.: 5766/2022, dated 12/15/2022
2. Cairo Court of Appeal, 62nd Commercial Circuit, Case No. 2240 of 111 BC, session 5/22/1992.
3. Egyptian cassation in Appeal No. 17259 of 77 BC - session 11/1/2016.
4. Kuwaiti Cassation, Appeal No. 481 of 2011 Commercial 3 - Session 6/5/2012.

5. Dubai Cassation, Appeal No. 273 of 2006, Commercial Appeal, Session - 3/5/2007.

6. Palestinian Court of Cassation (Ramallah) - Appeal No. 1201 of 2017 - issued on 2/22 -

Websites

1. <https://aladel.gov.ly/home/?p=1736>

2. <http://www.moj.gov.jo/EchoBusV3.0/SystemAssets/cffd55d6-2053-4753-b20a-df1336896981.pdf>.

/ 3. <http://www.aifa-eg.com> › unistrac-ag.3

4. <https://www.gamerobravo.com/en/arbitration-and-public-order-in-the-action-for-annulment-of-arbitral-awards-in-spain-constitutional-court-ruling-of-15-february-2021/>

5. <https://www.clydeco.com/en/insights/2022/11/the-annulment-of-arbitral-awards-for-violation-of>

6. <https://www.twobirds.com/-/media/vertaling-nl-arbitragewet.pdf?la=en>

7. <https://cour-europe-arbitrage.org/arbitration-rules/>

8. <https://cour-europe-arbitrage.org/arbitration-rules/>

9. <https://www.clydeco.com/en/insights/2022/11/the-annulment-of-arbitral-awards-for-violation-of>

10. <https://www.clydeco.com/en/insights/2022/11/the-annulment-of-arbitral-awards-for-violation-of>