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STATEMENTS OF THE ARBITRATION DECISION ACCORDING TO JORDANIAN LAW AND FRENCH LAW “A COMPARATIVE STUDY”

Dr. Noor Issa Al-Hendi*

ABSTRACT

This study deals with the statements of the arbitration decision in a comparative study between the Jordanian arbitration law and the French Procedures law, by revising the legal texts related to specific statements required in the arbitration decision, according to each of them. This study also clarifies the implications of the omissions of these statements in the arbitration decision.

Key Words: Arbitration decision, Jordanian arbitration law, French Procedures law, Annulment of Arbitration decision.

I. INTRODUCTION

The importance of this study arises from a discussion about required statements in arbitration decisions between the Jordanian arbitration law and the French Procedures law, as a comparative study, by revising the legal texts related to specific statements required in the laws—a new topic not broached by legal jurists.

The problem lies in the difference of views in the statements of an arbitration decision between Jordanian and French law, due to the different circumstances and the grounds regulating the arbitration and the causes behind it. This problem can be solved by answering a number of questions, including: Which statements do both

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Jordanian and French law acknowledge in the arbitration decision? What are the implications of the omission of some of these statements in the arbitration decision?

Solving these problems requires an approach capable of analysis of the legal texts, so the descriptive and analytical approach is applied as it analyzes legal texts and concludes on their connotations. Therefore, the study aims to clarify the statements required of the arbitration decision and to demonstrate the implications of their omission in the decision.

II. STATEMENTS OF THE ARBITRATION DECISION

Article Ten of the Jordanian Arbitration Law Number Thirty-One of 2001 stipulated that the arbitration agreement shall be written or otherwise deemed to be invalid.¹ The French Law of Arbitration stipulates that the arbitration decision shall be written and signed by the arbitrators,² and the decision must include statements that are deemed requirements for the written form.³ These required statements of the arbitration decision are stated in Article Fourty-One (c) of the Jordanian Arbitration Law:

The arbitration decision shall include the names and addresses of the litigants; the names, addresses, nationalities and personal characteristics of the arbitrators; a summary of the arbitration agreement; a summary of the requests, statements and documents of the litigants; wording of the ruling, the date and place of its issuance, and its reasons if necessary, provided that the ruling determines the arbitrators' fees and arbitration expenses and how [they] shall be distributed among parties.⁴

In addition, Article 1481 of the French Procedure Code stipulates that the arbitration decision includes the following statements: the names of the arbitrators who issued it, its issuance date, the names of the parties and their place of residence or addresses, the place the award is made, and the names of attorneys, representatives and counsels of the parties.⁵ Furthermore, Article 1482 has stated that the arbitration decision shall include a summary of the parties' claims and documents and the grounds of the decision; these statements are explained below.⁶

¹ Hamzeh Haddad, *Law Arbitration Centre: Law No. 31 of 2001*, N.Y. ARB. CONVENTION (Jan. 14, 2020), <http://www.newyorkconvention.org/11165/web/files/document/2/1/21022.pdf>.

² MUSLEH AL-TARAWNEH, JUDICIAL REVIEW OF ARBITRAL PROVISIONS, A COMPARATIVE STUDY 108 (Dar Wael, 2010); CODE DE PROCÉDURE CIVILE [C.P.C.] [CODE OF CIVIL PROCEDURE] art. 1513 (Fr.).

³ MOKHTAR BURBERRY, INTERNATIONAL COMMERCIAL ARBITRATION 193, 194 (Dar Al-Nahda Al-Arabia, Cairo, 2d ed. 1999).

⁴ Haddad, *supra* note 1, at 15.

⁵ CODE DE PROCÉDURE CIVILE [C.P.C.] [CODE OF CIVIL PROCEDURE] art. 1481 (Fr.).

⁶ CODE DE PROCÉDURE CIVILE [C.P.C.] [CODE OF CIVIL PROCEDURE] art. 1482 (Fr.).

A. The Name of the Litigants

The legislature has mandated mentioning the name of each party of the dispute in the arbitration decision.⁷ The party who seeks arbitration may be referred to as “Claimant,” and the person against whom the judgment is sought by “Respondent,” or the former is called the plaintiff and the latter is called defendant.⁸ The litigants may be natural persons or legal persons. If the litigants are natural persons, the name and addresses of each person shall be fully mentioned. If any of the litigants is a legal person, the name of the legal person and its headquarters shall be mentioned.⁹

B. The Name of the Arbitrators

The names of the arbitrators shall be mentioned in the arbitration decision, as should their personal characteristics and addresses. The decision should also specify the party that appointed each arbitrator and how the main arbitrator was nominated. In some international decisions, the arbitrator’s acceptance of his own assignment shall be mentioned.¹⁰

C. Wording of the Arbitration Decision

The wording of the arbitration decision is defined as the procedure in which the arbitrators decided to settle the dispute, or the ruling clause against one of the parties of the dispute, and what shall be executed in the interest of the prevailing party, or what each party shall do to settle the dispute. Therefore, the wording of the decision includes the adjudication of all matters before the arbitration.¹¹

D. The Date of the Decision

The date of the decision means the established date according to its body, as it is more likely that this date shall be written after the preamble. If the decision fails to write the date in the aforementioned manner, then the date on which the members of the tribunal signed shall be deemed legal. If the decision was issued by circulation, then the date next to the last signature shall be sufficient.¹²

⁷ ABDUL HAMID AL-AHDAB, ENCYCLOPEDIA OF ARBITRATION 110 (in Arabic, Dar Al Maarifah, 1998).

⁸ MUSLEH AL-TARAWNEH, *supra* note 2, at 318.

⁹ See CODE DE PROCÉDURE CIVILE [C.P.C.] [CODE OF CIVIL PROCEDURE] art. 1482 (Fr.).

¹⁰ MUSLEH AL-TARAWNEH, *supra* note 2, at 318.

¹¹ CODE DE PROCÉDURE CIVILE [C.P.C.] [CODE OF CIVIL PROCEDURE] art. 1484, 1485 (Fr.).

¹² CODE DE PROCÉDURE CIVILE [C.P.C.] [CODE OF CIVIL PROCEDURE] art. 1480, 1530 (Fr.).

E. *The Place of Arbitration Decision Issuance*

A question arises regarding the meaning of the place of the arbitration decision. Does the matter relate to the established place in which the decision is issued (the place where the tribunal signed the decision) even if it differs from the place where the arbitration occurred, and the arbitration agreement specifies? This matter is important in Jordanian law as it determines the forms of judicial review on the arbitration award.¹³ If the award was issued in Jordan, it shall be challenged for annulment according to the Jordanian arbitration law and executed in accordance with its provisions.¹⁴ The competent court is the court of appeal that arbitration occurred within the jurisdiction, unless the two parties agree on the jurisdiction of another court of appeal in the Kingdom, which is mentioned in Article (2) of the Jordanian law.¹⁵ However, if the decision was issued abroad of Jordan, it is considered a foreign arbitration decision, and it is not permissible to file an annulment lawsuit against it before the Jordanian judiciary as this type of arbitration is not subject to the Jordanian arbitration law.¹⁶ Rather, the Jordanian court is only entitled to exercise its control over this decision in accordance with the Implementation of Foreign Judgments Law No. (8) of 1952.¹⁷ The competent court is the Court of First Instance, in which the losing party resides within its jurisdiction, or the Court of First Instance, if the losing party who wishes to implement the award does not reside in the Kingdom.¹⁸

According to Article (3) of the Jordanian Arbitration Law, "[th]e provisions of this law shall apply to every arbitration agreement that occurs within the Kingdom . . ."¹⁹ It is also acknowledged by Article (2) of the Enforcement of Foreign Judgments Law stipulating that: "The law includes the decision of the arbitrators regarding arbitration proceedings if that decision has been deemed under the applicable law in the country in which the arbitration occurred, is enforceable as an decision of the court in the said country."²⁰

¹³ See generally Haddad, *supra* note 1, at 18–20.

¹⁴ *Id.*

¹⁵ *Id.* at 3. Also note that the term "competent court" is referred to continuously throughout this paper and follows this definition.

¹⁶ *Id.* at 9.

¹⁷ *Id.*; Hala Qutteineh, *Enforcement of Foreign Judgments in Jordan*, LEXOLOGY (Aug. 31, 2018), <https://www.lexology.com/library/detail.aspx?g=5827c9a5-b695-40fd-ac1d-734aa0a4a4af>.

¹⁸ Nicolas Bremer, *Seeking Recognition and Enforcement of Foreign Court Judgments and Arbitral Awards in Egypt and the Mashriq Countries*, 2018 J. DISP. RESOL. 109, 128 (2018). Law no. 8, of 1952 on Jordanian Law of Enforcement of Foreign Judgments, art. 4.

¹⁹ Haddad, *supra* note 1, at 3.

²⁰ Law no. 8, of 1952 on Jordanian Law of Enforcement of Foreign Judgments, art. 2; Bremer, *supra* note 18.

F. The Grounds of the Arbitration Decision

The reasoning of the arbitration decision is one of the substantive conditions necessary for its validity, and therefore the arbitrator must mention the legal and factual reasons on which this decision was grounded in his decision.²¹ Article 1482 of the French Procedure Code stipulates that the arbitration decision shall be a supported with reasoning and this rule shall be applied to all arbitration decisions, even the amicable arbitration decisions.²²

G. Stating the Fees of Arbitrators, Arbitration expenses, and How Costs Shall be Distributed Among Parties.

The Jordanian Arbitration Law stipulates that the arbitration decision shall include a specific amount of arbitrators' fees and arbitration expenses.²³ Some jurisdictions support the tribunal's authority to adjudicate on the arbitration expenses, based on its judicial authority acknowledged by the parties, especially if the parties do not agree on the costs.²⁴ Therefore, determining the arbitration expenses is a consequence of the dispute. The rule is that the tribunal shall refuse to adjudicate on a claim that has not been submitted to the tribunal.²⁵ Consequently, the tribunal shall acknowledge the claim and determine the party who shall bear the costs or distribute it among the parties if its demand is filed before the tribunal.

It is not necessary to acknowledge arbitration fees except when there is no agreement between the parties and the arbitrators to determine them in advance, which is a rare situation.²⁶ Some jurisdictions believe that the decision should include a determination of the arbitrators' fees of arbitrators,²⁷ whether it was agreed upon or determined by the tribunal according to Article 41-d of the Jordanian law. This is likely because not mentioning the statement in the arbitration decision would create a second dispute between the parties and the arbitrators in the event of failure to pay the fees of arbitrators. Therefore, the tribunal mentioning its fees of arbitrators in the decision, whether agreed upon or not, should not prevent investigation of its re-estimation after the order executing the arbitration decision. This should prevent the need to search for another executive bond for the arbitrators to demand their fees of arbitrators.

²¹ Jean-Louis Delvolvé, *Essai Sur la Motivation Des Sentences Arbitrales*, *Revue de L'arbitrage*, MUSÉE CRIMINOCORPUS 149–165 (1989), <https://criminocorpus.org/en/ref/111/71464/>.

²² CODE DE PROCÉDURE CIVILE [C.P.C.] [CODE OF CIVIL PROCEDURE] art. 1482 (Fr.); Delvolvé, *supra* note 21.

²³ Haddad, *supra* note 1, at 15.

²⁴ John Y. Gotanda, *Awarding Costs and Attorneys' Fees in International Commercial Arbitrations*, 21 MICH. J. INT'L L. 1, 13–18 (1999).

²⁵ See generally Haddad, *supra* note 1, at 12.

²⁶ See Gotanda, *supra* note 24, at 14.

²⁷ *Id.* at 9.

The following questions should be included in the arbitration award, according to both the Jordanian and French legislators, in a way that leaves no room for doubt that its inclusion is essential—especially when considering to file an annulment lawsuit from an arbitration decision: Shall a competent court consider the annulment lawsuit by investigating whether the arbitration agreement is valid or void? Did the tribunal apply the law chosen by the parties or did they exclude it? Whether or not the tribunal was properly formed? Whether or not the tribunal bound to the basic principles of litigation before it? Whether the tribunal issued its decision on time in accordance with an agreement or law, or exceeded it?

III. THE IMPLICATIONS OF OMITTING THE ARBITRATION DECISION STATEMENTS

As a general rule, once the arbitration decision is issued, the tribunal exhausts its jurisdiction, and it shall not be entitled to reconsider the arbitral lawsuit.²⁸ This is represented in the wording of Article 44(b) of the Jordanian Arbitration Law, which expressly states that: “Subject to the provisions of Articles 45, 46 and 47 of this law, the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.”²⁹ However, there are exceptions to this rule represented by the cases mentioned exclusively in Articles 45, 46, and 47 that include the interpretations of the arbitration decision, remedy of the arbitration decision, and the issuance of an additional judgment in some substantive requests that the tribunal failed to rule on, which shall be dealt successively.³⁰

A. *Interpretation of the Arbitral Award*

Article 45(a) of the Jordanian Arbitration Law states that each party may request from the tribunal “within the thirty days following the receipt of the arbitration award,” an interpretation of any ambiguities in its wording, and the requested party shall give the other party a copy of this request before submitting it to the tribunal.³¹ “The interpretation shall be issued in writing within the thirty days following the date on which the interpretation request was submitted to the” tribunal and it may extend the period for another fifteen days if it deems its necessity.³²

The decision, supported by interpretation and reason, shall be deemed to be complementary to the arbitration decision which it interprets, and its provisions shall be applied to it.³³ The interpretation of the decision is intended to explain the content

²⁸ See CODE DE PROCÉDURE CIVILE [C.P.C.] [CODE OF CIVIL PROCEDURE] art. 1480, 1530 (Fr.); Haddad, *supra* note 1, at 17.

²⁹ Haddad, *supra* note 1, at 17.

³⁰ *Id.* at 17–18.

³¹ *Id.* at 17.

³² *Id.*

³³ *Id.*

of the decision according to a discretion of the tribunal, and the scope of this discretion is the substantive elements in which the arbitration decision is grounded.³⁴

Nor should we fail to mention that the aforementioned article stipulated that the decision supported by the interpretation shall be deemed complementary to the arbitration decision that it interprets, and its provisions shall be applied to it, whether those related to its terms, effects or the request for its annulment, whether according to the original decision or independently if it includes an amendment to the original decision.³⁵ However, there are legal loopholes that may arise with regard to the interpretation of the arbitration award.³⁶ The first problem is that the tribunal contract may be terminated after the decision is issued and cannot be held, in case one of its members died. So what is the remedy?³⁷ The Jordanian legislator did not address this hypothesis, and seems to have not given the competent court the authority to interpret the arbitration decision in this case.

Some jurists consider,³⁸ as the researcher agrees with him, that as long as the tribunal did not complete its jurisdiction regarding the interpretation of the decision once it was issued, and thus according to the express content of (Article 44(b)), then the Tribunal shall remain competent to interpret the decision.³⁹ Pursuant to Article (20) of the Jordanian law, the competent court shall be assigned to appoint an arbitrator in place of the arbitrator who was unable to complete his duty, unless it is possible to convene it.⁴⁰ The argument of assigning interpretation jurisdiction to the original competent court of the dispute shall not be taken into account unless the tribunal can be convened, as it is a violation of Article (8) of the Jordanian law which states that "[i]n matters governed by this law, no court shall intervene except in cases provided for therein without prejudice to the arbitral tribunal's right of asking the competent court for assistance in the arbitral proceedings"⁴¹ In respect of the other problem, does filing an annulment lawsuit of the arbitration award terminate the jurisdiction of the tribunal to interpret the issued award if the interpretation request was submitted after filing an annulment lawsuit before the competent court?⁴² The Jordanian arbitration law does not include an answer to this question, however the researcher thinks that the tribunal shall alone be entitled to the jurisdiction to interpret the arbitration decision and does not pass to the competent court to consider the annulment lawsuit, as long as the interpretation request was submitted on time. The tribunal jurisdiction to interpret shall not terminate once the decision is issued, but rather thirty days after the party who requested the

³⁴ *Id.* at 15.

³⁵ *Id.* at 17, 18.

³⁶ *See generally id.*

³⁷ *See generally id.* at 8.

³⁸ Burberry, *supra* note 3, at 217.

³⁹ Haddad, *supra* note 1, at 17.

⁴⁰ *Id.* at 8.

⁴¹ *Id.* at 4.

⁴² NABIL OMAR, THE ORIGINS OF CIVIL AND COMMERCIAL PROCEDURES (NO. 13 OF 1968) 110 (Monshat Al-maref, Alexandria 2002).

interpretation receives the arbitration decision. Then the competent court considering the annulment lawsuit shall nullify the award if one of the grounds of annulment is submitted, or by its support, and therefore does not extend to the interpretation of the decision. In addition to all of this, the annulment lawsuit is not a method of appeal.⁴³

Therefore, the researcher believes that the competent court, in which an annulment lawsuit of the arbitration decision was filed and submitted with respect to an application for interpretation, shall suspend consideration of the annulment lawsuit until the issuance of the interpretation award as a complementary part of the arbitration decision, because the tribunal has not yet exhausted its jurisdiction regarding the interpretation.⁴⁴

B. The Remedy of the Arbitral Decision

Article 46(a) from the Jordanian arbitration law states the following:

The arbitral tribunal shall, by a decision on its own initiative or upon request of a party, correct any material errors in its award, whether clerical or in computation. The decision of correction shall be issued without a hearing within thirty days following the date of rendering the award or of submitting the request for correction, as the case may be.⁴⁵

The remedy ruling shall be issued in writing by the tribunal and notified to the parties within thirty days from the date of its issuance.⁴⁶ If the tribunal exceeds its authority to apply the remedy, it is permissible to adhere to the annulment of this ruling in an annulment lawsuit to which the provisions of this law shall apply.⁴⁷

Therefore, the arbitration decision shall be limited to rectifying the written or calculation errors therein, such as an error in the name of one of the litigants or one of the arbitrators, misprints, or a calculation error.⁴⁸ Therefore, it is not permissible for the tribunal to remedy the error under the provisions of the law.⁴⁹ If it does so, it is permissible to plead for the annulment of the remedy decision by annulment lawsuit before the competent court within thirty days from the date of notifying to those who plead for annulment.⁵⁰

⁴³ Haddad, *supra* note 1, at 18–20.

⁴⁴ AL-TARAWNEH, *supra* note 2, at 135.

⁴⁵ Haddad, *supra* note 1, at 17. *See also* AL-TARAWNEH, *supra* note 2, at 136.

⁴⁶ Haddad, *supra* note 1, at 17.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

C. *The Complementary Arbitration Decision*

Article 47(a) in Jordanian arbitration law suggests that each of the parties of the arbitration may, even after the end of the arbitration time, request the tribunal within the thirty days following the receipt of the arbitration decision to issue a complementary arbitration decision in the applications that submitted during the procedures and omitted by the arbitration decision; this request shall be notified to the other party before its submission.⁵¹ The tribunal shall issue its complementary decision within sixty days from the date of the application submission, and it may extend this period for another thirty days if it deems it necessary.⁵²

When submitting substantive applications to the tribunal from the claimant or the respondent, the tribunal shall adjudicate on all these applications, either positively or negatively.⁵³ The tribunal may decide in favor of the claimant in all or some of its applications and may adjudicate on others in favor of the respondent; consequently, the judgment was issued in favor of and against the claimant and the respondent at the same time.⁵⁴ It also may reject all requests of the claimant, so the decision will be issued in favor of the respondent.⁵⁵ In any case, the tribunal shall not adjudicate on applications that have not been brought before it or decide more than what they requested or claimed, otherwise its decision was expressly null and void according to article 49(a)(6) of the Jordanian Arbitration Law.⁵⁶ Also, article 47 stipulates that even if the tribunal has exhausted its jurisdiction once the substantive decision settled the dispute is issued, this exhaustion only includes the substantive requests that were submitted to the tribunal and had been settled and adjudicated.⁵⁷ As for the substantive requests that the tribunal did not adjudicate, it shall not exhaust its jurisdiction in this regard.⁵⁸

If an annulment lawsuit is filed on the arbitration decision that omitted the adjudication of some substantive applications and the other party submits, within the thirty days following receipt of the arbitration decision, a request for a complementary decision from the tribunal, the competent court shall suspend the proceedings for the annulment lawsuit until the substantive applications are adjudicated.⁵⁹ This decision shall be applied even if it was not acknowledged for several grounds.⁶⁰

⁵¹ *Id.* at 17–18.

⁵² *Id.*

⁵³ AL-TARAWNEH, *supra* note 2, at 136.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Haddad, *supra* note 1, at 18–19.

⁵⁷ *Id.* at 17–18.

⁵⁸ *See generally id.* at 17.

⁵⁹ *Id.* at 17–19.

⁶⁰ *Id.*

Because the tribunal did not exhaust its jurisdiction in the applications that it did not adjudicate, once the decision was issued, the competent court considered the annulment lawsuit and extended its control to a ruling that omitted the adjudication of some applications.⁶¹ This is because it was not one of the grounds for the annulment of the arbitration decision to ignore the adjudication in some of the applications, but rather that the ruling exceeded these applications.⁶² In addition, suspending the procedures achieves justice given that the complementary arbitration decision is considered an extension to the original arbitration decision, and the provisions pertaining to the original decision shall be applied to it regardless of the conditions, effects, or grounds for annulment.⁶³ Therefore, it is better for the competent court to exercise its control once and for one ruling instead of exercising its control over the original ruling and then on the complementary decision, even though they are based on one arbitration agreement and issued by one tribunal on the same subject of the dispute.⁶⁴

Since the arbitration decision is a judicial act, the error that marred it and justified the control thereof shall not deviate from one of the well-known forms of error in judicial rulings, which are material error, procedural error, and appreciation/estimation error.⁶⁵ Therefore, if the material error in the arbitration decision does not raise any problem in Jordanian law, given that the legislature granted the arbitration tribunal the authority to correct the material errors in its decisions, even on its own initiative, it is justified.⁶⁶ The question remains regarding the judicial review of the arbitration decision, which has either an appreciation error or procedural error; the agreement of the parties on arbitration or the law applicable on arbitration procedures shall specify a regulation for the tribunal in its view, which is called the rules of procedures.⁶⁷ If these rules are violated, the decision issued by the tribunal shall be marred by a procedural error, and then certain formalities shall precede or coincide with the issuance of the arbitration decision.⁶⁸ Therefore, these procedures shall be done in a proper way in order to impose the effects of the decision, and if any procedural error occurred in the decision, this decision shall be null and void.⁶⁹ This procedural error may be issued by the arbitration tribunal or by one of the parties of arbitration.⁷⁰ Whatever the source of the error in the procedure is, it leads to the annulment of the arbitration decision.⁷¹

⁶¹ AL-TARAWNEH, *supra* note 2, at 141.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See generally Irene M. Ten Cate, *International Arbitration and the Ends of Appellate Review*, 44 N.Y.U. J. INT'L L. & POL. 1109, 1126–28; Haddad, *supra* note 1.

⁶⁶ Haddad, *supra* note 1, at 17.

⁶⁷ *Id.* at 18–19.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

On the other hand, the tribunal may violate the substantive legal rule applicable to the facts of the dispute, misinterpret it, or misinterpret it in its decision, as well as misunderstand, misestimate or misapply the facts of the dispute itself, which leads to an error of applying the law, or an appreciation error.⁷² This error, if it occurred, is not considered one of the grounds that caused the annulment of the arbitral decision, but rather leads to the decision being only flawed with the defect of an appreciation error, as it has a defect of injustice,⁷³ so the appeal will be the only way to reform it, but it was not approved by the Jordanian legislatures.⁷⁴ Some international arbitration rules, such as the Arbitration System issued by the International Chamber of Commerce in Paris and effective from the date of January 1, 1998, have stipulated explicitly that the arbitration decision shall be issued at the place of arbitration and on the date recorded therein.⁷⁵ The judiciary in France has settled that the history recorded in the ruling is an argument that can only be undermined by appealing forgery.⁷⁶ In view of the necessity of this statement, especially its necessity in determining whether the ruling was issued within the time set for its issuance or exceeded date, most of the jurists confirm that the arbitration decision is empty of the date of its issuance.⁷⁷ Because Article 49(a)(7) thereof permits an annulment application of the arbitration decision if a violation occurred affecting its content, lack of the date shall not affect the content of the decision.⁷⁸

Arbitration decisions shall not be considered null and void if the location of the decision is not mentioned among its statements.⁷⁹ This statement is known from the arbitration agreement and mentioning its location does not affect the content of the arbitration decision.⁸⁰

The arbitration decision also shall not be considered null and void if its grounds are not mentioned according to the wish of the parties, but the Tribunal shall abide by its reasoning; if the parties are silent about deciding this matter, the non-causative decision may then be subject to annulment because its absence of grounds may nullify it in a way that affects its content.⁸¹

Consequently, in relation to the laws expressly stipulating the reasoning of the arbitration decision and the laws stipulating that the same procedures for issuing a judicial ruling should be followed with regard to the arbitration decision in these two cases, the failure to cause the decision to be null and void is because it is contrary to public order.⁸² However, the reasoning of the decision shall not mean that the

⁷² See Ten Cate, *supra* note 65.

⁷³ OMAR, *supra* note 42, at 114.

⁷⁴ AL-TARAWNEH, *supra* note 2, at 168.

⁷⁵ AL-TARAWNEH, *supra* note 2, at 113.

⁷⁶ See Burberry, *supra* note 3.

⁷⁷ *Id.*

⁷⁸ *Id.*; Hadda, *supra* note 1, at 19.

⁷⁹ AL-TARAWNEH, *supra* note 2.

⁸⁰ *Id.* at 114.

⁸¹ *Id.* at 117.

⁸² JEAN ROBERT, L'ARBITRAGE: DROIT INTERNE, DROIT INTERNATIONAL PRIVE 178 (Daloz, 5th ed. 1983).

arbitrators are obliged, in the reasoning, to mention all the evidence and proofs of the parties, as the presentation of the grounds of the decision should be sufficient to know how the arbitrators reached the results mentioned in the content of the decision, and this may differ according to the nature of the dispute.⁸³

The French judiciary has considered the failure to submit reasoning of an arbitration decision in international arbitration to not be contrary to the international public order if the law or procedural rules for arbitration do not require the award to have grounds.⁸⁴ According to the French Procedure Law, the groundless decision of internal arbitration shall be deemed null and void under Article (1482) even if it is an amicable arbitration decision.⁸⁵ However, the provisions of the French Law of Procedure amended in 1981 do not oblige the arbitrator in international arbitration to make cause or grounds for the arbitration award unless the parties have requested reasoning or it is required by the law or rules of procedures followed by the arbitrator.⁸⁶

Arbitration decisions should not be considered null and void if the arbitration expenses and fees of arbitrators are not mentioned in it because the legislator has limited the annulment that results from failure to observe the conditions that must be fulfilled in the decision regarding those conditions that affect the content of the decision.⁸⁷ The arbitration decision, which is free from the costs of arbitration and the arbitrators' fees of arbitrators, shall not affect its content.⁸⁸

Even in private arbitration, unless there is no previous agreement with the parties, tribunals usually require fees from the arbitrators in order to issue its decision.⁸⁹ The tribunal may also omit expenses of arbitration, even though they are a consequence of the dispute.⁹⁰ In this case, neither party shall claim the expenses that it entrusted to the arbitration procedures or that it seeks to charge it to the other party, even if the decision was issued in its favor.⁹¹ In this last case we distinguish between two hypotheses:

First Hypothesis: that one party has requested the Tribunal to rule on the costs of the arbitration and the Tribunal has overlooked it in its ruling. Here, this party can request the Tribunal within thirty days to receive the arbitration decision to issue an additional decision in these expenses pursuant to Article (47) of the Arbitration Law, which states the following:

⁸³ *Id.*

⁸⁴ See CODE DE PROCÉDURE CIVILE [C.P.C.] [CODE OF CIVIL PROCEDURE] art. 1482, 1520 (Fr.); ERIC LOQUIN, REVUE DE L'ARBITRAGE 83–96 (1989).

⁸⁵ CODE DE PROCÉDURE CIVILE [C.P.C.] [CODE OF CIVIL PROCEDURE] art. 1482 (Fr.); Eric Loquin, *Lobligation pour Lamiable compositeur de motiver sa sentence*, REVUE DE L'ARBITRAGE 223 (1976).

⁸⁶ Loquin, *supra* note 81; CODE DE PROCÉDURE CIVILE [C.P.C.] [CODE OF CIVIL PROCEDURE] art. 1481 (Fr.).

⁸⁷ Haddad, *supra* note 1, at 18–19.

⁸⁸ *Id.* at 15.

⁸⁹ *Guide to International Arbitration*, LATHAM & WATKINS 15–16 (2017), <https://www.lw.com/thoughtleadership/guide-to-international-arbitration-2017>.

⁹⁰ Gotanda, *supra* note 24, at 6–7, 13, 15–18.

⁹¹ *Id.*

Either of the two arbitrating parties may, even after the expiry of the time limit for arbitration, request, within thirty days following the date of receipt of the arbitral award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. Such request shall be notified to the other party before its submission (to the tribunal).⁹²

The tribunal shall issue its complementary decision within sixty days from the date of the application submission, and it may extend this period for another thirty days if it deems it necessary.⁹³

Second Hypothesis: that during the arbitration procedures, the party did not request a ruling on the expenditures and expenses, so as a result, the tribunal did not, of course, judge or distribute it to the other because it is not permissible to judge what the litigants did not ask for. Then, the party claiming these expenditures must file a financial claim before the competent court with valuable jurisdiction in accordance with the usual procedures under Procedural Law for filing this suit, or they must return to the tribunal according to a new agreement to decide this issue. This is a situation that is particularly rare.⁹⁴

On March 20, 1986, regarding the need for the arbitrators to follow the agreement between the two parties on how to distribute the expenses between them, the Paris Court of Appeal nullified the clause in an arbitration decision that stipulated that one of the parties of the dispute be charged with such expenses, because the two parties had agreed in advance to divide these expenses equally in half.⁹⁵ What came in the arbitration decision was due to the fact that each party, during the pleading, claimed the other party had to bear the mentioned and specified expenses.⁹⁶ However, the Court of Appeal indicated that the authority of the arbitrators in relation to the issue of apportioning expenses was specified and clear in the arbitration agreement.⁹⁷ Therefore, the court issued a decision to nullify what the arbitrators went to in charging all expenses to one of the parties of the dispute.⁹⁸

Is it permissible for each party to ask the court to consider the extent to which those expenses correspond to what must be paid in similar cases to the arbitrators if the disputing parties find that the estimated fee of the arbitrators is exaggerated? In other words, can the parties of the dispute object to the arbitrators' assessment of their fees of arbitrators? According to the general regulations, the two parties may in this case resort to the judiciary to control the wages estimated by the arbitrators in

⁹² Haddad, *supra* note 1, at 17–18.

⁹³ *Id.* at 18.

⁹⁴ AL-TARAWNEH, *supra* note 2, at 122.

⁹⁵ Berlrland Morean, *No. 1 Revue de L'arbitrage* 82 (1971) (Paris Court of Appeal ruling on March 20, 1986 in Lawsuit Y. Mondell C / J, de Ligaut).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

order to stop the arbitrators' oppression and/or exaggeration of their fees—something that the French judiciary and jurists acknowledge.⁹⁹

However, legal rules do not allow the arbitrators to estimate their wages by themselves. In the event that the parties of the dispute do not agree on this, and leave the matter to the court, Jordanian law has dealt with this issue by stipulating it in Article (19).¹⁰⁰

IV. CONCLUSION

The study concluded that the Arbitration decision statements are represented in the following: the names and addresses of the parties; the names, addresses, nationalities and personal characteristics of the arbitrators; a summary of the arbitration agreement; a summary of the request of the litigants; statements and documents; the wording of the Arbitration decision; and the date and place of its issuance and its grounds if its mention is obligatory, provided that the decision includes determining fees of arbitrators and arbitration expenses and its way of distribution among the parties.¹⁰¹

Moreover, the study concluded that, as a general rule, the Tribunal will exhaust its jurisdiction once the arbitration decision is issued. Therefore, the Tribunal shall not be entitled to reconsider the arbitration case except for the interpretation of the arbitration decision, its remedy, its adjudication, or the issuance of an additional decision in some substantive applications that the tribunal has omitted.

An Arbitration decision shall not be considered null and void if the place of the decision is not mentioned among its statements, as the arbitration agreement contains this statement.

An Arbitration decision shall not be considered null and void if its grounds are not mentioned according to the wish of the parties, but the tribunal shall abide by its reasoning if the parties are silent about deciding this matter. The non-causative decision may then be subject to annulment as its grounds and absence of grounds may nullify it in a way that affects its content.¹⁰²

An Arbitration decision shall not be considered null and void if the expenses and fees of arbitrators are not mentioned because the legislator has limited any annulment that results from failure to observe the conditions that shall be fulfilled in the decision regarding those conditions that affect the content of the decision.¹⁰³ The arbitration decision, which is free from the expenses of arbitration and the fees of arbitrators, shall not affect its content.

⁹⁹ Gotanda, *supra* note 24, at 6–7.

¹⁰⁰ Haddad, *supra* note 1, at 8.

¹⁰¹ *See generally id.* at 15–18.

¹⁰² *Id.*

¹⁰³ *Id.*

V. RECOMMENDATIONS

The Jordanian legislature needs to address the case related to the termination of the tribunal contract after the decision is issued. Response of the Jordanian legislature on this question: does filing a lawsuit for nullifying the arbitration decision deprive the competence of the tribunal to interpret the decision it issued, if the request for interpretation was filed after filing an annulment lawsuit before the competent court? The researcher recommends the Jordanian legislature respond to this question. There is a necessity for the Jordanian legislature to address the case related to the termination of the tribunal contract after the decision is issued.