



Why do UAE Courts annul Final Arbitral Awards which are issued in the UAE?

لماذا تبطل محاكم الإمارات أحكام التحكيم النهائية الصادرة في دولة الإمارات
العربية المتحدة؟

By

Mohamed Al Marzooqi 100088

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Dissertation Supervisor

Professor Aymen Masadeh

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Abstract:

Arbitration is one method to resolve disputes out of different methods available in the construction industry. The UAE law through the Civil Procedure Code provides some articles which governs the arbitration. The requested outcome of the arbitration is a reward which could be recognized and then be enforced by courts. Annulment is one of the main risks for refusing to recognize an arbitral award. The dissertation will focus on the challenging grounds to annul arbitral awards which are issued in the UAE and finding out what were the main reasons to annul the arbitral awards by the courts. The best comprehensive way of finding the answers to this question is through studying all related judgments from the main courts in the UAE since the issue of law in 1992 until the date of starting this dissertation. Using practical experience in arbitration both ad hoc and institutional and being a witness expert in all UAE courts since 2004, in addition to utilizing a computer programme, reached to some important outcomes and conclusions that will help all parties involved in arbitration including arbitrators, arbitration centers, courts, legislative authorities and legal firms.

يعتبر التحكيم أحد وسائل حل النزاعات المتاحة ضمن النزاعات الأثنائية. إن قانون الإمارات قد أورد ضمن قانون الإجراءات المدنية بعض المواد المتعلقة بالتحكيم والتي على أساسها تعمل المحاكم في الحكم على ما يرد إليها من نزاعات في التحكيم. إن أهم مطلب في التحكيم من الأطراف المتنازعة هو الحصول على حكم قابل للتصديق ومن ثم يكون قابل للتنفيذ. إن طلب بطلان حكم التحكيم يعتبر من أكبر المخاطر المحيطة بعملية التحكيم لدى الأطراف المتنازعة. إن هذا البحث يركز على المبادئ الأساسية التي يركز عليها بطلان أحكام التحكيم الصادرة في دولة الإمارات العربية المتحدة. ويحاول البحث أن يتوصل إلى أهم الأسباب التي على أساسها أبطلت أحكام التحكيم. إن أفضل وسيلة للأجابة على هذا السؤال كان من خلال البحث في كافة الأحكام التي صدرت من أهم المحاكم الأساسية في الدولة منذ 1992 وهو تاريخ صدور قانون الإجراءات المدنية وحتى بداية البدء في هذا البحث. إن الأستعانة بالخبرة العملية التي يتميز بها الباحث في مجال التحكيم المؤسسي وغير المؤسسي وكونه خبيراً فنياً معتمداً لدى محاكم الدولة منذ عام 2004 إضافة إلى خبرته في استعمال أنظمة الكمبيوتر أدى إلى الوصول إلى حقائق متميزة ونتائج يمكن الاعتماد عليها في أية تعديلات محتملة في قانون التحكيم في الدولة. كما أن هذه النتائج ستكون حتماً مفيدة إلى القطاعات الأخرى العاملة في المجال مثل المحكمين ومراكز التحكيم والمحاكم وشركات المحاماة والجهات الحكومية ذات الصلة.

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1 Chapter 1: Introduction

This dissertation will focus on the reasons for annulment¹ of arbitral awards which are issued in the UAE by Union Supreme Court, Abu Dhabi Court of Cassation (hereafter will be abbreviated as Abu Dhabi Court), and the Dubai Court of Cassation (hereafter will be abbreviated as Dubai Court in the figures and tables). Such reasons are derived from understanding and analyzing final court judgments that refer normally to the First Instance and Appeal courts judgments. The study will cover judgments issued by these courts in order to reach an understanding of the proper application of the law related to the recognition and annulment of arbitral awards. In addition, the pleadings of parties and their counsels were also studied because they established the different views of legal firms to the applicable law in order to support their clients' position in the cases. However, the dissertation will adopt the final judgments rendered by the cassation or supreme courts to demonstrate the applicable law.²

Several choices were carefully studied to select the court judgments, the type of cases, and the period in which judgments were released or published. There are several courts in the UAE. The main public courts are Union Supreme Court, Abu Dhabi Court, Dubai Court of Cassation, Ras Al Khaima Court of Cassation, Fujairah Court and DIFC Court. While the Union Supreme and Dubai Court of Cassation were established after the establishment of the UAE in 1970, Abu Dhabi Court, Ras Al Khaima Court of Cassation and DIFC Court were established in 2007, 2006 and 2004 respectively. DIFC Court jurisdiction was limited to the DIFC community, however, in 2011, it was expanded to businesses outside the DIFC. The Union Supreme Court's jurisdiction is extended to all emirates except Dubai and Ras Al Khaima. However, its jurisdiction was extinguished in Abu Dhabi in 2007 after the establishment of Abu Dhabi Court. As a result, the judgments of the three courts Union Supreme, Abu Dhabi and Dubai were selected. On the other hand, DIFC Court was not selected due to the fact that it applies common law rather than the UAE civil law which may create different criteria for its judgments compared to the civil law courts (Union Supreme, Abu Dhabi, and Dubai Court of Cassation) judgments.

¹ UNCITRAL Model Law uses "...refuse to recognise" rather than annulment or nullification. The word "annulment" is used in this dissertation because it is often used in arbitration references and in the UK in general.

This dissertation will explore possible annulment grounds for arbitral awards which were issued in the UAE under UAE law and the arbitral awards annulled by UAE courts judgments. It will discuss the outcomes analysis of all released judgments on arbitral awards which were submitted to the courts for recognition and enforcement since 1991. These amount to 85 judgments. It covers the judgments of the Union Supreme, Abu Dhabi, and Dubai Court of Cassation. It will also analyze all grounds of annulment that were used by the courts and the main differences in approach between the courts in the application of the law and explore the most common challenging for annulment grounds set out in pleadings or the court's judgments or both of them. The dissertation then will study in depth the most common ground for annulment and will discuss the arguments related to it. Figures and tables will be used in order to show some numerical results. The dissertation will also highlight some of the main issues that should be considered while drafting the proposed arbitration act.

This research is the first of its kind in the UAE in which an academic analysis is carried out on all judgments issued in the UAE courts since their establishment. Such analysis focuses on the reasons for annulment of arbitral awards whether such arbitrations take place in-court, out-of-court³, ad hoc, or institutional. The research was conducted based on judgments provided by the courts of Union Supreme, Abu Dhabi, and Dubai⁴, which looked at all judgments released up to 2012. The reliability of these judgments and resources will strengthen the credibility of the outcome of this research.

Background:

Arbitration should lead to fair resolution of disputes in a reasonable time, cost, and be decided by an independent tribunal. The arbitral tribunal not only has a duty to resolve disputes impartially but also to abide by applicable laws and regulations in order to render its awards enforceable. Parties involved in disputes expect tribunals to make all reasonable efforts in order to protect its award from annulment. Such efforts may include understanding and obeying laws, and the agreements between the parties.

In order to be familiar with such laws and procedures, arbitrators are required to review the law and legal rules which are established by higher courts applicable

³ "out-of-court", is a terminology which is oftenly used in most of references to refer to those arbitrations which are established by the parties away from the court system.

⁴ DIFC-LCIA court was excluded from this research because it is recently established and its judgments are based on common law basically.

locally. The minimum requirement is that those rules should be respected in order to avoid fatal errors that may lead to annulment of the arbitration award.

The use of arbitration as a method to resolve disputes has increased noticeably in the UAE generally and in Dubai particularly as a result of the UAE becoming an increasingly populated international business hub. International law firms have increased their presence in UAE in order to support their clients in establishing businesses in the country and representing them in legal disputes. UAE joined the New York Convention on Recognition and Enforcement of Arbitral Awards in 2008, which encouraged law firms to advise their clients to adopt arbitration as a first alternative to resolve possible disputes with their business partners in the UAE.

The need to understand the legal basis for arbitral award annulment has increased commensurate with the increase in the number of disputes that have been referred to arbitration. For example, Dubai International Arbitration Centre (DIAC) recorded an increase in number of cases to more than 350 in 2010 compared to 77 cases in 2007. This was a direct implication of the financial crises that hit the region. In the UAE, it is highly recommended to understand the legal principals which are established by the higher courts in addition to the Civil Transaction and the Civil Procedural Codes.

There are several reasons for arbitral award annulment. The Civil Procedural Code lists these reasons in Article 216. However, one of the objectives of this dissertation is to analyse if court practice was a straight forward application of this article or not. The dissertation will discuss thoroughly all possible reasons for arbitral award annulments set out in the judgments which have been examined.

It is well known in the arbitration field in the UAE that the legislative authorities are drafting a new arbitration act. This is due to be released possibly in the near future. Therefore, this dissertation not only analyses in depth the grounds for annulment but also provides a good platform for researchers, arbitration practitioners, law firms, and possibly judges, for future developments and practical participation in assisting the legislative authorities to draft the proposed arbitration act.

The method adopted in this research was that judgments were translated to English utilizing the services of one of the court's registered translators. Translation of the cases was also planned carefully. The process started with selection of the text in Arabic that should be translated. Legal translators who have legal background were selected. The translation was rechecked by the researcher in order to ensure the proficiency and legal comparability with the legal terminologies used by the translators. However, due to the enormous amount of documents and translation, possible improvement may be required in future.

Having embarked on this dissertation, I have drafted and designed a computer programme that can accommodate analysis of the results and it is a live product which can accommodate new information easily. Hence, not only is this dissertation given in writing but also in electronic format. The purpose is that the reader can immediately not only explore the results and go back to retrieve part or full details of the judgment through following the attached instruction. This feature will enable the reader to go behind the results and verify the history of the cases which will provide him/her with better understanding of the rules that were established by the judgments considered.

Moreover, the research focuses only on those cases which were evaluated by the Dubai Court of Cassation, Union Supreme Court and Abu Dhabi Court in order to understand the law related to challenging arbitral awards. All cases, which were finally judged by courts of First Instance and Appeal and were accepted by the parties, are beyond the scope of this research. However, the analysis of their judgments were considered when there is cassation or supreme courts judgments in order to compare the difference of the courts understanding and application of the law.

2 Chapter 2: Challenging Arbitral Awards:

In general, the grounds for challenge which lead to annulment of arbitral awards are based on Article V of Convention on The Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958) and Article 34(2) of the UNCITRAL Model Law.⁵ These articles establish guidelines for jurisdictions either to establish new laws or to amend the existing ones which govern arbitration practices and enforcement. The reason is that jurisdictions want to ensure enforcement of arbitral awards which are issued locally.

Hence, the analysis of rules governing annulment of arbitral awards may be established based on the grounds for challenging awards that the law provides. It will be valid logic to start analyzing the possible grounds for challenging awards established by the law in order to understand whether these grounds are specific or general, classified or mixed. The same detailed approach will be implemented on analyzing the cases attached to this dissertation. A comparison analysis between the outcomes will be reviewed in order to reach to a conclusion on the clarity of the law on annulment of arbitral awards. The next step is to analyze each case and study the arguments in the pleadings, the facts of the dispute, the courts judgments, and the final judgment by the cassation or the Union Supreme Court.

2.1 An overview of the grounds for challenging an arbitral award under the UAE Civil Procedure Code⁶:

Generally stated, arbitral awards should be recognized by the local court as a precondition to enforcement. It is often recognized by the law that challenging a final award by a dissatisfied party will start when the winning party applies for recognition. The purpose for such challenge is normally to modify or nullify the arbitral award by the local court⁷. According to article 213 of the UAE Civil Procedure Code, there are different procedures to recognize and annul an arbitral award. In case of out-of-court arbitration⁸, the losing party may challenge the

⁵ J Lew, L Mistelis, S Kröll, *Comparative International Commercial Arbitration*, (Kluwer Law International, The Netherlands 2003) 673

⁶ As per UAE Civil Procedure Code, Federal Law No. (11) of 1992

⁷ J Lew, L Mistelis, S Kröll, *Comparative International Commercial Arbitration*, (Kluwer Law International, The Netherlands 2003) 664, P Fouchard, and others, *Fouchard, Gaillard, Goldman on International Commercial Arbitration*, (Kluwer Law International, The Netherlands 1999)300, G Born, *International Commercial Arbitration*, (Kluwer Law International, The Netherlands 2009)150

⁸In-court and out-of-court definition: The definitions of these two terms are described in details in Chapter 3

arbitral award directly after a final award was issued through filing a case to the local court or at the time when the winning party begins filing a case for recognition. However, in case of in-court arbitration, both parties may request the court in the next hearing to recognise or annul the award after receiving it without filing a case.⁹ This dissertation will elaborate on the difference between in-court and out court arbitration later as this is considered an important issue. This is because it might have an impact on annulment of an arbitral award and difference of the definition among the three courts in the UAE.

As stated earlier, this research has studied the reasons for annulment of final arbitral awards by the local¹⁰ courts in the UAE. It was necessary to analyze arbitration articles relating to arbitration of the UAE Civil Procedure Code (hereinafter the CPC), Federal Law No. (11) of 1992 in order to compare these with actual implementation by the courts. The issues raised by the applicable articles can be broadly classified into three main categories as shown in Appendix (1)¹¹. They are:

1. Arbitrable;
2. Procedural;, and /or
3. Substantive.

Arbitrable articles are those which relate to matters of the extent of power given by the law or the parties to an arbitrator or an arbitral tribunal. These include jurisdiction of the arbitrator/arbitral tribunal, the validity of an arbitration agreement, and the capacity of the parties to refer their disputes to arbitration.

Procedural articles concern procedures for dealing with arbitral awards including the structure of the award, issuance formalities, procedure for enforcement, differences between incourt and out-of-court arbitration procedures, and procedure for conducting arbitration in order to ensure avoiding any possible irregularities¹².

Substantive articles provide some guidance on respecting applicable laws and public policy matters in the arbitration process and the award. Notwithstanding listing some of the details of these three main categories, the applicable articles of law contain other detail matters related to arbitration which are beyond the scope of this dissertation.

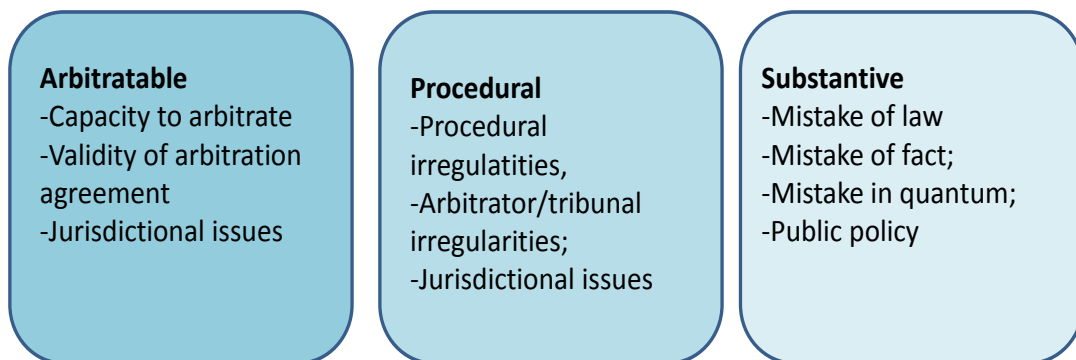
⁹See article 213, UAE Civil Procedure Code, Federal Law No. (11) of 1992

¹⁰ The local court is defined in this paragraph as the courts of Dubai, Abu Dhabi, or Union Supreme.

¹¹N Blackbay and others, *Redfern and Hunter on International Arbitration*, 5th ed.(Oxford University Press, NY 2009)

¹² The definition of “Irregularity” for this dissertation is: Any process which affects the arbitrator/tribunal, the proceedings, or the award which may cause substantial to the UAE law.

However, the three main categories were classified into subcategories based on legal articles in combination with the outcomes of the analysis. The arbitrable category maybe further classified into (1) capacity to arbitrate, (2) validity of arbitration agreement, and (3) jurisdictional issues. It is noted that Article 203-4 is a UAE Civil Procedural Code (CPC) which relates to the incapacity to arbitrate. The procedural category maybe classified into: Procedural irregularities, arbitrator/tribunal irregularities, and award irregularities. The third category is substantive which may be classified into: Mistake of law, fact, and quantum and public policy. The following chart explains the outcomes:



Taking into account such categorization and number of sub categories in each one, it is appropriate to state that the law focuses mainly on the jurisdiction and the irregularities in matters in the arbitration process. Such inference is easily recognized due to the importance of these categories and frequent deviations that have been noted. Nevertheless, the law focuses on the main outcome of the arbitration process which is the award. It specifies the procedure, contents, restrictions, timing, formalities, and other related issues in order to ensure recognition and avoid annulment.

Public policy:

Specifically, the main grounds for annulment are detailed in article 216. However, Article 212-2 adds that the award shall not conflict with the public policy of the jurisdiction. This article was classified under the substantive category because it gives the court the authority to study the substantive contents of the award in order to verify that the article was properly applied. It should be noted that judicial officer does not consider the request for annulment to be valid if the arbitrator issued his award in contradiction of the facts of the case. However, there is a possibility to annul the award if it conflicts with any UAE laws as stipulated in article 212-2.

Procedural errors:

Annulment of award can also be established if the parties did not follow the proper procedure for filing the recognition or annulment case in accordance with the law. For example the difference between in-court and out-of-court arbitration as is stipulated in article 213. The law states the effect of not adhering to this article on recognition of an arbitral award. 213-1 states “*When arbitration is conducted through court, the arbitrators shall, within fifteen days following the issue of their award, file with the competent court the award together with the original terms of reference, minutes of sessions and documents...*”. While 213-3 states: “*Where arbitration is conducted between the parties to a dispute outside the court, the arbitrators shall provide each party with a copy of their award within five days from the date of the issue of the same. The court shall, at the request of one of the parties filed within the normal course of filing the suit, consider whether the award shall be approved or nullified* ”. However, the court may refuse to recognize but may not nullify the award and request the applicant to start over and apply for recognition using the procedure set up in the law.

Requirement of signatures:

Article 212-7 is another method of annulment of an arbitral award. It states that the award must be signed in order to identify the date of issuing the award. If the arbitrator/tribunal failed to sign the award, then the court will not be able to determine if the arbitration agreement which has expired by time prescription or not. This would be identified only by the date of the signature. Specifically, the definition of signing the award is not clear whether it should be on all pages or on the last page of the award. This is a valid question since some awards could have more than a couple of hundreds of pages. In addition, and in case of the tribunal, the law does not specify clearly whether the signature of majority of the members is enough to pass the award in case there was a member who has a different opinion as stated in article 212-5.

Requirement of a date:

In the same manner, what will be the position if the award did not include its date? Is this enough reason for the court to annul the award? Where should the date be written? Could the date of receipt of the award by the parties be considered enough to indicate the approximate date of the award? Could the court infer the date of the award from reading the whole award?

Time limit of the award:

Furthermore, the law does not specify clearly the date in which the legal period of the arbitration starts. There are different activities in the arbitration process based on

whether the arbitration is ad hoc or institutional. Possible events are the date of appointing the arbitrators, the date of the arbitrator/tribunal writing to the parties requesting them to submit their pleadings, the date of signing the Terms of Reference, the date of introduction meeting, or the date of the first hearing. Any dispute in defining the legal starting date of the arbitration may affect on the total allowable period or the agreed period by the parties which may affect the process of award recognition in reference to article 216-1-a. In addition, do the parties have to agree expressly or impliedly on extending the period of the time for rendering the award? Does institutional arbitration differ from ad hoc arbitration in this regard? Such question may create some ambiguity with the parties and their legal representatives which might cause annulment of the award.

Inclusion of arbitration agreement in the award:

Similarly, the law requires in article 212-5 that a copy of the arbitration agreement shall be attached to the award. Does this mean attaching separately a copy of this agreement? Should the award state in brief or the exact wordings of the arbitration agreement? Should the award have both inside and attached copy of the arbitration agreement? Could the court annul the award if a copy of the arbitration agreement was attached to the award without being embedded also in the award? The law is not clear enough as stated in the relevant articles to answer these questions.

Conflict of law:

Article 212-2 does not specify clearly the possibility of annulment of an award if it conflicts with a UAE law which is not categorized as public policy. The law does not have any article which specifies the requirement that an award should not be in conflict with the case facts. The law does not provide for an award to be annulled if it is issued in conflict with the facts of the dispute. The law considers this issue is a pure substantive one which is under the arbitrator pure discretion. However, the ambiguity of this article leaves the door open for the court and the parties to apply for annulment of an arbitral award if it is not in conformity with the provisions of law using the argument that such non conformity is in conflict with the public policy.

Dealing with all issues of the dispute:

Likewise, if the arbitrator or tribunal fails to deal with all the issues that were put to it by the applicant, does the UAE law allow the court to nullify the award? The law does not specify this as a reason to nullify the award because any omission of the arbitrator to discuss any part of the conflict or assessment of elements of proof is not considered reasons for award annulment. However, the court may return the matter to the tribunal to deal with any omissions.

Interpretation and correction of an award:

Article 214-1a specifies the process for interpretation, correction, and explanation of the arbitral award. Such process may create further dispute between the parties. The article requires the arbitrators to reply to the court within three months from its decision. What happens if the arbitrators could not fulfill this requirement within the specified period? Should the interpretation process follow the same arbitration procedural process specified in the law? Should the tribunal start the arbitration process over by calling both parties to submit their arguments? Is there a requirement for a hearing if one party requested such? Could the court nullify the award because it passed its time limit?

Partial recognition and annulment of an award;

Furthermore, the law does not specify if the court can recognize or nullify the award partially. If the award dealt with a dispute consisting of two or more major issues whether they are related to each another or not, and the award satisfied the law requirement to be recognized on one issue but not the other one, what will be the court position in this case? What will happen if the arbitrators rendered the award in favour of the applicant but mistakenly? Will the court recognize the part of the award which in compliance with law and nullify the other part? Such issues are not clear enough in the law.

Oath by witnesses:

Article 211 states that the arbitrators shall cause the witnesses to take oath. What will happen if the oath is not administered? Or the arbitrators did not follow proper wordings of the oath? Or the parties agreed that there is no need for the witnesses to take oath? Could the court nullify an award just because the arbitrators did not cause the witnesses to take oath properly even though such reason is not mentioned specifically in article 216? Isn't this a part of substantial issues that the court does not consider them a reason for annulment?

Delivery period of the award:

In addition, article 213 states that the award shall be delivered to the parties within five days from the date of the award. Could the court annul the award if it was delivered after the fifth day from its date? What happens if one party received the award within five days and the other within 30 days, for example? Such issue could be better clarified and in more detail.

Contents of an award:

Moreover, article 212 requires that the award shall include a summary of the statements of the parties, their documents, the grounds and context of the award. Does this mean detailed reasoning of the award? How detailed should be the reasoning? Is general reasoning enough? What about if the reasoning was only one sentence? Could the court annul the award because its ground and context was not sufficient or detailed enough?

Number of tribunal members:

On the other hand, article 206-2 requires the number of the arbitrators shall be odd. Would the court nullify the award if the parties agreed on even number of arbitrators? Is this considered a public policy matter that does not allow the parties to agree on even number of arbitrators?

In conclusion, it will be inadequate to only rely on article 216 in order to establish the grounds for challenging an arbitral award in the UAE law. There are public policy, signature, date of award and other problems that could be derived from most of the articles and previous final judgments related to the recognition and annulment of arbitral awards.

2.2 Statistical review of the grounds for challenging UAE arbitral award:

The first step in analyzing the research was to understand the UAE Civil Procedure Code, Federal Law No. (11) of 1992 which relates to the arbitration without the enforcement. Articles 203 to 218 are related to arbitration. A new arbitration law is under drafting and may be released in the next year. As a result of this analysis, a general classification schematic diagram was drafted showing the reasons for recognition and nullification of the final arbitral awards. The analysis process of the cases were planned in order to ensure full understanding of all possible components of the judgment. These main components were the parties' pleadings and position, the final arbitral award classification, the chronology of the event of the case, the first (and second rounds if any) of the first instance, the appeal, the cassation court judgments, and then, the final cassation court judgment. In addition, the reasons of all judgments were studied according to whatever is clarified by the cassation court. Studying the pleadings of the parties whether to recognize or nullify the final arbitral award was important because it participated in creating the structure of answering the question of this research. In addition, such allegations or defence clarified the understanding of the law firms of the arbitration articles

A general informative table of events of each case was prepared by the author and attached to this study. This table will provide the reader a general idea of the time that the court took to recognize or nullify the final arbitral awards whether in-court or out-of-court arbitration. Such indication could be used generally to estimate the time to recognize or nullify a final arbitral award. However, such estimation will change from case to case.

After analyzing the cases, it is established that the most common grounds for challenging arbitral awards are similar to what is provided by the law from article 203 to 218¹³. As stated earlier, these grounds can be classified as arbitrability (including issues of lack of capacity, invalid agreements to arbitrate, tribunal's excess of powers, or arbitrability of the subject-matter of the dispute); procedural grounds (including issues relating to the composition of the irregularities in proceedings, tribunal, and award); and substantive grounds (including mistakes of law, mistakes of fact, and public policy).¹⁴

It is important to define each main and sub categories of challenging grounds in order to analyze the judgments. Arbitrability grounds are means the reasons which include mostly matters relate to arbitration in early stages of the agreement between the parties. These cover, for instance, whether the subject matter is arbitrable by law or not such as any dispute which is not capable of being reconciled.¹⁵ These grounds may also include if the parties have legal capacity to refer disputed matters to arbitration. Also included is the jurisdiction of the arbitrators to render an award on a matter referred to it by the parties.

In addition, procedural ground includes reasons related mainly to irregularities in the process of arbitration which may lead to failure of the arbitrators to conduct the proceedings in accordance with the procedure agreed by the parties and required by the law. This could cover irregularities in the proceedings itself, the formation of the tribunal and their performance and replacement, and the contents of award as agreed by the parties and the law whether the arbitration is ad hoc or institutional.

The third ground is substantive. This could include mistakes by the arbitrators whether the proper application of the applicable law agreed by the parties or the facts of the case has taken place. This could also include matters related to the UAE public policy as stated by the law.¹⁶

¹³ UAE Civil Procedure Code, Federal Law No. (11) of 1992

¹⁴ This is in agreement with what is mentioned in N Blackbay and others, *Redfern and Hunter on International Arbitration*, 5th ed. (Oxford University Press, NY 2009)

¹⁵ Article 203-4, UAE Civil Procedure Code, Federal Law No. (11) of 1992

¹⁶ Article 212-2, UAE Civil Procedure Code, Federal Law No. (11) of 1992

The preliminary results of the analysis of cases which are related to the recognition and enforcement of arbitral awards under the scope of this research show that procedural grounds were the most common reasons for granting annulment. As part of the procedural grounds, the misunderstanding of the parties, and sometimes by the first instance court, between the definition of in-court and out court¹⁷ arbitrations figured partially in annulment of arbitral awards.

Obviously, the most informative component is the reasoning of the cassation court and its judgments. Such reasoning was the core of the analysis provided by this study. A comparison among all judgments was studied in order to understand the main reason for recognition or annulment of the final arbitral award. This was followed by comparing such reasoning with existing articles of the law. A practical classification schematic diagram of the reasons for recognition and nullification of the final awards was drafted and compared to the previous general one. This research analysis is structured basically on the final judgments by the cassation and supreme courts.

It is essential to state that the attached judgments to this dissertation are all judgments related to challenging arbitral awards including ad hoc, institutional, in-court and out court arbitrations which were provided by the courts for this research. The period of these challenges extended from the year of 1991 up to 2012. It is also important to understand that the court procedure to recognize or challenge the arbitral award does not require filing a new case. The procedure requires only a request for recognition and enforcement in the first hearing after submitting the arbitral award to the court. This means that the computer system registers the case in its original number and does not provide the request for recognition or annulment with a new number. As a result, the search through case numbers and judgments of the computer system will not lead to identify such cases unless the parties appealed where they are dissatisfied with the first instance court decision.

85 cases were found that met the requirements of this study. 70 out of 85 judgments were from Dubai Cassation Court, while 7 judgments were issued by the Union Supreme Court and 8 judgments were issued by Abu Dhabi Court (see Figure.1).

¹⁷The final arbitral awards under these cases were in-court and out-of-court arbitration. Out-of-court arbitration were *ad hoc* and institutional. The most common arbitration institutions were Dubai International Arbitration Centre (DIAC) and Abu Dhabi Chamber of Commerce Arbitration Centre (ADCCAC).

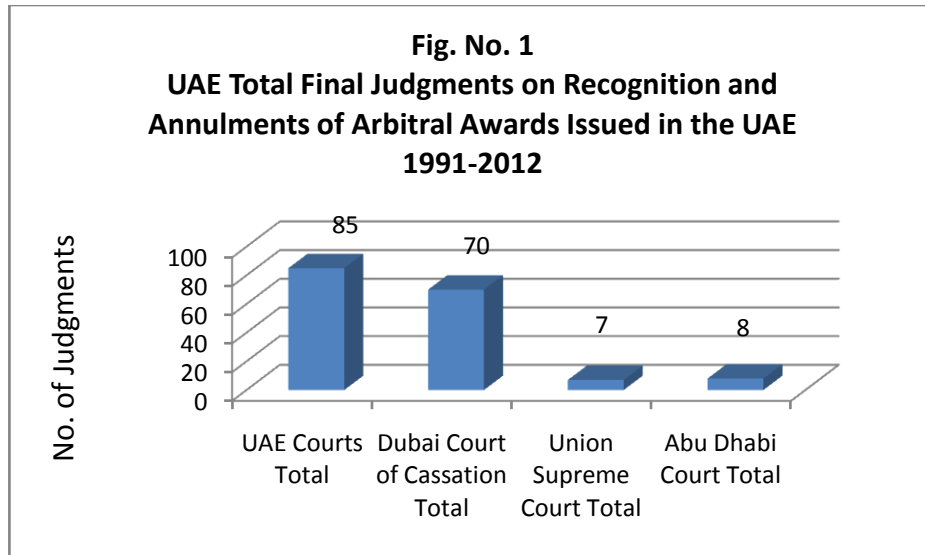


Figure 1: Total number of judgments by all courts

The final judgments of 27 out of 85 cases resulted in annulment of final arbitral awards, 3 of them were in Abu Dhabi Court, one was from the Union Supreme Court, and 23 were from Dubai Court of Cassation (See Figure. 2). In addition, 33 judgments were reversed in Dubai, one in Union Supreme Court, and 3 in Abu Dhabi Court (See Figure. 3). Comparing Dubai Court of Cassation judgments to other courts judgments, it is clearly visible that the annulment rate approached 32%, while in the Union Supreme and Abu Dhabi courts it was 14% and 38% respectively.

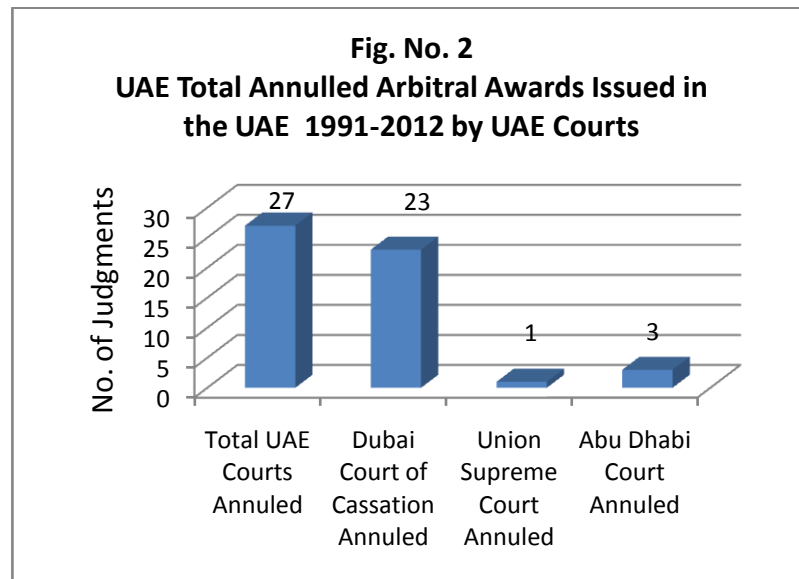


Figure 2: Total number of annulled arbitral awards by all courts

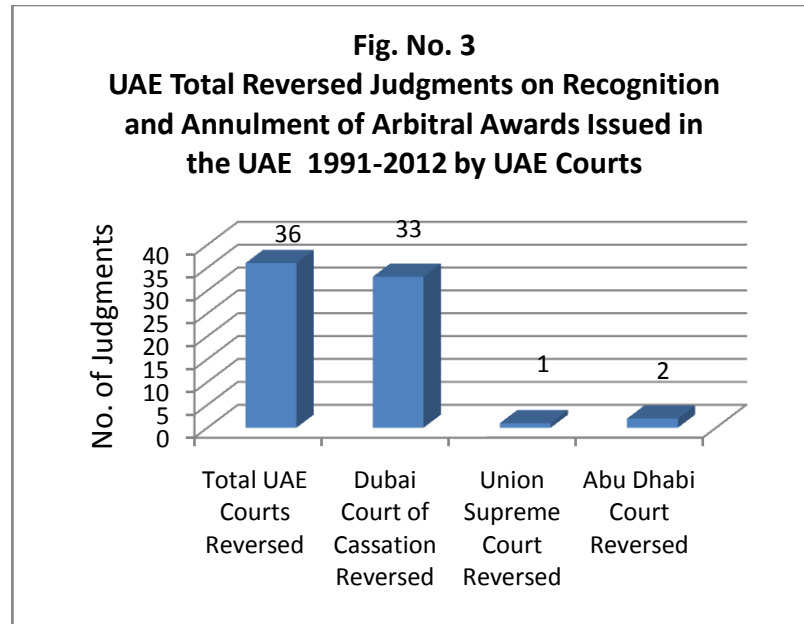


Figure 3: Total reversed judgments on recognition and annulment of arbitral awards issued in the UAE 1991-2012 by all courts

Looking closely at the figures, it is established that claims for annulment brought on procedural grounds approached 60% of the total researched judgments, while the substantive issues share was around 36%. The arbitrability ground had around 22% (see Figure. 4)¹⁸. However, the percentage of awards annulled based on procedural ground was around 63% of the total annulled awards, 15% for substantive ground, and finally 26% for arbitrability ground (see Figure. 5). However, while (Figure. 6) shows the combination of the two Figures 4 and 5 for more clarity on the annulment ratios for each ground, (Figure. 7) shows the distribution of these judgments based on individual courts

¹⁸ It is to be noted that due to the fact that some awards were challenged on more than one ground which leads to a total of percentages exceeding 100% if referenced to the total number of cases.

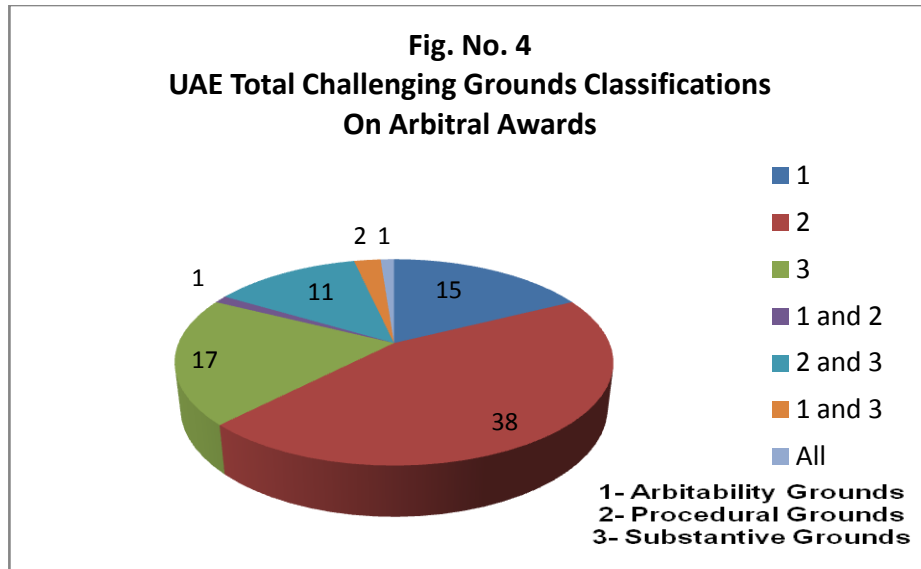


Figure 4: Challenging grounds of arbitral awards in all courts

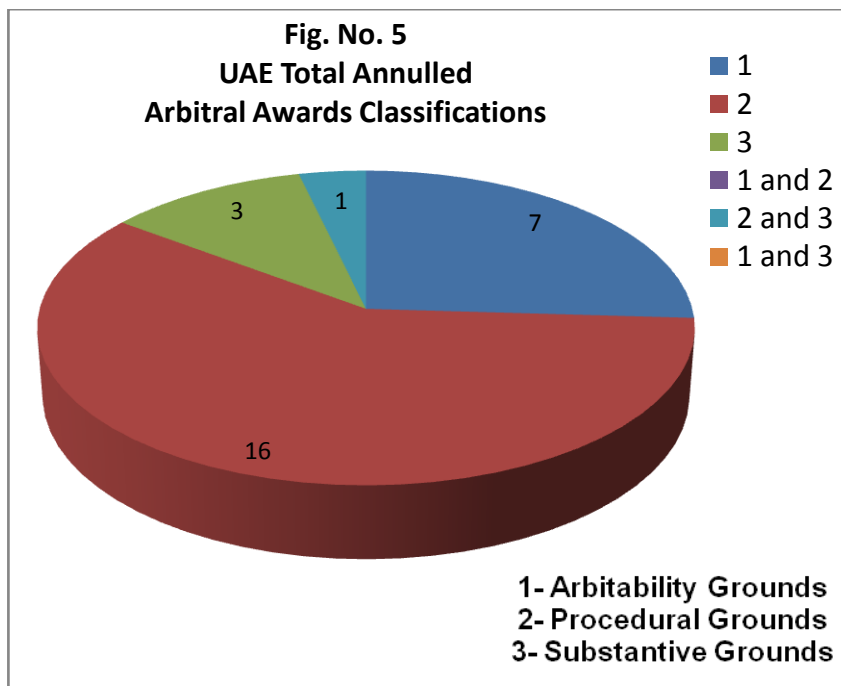


Figure 5: Annulment grounds which were used by all courts to annul arbitral awards

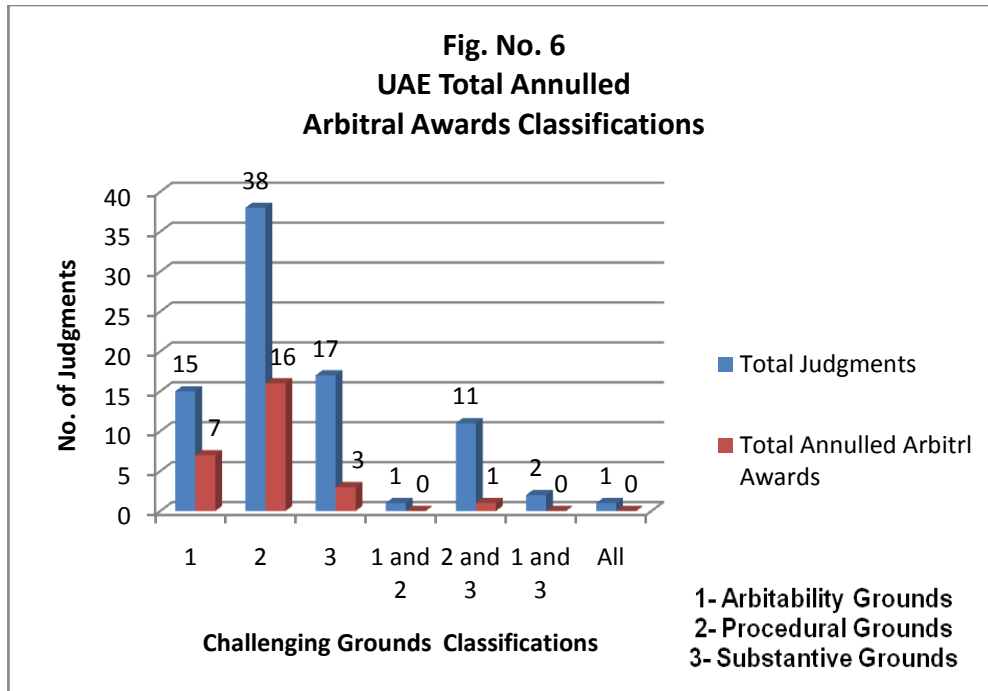


Figure 6: Number of annulled arbitral awards compared to the total judgments for each category in all courts

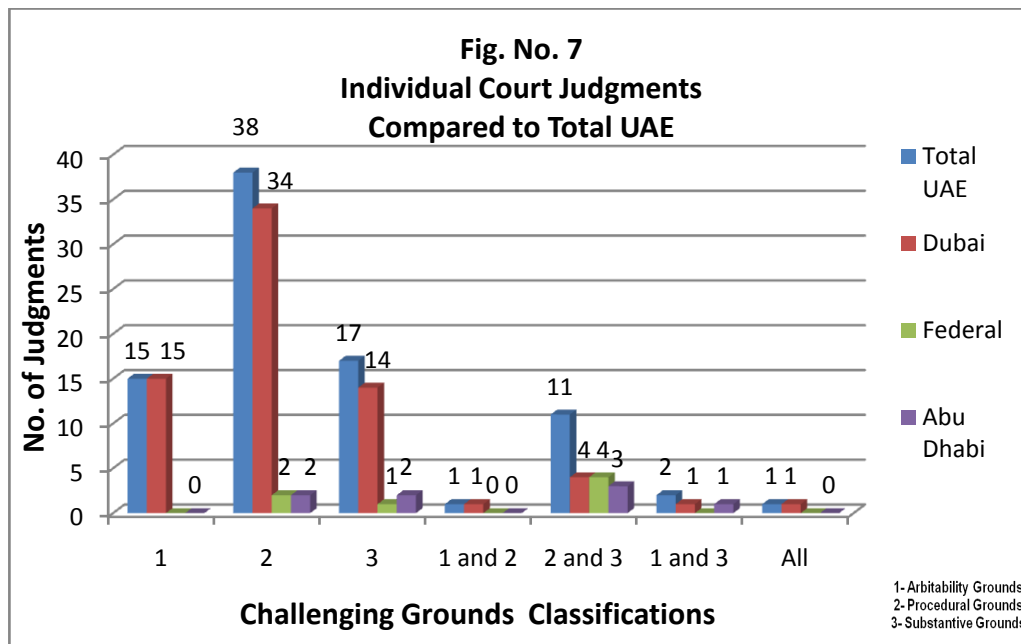


Figure 7: Number of annulled arbitral awards compared to the total judgments for each category in each court¹⁹

¹⁹ Please note that wherever the word “federal” is mentioned, it refers to the Union Supreme Court.

It could be easily remarked that the rate of success in annulment proceedings based on the procedural ground far exceeded the other grounds and reached almost two thirds of the total awards annulled in the whole UAE in the period. On the other hand, the interesting issue in these figures is that while the substantive ground was used more frequently than arbitrability ground to challenge the award, the success rate for annulment on this basis was less than for the arbitrability ground.

In my opinion, this shows that courts avoid to consider any substantive challenges to the arbitral awards. Their main concern is to ensure the regularities of the procedural process that provides the parties fair and legal rights to present their cases to the arbitrators. In addition, courts do not encourage parties to challenge the arbitrability process such as avoiding arbitration agreement or incapacity unless they were demonstrated clearly to the court.

In addition, this could be as a direct result to ad hoc arbitration where parties are not bound to follow specific set of procedures including the arbitrators. The communications between the arbitrators and the court sometimes may result to some procedural irregularities such as when requesting for time extension. If courts delay the response to such request, this may lead to time expiry of the arbitration.

Furthermore, the analysis of annulled awards shows that 7 out of 27 awards were annulled on the ground of exceeding the time limit of the arbitration period. In addition, 4 awards were annulled on the basis of conflict with public policy, 3 awards for incapacity to arbitrate, 4 awards for lack of jurisdiction²⁰, 4 awards for procedural irregularities, one awards for non suspension of the arbitration proceeding, 2 awards for non signature, 2 awards for not including the arbitration agreement, and one award for having the witness not taking the oath. For clarity, there was one award which was annulled on two grounds; exceeding time limit and procedural irregularities (See Figure 8).

²⁰ Either for the court or for the arbitrator

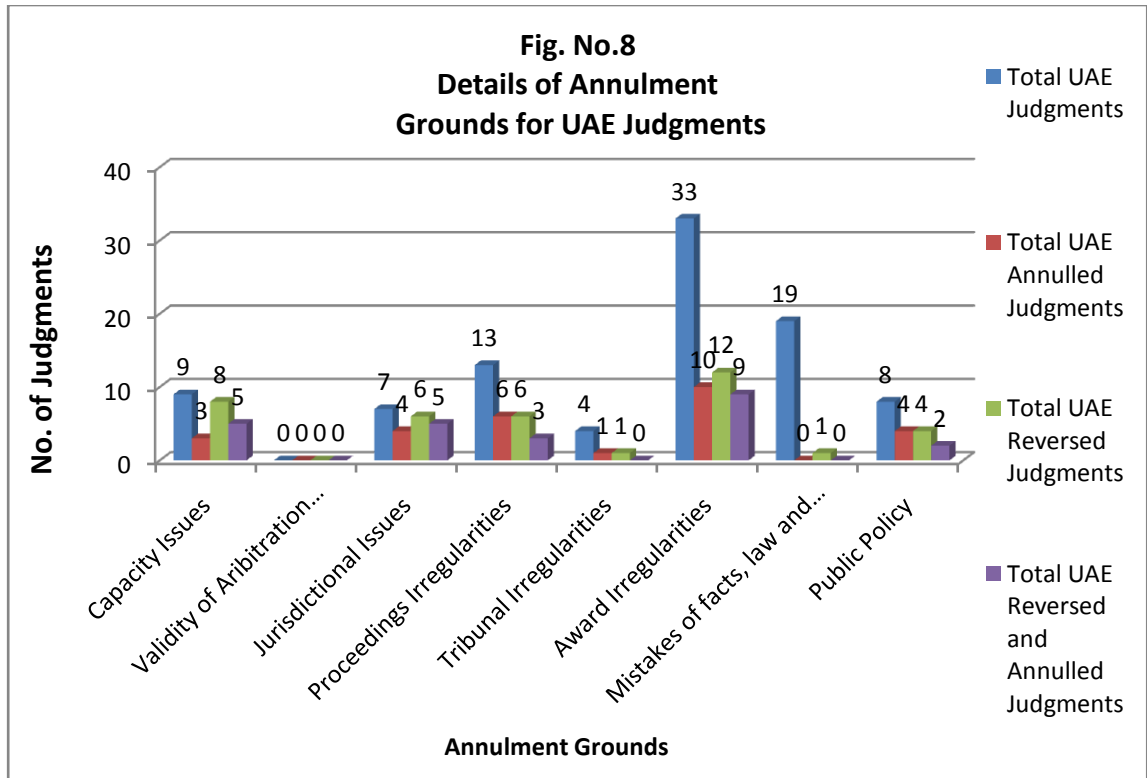


Figure 8: Details of annulment grounds of all UAE courts judgments

It is to be noted that there is only one award in Dubai and one in the Union Supreme court that were annulled on the basis of being in violation to the public policy. However, in Abu Dhabi, there were two judgments out of three annulled awards issued on the basis of conflicting with public policy. For clarity, the public policy issue was categorized under substantive ground for award nullification.

This result shows that courts rarely annulled arbitral awards on the basis of conflicting with public policy. This proves also that the tool of conflict with public policy is not an easy defence to be used in the pleadings to request the court to annul an arbitral award.

2.2.1 Dubai Court of Cassation judgments:

In order to understand the actual challenging grounds used by the legal counsel representing the parties in the cases, the subject matter of this dissertation, it is preferable to list some statistics related to them. This dissertation will consider only serious challenges which were considered by the courts rather than listing the whole ones which were not dealt with by the courts.

It is found that the most frequent ground used in challenging the recognition of a final award was the procedural ground which had a percentage of 65% of the annulled cases, while the arbitrability ground reached 26%, and the substantive grounds share was 9%. On the other hand, the difference in views between the Court of Cassation judgments with lower courts, appeal and first instance, reflects the level of legal understanding and application of the legal rules for these cases. In figures, 46% of the cases, the judgments were reversed²¹, of which 59% were on the procedural grounds. Such reversed judgments changed the final status between recognition and annulment. It showed differences of opinions between the courts. While Figure. 8 shows the above results in detail, Figure. 9 shows the details of all annulment grounds for Dubai Court of Cassation judgments.

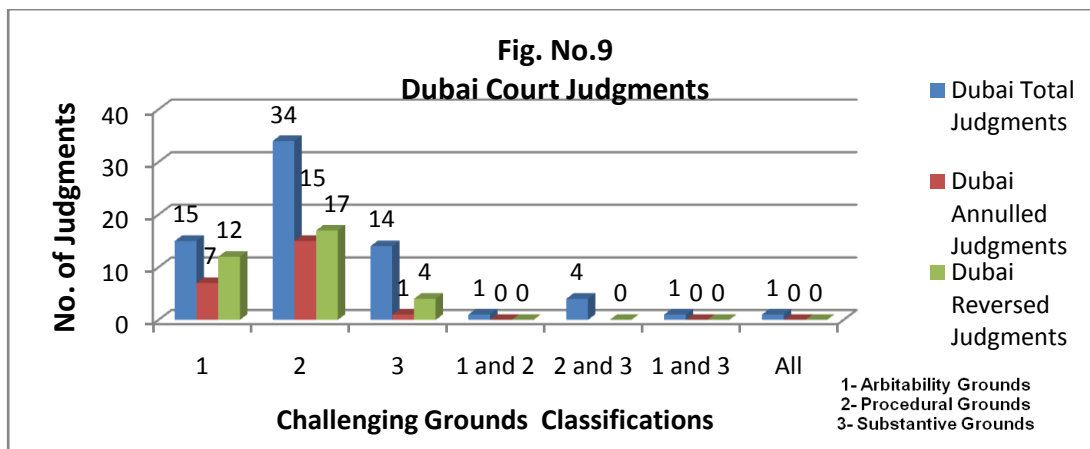


Figure 9: Number of annulled arbitral awards compared to the total judgments for each category in Dubai Court of Cassation

It is to be noted that case no. 33/2009 was not annulled nor was recognized due to the fact that the party did not follow the correct procedure established by the law for requesting arbitral award recognition. The misunderstanding was from the confusion of considering the arbitration in-court or out court. This will be explained in more detail in due course. The court ordered the party to resubmit the application for recognition.

Additionally, institutional arbitration²² awards contributed 13% of the total Dubai Court of Cassation cases, of which 56% were challenged on procedural grounds. Four out of nine awards were annulled of which 50% were on a procedural ground as shown in Figure. 10.

²¹Reversed could be defined in this research as any difference in the judgments between the three courts, first instance, appeal, and cassation/supreme.

²²Dubai International Arbitration Center (DIAC) was the only arbitration centre that was reflected in the judgments received from Dubai Courts.

In my opinion, one of the main factors that resulted in high percentage of annulment based on procedural grounds is ad hoc arbitration. Well-trained arbitrators in ad hoc arbitration should be selected carefully by Dubai courts. Furthermore, the court is not monitoring the performance of the arbitrators and the arbitration process in order to ensure the proper regularities of the arbitration. In fact, the court closes the case file once the arbitrator is appointed and it acts only when it receives the final award or if one of the parties or the arbitrator requested the interference of the court. There is no procedural guidelines which governs the ad hoc arbitration which is referred by the court.

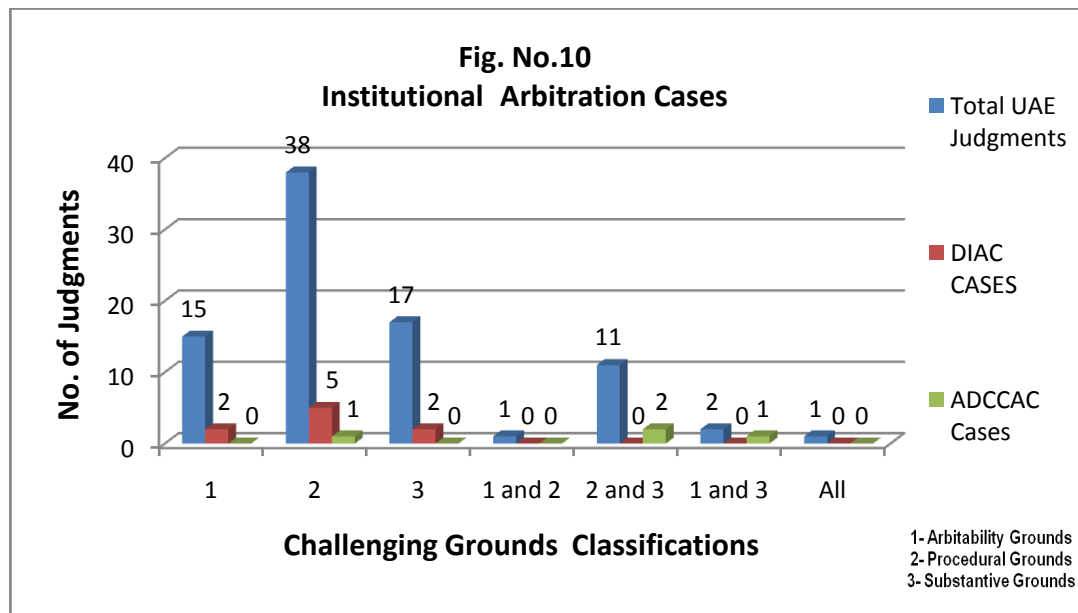


Figure 10: Challenging grounds classifications of institutional arbitration awards including DIAC and ADCCAC²³

2.2.2 Union Supreme Court judgments:

It is found that the most frequent ground used in challenging the recognition of a final award was procedural grounds which had a percentage of 86% of the annulled cases, while the substantive grounds share was 71%.²⁴ No arbitral awards were challenged on arbitrability grounds. On the other hand, the difference in views between Supreme Court judgments and the lower courts, appeal and first instance, reflects the level of legal understanding and application of the legal rules on these cases. In figures, there was one case when the judgment was reversed and the award was annulled on the basis of procedural ground. Such reversed judgment changed the

²³ Abu Dhabi Chamber of Commerce Arbitration Centre (ADCCAC)

²⁴ It is to be noted that due to the fact that some awards were challenged on more than one ground which leads to a total of percentages exceeding 100% if referenced to the total number of cases

final status between recognition and annulment. While Figure. 11 shows the above results in details, Figure. 12 shows the details of all annulment grounds for Union Supreme Court judgments.

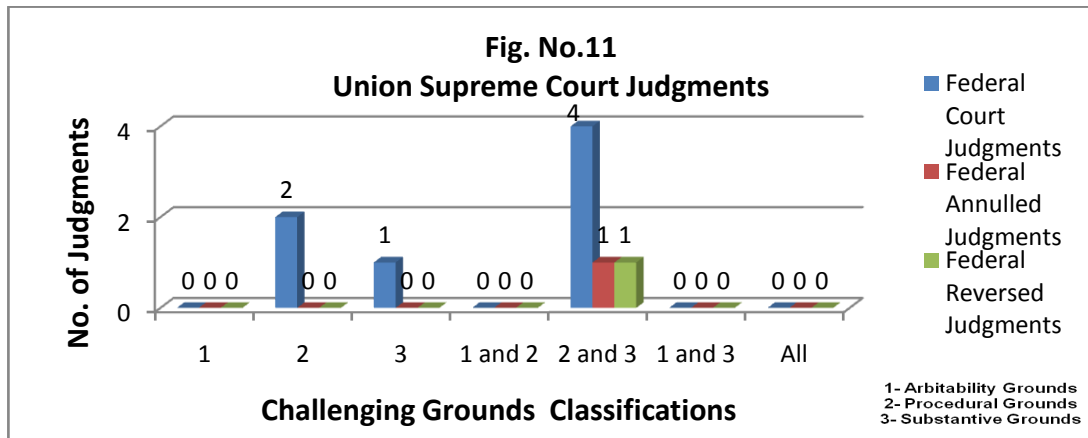


Figure 11: Challenging grounds classifications of Union Supreme Court judgments including annulled and reversed judgments

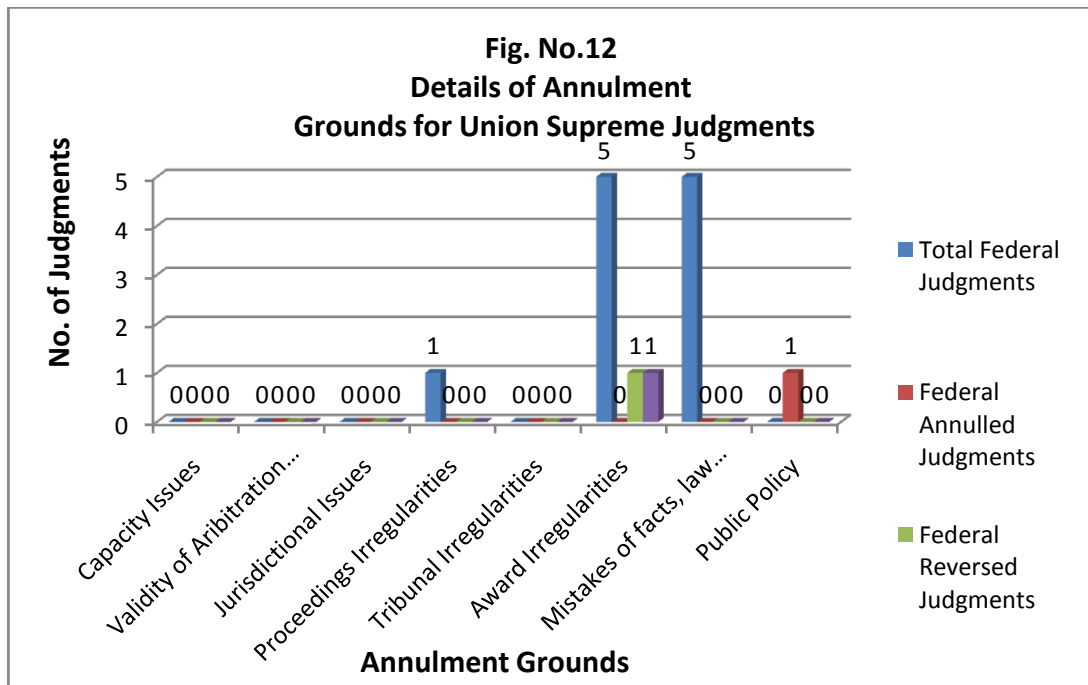


Figure 12: Annulment grounds classifications of Union Supreme Court judgments

2.2.3 Abu Dhabi Court judgments:

Surprisingly, it is found that the use of substantive grounds exceeded the procedural grounds of the annulled cases. There were three annulled awards; two of them were based on substantive ground while the other one was on procedural ground. On the other hand, the difference in views between the cassation court judgments with lower courts, appeal and first instance, reflects the level of legal understanding and application of legal rules on the cases. In other words, two out of three annulled awards resulted from reversed judgments. While Figure. 13 shows the above results in details, Figure. 14 shows the details of all annulment grounds for Abu Dhabi Court judgments.

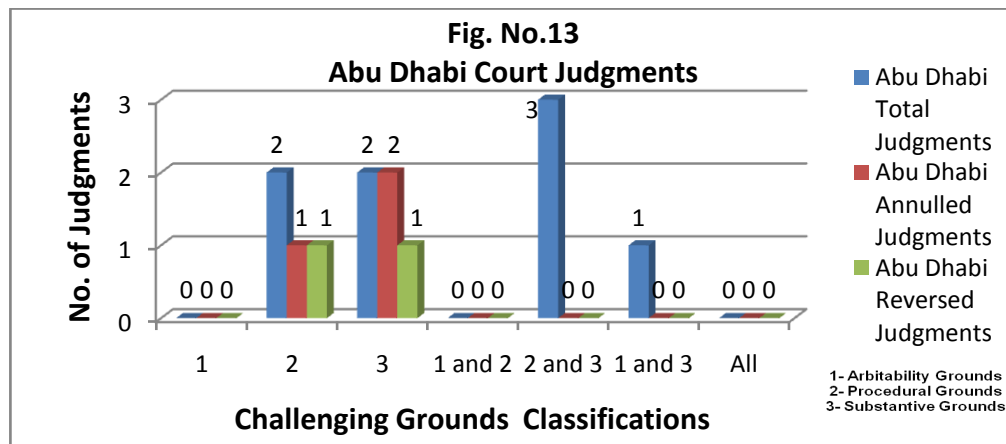


Figure 13: Challenging grounds classifications of Abu Dhabi Court judgments including annulled and reversed judgments

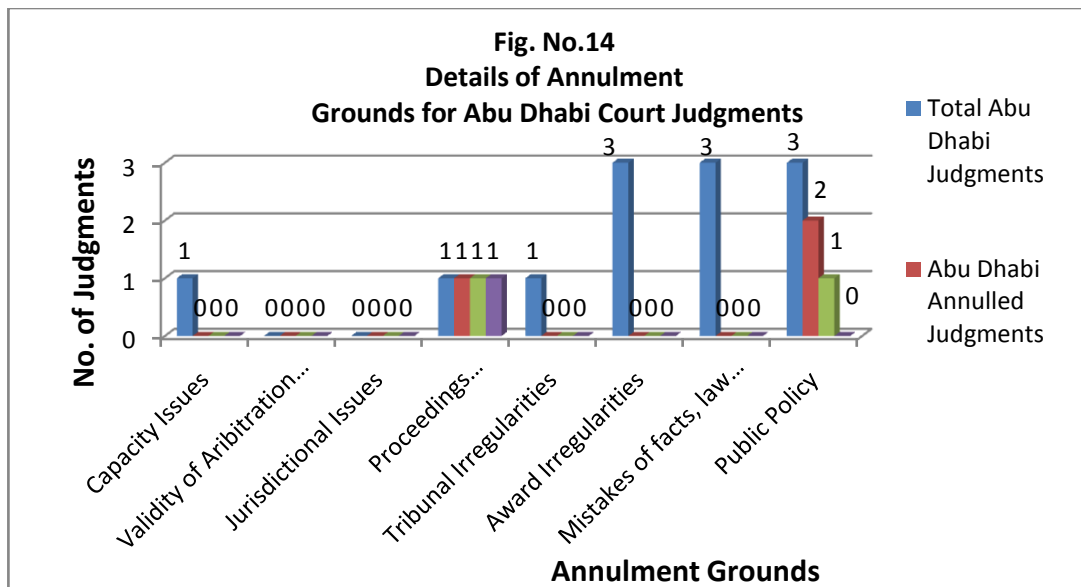


Figure 14: Annulment grounds classifications of Abu Dhabi Court judgments

Additionally, institutional arbitration²⁵ awards contributed 25% of the total Abu Dhabi Court cases, in which procedural and substantive grounds share the same weight of 75% for each one out of the total number of the judgments in Abu Dhabi Court. However, the only award which was annulled was in fact based on procedural grounds and the judgment was reversed as shown in Figure. 10. Moreover, Figure 15 shows the difference in the annulment rates between DIAC²⁶ and ADCCAC arbitral awards.

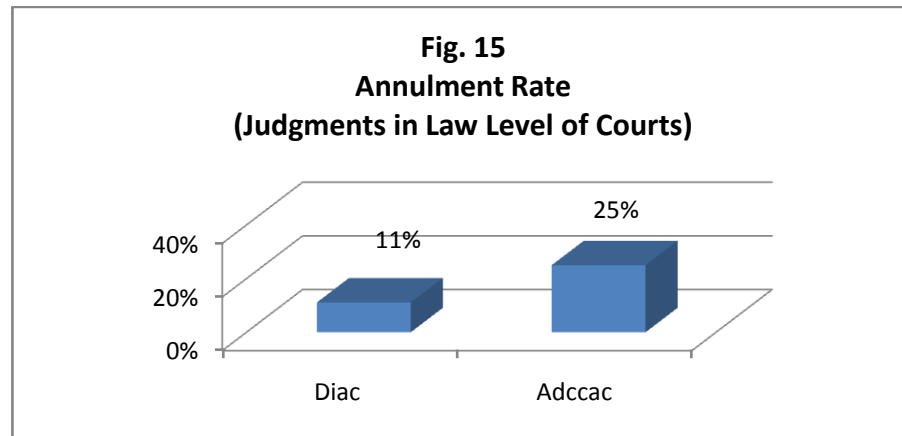


Figure 15: Difference in the annulment rates between DIAC and ADCCAC arbitral awards

The difference in the percentage of annulment between the two centers may reflect the organizational guidelines between the two centers. In addition, the qualification of the arbitrators in each center may also play great role in reducing the annulment possibilities. In addition, continuous supervision from the arbitration centre might have impact in ensuring proper regularities of the arbitration.

²⁵ Abu Dhabi Chamber of Commerce Arbitration Centre (ADCCAC) was the only arbitration centre that was reflected in the judgments received from Abu Dhabi Courts.

²⁶ Dubai International Arbitration Centre (DIAC)

3 Chapter 3: Main differences between the UAE courts on annulment grounds:

Generally, all three UAE courts had similar approaches in recognition and enforcement of final arbitral awards. It is noted that since the issuance of the (CPC), all courts have applied the same principles and have the same understanding and application of the law. All of them have not expressed different views on the arbitrability ground. However, there were two main issues where the Dubai Court of Cassation had different opinions of the law than the others and these relate to procedural grounds and substantive grounds. With regard to procedural grounds, it is the concept of in-court and out court arbitrations which leads the difference, while with the substantive ground it is the issue of number of arbitrators which is classified in this research under public policy.

3.1 In-court/ out-of-court arbitration:

The difference between in-court and out-of-court arbitration is considered one of the main controversial issues among the three main courts in the UAE. Article 213 (1) in the CPC established two main significant differences between the two concepts: the first difference is the procedure for the arbitrator to submit the final award to the court and the parties; the second difference is the procedure for the parties to either request recognition or annulment of the award.

If the arbitration is classified to be in-court, then the following procedure shall be followed. The arbitrators shall file within fifteen days following the issue of their award with the competent court the award together with the original terms of reference, minutes of sessions and documents.²⁷ Alternatively, if the arbitration is classified to be out-of-court then the arbitrators shall provide a copy of the award to each party and then file the case within the normal course of filing the suit.²⁸

²⁷Article 213 (1) of CPC states: 1. When arbitration is conducted through court, the arbitrators shall, within fifteen days following the issue of their award, file with the competent court the award together with the original terms of reference, minutes of sessions and documents. They shall also file with the court a copy of the award to be delivered to each of the parties within five days from the date of filing of the original copy thereof. The court clerk shall prepare a report on the said filing to be submitted to the judge or the head of the department, as the case may be, so as a hearing may be convened within fifteen days for the purpose of approving the award. The parties of the dispute shall be notified of the date fixed for the hearing as aforesaid.

²⁸Article 213 (3) of CPC states: 3. where arbitration is conducted between the parties to a dispute outside the court, the arbitrators shall provide each party with a copy of their award within five days from the date of the issue of the same. The court shall, at the request of one of the parties filed within the normal course of filing the suit, consider whether the award shall be recognized or nullified.

The understanding of Dubai Court of Cassation is that they consider the arbitration is in-court only if the parties filed the dispute (in which they have an arbitration agreement) in the beginning with the court and then requested the court to appoint an arbitrator. The subject matter of the case when filing the case to the court should be resolving the dispute rather than appointing arbitrators. If the subject matter of the filed case with the court is to appoint an arbitrator, then the court will consider it as an out court arbitration. In case number 33/2009 civil reference number 11 in Table (3), the first instance court decided that the arbitration is considered in-court because the parties filed the case to the court in order to appoint an arbitrator, which the court did. After the arbitrator delivered the award to the court according to article 213(1), the party requested to recognize the award in the first next hearing. The court recognized the award.

However, the cassation court accepted the challenge on the basis that this is not an in-court arbitration in accordance with the law. The court described its position as if the parties filed a case to the court requesting to appoint an arbitrator, and if the court ordered to appoint an arbitrator, the court shall conclude that the dispute is resolved and the case file is closed. As a result, the parties should file a new case with the court to recognize or nullify the award once it is rendered by the arbitrator in accordance with article 213 (3). The cassation court accepted the challenge and requested the party to file a new case for recognition.²⁹³⁰

On the other hand, the Union Supreme Court in case number 325/2010 Civil reference number 72, the claimant filed the case with first instance court to appoint an arbitrator. The court appointed the arbitrator. Upon receiving the award, the claimant requested the court in the first hearing to recognize the award. The court refused to recognize it on the basis that the arbitration is out court. The appeal court reversed the judgment, and the cassation upheld the appealed judgment. In its judgment, the Supreme Court stated that it considers the arbitration is in-court once a party files a case whether only to appoint an arbitrator or to resolve the dispute. Hence, article 213 (1) will be applicable in this case.

Similarly, Abu Dhabi Court applied the same concept as the Union Supreme Court in case number 873/2009 Civil reference number 81. The challenge from the respondent was based on the same concept, however, all the three courts had the same view that they considered the arbitration is in-court and hence the rejected the challenge on this basis.

²⁹Please see also case no. 190/2006 Commercial, reference no. 29 in Table (3).

³⁰Case 33/2009 Dubai, reference no. 11

Statistically, Figure 16 and 17 show a comparison between Dubai Court of Cassation and Union Supreme & Abu Dhabi classifications of judgments and annulled arbitral awards.

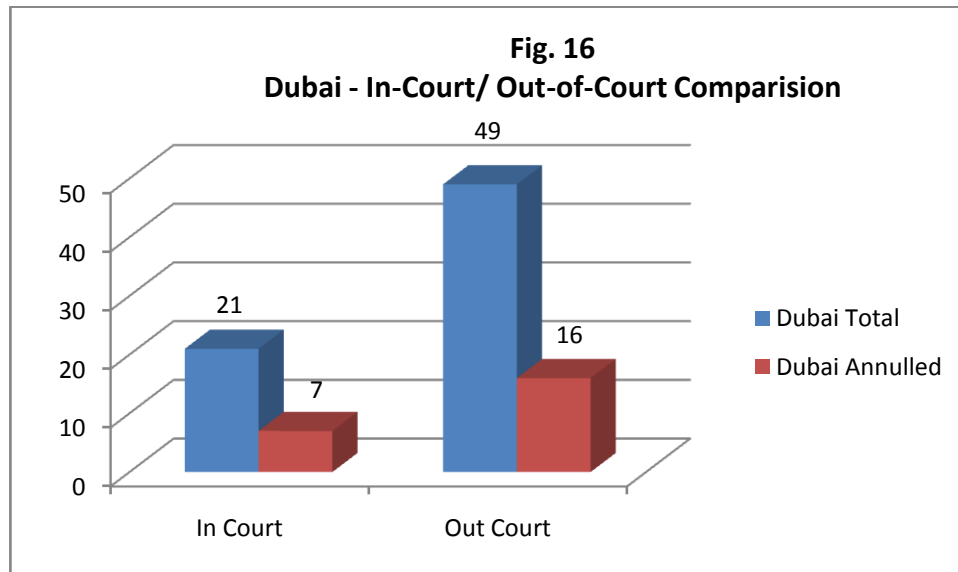


Figure 16: Difference between in-court and out-o-court arbitrations and the annulled awards in Dubai Court of Cassation

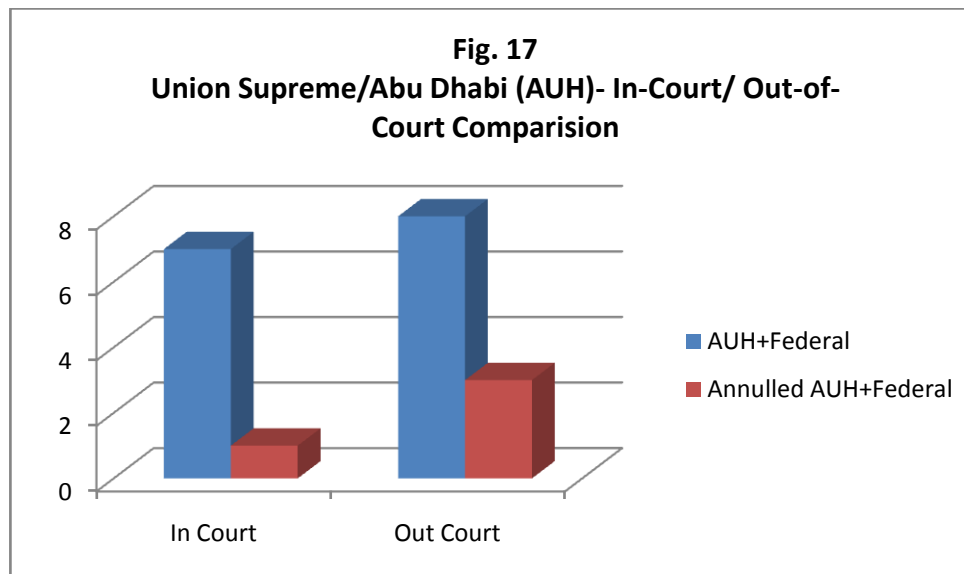


Figure 17: Difference between in-court and out-of-court arbitrations and the annulled awards in Union Supreme and Abu Dhabi Courts

In summary, the findings of the interviews confirms the differences between in-court and out-of-court arbitration by the courts. Both Dr. Ali Al Imam³¹ and Mr. Shehab Al Hammadi³² still confirm their positions. However, Mr. Al Hammadi raised the issue that the Union Supreme Court might change their position and adopt the same principle that Dubai Court of Cassation is applying in this regard.

In my opinion, the Union Supreme and Abu Dhabi courts application of in-court and out-of-court classification is more reasonable and closer to what is stated in Article 213 of the CPC. However, both courts look at this issue from the court procedural point of view when filing the cases in the courts. Disputed parties prefer to consider their case as an in-court arbitration because they will save time and money. In case of out-of-court arbitration, parties should pay court fees twice, one at the time of requesting the court to appoint the arbitrators, and the second at the time of requesting to recognize or annul the arbitral award.

While Dubai Court of Cassation evaluates that when the parties approach the court for only appointing the arbitrators without looking at the merit of the dispute, the court appoints the required arbitrator and then the case is considered “Decided”. Based on this procedural status, the court classifies it as an out-of-court arbitration.

It is highly recommended for the disputed parties to understand the importance of the classification of in-court and out-of-court arbitration. This importance will have impact on time and cost of the case proceedings. If the party who seeks the recognition of the arbitral award misfile the application for recognition or annulment of an arbitral award as per Article 213 of the CPC, this may result that the law court may refuse to recognize or annul the arbitral award and request the parties to restart the application.

3.2 Even/odd number of arbitrators:

The difference of understanding and application of the law between the courts in the UAE was clear with regards to the number of arbitrators. If the parties agreed to appoint even number of arbitrators, two or four, is this considered as non-compliance to the law? Is it against public policy? Let us see the difference in views between the three courts.

In case number 273/1993 reference number 68, the tribunal which was agreed between the parties constituted of four arbitrators. They issued their final award and the claimant requested the judge to recognize the award. The respondent challenged

³¹ Appendix 3, Q9, Dr. Ali Al Imam is the Chairman of Dubai Court of Cassation. The interview was conducted in his office on Jan 7th, 2013.

³² Appendix 4, Q7, Mr. Shehab Al Hammadi is the vice chairman of the Union Supreme Court. The interview was conducted in his office on Feb 26th, 2013.

the award and requested that it be nullified on the basis that it conflicts with article 206 (2)³³. The issue was raised for the first time in front of the cassation court. The cassation court in their final judgment did not accept the challenge on the basis that the respondent had to initiate the request for annulment on this basis in front of the judge who was charged with the matter of recognizing the award in accordance with the request of the claimant.

The Union Supreme and Abu Dhabi Courts acted contrary to Dubai Court of Cassation on this issue. The parties agreed in case no. 186/2008 Abu Dhabi Court reference no. 85, to appoint two arbitrators as provided in their partnership agreement. They filed a case in the court requesting to appoint two arbitrators which they did. The first instance court recognized the award but the appeal court reversed the judgment. However, the court did not accept the challenge from the claimant on the basis that they are free and not bound to appoint even number of arbitrators. The court stated clearly that defining the number of arbitrators is a public policy matter which means that any agreement contrary to it shall be considered void and null.

This principle was also emphasized in case 544/2008 Abu Dhabi Court reference no. 83 when the court insisted that appointing two arbitrators by a semi-governmental institution is against the public policy even though that the court also mentioned that article 206 (2) shall be respected as well.

Looking at the judgment of Dubai Court of Cassation from the first instance, it may be shown that the court rejected the request of the annulment on the basis that appointing an even number of arbitrators is not a valid reason for nullifying an arbitral award. However, as a result of the interview with the chief judge of Dubai Court of Cassation³⁴, it was very clear that the position of the court is similar to Abu Dhabi and Union Supreme courts. They all consider that an arbitration agreement which is based on even number of arbitrators is against the public policy.

The outcome from the interviews regarding this issue was clear. Both Dubai and Union Supreme Courts³⁵ agreed that the tribunal number shall be odd. Parties may not agree on even number otherwise it is considered against the public policy. However, Dr Bunni³⁶ raised another issue in this regard. He stated that in some other jurisdictions, even numbers are acceptable subject that there should be a casting vote to that arbitrator whose profession matches with the main issue of the dispute.

³³Article 206 (2) states: 2. "If there are more than one arbitrators, the number shall, at all times be odd."

³⁴ Please see Appendix 3

³⁵ Appendices 3 & 4, Q10 & 8 respectively

³⁶ Appendix 5, Q.

In my opinion, this issue is stated clearly in Article 206(2) which states that the number of arbitrators shall be odd. In addition, the violation of this concept is conserved a matter in conflict with the public policy. However, I am in the opinion that such determination should be left to the parties to decide on the number of arbitrators. In principle, even number of arbitrators is recognized in Quraan³⁷, which is the major source of Shariah law. Thereupon, it is submitted to amend this article in any proposed new arbitration act.

3.3 Annulment of part of the award:

In principle, courts normally recognize or annul arbitral awards as a whole. However, Dubai Court of Cassation decided two cases in which there were judgments for partial recognition of awards. Dubai Court of Cassation issued their judgment considering partial annulment in case no. 190/2006 Commercial reference no. 29. The case in brief is that the parties filed a petition to the court to appoint an arbitrator to decide on the existence of a partnership agreement between the parties which it did. In addition, the arbitrator in his final award decided that the partnership company should be liquidated and a liquidator should be appointed.

The first instance and appeal courts recognized the award. However, the cassation court recognized only the part of the award which decided on the validity of the partnership agreement but annulled the other part of the award in relation to the liquidation. The court in their judgment stated that the arbitrator had no jurisdiction to decide on the liquidation, and because the parts are not linked directly together. Hence, partial annulment was considered.

Alternatively, in case no. 10/1995 reference no. 64, the arbitrator issued his final award in which he decided firstly that the respondent shall register the land in Jordan in the name of the claimant. Secondly, he shall pay him some money with interest. The first instance and appeal courts recognized the second part of the award while they annulled the first part. The cassation court accepted the challenge from the respondent on the basis that the annulment of the first part should imply the annulment of the second part because both parts are linked together. The cassation court was persuaded and upheld the challenge on the basis that the court should have studied the respondent's defence. The defence was based on the fact that both parts of the award were linked and could not be separated. If the court found the defence acceptable then this may change the case which may result in the two parts considered linked. In this case, if the first part is annulled then the second part will be annulled as well if the court found that both parts are linked together.

³⁷ "...as adjudged by two just men among you...", Al Maidah, V. 95, <http://quran.al-islam.com/Loader.aspx?pageid=738&BookID=15&page=1>, Accessed on April 25th, 2013.

The difference of views between Dubai Court of Cassation and the Union Supreme Court in this regard was also clear in the interviews. While Dr. Ali Al Imam³⁸ agree that an arbitral award could be partially recognized if the issues were not connected. Mr. Shehab Al Hammadi³⁹ believes that, in general, the Union Supreme Court does not encourage partial recognition of an arbitral award because it involves looking at the award from the substantive issue which is not recommended. However, Dr. Nael Bunni⁴⁰ in agreement with Dr. Al Imam's view and supports his argument with the reference to Article V.1(c) of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Dr. Bunni relied in his opinion on this issue with regards to international arbitration.

In my opinion, partial recognition or annulment is not recommended as this may result that the court may be required to look at the merit of the dispute which is avoidable by courts. The issue is also raised that in case the court annulled an arbitral award partially this may leads to terminate the arbitration agreement. Dubai Court of Cassation case Rights 192/2007 dated on Nov 27, 2007, established that the jurisdiction of the arbitrator ends once the arbitral award is recognized or annulled unless the disputed parties sign another arbitration agreement. This is also supported by Article 214(1) of CPC as it states that the jurisdiction of the arbitrators stays valid only to explain their award or to decide on matters which were not covered under their original.

³⁸ Appendix 3, Q6

³⁹ Appendix 4, Q6

⁴⁰ Appendix 5, Q6. Dr. N. Bunni is a well-known international arbitrator. The interview was conducted in his office in Dubai and an email replying to a questioner on March 2nd, 2013.

4 Chapter 4: Categorization of Annulment grounds for UAE arbitral awards:

In order to understand the three main categories for the grounds of challenge to annul arbitral awards, it is appropriate in this section to focus with more details on these grounds. The following details will enable us to understand the main reasons under each category. This analysis will focus only on cases with new reasons and avoid repeated ones.

4.1 Prior arbitration commencement:

4.1.1 Arbitrability grounds:

4.1.1.1 Capacity issues:

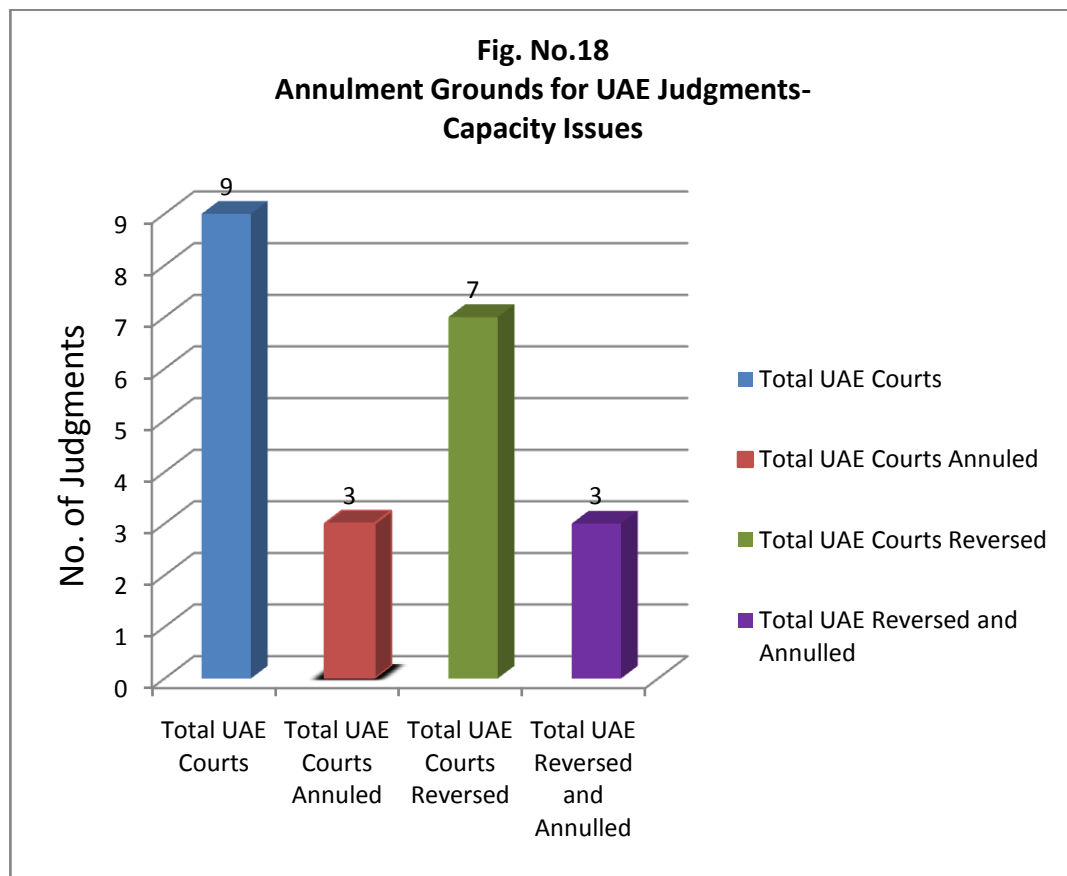


Figure 18: Annulment grounds based on capacity issues in all UAE courts

The first category is the arbitrability of a claim. This comprises of three sub-categories: capacity, validity, and jurisdictional issues. According to the judgments considered in this dissertation, the following fields were related to capacity issues; the general proxy (or Power of Attorney) which includes specifically the capacity of the proxy holder (or attorney in fact) to refer disputes to arbitration. In addition, the party who requests the court to annul an arbitral award cannot rely on the basis of the incapacity of the other party to arbitrate. The incapacity ground is a tool in the hand of the party who gives proxy to request for annulment.⁴¹ However, Dubai Court of Cassation annulled an arbitral award on the basis of a challenge by the respondent that the claimant's proxy had not clear capacity to arbitrate and the proxy was issued from the owner of the claimant rather from the claimant itself as a trade entity⁴². Moreover, if the arbitrators have the capacity (or authorized) to conciliate, then the first recognition or annulment judgment is not subject to appeal.⁴³ However, such capacity should be explicit vividly and in writing.^{44 45 46}

In addition, the party who attended the arbitration could not by default have the capacity to request award recognition or annulment. The capacity to arbitrate must be extended to the capacity to request recognition or annulment.⁴⁷ In another case⁴⁸, the court accepted the challenge to annul the arbitral award on the basis that the first instance court should consider the defence of the respondent that the person who gave proxy to arbitrate was not conscious of his behavior (was put under restriction after the award was rendered) and he was misled by the claimant. The court adopted the principle that incapacity could extend to a person who is unconscious legally of his behavior.

The court in another case did not accept implied capacity to arbitrate unless it is stated clearly in a written and signed format.⁴⁹ However, in another case, the court accepted implied capacity to sign the arbitration deed (terms of reference) if the principal or his legal counsels attended the arbitration proceeding without objecting to the person who signed the arbitration deed.⁵⁰

⁴¹Case 209/2004 Dubai, reference no. 36

⁴²Case 191/2009 Dubai, reference no. 7

⁴³Case 207/2009 Dubai, reference no. 4

⁴⁴Case 186/1996 Dubai, reference no. 60

⁴⁵Case 294/1994 Dubai, reference no. 67

⁴⁶Case 278/2008 Dubai, reference no. 12

⁴⁷Case 271/2000 Dubai, reference no. 53

⁴⁸Case 460/1998 Dubai, reference no. 55

⁴⁹Case 577/2003Dubai, reference no. 33

⁵⁰Case 834/2010 Abu Dhabi, reference no. 78

Finally it is noted that all five judgments in this section were reversed by the three levels of courts in Dubai. This may reveal the difference in approach or understanding and interpretation of law between the different levels of courts.

4.1.1.2 Validity of arbitration agreement issues:

There were no judgments by any court related directly to challenges on the validity of the arbitration agreement. However, the classification used in this dissertation was built on direct causes and grounds rather than indirect ones. As an example, if the award was annulled on the basis of invalidity to arbitrate because one of the parties had no capacity to arbitrate, then this could mean the signed arbitration agreement is invalid. However, this dissertation has necessarily classified such examples under incapacity issues.⁵¹

4.1.1.3 Jurisdictional issues:

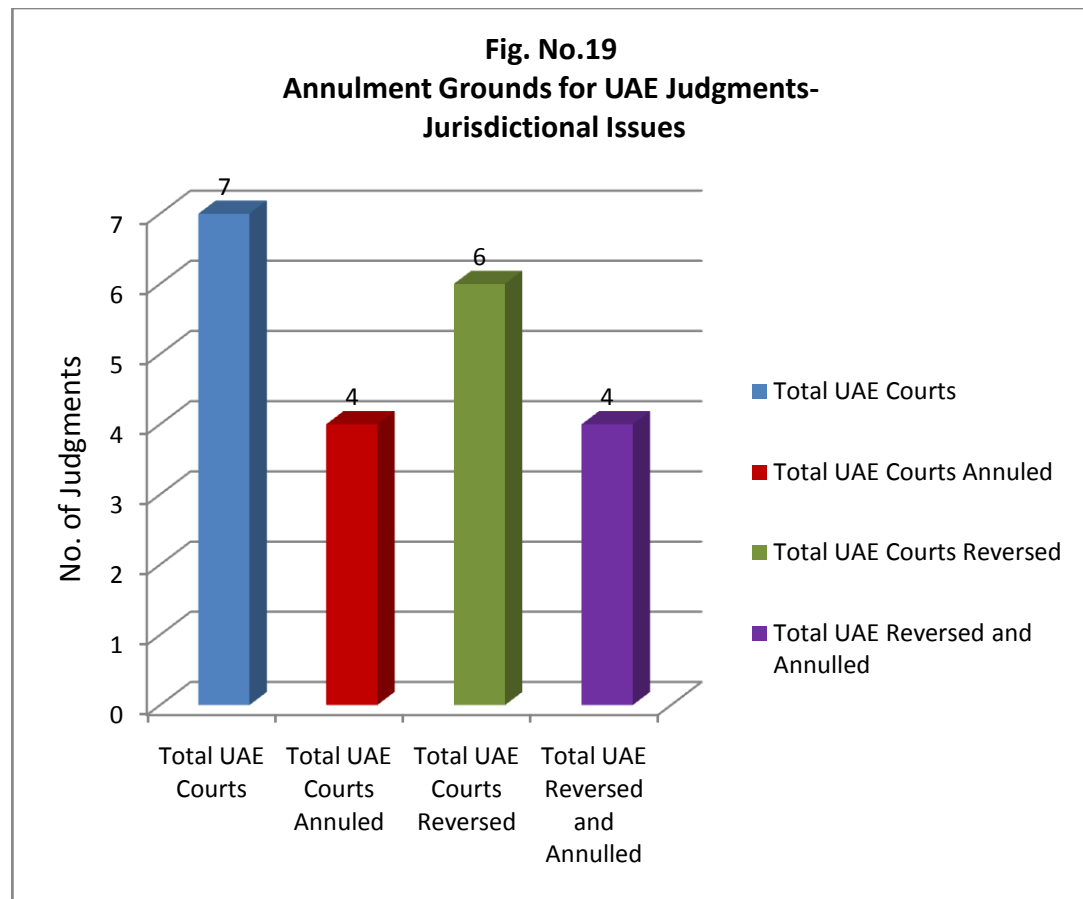


Figure 19: Annulment grounds based on jurisdictional issues in all UAE courts

⁵¹Case 191/2009 Dubai, reference no. 7

There are two jurisdictional issues in the arbitration process. The first issue can be raised before the arbitration proceeding starts, while the second issue can be raised once the proceedings start. However, there are certain cases where jurisdictional issues are monitored by the court where substantive pleadings are challenged. Arbitrators may sometime exceed their jurisdictional power if their awards conflict with the public policy. This matter will be discussed at a later stage in this chapter. Meanwhile, this section will deal with the jurisdictional issues arising before the arbitration proceeding starts.

Jurisdictional issues can be dealt with by the court rather than the arbitrator. The court could decide that it has no jurisdiction on interpretation of an arbitral award.⁵²In another case, the Appeal court found that it did not have the jurisdiction to recognize or annul the award as stated by the Cassation court.⁵³ Additionally, the jurisdiction of the court is extinguished if arbitral disputes are under the jurisdiction of the Rental Committee.⁵⁴ This is based on the Dubai Ruler Decree No. (2)/1993. However, in practice jurisdictional issues are normally dealt with by the arbitrators.

As discussed earlier in relation to the partial annulment of an arbitral award⁵⁵, the court decided that the arbitrator exceeded his jurisdiction, conferred by the agreement between the parties, when he decided to liquidate the company in which the parties are its shareholders. The arbitrator was appointed to issue an award verifying only if the shareholder agreement between the parties is valid or not. Additionally, the court did not accept that arbitrator could extend his jurisdiction over a third party with a different legal identity from the parties.⁵⁶ The judgment annulled that part of the award which was issued against a third party who was not a legal party in the arbitration agreement. Moreover, the court annulled the part of the award which is beyond the capacity and jurisdiction of the UAE court as the award directed the respondent to register the property, which is located in another country, in the name of the claimant.⁵⁷

On the other hand, institutional arbitration is more advanced in organizing the jurisdiction issues of the arbitrators. It is easier for the court to decide on this issue by referring the parties to the rules of the arbitration centre as per their agreement.⁵⁸

⁵²Case 240/2007 Dubai, reference no. 19

⁵³Case 150/2007 Dubai, reference no. 21

⁵⁴Case 193/2002 Dubai, reference no. 47

⁵⁵Case 190/2006 Dubai, reference no. 29

⁵⁶Case 277/2002 Dubai, reference no. 46

⁵⁷Case 10/1995 Dubai, reference no. 64

⁵⁸Case 297/2010 Abu Dhabi, reference no. 79

4.2 Post commencement-

4.2.1 Procedural grounds

4.2.1.1 Procedural issues:

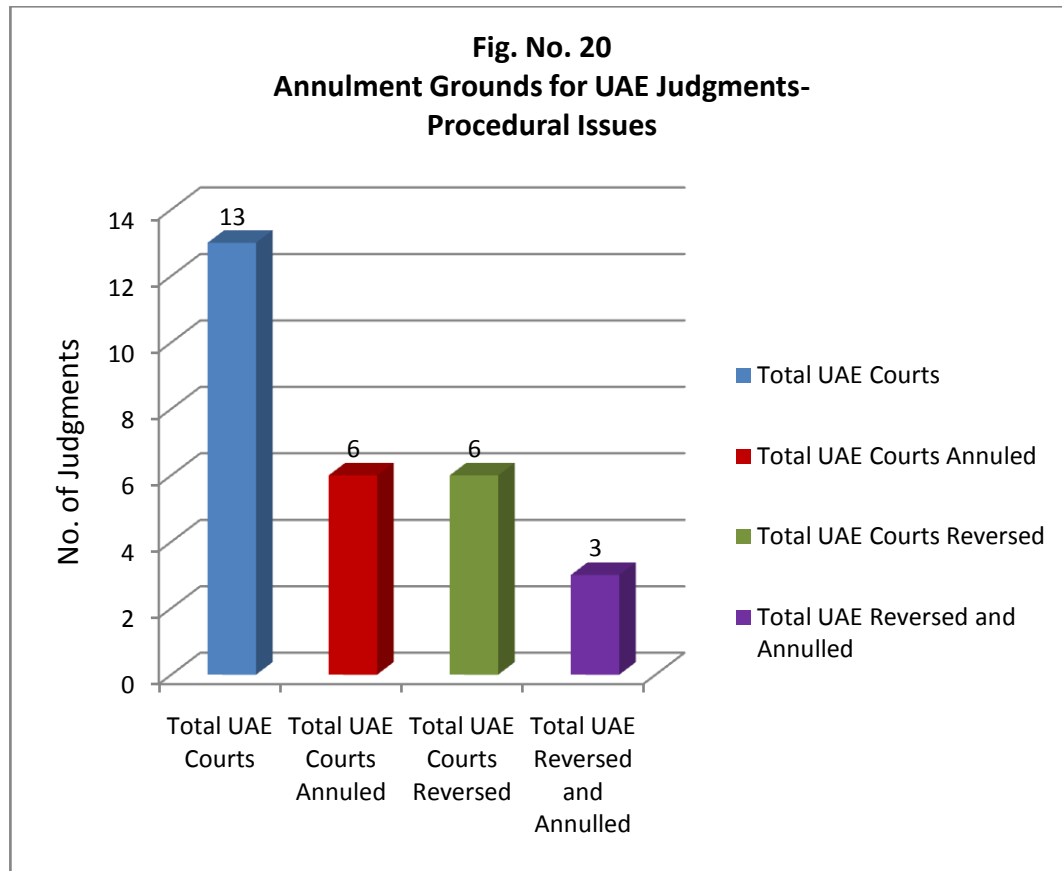


Figure 20: Annulment grounds based on procedural issues in all UAE courts

One of the most important procedural irregularities found in analyzing the judgments in this research is exceeding the time limit to issue the arbitral award. The time limit is explicitly determined by articles 210-2, 3 and 216-1 of the Arbitration Law.

Extending the time limit to issue the award without implied or written agreement of the parties, could lead the court to annul the award.⁵⁹ However, the determination of the starting date of the arbitration is defined by the court as the first day which the arbitrator decides to hear the parties or to receive the submissions from them. Such determination is under the sole discretion of the court rather than the arbitrator or the parties. The court will decide the starting date from the award documents regardless of the arbitrator's decision.^{60 61 62 63} The court may also consider the validity of the

⁵⁹ Case 156/2009 Dubai, reference no. 5

⁶⁰ Case 157/2009 Dubai, reference no. 6

extension of time if such extension was authorized without any interruption of the arbitration.⁶⁴

In addition, the issue of including a copy of the arbitration agreement could be seen as a straight forward requirement as per the article 212-5. However, by analyzing the judgments, the court is required to examine the case carefully in order to insure the difference between the arbitration agreement and the terms of reference which arbitrators have drafted and signed it by the parties. In such a case, if one party refused to sign such terms of reference, the court should verify the arbitration agreement as per their original agreement. If the court issued its final judgment to consider that the arbitration agreement is valid, and the arbitrator included a summary of this agreement in his award as an evidence of his jurisdiction, then such process is enough to consider that the award had complied with the requirement of the said article to include a copy of the arbitration agreement.⁶⁵

Moreover, the court does not require that the arbitrator shall include verbatim the arbitration agreement or the terms of reference. A summary of such agreement is required to be included in the award in order to enable the court to verify the jurisdiction of the arbitrator to resolve the dispute between the parties.⁶⁶

On the other hand, arbitrators should be careful when they issue an explanatory award. They may be requested to allow the parties to submit their pleadings in order to avoid annulment on the basis that the proceedings violated article 212-1.⁶⁷ Moreover, the arbitrators must enable the parties to submit their pleadings equally during the whole arbitration proceedings. Failing to do so, and this affects the award, the court may annul the award on the basis of article 216-c.^{68 69}

However, the arbitrator is not obliged to follow the same court procedures to allow the parties to present their dispute.⁷⁰ He may use alternative languages to communicate with the parties if they agreed to do so.⁷¹

Furthermore, requesting the witnesses to take oath is a must according to article 211. Failing to do so will lead to an award annulment by the court. This oath should

⁶¹Case 278/2008 Dubai, reference no. 12

⁶²Case 151/2007 Dubai, reference no. 22

⁶³Case 317/2009 Dubai, reference no. 3

⁶⁴Case 435/2003 Dubai, reference no. 42

⁶⁵Case 67/2009 Dubai, reference no. 8

⁶⁶Case 151/2007 Dubai, reference no. 22

⁶⁷Case 278/2008 Dubai, reference no. 12

⁶⁸Case 133/2008 Dubai, reference no. 35

⁶⁹Case 161/2003 Dubai, reference no. 43

⁷⁰Case 351/2005 Dubai, reference no. 30

⁷¹Case 351/2005 Dubai, reference no. 30

consider an acceptable format by the court.⁷² However, the court may recognize the award if the witness statement, of the person who did not take oath, was not considered in the award.⁷³

Additionally, the exaggeration in the arbitrator's fees is not considered a valid ground for nullification. However, the parties may request the court to look at the matter and reconsider the fees.⁷⁴ Courts also may not accept the challenge if it was prematurely filed, i.e. if the challenge to annul an award is filed before rendering the award to the court or parties.⁷⁵

4.2.1.2 Tribunal issues:

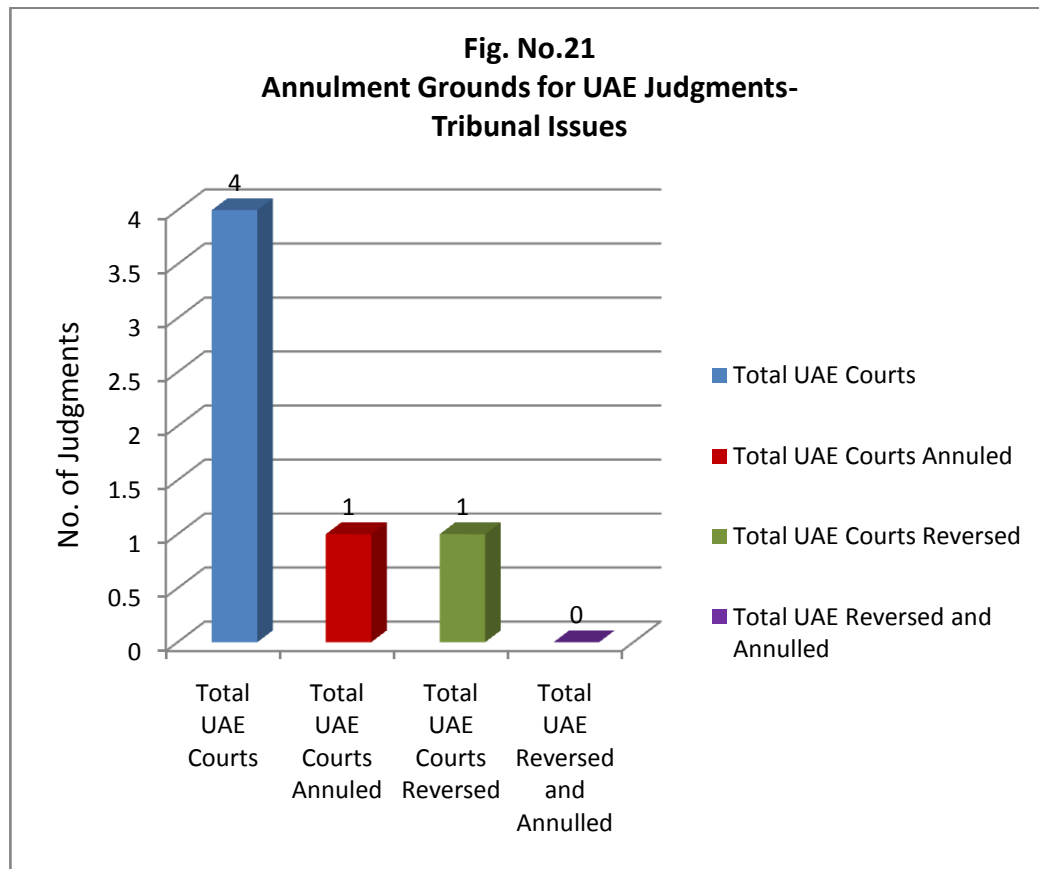


Figure 21: Annulment grounds based on tribunal issues in all UAE courts

It should not be possible to disqualify an arbitrator except for the same applicable reasons to disqualify a judge. However, such disqualification must be initiated before

⁷²Case 503/2003 Dubai, reference no. 41

⁷³Case 351/2005 Dubai, reference no. 30

⁷⁴Case 403/2003 Dubai, reference no. 42

⁷⁵Case 31/2001 Dubai, reference no. 52

the draft of issuing the award or closing the submissions. As a result, the court may not accept a challenge on this basis if it was evident that the disqualification application is filed after the arbitrator has issued the award or the submissions were closed.^{76 77 78}

Alternatively, if one of the disputed parties in the arbitration filed a challenge to disqualify or replace an arbitrator before closing the submissions or issuing the award, the arbitrator should suspend the arbitration and resume only when the final judgment is issued. If the arbitrator continued and issued the award, the court could annul the award on this basis.⁷⁹

4.2.1.3 Award irregularities:

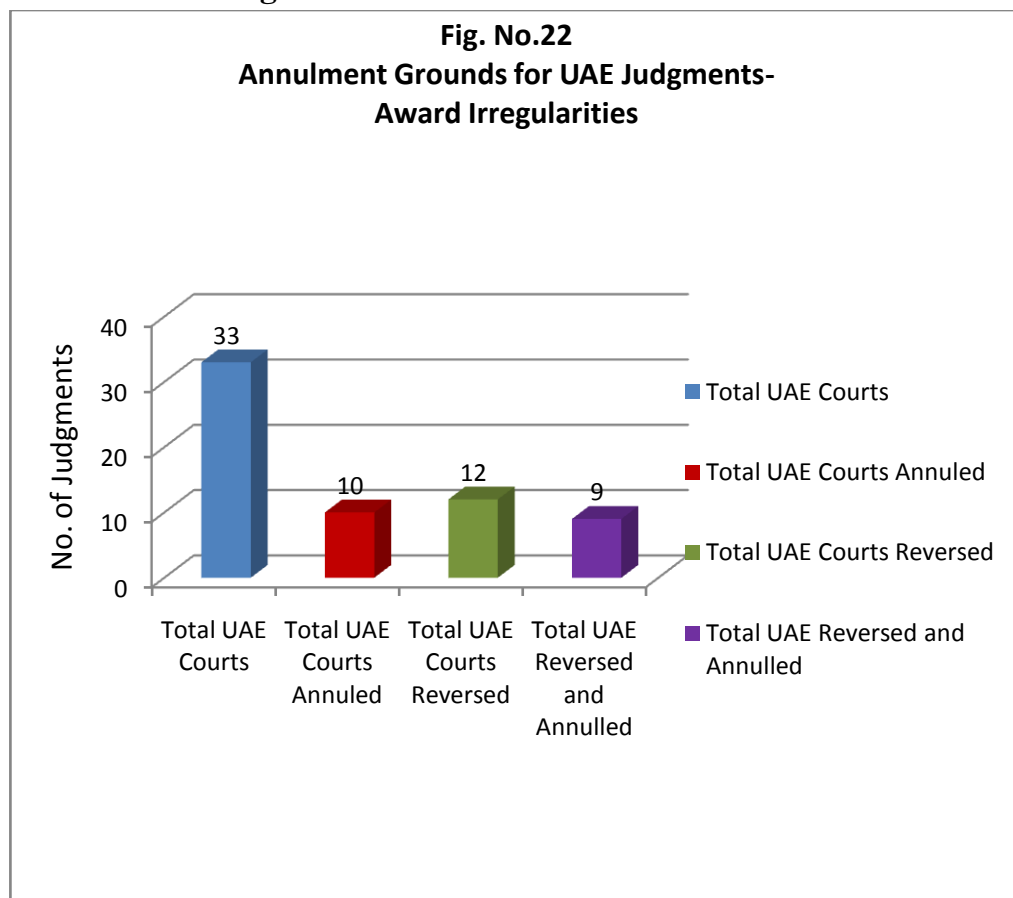


Figure 23: Annulment grounds based on award irregularities in all UAE courts

⁷⁶Case 10/1995 Dubai, reference no. 64

⁷⁷Case 220/2005 Dubai, reference no. 32

⁷⁸Case 273/2006 Civil Dubai, reference no. 26

⁷⁹Case 75/2007 Dubai, reference no. 16

It is well known in the arbitration field that the final product of any arbitration is the award whether interim or final. The analysis shows that most of the cases considered in this dissertation can be categorized under this section. This importance is evident from the number of articles of the CPC which dictate the mandatory structure, contents, and procedure for rendering the award.

From the analysis carried out for this dissertation, there were several grounds for challenging an award under this section. These include the arbitration agreement within the arbitral award, signing the award, exceeding the time limit, delivering the awards to the court, the parties, and to the centre (in case of institutional arbitration), writing the date of the award, interpretation of the award, and correction of the award.

4.2.1.4 Arbitration time limit:

Exceeding the time limit to render the arbitral award was also a major ground relied upon for annulment of award. The law expressly states in article 216 (1-a) that the arbitral award could be challenged for annulment if it is issued after the agreed period by the parties. The law states that the normal period provided to the arbitrators to issue the award is six months unless otherwise agreed upon by the parties.

Generally, the arbitration process exceeds this period. In case of ad hoc arbitration, the arbitrator should request the approval from the parties or the court⁸⁰ for extension of time before the original period expires. However, in case of institutional arbitration, the rules specify the procedure for such extension.

The prominence of this ground leads the author to suggest some statistical analysis for which the results are shown in Figure. 12&13. As a result of the above, and because of the importance of this ground of annulment, detailed analysis of this section will be discussed later in this chapter.

⁸⁰ In case of in-court arbitration.

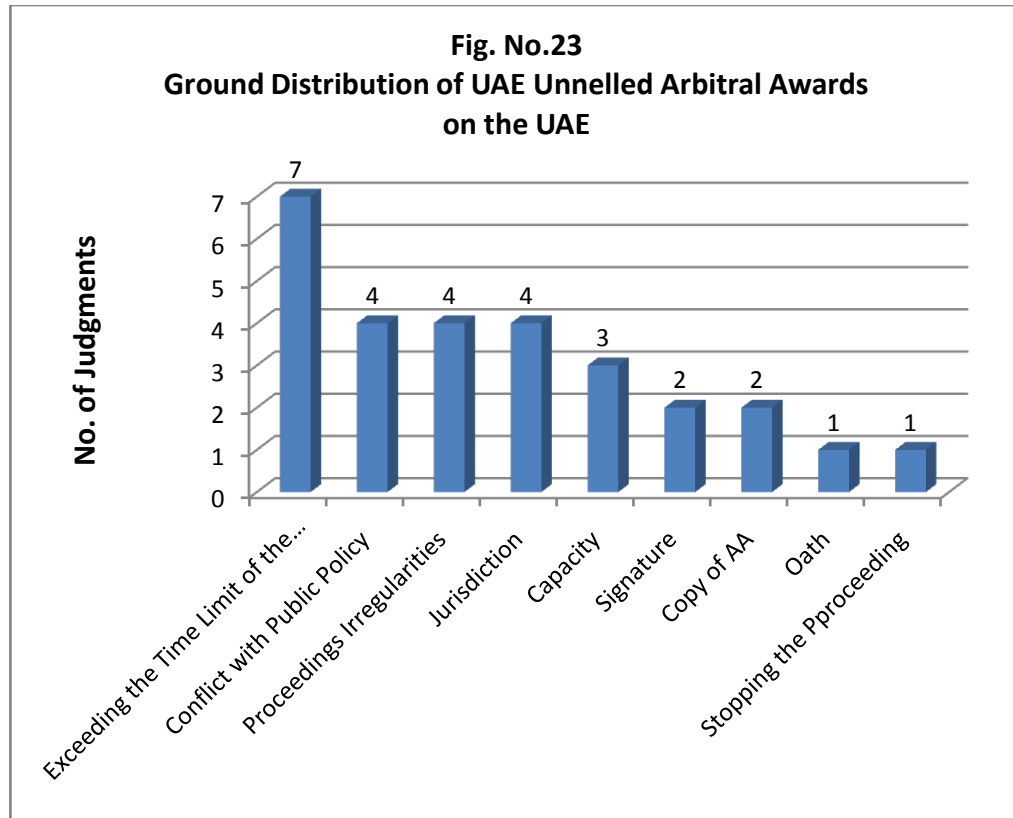


Figure 23: The most common ground for annulment of arbitration awards in the UAE courts is exceeding the time limit

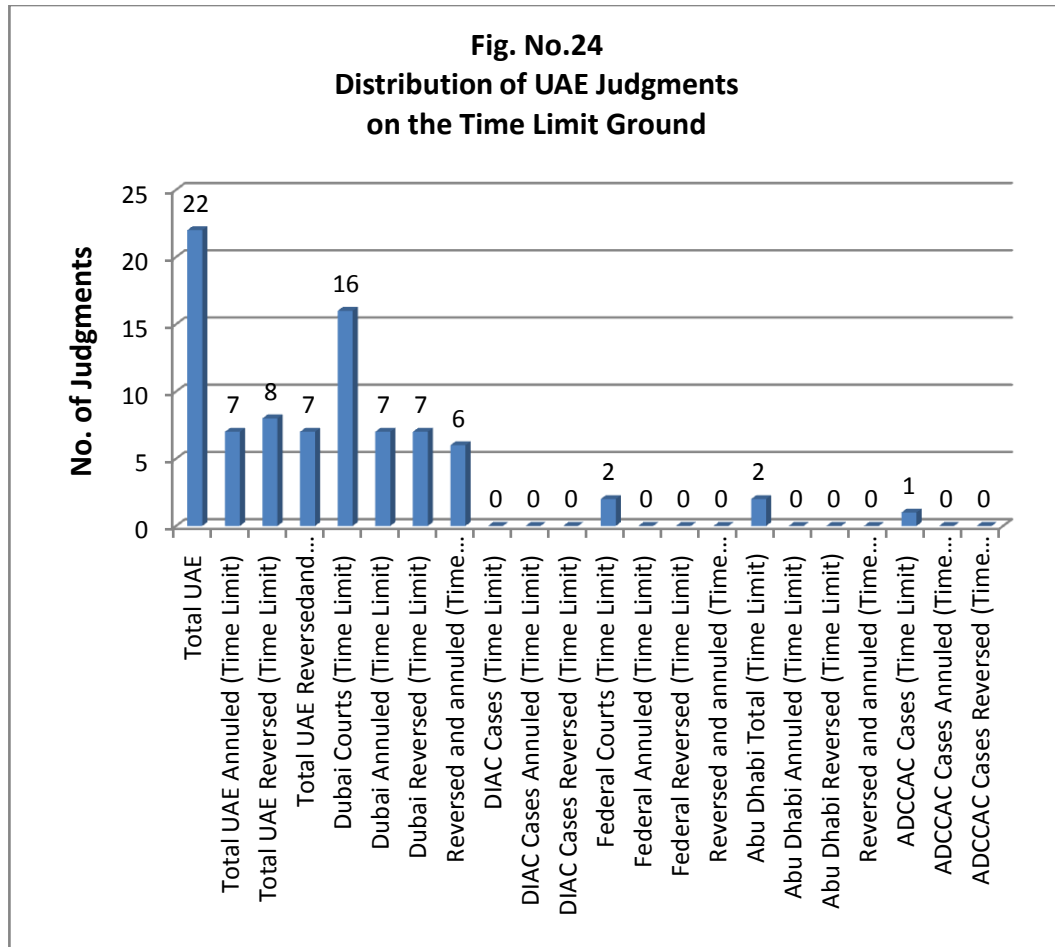


Figure 24: Difference among all the courts in relation of exceeding the time limit as a ground to annul the arbitration award

4.2.1.5 Arbitration agreement /Terms of Reference:

It is noted that the majority of cases under this category are related to the interpretation of article 212 (5) of the Arbitration Law. This article states that the award shall contain a copy of the arbitration agreement. There were clearly several different interpretations and understandings of the law by the parties. Some applicants thought that the law requires a full copy of the arbitration agreement to be included with the award as an appendix. Others thought that the full content of the arbitration agreement is to be included within the award.

The Dubai Court of Cassation differentiated this requirement on the basis of the difference between in-court and out court arbitration. In general, the Dubai Court of Cassation held that in any arbitration whether in-court or out court, a brief summary

of the content of the arbitration agreement must be included in the arbitral award. Failing to do this may lead to annulment.^{81 82}

However, the Dubai Court of Cassation held that in case of in-court arbitration (and because the whole arbitration is under the full control of the court from the day the dispute was filed in front of the court) there is no requirement to include a brief summary of the arbitration agreement within the award. It will be enough to attach a copy of it with the award.⁸³

The court also differentiated between the arbitration agreement and the terms of reference (which is sometimes called the Arbitration Deed). The court held that the requirement of article 212-5 to include a copy of the arbitration agreement with the award is that agreement by which the two parties agreed to refer their disputes to arbitration. This might be an article in their agreement or a separate arbitration agreement. Terms of reference or arbitration deed is signed in case there was no arbitration article in the contract nor there was a separate agreement.⁸⁴

The conclusion must be that if there was an arbitration agreement, and the parties refuse to sign the proposed terms of reference by the arbitrator, this refusal should not stop the arbitrator from proceeding with the arbitration. The court used two different terminologies: (Terms of Reference مشارطة التحكيم) which means terms of reference or arbitration deed, and (Arbitration Agreement اتفاقية التحكيم) which means the arbitration agreement. The court dismissed the argument that the arbitration starts from the date of signing the terms of reference or the arbitration deed. It held that the arbitration is considered existing by having the arbitration agreement signed between the parties and the starting date is the first meeting between the parties regardless whether they signed the terms of reference or not.⁸⁵ This may suggest that the inclusion of a copy of Terms of Reference in the arbitral award could not be accepted as a valid ground for annulment in Dubai Court of Cassation.

Hence the annulment may be applied on this ground if the arbitrator did not include a copy of the signed terms of reference or arbitration deed in case there was no

⁸¹Case 39/2005 Dubai, reference no. 33

⁸²Case 328/2002Dubai, reference no. 45

⁸³Case 273/2006 Dubai, reference no. 25

⁸⁴Case 156/2009 Dubai, reference 5 (ذلك أن من المقرر أنه يجوز أن يكون الاتفاق على التحكيم وارداً في ذات المحرر)
 المتعلق بالتصرف القانوني منازع أو منفصلاً عنه في مشارطة تحكيم أو وثيقة مستقلة ومتى ورد شرط التحكيم في العقد
 Translation: It is established that it is permitted for the parties to agree on arbitration within the contract under
 dispute or separately in Terms of Reference/ (Arbitration Deed) . (And) when the arbitration
 clause is being included in the contract, this will be enough and there will be no requirement to
 draft Terms of Reference/ (Arbitration Deed) or another document (arbitration agreement) in
 order to ensure that the proceedings are legally correct.

⁸⁵Case 157/2009 Dubai, reference no. 6

arbitration clause in their original contract or a separate one. However, including a brief of the arbitration article or a separate arbitration agreement would be enough.

4.2.1.6 Signature:

Signing the award may appear to be a very simple issue for arbitrators. However, missing the date in the award could lead to its annulment.⁸⁶ The importance of the date, as stated by the court in its judgment, is to verify if the arbitrator exceeded the time limit to issue the award as per the arbitration agreement or by the law. The court expects to see the date stated with the signatures of the arbitrators. The court may not accept the argument that the date may be inferred from the sequence of the events of the arbitration.

There are several options to understand how to sign an arbitral award. Signing on all pages is the most cautious approach by arbitrators. Others may sign the last page only. The reason is that some arbitral awards could consist of hundreds of pages. In the research carried out for this dissertation, I found that the court annulled an arbitral award because the arbitrators signed the last page only⁸⁷ while it recognized another one even though the last page was the only one signed^{88 89}. It is established now by all UAE courts that the minimum requirement is that the arbitrator or the majority of arbitrators shall sign the last page only in the case where it contains some of the reasoning of the award as a continuation to the previous page which contains the reasons. However, the court has not yet established the validity of an arbitral award in case the arbitrator signed only the last two pages which contain some of the reasons.

The matter of interpretation of an arbitral award was discussed earlier under the section on jurisdiction. It is important to revisit this principle from a different angle. Arbitral awards could be annulled due to a challenge on the basis of procedural ground. Arbitrators should avoid procedural irregularities when they are requested by the court or the parties to explain or correct their award. A fair chance must be given to both parties to submit their arguments before issuing the corrected award or any subsequent interpretation. Failing to do so may lead to annulment.^{90 91} However, from cases considered it appears that any request for correcting the award should be filed before the First Instance Court or Appeal Court and not in the Cassation Court.⁹²

⁸⁶Case 400/2004 Dubai, reference no. 49

⁸⁷Case 233/2001 Dubai, reference no. 20, Case 218/2006 Dubai, reference no. 27

⁸⁸Case 427/2009 Abu Dhabi, reference no. 76

⁸⁹Case 834/2010 Abu Dhabi, reference no. 78

⁹⁰Case 296/2009 Abu Dhabi, reference no. 82

⁹¹Case 278/2008 Dubai, reference no. 12

⁹²Case 273/2006 Dubai, reference no. 25

4.2.1.7 Award reasoning:

The law requires that the arbitral award should contain the tribunal's reasoning.⁹³ However, it has been held by the courts that invalid, or wrong, or incomplete reasoning of the award may not be considered a valid ground for annulment.⁹⁴ The court considers that verifying the reasoning is part of substantive ground which the court may not be willing to interfere with.

4.2.1.8 Award delivery:

When an arbitral award is issued, arbitrators should follow the procedure set out by the law, the arbitration agreement or the arbitration center. However, failing to follow such procedure may not be considered as a valid ground for annulment. The court looked at this matter from two angles; the first is because this reason is not listed in article 216 as one of the annulment grounds; and the second reason is related to the delivery of the award being a procedure which follows the issue of the award and would not affect the arbitration procedure itself.^{95 96}

As discussed earlier, there are two different arbitration categories according to article 213, in-court and out court. In the in-court arbitration, the arbitrator must deliver the arbitral award to the court within 15 days from the issue of the award and then deliver a copy to the parties within 15 days from delivering to the court. However, in case of out court arbitration, the arbitrator should deliver a copy of the award to both parties within 5 days from issuing the award. The court held that exceeding these time limits will not be considered a valid ground for annulment.⁹⁷

4.2.2 Substantive grounds:

It is found that even though the substantive grounds were well established by the courts, parties in dispute have tried in many cases to make application to annul the arbitral awards by arguing in relation to the substantive basis. Arbitrators may establish their opinion on the matters in dispute on the basis of factual, legal and quantum submissions by the parties. Dr. Al Imam⁹⁸, chief judge of Dubai Court of Cassation, stated in the interview⁹⁹ that the court is aware that arbitrators are not required to have the same legal qualification that normal judges might have. As a result, the court considers reviewing the substantive issues of an award from the legal point of view is a substantive matter.

⁹³ CPC, Article 212-5

⁹⁴ Case 447/2010 Abu Dhabi, reference no. 79

⁹⁵ Case 325/1994 Dubai, reference no. 66

⁹⁶ Case 40/2004 Dubai, reference no. 38

⁹⁷ Case 325/1994 Dubai, reference no. 66

⁹⁸ Dr. Ali Al Imam is the Chairman of Dubai Court of Cassation

⁹⁹ Answer to Question No.5, Appendix (3)

The wordings of Article 212-2 of the Arbitration Law may be understood to mean that the arbitral award shall be in conformity with the provisions of law. However, the court, according to Dr. Al Imam's views, established that the application of legal principles or the law is not considered as a substantive issue but a procedural issue. In other words, the arbitrator must issue his award after he is satisfied that the legal framework which enabled both parties to submit their pleadings and present their cases was fair and reasonable.

4.2.2.1 Mistake of facts:

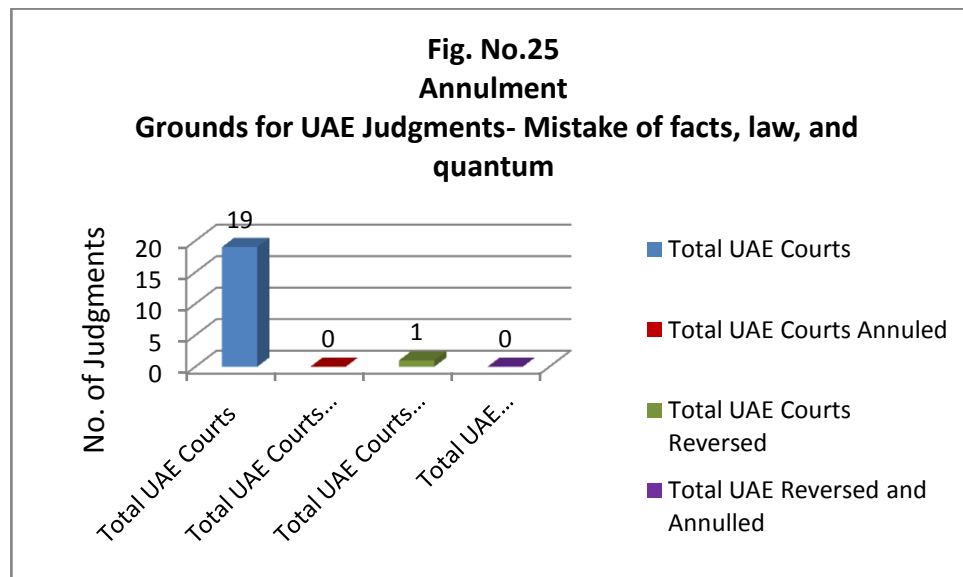


Figure 25: Annulment grounds based on mistake of facts, law, and quantum in all UAE courts

The process of taking evidence is another substantive matter which is under the discretion of the arbitrator. The court may not wish to evaluate the performance of the arbitrators in this respect and it considers this as merely a substantive issue.^{100 101} The court held that the arbitrator is not obliged to adhere to the applicable law of taking evidence as practiced in the courts of UAE by judges.¹⁰² This may apply to any request of the parties to present witness evidence to the arbitration tribunal. The arbitrator is also not obliged to approve such request. The challenge to annul the

¹⁰⁰Case 297/2010Abu Dhabi, reference no. 80

¹⁰¹Case 486/2008 Dubai, reference no. 84

¹⁰²Case 269/1995 Dubai, reference no. 63

arbitral award on this basis may not be accepted as the court considers it as a substantive issue.¹⁰³

The court has also held that it classifies a situation as a ‘substantive matter’ when the arbitral award is in conflict with a previous cassation court judgment. Parties may not apply for annulment on this ground, and if they did, the court may not accept it.¹⁰⁴ Moreover, the court established that it is not a valid ground to annul an arbitral award because the award did not resolve all the disputes under the arbitration agreement in accordance with the parties’ pleaded requests.¹⁰⁵ This clearly demonstrated in the interview with Dr. Al Imam when he stated that the court may not consider the conflict between an arbitral award and a previous cassation judgment on substantive issues as a public policy..¹⁰⁶

In addition, the court may not accept a case for annulment of arbitral award on the basis that the arbitrators’ fees were exaggerated. The court may accept an application by the parties for the Court to reconsider the fees of the arbitrator.¹⁰⁷

4.2.2.2 Mistake of law:

A party who tries to argue on the basis that the arbitral award was contrary to the applicable law from substantive point of view may not succeed in convincing the court to annul the award. Moreover, the court upon application for recognition of the arbitral award does not allow the parties to raise objectively the extent of its conformity with the law.^{108 109}

For example, the “back to back” payment principle in construction contracts by which the contractor is not obliged to pay his subcontractor if he was not paid by the employer is well established by the court in the UAE. However, if the arbitrator issued an award contrary to this principle, the court may not annul the award on this ground, as it considers the application of the law as a substantive issue.¹¹⁰ This principle is well established in the UAE jurisdiction. Both Dr. Ali Al Imam¹¹¹ and Mr. Shehab Al Hammadi agree that they do not consider the arbitral award in conflict with the public policy in the UAE if the award was based on a substantive issue against a previous final court judgment or any other law articles. Dr. Al Imam explained that the intention of the law in Article (212-2) of the CPC is that the

¹⁰³Case 225/2005 Dubai, reference no. 31

¹⁰⁴Case 266/2009 Dubai, reference no. 266

¹⁰⁵Case 270/2007 Dubai, reference no. 9

¹⁰⁶ Please see the interview with Dr. Ali Al Imam Appendix no. 3

¹⁰⁷Case 403/2003 Dubai, reference no. 42

¹⁰⁸Case 265/2007 Dubai, reference no. 18

¹⁰⁹Case 13/1991 Dubai, reference no. 70

¹¹⁰Case 447/2010Abu Dhabi, reference no. 79

¹¹¹ Appendix 3, Q5

arbitrator shall maintain proper procedure of the pleadings of the parties as required by the law. Dr. Bunni agrees with this issue but had pointed out that in other jurisdiction the matter may be different.¹¹²

In addition, there are certain instances when the arbitral award does not resolve all issues which were brought by the parties. The court may not annul the award on this ground. Instead, it may request the arbitrator to complete his award by issuing a supplementary award to cover the other disputes. However, such request should be raised in front of the substantive¹¹³ courts considering as a substance issue.¹¹⁴

The language of the arbitration is normally considered to be a legal issue. Courts may admit the use of language as a reason for annulment because the documents were all not translated to the agreed language of the arbitration on the request of a party. The court will verify if such un-translated documents had a material effect on the award, and if not, then it will consider the matter as a substantive argument. It is also held by the court that it is not necessary to translate all documents to the agreed language as long as the arbitrator understood its contents; hence, any argument in this regard is substantive.¹¹⁵

4.2.2.3 Mistake of quantum:

It was noted in all judgments considered in this study that any argument by the parties related to the mistakes in quantum in the arbitral awards is not accepted by the court to be a valid ground for annulment. Arguments raised covered mistake in calculating the interest¹¹⁶, the basis of calculating the interest¹¹⁷, estimated remedy for the loss of profit¹¹⁸, mistake in calculation¹¹⁹, and applying financial remedy against delay.¹²⁰

Upon the request of the parties, the court may request the arbitrator to correct quantum mistakes. However, there was no judgment in this research which ordered the arbitrators to correct such mistakes.

¹¹² Appendix 5, Q3

¹¹³ "Substantive Courts" means the first instance and the appeal courts.

¹¹⁴ Case 126/2001 Dubai, reference no. 50

¹¹⁵ Case 486/2008 Dubai, reference no. 84

¹¹⁶ Case 171/1992 Dubai, reference no. 69

¹¹⁷ Case 447/2010 Dubai, reference no. 79

¹¹⁸ Case 486/2008 Dubai, reference no. 84

¹¹⁹ Case 447/2010 Dubai, reference no. 79

¹²⁰ Case 171/1992 Dubai, reference no. 69

4.2.2.4 Conflict with public policy:

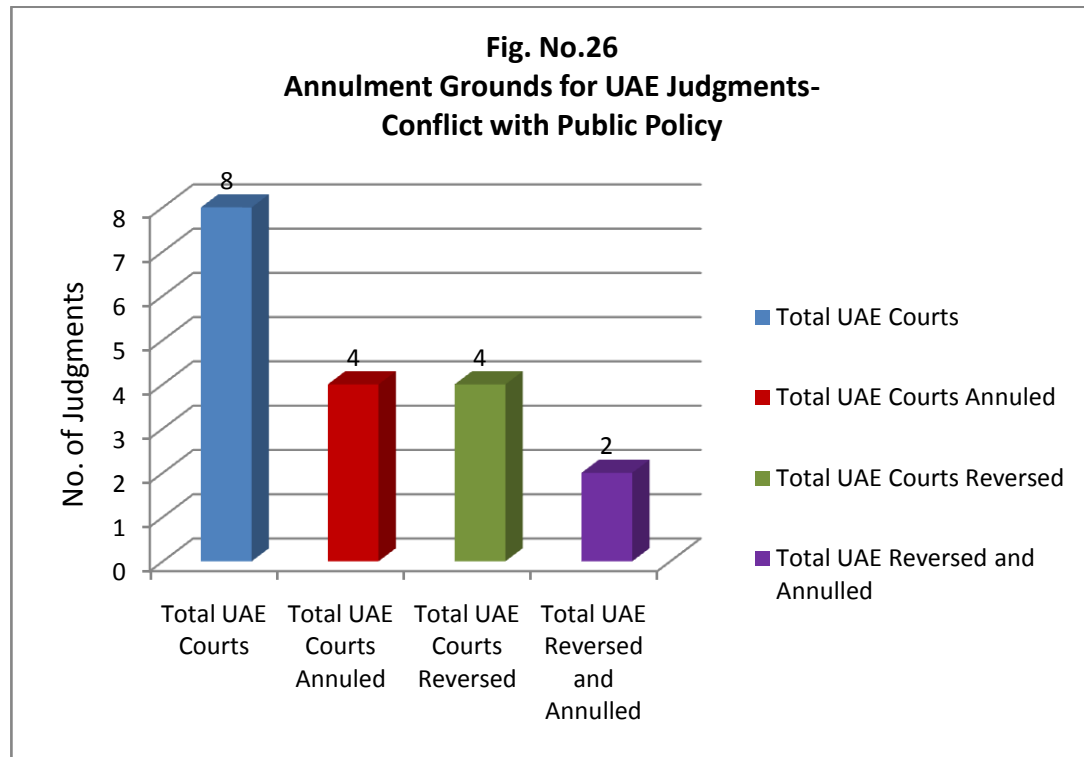


Figure 26: Annulment grounds based on conflict with public policy in all UAE courts

The UAE Civil Code defines in general terms what are public order matters.¹²¹ The court may accept a challenge to annul an arbitral award if there was a conflict with public order principles. However, the cassation court reversed a judgment to annul an arbitral award on the basis that the first instance court should consider in detail the conflict between the award and the Islamic Shariah in relation to personal status. The cassation court did not accept general application of this ground.¹²²

In another case, the court annulled an award when the arbitrator decided to direct the termination of a sale contract of a real estate property. Such decision, in the opinion of the court, was in conflict with the public policy in relation to the circulation of wealth.¹²³ However, the court did accept the argument that the court, when it appointed an arbitrator for this dispute, that it had no jurisdiction on a real estate lease agreement dispute. The court held that disputes related to a usufruct agreement for a hotel is an exception over which the Rental Committee has no jurisdiction.

¹²¹ Article 3, UAE Civil Code 1985

¹²² Case 146/2009 Dubai, reference no. 14

¹²³ Case 14/2012 Dubai, reference no. 1

Hence, any arbitration in such disputes has no conflict with the rules of public order.¹²⁴ On the other hand, there is no conflict with the public order rules if the arbitrator did not follow exactly the CPC in arbitration as long as he enabled the parties to submit their pleadings and managed the hearings in a fair and reasonable manner.¹²⁵

The argument whether the arbitral award is in conflict with the public policy or not will continue. Both Mr. Shehab Alhammadi¹²⁶, and Dr. Bunni¹²⁷ agree in the interviews that the public policy is an important ground challenge to annul arbitral awards. Moreover, Dr. Al Hosani stated that the proposed arbitration law will not specify the public policy and such matter will be open widely for the consideration of the judge case by case.¹²⁸ Such issue is based on the Article V.2(b) of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which provides that the arbitral award shall not be in contrary to the public policy of the state in order to avoid annulment provided that other measures are achieved.

It is well established by court decisions that arbitration must be voluntary and not compulsory. As a result, parties should not be forced to accept any conditions imposed by one of the parties without prior consent of the other parties. However, such consent must not conflict with the public order rules. As an example, the court annulled two awards issued by arbitrators appointed by Abu Dhabi stock market who made arbitration mandatory on any disputes between their brokers and traders.^{129 130}

Moreover, the number of arbitrators is considered a matter of the public order rules. The law states that if there were more than one arbitrator, then the number shall be odd.¹³¹ Abu Dhabi court held that parties cannot agree on even number of arbitrator, and if they did then the award is subject to annulment.¹³² On the other hand, Dubai Court of Cassation agree on the same principle prerecorded in the interview with Dr. Al Imam.¹³³ However, the judgment in case 279/1993 did not accept the appeal to annul the award on the ground that the number of the arbitrators was four in contradiction with the law.

¹²⁴Case 873/2009 Union Supreme, reference no. 81

¹²⁵Case 32/2009 Dubai, reference no. 10

¹²⁶ Appendix 4, Q5

¹²⁷ Appendix 5, Q4

¹²⁸ Appendix 2, Q5

¹²⁹Case 554/2008 Abu Dhabi, reference no.83

¹³⁰ Case 640/2009 Union Supreme, reference no. 74

¹³¹Article 206-2, UAE Civil Procedure Code

¹³²Case 554/2008 Abu Dhabi, reference no.85

¹³³See Appendix (3)

In my opinion, the analysis in this dissertation showed that out of 85 judgments since 1991, 4 arbitral awards were annulled on the basis of conflict of public policy. One of them was by Union Supreme Court on the basis that authorities may not impose arbitration as the only method to resolve disputes of their clients without their prior written consent. Two of them were by Abu Dhabi Court. One was on the basis that the number of arbitral tribunal shall be even number and any agreement by the parties otherwise is considered against the public policy. The other annulled arbitral award was on the basis that forcing the parties to accept the authorities nominated employees to arbitrators without the parties' consent was considered against the public policy. The last one was by Dubai Court of Cassation on the basis that the arbitrator may not issue an award on property registration system adopted by the government.

It is clearly seen from the above analysis that courts did not use the conflict with public policy frequently to annul arbitral awards. The rate of 4 annulled awards within more than 20 years and more than 85 judgments is not considered a serious matter in my view. Moreover, the reasons of three out of four annulled awards straight forward application to the law and the principles of arbitration. Odd number of arbitrators is clearly stated in Article (206-2). The article used the word “وجب = Shall” which states that the total number of arbitrator shall be odd. On the other hand, nobody has the authority to force the parties to accept arbitration or force them to accept nominated arbitrators without their clear consent.

However, the only annulled arbitral award that created some argument was the one issued by Dubai Court of Cassation recently. This was the only annulled arbitral award based on conflict with public policy since 1991. After discussion with both Dr. Ali Al Imam and Mr. Shehab Al Hammadi, both of them supported this judgment very strongly.

In my opinion, the annulment on the basis of conflict with public policy was not abused by UAE courts. I totally agree with the reasons for the three annulled arbitral awards by Union Supreme and Abu Dhabi courts. However, regarding Dubai judgment, I may view it based on the general trend in the real estate industry after the financial crises. Termination of property sale and purchase contracts could not be considered as a normal dispute. There are considerable amount of disputes in this regard which many governmental authorities are involved in this industry.

5 Chapter 5: Challenge on time limit expiry ground:

As discussed earlier in **Arbitration time limit 4.2.1.4**, the matter of time limit expiry was found the most contentious issue in most of the judgments. Time limit expiry was found in this dissertation is the main reason for most annulled arbitral awards in UAE courts. As a result, this section will consider this subject in detail through looking closely to courts decisions and the arguments presented by legal counsels of the parties in order to explore their understanding of the law provisions in this regard.

In the previous analysis, and because of the limitation of the scope of this research, not all challenges and appeals which were argued either by legal counsel or discussed by the courts were considered in this research. However, it was found that a considerable number of judgments dealt with the argument of the court on the issue of the challenge on the basis of time limit expiry of the award.

From numerical point of view, it was found that 22 out of 85 judgments discussed the time limit issue. Out of the 22 awards, 7 were annulled on this basis. Looking at the total number of annulled awards, almost 30% of them were annulled on the time limit ground. It was found that this ground of annulment was the highest figure compared with all other grounds of annulment. It is noted that none of the institutional arbitration awards faced annulment challenges based on this ground.

These results compel further discussion on this subject in more detail. In order to do so, we need to look at the CPC articles (203-218) in relation to arbitration which specify the periods for issuing the award. We may use some comparative analysis with other laws as well.

5.1 CPC Provisions of time limit:

Article 210 provides the time limit guidelines for the arbitrator to issue his award.¹³⁴ The law states that the arbitrator shall issue his award within the six months starting from the first arbitration meeting which can be extended based on the parties' agreement or court decision upon the request of one the disputed parties. This is applicable if the parties did not agree or specify extended periods in their arbitration agreement. However, such period shall be suspended or ceased depending on whether the arbitration is suspended or terminated.

Article 214 states the time limit for the arbitrator to issue explanatory award or Addendum award within three months from receiving the notification either from the court or from the parties. Article 213 specifies the time frame to deliver the award to

¹³⁴Case 317/2009 Dubai, reference no. 3

the parties and the court based on the type of arbitration whether in-court or out court arbitration. It is to be noted that Article 216 states explicitly that parties may challenge an arbitral award if time to issue the award has expired.

5.2 Types of time extensions and arbitrators authority:

It is established by the law that the time limit for the arbitrator to issue his award is based on the arbitration agreement. In addition, it was held by the Dubai Court of Cassation that the invalidity of an arbitration agreement as a result of its time expiry is not considered a matter of public policy. Hence, parties have to initiate and prove the grounds for annulment rather than the court to draw the inference itself.¹³⁵ However, if the time limit extension for issuing the award was not specified in the agreement, and the parties did not agree on the time of commencement of the arbitration nor did they refer it to the arbitration centre, then there could be two possibilities. First, if the arbitration is institutional, then the institution rules should be applied.¹³⁶ It is clearly established that most arbitration institutions have specified a clear mechanism to extend the time limit for the award.¹³⁷ However, UNICTRAL rules are silent on the time limit of the award and hence, the authority to extend the time limit is given to the arbitrator subject to the application of the law of the Seat.¹³⁸

The law of the UAE states that if the parties did not specify the time limit then it should be six months and any extension shall be through the court.¹³⁹ Second, if the arbitration is ad hoc, then the extension of the time limit can be established either by the arbitrator or the court based on their agreement. The court held that the arbitrator may extend the time limit indefinitely if he was authorized to do so and if the parties have agreed in the arbitration agreement or at a later stage.¹⁴⁰ Otherwise, the court may extend the time limit if application was submitted by the arbitrator or one of the parties. The court will estimate the extension at its own discretion taking into consideration all circumstances.¹⁴¹ However, the court held that to conclude that the extension of the time limit is valid, the extension period and the original one shall continue legally without interruption.¹⁴²

The court held that the arbitrator must cease the arbitration if there was a legal reason such as a forgery or a request to disqualify an arbitrator. The arbitration may only continue once a final judgment has been issued by the court. If the arbitrator did not

¹³⁵Case 141/2006 Dubai, reference no. 28

¹³⁶G Born, *International Commercial Arbitration*, (Kluwer Law International, The Netherlands 2009)406

¹³⁷ For example, see DIAC Rules 2007, no. 36

¹³⁸ Cairo Appeal (91 Commercial), Date 30/12/2003

¹³⁹ Article 210-1, CPC

¹⁴⁰ Case 873/2009 Abu Dhabi, reference no. 81

¹⁴¹CPC, Article 210-2

¹⁴²Case 322/2004 Dubai, reference no. 34

cease the arbitration and issued his award before receiving the final judgment, then his award may be annulled.¹⁴³

On the other hand, although Abu Dhabi Court held that if the parties agreed to authorize the arbitrator to extend the time without limitation, then the arbitrator is free to extend it without a requirement for a prior notice or approval from the parties.¹⁴⁴ Dubai Court of Cassation has also held also that if the arbitrator was authorized to extend the arbitration period through the court, his request to the court should be sent before the expiry date unless there was an implied agreement to extend the period.¹⁴⁵ However, French law may not accept that the parties vest the tribunal with the power itself to extend the time for the award.¹⁴⁶ The arbitrator in this case shall issue his award in a reasonable time.¹⁴⁷

5.3 Implied time extension:

Article 210-2 of CPC and the UAE courts hold in several judgments that implied extension is an acceptable option for the parties and that arbitrator may extend the arbitration period.¹⁴⁸ The understanding of such implied agreement is at the discretion of first and appeal courts and cannot be challenged in front of the cassation court for the first time. Implied agreement means according to Dubai Court of Cassation that if any party stated clearly his challenge on continuing the arbitration after its time expiry, such objection shall stay valid till he acts to the contrary to his challenge by an act either directly or impliedly.¹⁴⁹ The court held that attending a meeting, proposing an action, submitting documents are clear examples of implied agreement to extend the time limit if there was no explicit challenge to the contrary.¹⁵⁰

The court also held that it considers the existence of implied agreement to extend the time limit even after the expiry of the original period if none of the parties challenged in front of the arbitrator and he continued attending or submitting documents to the arbitration.¹⁵¹ In order to prove that there was no implied agreement to extend the time limit, parties should express their challenge in a very

¹⁴³Case 75/2007 Dubai, reference no. 16

¹⁴⁴Case 75/2007 Dubai, reference no. 16

¹⁴⁵ Case 39/2007 Dubai, reference no. 24

¹⁴⁶Delvolvé, Pointon, *French Arbitration Law and Practice*, et al. (2009), p176

¹⁴⁷M Afifi, *نظام الطعن على حكم التحكيم The Challenging System on The Arbitral Award*, (Dare El Gamaa El Gadida, Alexandria 2010)531

¹⁴⁸ As an example, Case 9/1996 Dubai, reference no. 61

¹⁴⁹Case 9/1996 Dubai, reference no.61, states “... ويستفاد التنازل الضمني عن الدفع بالسقوط من كل فعل أو عمل ...” وينافي الرغبة في التمسك به Translation : And the implied waiver is utilized for challenge fall from any act or action contrary to the desire to own it.

¹⁵⁰Case 39/2007 Dubai, reference 24

¹⁵¹Case 39/2007 Dubai, reference 24, Case 873/2009 Abu Dhabi, reference no. 81

clear manner such as sending letters and refraining from making any submissions and attending meetings unless such attendance is just to express their challenge in the minutes of the meeting.¹⁵² The court also held that an implied agreement to extend the time limit is also accepted from the legal representatives of the parties who attend the arbitration without a specific proxy in this regard unless the proxy states otherwise.¹⁵³

5.4 Starting the time period:

Article 210-1 of CPC states that the commencement of arbitral proceedings is the date of the first meeting with the parties after the legal appointment of the arbitrators.¹⁵⁴ In practice, some arbitrators may invite the parties for the first meeting just for introduction and sometimes to draft the Terms of Reference. Parties may consider that this is not the first session of arbitration. The court held that the attendance of the parties for the meeting which was held upon the request of the arbitrators is indeed the first session according to Article 210-1 of CPC regardless of what the arbitrator or the first instance court or the parties may define it. Such determination should be inferred from the minutes of the arbitration meeting or the submissions.¹⁵⁵ Moreover, the court held that the first meeting is considered achieved without the presence of the parties at the first meeting as long as the arbitrator enabled them to submit their pleadings and reviewed them.¹⁵⁶

In another case, the court did not accept the parties' argument that the commencement of the arbitral proceedings starts from the date of signing the terms of reference (or arbitration deed).¹⁵⁷ The court even did not accept the argument that the first meeting which was called for but was postponed by the arbitrators due to the absence of the respondent was not valid. The court held that it was in fact valid regardless of the presence of one of the parties or none of them as long as they were invited correctly. The court stated that the nonpayment of the arbitration fees by one of the parties would not prevent the arbitral proceedings commencing.¹⁵⁸

5.5 Counting the time limit:

Article 210-1 of CPC provides that the time limit for the arbitrators to issue their award is six months from the first arbitration meeting. In order to comply with this requirement, arbitrators must include the date with their signatures in the award. The court annulled an award because the date was not stated clearly in the award which is

¹⁵² Case 39/2007 Dubai, reference 24

¹⁵³ Case 268/2007 Dubai, reference 17

¹⁵⁴ Case 317/2009 Dubai, reference no. 3

¹⁵⁵ Case 317/2009 Dubai, reference no. 3

¹⁵⁶ Case 317/2009 Dubai, reference no. 3

¹⁵⁷ Case 157/2009 Dubai, reference no. 6

¹⁵⁸ Case 157/2009 Dubai, reference no. 6

also in conflict with the requirement of Article 212-5.¹⁵⁹ The court may not be able to verify if the award was issued within the time limit or not. This can only be verified when the date of award issue is specified in the award.

The court held that counting options are based on the parties' agreement unless they were silent on this issue. The court accepted counting days rather than months because the parties agreed specifically to define that the month equals 30 days. It was found that the total days on this basis equaled 5 months and 27 days.¹⁶⁰ However, it was held by court procedure in the court judgment that this period is based on calendar days rather than on work days. It also considered the starting and ending dates are inclusive. This is different from some arbitration centres rules in the region. DIAC for instance, specifies in Article 3.7 of its 2007 Rules that "...such period shall begin to run on the day following the day when a notice or other communication is received or deemed to be received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period."

On the other hand, and in case of suspension of the arbitration proceedings for legal reasons, the court counts the period from the date of commencement till the date on which the arbitrators issue their order to suspend the proceedings. The counting includes the starting date but does not include the suspension date.¹⁶¹

5.6 Difference between the time limit of the issuance and delivery of the arbitral award:

Article 213-1 states the delivery method of an arbitral award to the court and the parties if the arbitration was in court, while article 213-3 applies to out-of-court arbitration. CPC did not state that the failure to deliver the arbitral award on time to one or all the parties can be considered a valid reason for annulment. The court dismissed the challenge to annul an arbitral award because of the failure of the arbitrator to deliver the award in accordance with the CPC.¹⁶² The court stated that the delivery of the award to the parties is a subsequent process after issuing the award and will not be the award itself.

The court explained in its judgment that the delivery of the award is an action which happens after issuing the award and has no relation with its validity. Moreover, the court even held that a party may not be permitted to request annulment on the basis that

¹⁵⁹Case 400/2001 Dubai, reference no. 49

¹⁶⁰Case 141/2006 Dubai, reference no. 28

¹⁶¹Case 173/1996 Dubai, reference no. 58

¹⁶²Case 40/2004 Dubai, reference no. 38

the arbitrator did not be deliver the award to the parties. The court held in this case that the party must file a case against the arbitrator to deliver the award and then only may request for annulment.¹⁶³

5.7 Time limit for interpretation and correction of an award:

Article 214-1 of CPC states: In case the court, at the time of recognition or annulment, requested the arbitrator to explain or correct the award, the arbitrator shall submit the corrected award or the addendum within three months from such request. The parties may not agree with the arbitrator to the contrary.

Another issue is if the parties requested the arbitrator to correct or complete or explain his award, should he be obliged to issue his revised award within three months from the request? This is not clear in the CPC. However, in case of institutional arbitration, the institutional rules may clarify the situation. In case of DIAC, article 38 states that the arbitrator shall issue the supplemental award within thirty days from the date of the request.¹⁶⁴ However, in case of ad hoc arbitration where there is no reference to specific rules, the time limit is referenced to the parties' agreement, to the arbitrator, or to the court.

It is interesting to note from the analysis carried out that all disputes on time limit came from ad hoc arbitration whether in-court or out-of-court. From this it could be concluded that institutional arbitration manages time limits better than ad hoc arbitration.

5.8 Issues arising from time limit:

Having found that the expiry of the time limit was the most common annulment ground of arbitral award in the UAE, it is worth discussing the issues related to practices of other international arbitration laws. As discussed earlier, UAE law states that if the parties in dispute were silent on the time limit for the arbitrator to issue his award, then the six months limit is enforceable unless both parties agree otherwise after starting the arbitration whether expressly or impliedly. The law recognizes also that the arbitrator is not bound to a specific time limit to render his award if he was authorized 'indefinite time' by the parties.

According to the UNCITRAL Model Law of arbitration, there is no provision for limited period for rendering the arbitral award.¹⁶⁵ However, even it states in Article 39 a 60 days period to render the award upon receiving a request from the parties for

¹⁶³Case 31/2001 Dubai, reference no. 52

¹⁶⁴Article 38, DIAC Rules 2007

¹⁶⁵UNCITRAL, Article 34.1 states: "The arbitral tribunal may make separate awards on different issues at different times."

additional award, it provides the authority to the arbitral tribunal to extend the period if necessary.

Statutory provisions on time limit to render arbitral awards vary from one country to another. For instance, in Austria, the arbitration act does not specify a time limit to render the arbitral award. Moreover, expiry of time limit of the award is not considered a valid ground to set aside the award.^{166 167} Several other countries do not specify the time limit to issue the award such as England, Russia, Scotland, Singapore, Slovenia, Croatia, Slovakia, Sweden, France, Germany, Hungary, India, Netherlands, Australia, Argentina, Belgium, Bulgaria, and Czech.¹⁶⁸

There are other countries where there are different approaches in dealing with the time limit issue. In China for instance, CIETAC¹⁶⁹ specifies six months for foreign arbitral awards but no specific time limit for domestic ones. In Argentina and Belgium, even though there is no specific time limit, the court will decide on the time limit in its absence in the arbitration agreement.¹⁷⁰

Compared to the UAE law, other countries have similar approaches such as Brazil and Spain but with a different definition of the starting date. In Spain, the six months starts from the date of the last defense submission extendable by the tribunal for another two months, while in Brazil it starts from the constitution of the arbitral tribunal. On the other hand, in Turkey, the law specifies one year as time limit from the date of appointing a sole arbitrator or from the date of the first arbitral tribunal meeting. Serbia has another different view. It specifies the time limit to be 60 days from the date of the last hearing or the last meeting of the tribunal. Similarly, in Hungary, the Court of Arbitration specifies 30 days from the closing date of submissions for national arbitration and 60 days for foreign ones. Finally, Italy specifies 240 days from the date of acceptance of the arbitral tribunal.

It is obvious that the time limit (in case of silence in the agreement) is a contentious issue among legislators in different jurisdictions. Those who prefer to fix a time limit for the tribunal to issue their award come from the background of considering the arbitration is an alternative dispute resolution of the public litigation system. Parties

¹⁶⁶ <http://www.arbitration-austria.at/dokumente/AustrianArbitrationAct2006text.pdf>, Accessed on February 1st, 2013

¹⁶⁷ Editors: Torsten Lorcher, Guy Pendell and Jeremy Willson, *CMS Guide to Arbitration*, Volume1, Forurth Edition, guides.cmslegal.com/arbitration

¹⁶⁸ Editors: Torsten Lorcher, Guy Pendell and Jeremy Willson, *CMS Guide to Arbitration*, Volume1, Forurth Edition, guides.cmslegal.com/arbitration

¹⁶⁹ Editors: Torsten Lorcher, Guy Pendell and Jeremy Willson, *CMS Guide to Arbitration*, Volume1, Forurth Edition, guides.cmslegal.com/arbitration

¹⁷⁰ Editors: Torsten Lorcher, Guy Pendell and Jeremy Willson, *CMS Guide to Arbitration*, Volume1, Forurth Edition, guides.cmslegal.com/arbitration

who agreed to refer their disputes to arbitration expect to see a quick resolution to their dispute. Hence, by specifying a time limit for issue of arbitral awards, the public litigation system may prefer to ensure fair justice to the parties and the reference to the general litigation system for all disputes. They also specify that any extension of the specified time limit should be referred to the court.

The other party may argue that it is impractical to specify a time limit because it might conflict with a principle fair justice by providing the opportunity for the parties in dispute to present their case. While almost all arbitrations provide a timetable for both parties to present their cases, unexpected circumstances can force the arbitral tribunal to extend the time limit for each milestone which will have an effect on the date of issuing the award. Such an argument may explain that it is unnecessary to specify a time limit because arbitration was initiated by the consent of the parties to refer their dispute to an arbitrator or an arbitral tribunal to resolve their dispute whether by an award or by a settlement. As a result, there is a confidence in the arbitrators of their choice so why not extend such confidence by providing the arbitrators with the authority to extend the time limit to issue the award whenever they think it is reasonably required to extend such time limit. Those who support this argument also state that it is unfair for the parties if the court annulled an arbitral award just because it exceeded the time limit by one day for instance. The law in this case will not differentiate between one day or one year if the law specifies a time limit to issue the arbitral award. This could be seen as being against the public interest when the parties have spent considerable amount of time and cost in such arbitration.

It is my view that, in general, the law should build on the confidence that the parties in dispute agreed to provide it to the arbitrators. This requires that the law enables easily the arbitrators to decide on the time limit and requirement for extensions as it gives them also the authority to decide on their jurisdiction under the doctrine of Competence-Competence. In addition, most of the court judgments considered, as also stated in the UNCITRAL Model Law, do not annul arbitral awards on substantive grounds. This means that the court respects the parties autonomy on this issue so why not to extended it to avoid the annulment on the expiry of time limit if the arbitrator extended reasonably the time limit to issue the award.

However, as a compromise solution, if specifying a time limit to issue an arbitral award is necessary, it could be adopted subject to define the starting date of the arbitration to be from the date of closing the submissions. In general, 60 days from the closing date could be enough to issue an arbitral award whether national or foreign. However, there could be circumstances that arbitrators should be allowed to extend such time limit. This will require no limit imposed on the authority of the arbitrator to extend the time limit to issue the arbitral award. As a result, I prefer not

6 Chapter 6: Conclusion and Recommendations

The analysis of 85 judgments which were issued from the three main courts in the UAE, Dubai Court of Cassation, Union Federal Court and Abu Dhabi Court of Cassation since 1991 on recognition and annulment of national arbitral awards reflected a broader view on the application of the arbitration articles 203-218 of the federal UAE CPC. The analysis found that the challenging grounds for the annulment of arbitral awards which are issued in UAE are classified into three main categories: Arbitrability, Procedural, and Substantive grounds. Such challenging grounds were not all derived from Article 216 of the CPC. As a result, it will be inadequate to only rely on article 216 in order to establish the grounds for challenging an arbitral award in the UAE law. However, Article 216 should be considered the starting point to challenge an arbitral award.

In my view the rate of the annulment of arbitral awards over the last 20 years is considered very high (27 out of 85). Such high rate may be referred to the fact that arbitration was introduced recently in the UAE. In addition, the articles which are related to arbitration are still not clear enough for law firms and courts. This was reflected in the analysis of the reversed judgments and the pleadings of the counsels of the disputed parties.

It was found that the most challenging ground for arbitral awards annulment was procedural ground. The next one was arbitrability and the third was substantive. It was also found that the most common annulment ground from the procedural one was award irregularities. However, the main finding of this dissertation is that the lapse of arbitration period was the most common ground for annulment out of the award irregularities. The expiry of time was based mainly on the procedure of extension. All of the awards which were annulled on the ground of exceeding the time limit were ad hoc. The extension of time was whether through the agreement of the parties or the approval from the court.

Although fixing an arbitration period is helpful, the law, it is submitted, should provide a proper, practical and suitable procedure for extension of time requests. As it was seen in this study that none of the institutional arbitral awards was annulled on the ground of lapse of arbitration period. This reflects clearly that arbitration centres

are helping the arbitrators and the disputed parties to overcome such possible risk of annulment.

It was also found that all the attempts of counsels to challenge the recognition of awards on the basis of substantive grounds failed, including those related to conflicts with provisions of the law which are related to substantive issues. However, the main ground of annulment which succeeded was the conflict with public policy. It was found that out of four annulled awards on this basis, three were in a direct conflict with clear articles of the CPC which related to the number of arbitrators and the selectivity of arbitration as a dispute resolution mechanism. However, the main debatable one was the annulled award by the Dubai Court of Cassation. Even this judgment was annulled after reversing the judgments of the lower courts. As a result, and in my opinion, the UAE courts did not abuse the conflict with the public policy to annul arbitral awards.

It is also concluded that there were main differences between the three courts on three main issues: Partial recognition/annulment, in-court/out-of-court classification, and number of arbitrators in the arbitral tribunal (even/odd). Such difference should be considered carefully by legal firms involved in advising their clients in the UAE.

In addition, it is concluded that over the last twenty years, since the CPC was issued in the UAE, there were considerable improvements of understanding and applying the law in relation to arbitration. This was also noticeable on the legal firms pleadings who represented their clients in requesting the recognition or annulment of arbitral awards. The rate of annulment fell down in the last decade as compared to the previous one. The justice delay was also substantially reduced.

It is highly recommended for legislative authorities to study the outcomes of this dissertation analysis and draft new arbitration act which avoids some ambiguities in the current arbitration articles. The new law should consider boosting institutional arbitration whether from the existing centers or creating new centers through the existing courts with a proper and independent management system in order to cater for small disputes with reasonable costs. It is also recommended that a fast track arbitration is considered with a reasonable cost for small value disputes.

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8 Appendices:

Appendix No.	Title
1	Arbitration Articles in the CPC in both languages - Courtesy of DIAC
2	Dr. Ali Al Hosani (Asst. Deputy Minister of Commerce) interview
3	Dr Ali Al Imam (Dubai Court of Cassation) interview
4	Mr. Shehab Al Hammadi (Union Supreme Court) interview
5	Dr. Nael Bunni interview
6	The 85 judgments under the scope of this dissertation in both languages (English and Arabic) (Please note the source of the translations)
7	A CD including the detail analysis of the judgments using Microsoft Excel programme
8	DIAC Award Checklist, provided by Dr. N. Bunni

Notes on translations and Appendices:

1. There were three main sources for translations:
 - a. Two translations were copied from Kluwer arbitration.com.
 - b. Thomson Reuters- Westlaw Gulf (7 judgments). Complimentary.
 - c. Abu Ruf legal Translation Services for the rest of the judgments. Paid services.
2. The researcher attached the translations received from Kluwer and Thomson Reuters as they were received.
3. Regarding the rest of the judgments, Mr. Tregaskis and the author agreed on a process to redefine the structure of translations in order to make it easier for non-law experts to understand the judgment. Mr. Tregaskis reviewed most of the translations. The author also reviewed some of the translations once again.
4. All translations are copy righted for the author except as stated in 1 and 2 above.
5. There are still some missing translations which will be completed hopefully with the submission of the final copy after marking. However, two sample copies are attached with the Tables Volume. Other translated judgments and all appendices are included in the CD.