

The judicial annulment of awards in Spain: A statistical study of 1.229 judgments

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Sumario

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El estudio realiza un análisis estadístico de las 1.229 sentencias dictadas en España -por los Tribunales Superiores de Justicia españoles en la última década 2022-2013- sobre la acción de anulación contra el laudo arbitral, y lo hace desde la doble perspectiva de la eficacia y eficiencia de esta acción: (a) la eficacia, examinando el índice de estimación de las acciones de anulación -y los motivos por los que generalmente se estima dicha anulación-; y (b) la eficiencia, verificando la duración de este procedimiento judicial de anulación de laudos arbitrales. La conclusión alcanzada es altamente positiva a favor del arbitraje, dada la baja tasa de estimación de las demandas de anulación y la celeridad del procedimiento judicial a través del que se resuelven dichas demandas.

Abstract

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The study performs a statistical analysis of the 1.229 judgments handed down in Spain -by the Spanish High Courts of Justice in the last decade 2022-2013- on the judicial annulment claim against the arbitration award, and does so from the dual perspective of the effectiveness and efficiency of this claim: (a) effectiveness, by examining the rate at which claims for annulment are upheld -and the grounds on which such annulment is generally upheld; and (b) efficiency, verifying the duration of this judicial procedure for the annulment of arbitration awards. The conclusion reached is highly positive in favor of arbitration, given the low rate of estimation of claims for annulment and the speed of the judicial procedure in which such claims are examined.

Título: *La anulación judicial de laudos en España: estudio estadístico de 1.229 sentencias*

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Palabras clave: *Anulación de laudos, España, Tribunales Superiores de Justicia, análisis estadístico*

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Summary

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1. Introduction: five topics in Spanish arbitration*

This study statistically analyses one of the great topics in Spanish arbitration. Specifically, that which affects the effectiveness and efficiency of the judicial annulment of arbitration awards in Spain. Briefly, arbitration is characterised by the following five main features:

First, is a method of conflict resolution that is constitutionally valid¹.

Second, it is subject only to the free will of the parties, both as to its initiation and conclusion, and as to the manner in which its procedural course is determined².

Third, the national procedural rules (LEC, LOPJ, etc.) are not directly applicable to it³.

Fourth, the award terminating it is not subject to appeal before the courts⁴.

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Abbreviations: art. article; EC: Spanish Constitution; HCJ: High Court of Justice; LA: Spanish Arbitration Act; LEC: Spanish Civil Procedure Act; LGDCU: General Law for the Defence of Consumers and Users in Spain; UNCITRAL ML: UNCITRAL Model Law on International Commercial Arbitration; LOPJ: Organic Law of the Judiciary; S: judgement; SS: judgements; STC: judgement of the Spanish Constitutional Court; STS: judgement of the Spanish Supreme Court; SHCJ: judgement of the High Court of Justice; and TC: Spanish Constitutional Court; TS: Spanish Supreme Court.

¹ In general, on the constitutionality of arbitration, FERRERES COMELLA, *The Constitution of Arbitration*, Cambridge University Press, 2021, is fundamental. And with regard to arbitration in the Spanish case, STC 174/1995, of 23 November, is very categorical when it states that: «[...] the arbitration institution is compatible with the Constitution [...] without doubt, it is, and we have recognised this in Rulings 43/1988, 233/1988 and 288/1993». And, from this perspective, the TC consistently repeats that arbitration is a «jurisdictional equivalent» to state judicial proceedings. The aforementioned STC 174/1995, of 23 November, considers «arbitration to be a jurisdictional equivalent, by means of which the parties can obtain the same objectives as with civil jurisdiction (that is, by obtaining a decision that puts an end to the conflict with all the effects of *res judicata*)». Subsequently, it has been clarified that this equating of arbitration as a jurisdictional equivalent «must be understood only in reference to the equivalence of its effects in terms of *res judicata* and enforceability» (SSTC 79/2022, of 27 June; and 50/2022, of 4 April).

² In this sense, the aforementioned STC 174/1995 stresses the idea that: «arbitration is a means for the resolution of conflicts based on the autonomy of the will of the parties, implying a renunciation of state jurisdiction by the arbitrator or arbitrators»; and STC 176/1996 insists that arbitration is a «heteronomous means of settling disputes which is based on the autonomy of the will». Consequently, the basis of arbitration must be sought in the right to freedom of art. 10 EC. Thus, STC 79/2022, of 27 June, emphasises that the basis of arbitration «is none other than the autonomy of will ex art. 10.1 CE».

³ In this order of ideas, for example, the SHCJ of Madrid 77/2021 of December 10th is very clear when it states: «Regardless of even the international nature of the arbitration followed, it is clear that subjection to the precepts and institutions of our Civil Procedure Act cannot be claimed, as then, evidently, this would over complicate the arbitration procedure, making it an authentic exercise *contra natura*, denaturing the flexibility inherent to this channel and submitting to procedural rigidity which, precisely, is one of the aspects that tries to be oriented in the alternative mode of dispute resolution in which arbitration (whether domestic or international) consists.»

⁴ By mandate of art. 43 LA, according to which: «The award has the effect of *res judicata* and only an action for annulment may be brought against it».

Fifth, a legal action for annulment can only be brought against such an award in a very exceptional manner⁵. And, in order to ensure the maximum effectiveness of the arbitration, such action should not succeed.

As I indicated earlier, our study is going to focus on the fifth topic, on the analysis of the degree of efficiency and effectiveness of the judicial claims for annulment of awards. And we will do so by examining all the judgments handed down in award annulment proceedings by the Spanish SHCJs in the decade 2013-2022⁶, namely 1.229 judgments⁷.

The final objective of the study is to statistically verify the reality of the judicial proceedings for the annulment of awards in Spain from the perspective of their duration and effectiveness.

2. On the well-known exceptional nature of the action for annulment of the award

The action for annulment of the award is legally and jurisprudentially configured as an exceptional mechanism of judicial control to guarantee solely and exclusively that the arbitration procedure complies with the provisions of its rules and respects the essential inalienable principles guaranteed constitutionally or admitted internationally. This exceptionality translates into: (a) the impossibility for the court to review the establishment of the proven facts and the application of substantive law in this action, so that it cannot, in any case, be considered a second instance of judgment⁸; and (b) the limited nature of the legal grounds for such an action, which must therefore be interpreted restrictively.

From the legal perspective, both at the international and domestic level, we find this restrictive regulation of the action for annulment of the award:

- a) At the international level, art. 34 UNCITRAL ML provides for the so-called «Application for setting aside recourse against arbitral award» in a very exceptional manner, with a very short expiry period (three months) and only on the grounds specifically provided for in the aforementioned rule. And recently, the «Ibero-American Model Law on Commercial Arbitration», approved on 18 May 2023 by the General Assembly of the Ibero-American Institute of Procedural Law, also provides for the so-called «setting aside recourse against the award» in art. 50, which can only be based on the grounds set out in art. 52.

⁵ Only on the grounds specified in art. 41 LA, i.e. to denounce defects in the valid constitution of the arbitration tribunal, fundamental defects in the conduct of the arbitration proceedings (infringement of the principles of equality, defence and contradiction) or infringement of constitutional public order.

⁶ Since 2011 (with the reform of the LA by Law 11/2011 of May 20th), the HCJs have had sole authority to rule on actions for annulment of awards rendered in their area of jurisdiction (art. 8.5 LA).

⁷ The High Courts that handed down the most rulings were those of Madrid, with 536; Galicia, with 127; Andalusia, with 113; Catalonia, with 112; and the Basque Country, with 75. The judgments have been obtained from two legal databases: CENDOJ and ARANZADI-LA LEY. All judgments of these High Courts correspond to their civil and criminal chambers.

⁸ SSTC 79/2022, of 27 June; 50/2022, of 4 April; 65/2021, of 15 March; 55/2021, of 15 March; 17/2021, of 15 February; and 46/2020, of 15 June, and, similarly, cf. SSTC 76/2012, of 16 April; 65/2009, of 9 March; and 9/2005, of 17 January.

- b) And at the Spanish domestic level, art. 40 LA establishes «*Judicial annulment claim against the arbitration award*: an action for annulment may be brought against a final award under the terms provided for in this title»; and the following article establishes the grounds for annulment of the award (which coincide with those established in the aforementioned art. 34 UNCITRAL ML).

And this exceptional nature is consistently reiterated by the case law of the TC: «such control has a very limited content and does not allow a review of the merits of the matter decided by the arbitrator, nor should it be considered as a second instance, able to be based exclusively on the grounds set forth in the law, and none of them - not even those relating to public order - can be interpreted in such a way as to subvert this limitation.»

Finally, at this point we must emphasise the existence of two common elements in arbitration legislation around the world: (a) the provision of a brief (quick) judicial procedure in which to debate the possible annulment of the award; and (b) its processing before a court at the highest jurisdictional level of the country. Both circumstances are present in Spain: (a) the «oral trial», which is the judicial procedure in which the annulment of the award is discussed (art. 42 LA)⁹; and (b) the court competent to rule on this judicial request is the High Court of Justice of the Autonomous Community where the award was made (art. 8.5 LA)¹⁰.

3. Study of the area of judicial annulment claims against the arbitration award in Spain

This study will analyse two parameters of the effectiveness of the annulment of the award: (a) the average duration of the annulment proceedings - in relation to the time legally provided for; and (b) the degree of judicial recognition of the annulment action - as well as the most frequent grounds for the recognition of the annulment of the award.

3.1. Duration of legal proceedings for the annulment of an award

As indicated above, the claim for annulment of an award is dealt with by the simplest ordinary procedure provided for in Spanish law, namely the oral trial, with some minor particularities (art. 42 LA).

The average duration, in general, of oral trials in Spain, according to statistics provided by the General Council of the Judiciary, was 8.9 months in 2022 (and 9.6 months in both 2021 and 2020)¹¹. And the average duration of oral proceedings involving an application to set aside an award was 3.4 months in 2022, 5 months in 2021 and 6 months in 2020¹².

Two conclusions can be drawn from this statistical data: (a) the duration of oral proceedings to resolve an application for annulment of an award is significantly shorter than the average

⁹ This is the shortest and quickest Spanish civil judicial procedure.

¹⁰ There are 17 HCs, as Spain is territorially divided into 17 Autonomous Communities.

¹¹ Source: Memoria del Consejo General del Poder Judicial de 2023 (corresponding to the year 2022), p. 461 [cfr <https://www.poderjudicial.es/cgpi/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/Actividad-del-CGPI/Memorias/Memoria-anual-2023--correspondiente-al-ejercicio-2022->]. Accessed on: 11-04-2024.

¹² See Appendix 5.2 for overall data.

duration of oral proceedings in any Spanish court (this is undoubtedly due to two factors: firstly, that this procedure is resolved by a court with few judicial powers, which means that it has more time than the rest of the state courts, which are more overloaded with work, and secondly, that in ordinary oral proceedings, on most occasions, there is a hearing for the taking of evidence, a hearing that normally does not take place in oral proceedings to annul awards because the only evidence is usually documentary evidence); and (b) in three years it has been possible to reduce the duration of oral proceedings to annul awards by almost half.

Years	Oral proceedings (declaratory)	Oral proceedings (for annulment of an award)
2022	8.9 months	3.4 months
2021	9.6 months	5 months
2020	9.6 months	6 months

Table 1 (prepared by the author)

If we analyse the average duration of award annulment proceedings in the period 2022-2013, we observe that those with the longest durations are the High Court of Madrid (258 days) and the High Court of Catalonia—based in Barcelona—(256 days); and those with the shortest durations are the High Court of La Rioja (93 days) and the High Court of Extremadura (96 days)¹³. This is due to the fact that the HCJs of Madrid and Catalonia hear substantially more applications for annulment of awards than the other two HCJs¹⁴.

HCJ	Duration (2022)
HCJ of Madrid	258 days
HCJ of Catalonia	256 days
HCJ of Extremadura	96 days
HCJ of La Rioja	93 days

Table 2 (prepared by the author)

3.2. Degree of judicial review of annulment action

Of the 1.229 rulings handed down by all the Spanish High Courts analysed in this study, 301 upheld the claim and declared the award null and void, which represents 24.5% of the rulings¹⁵. By year, we note a favourable trend towards the dismissal of actions to set aside awards in the last four years (in 2019, 64.8% of applications filed; in 2020, 71.6%; in 2021, 82%; and in 2022, 83.5%)¹⁶.

	Years			
	2022	2021	2020	2019
Judgments	97	121	74	91
Dismissal	81 (83.5 %)	99 (82 %)	53 (71.6 %)	59 (64.8 %)

¹³ See Appendix 5.2 for overall data.

¹⁴ The number of judgments on annulment of awards in the HCJ of Madrid was 536 and in the HCJ of Catalonia 112, while the HCJ of Extremadura and La Rioja handed down only 11 and 3 judgments respectively.

¹⁵ See Appendix 5.3 for overall data.

¹⁶ See Appendix 5.4 for overall data.

Upholding	16 (16.5 %)	22 (18%)	21 (28.4 %)	32 (35.2 %)
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Table 3 (prepared by the author)

And of the five most important High Courts in Spain, in terms of the volume of judgments they have handed down, the one with the highest number of upheld judgments is Galicia (with 36.2% of its judgments), followed by Madrid (with 26.5%), Andalusia (with 23.9%), Catalonia (with 17%) and, finally, the Basque Country (with only 14.7%)¹⁷.

Specifically, these are the data obtained by HCJs in the period 2022-2013¹⁸.

HCJ	Judgments	
	Dismissal	Upholding
A (113)	86 (76.1 %)	27 (23.9 %)
Ar (12)	9 (75 %)	3 (25 %)
C (112)	93 (83%)	19 (17%)
Can (33)	26 (78.8 %)	7(21.2 %)
Cant (2)	1 (50 %)	1 (50 %)
CL (22)	5 (81.5 %)	27 (18.5 %)
CLM (23)	3 (88.5 %)	23 (11.5 %)
CV (56)	47 (83.9 %)	9 (16.1 %)
E (11)	7 (63.6 %)	4 (36.4 %)
G (127)	81 (63.8 %)	46 (36.2 %)
IB (19)	16 (84.2 %)	3 (15.8 %)
LR (3)	2 (66.7 %)	1 (33.3 %)
M (536)	394 (73.5 %)	142 (26.5 %)
N (11)	8 (72.7 %)	3 (27.3 %)
PA (21)	13 (61.9 %)	8 (38.1 %)
PV (75)	64 (85.3 %)	11 (14.7 %)
RM (45)	36 (80 %)	9 (20 %)

Table 4 (prepared by the author)

In order to evaluate the effectiveness of this action, we will take as a comparative element the degree to which the action for the judicial annulment of final judgements (known in Spain as the «review of final judgements») has been upheld¹⁹, as both serve to attack the *res judicata* of the final decision (award or judgement) and are decided by courts that are the pinnacles of the Spanish judicial organisational system^{20- 21}. Continuing with the previous criterion, if we take the

¹⁷ The first was the HCJ of Castilla La Mancha, as only 11.5% of its rulings upheld claims for annulment of awards.

¹⁸ Abbreviations in the following table: A: Andalucía; Ar: Aragón; Can: Canarias; Cant: Cantabria; C: Cataluña; CL: Castilla y León; CLM: Castilla La Mancha; CV: Comunitat Valenciana; E: Extremadura; G: Galicia; IB: Illes Balears; LR: La Rioja; M: Madrid; N: Navarra; PA: Principado de Asturias; PV: País Vasco; and RM: Región de Murcia.

¹⁹ Regulated in arts. 509 to 516 LEC.

²⁰ The courts competent to rule on the action for annulment of final judgments may be the TS or the HCJ (art. 509 LEC).

²¹ In addition, and with respect to judgments, in Spain there are two other extraordinary judicial remedies for denouncing vices or defects similar to those foreseen for the annulment of the award: (a) the «action for rescission

last four years as a reference, we come to the conclusion that relatively fewer awards are annulled than final judgments, which reaffirms the effectiveness of arbitration. Specifically, the data are as follows:

Dismissal judgements	2022	2021	2020	2019
Annulment of awards	97 (83.5%)	121 (82 %)	74 (71.6 %)	91 (64.8 %)
Review of final judgments	25 ²² (56 %)	19 ²³ (78.9 %)	9 ²⁴ (33.3 %)	20 ²⁵ (40 %)

Table 5 (prepared by the author)

3.3. Grounds for granting the action for annulment

It should be made clear that we are not going to refer here to the grounds most frequently invoked in applications for annulment of awards (since it is impossible to know them), but to the specific grounds on which the courts base their decisions to uphold such applications.

These grounds are those that appear exhaustively in art. 41.1 LA and, in general terms, coincide with those of art. 34 UNCITRAL ML.

The statistics are clear: out of the upheld judgments, the most frequently used reason is breach of public policy (art. 41.1.f LA), with 47.99%, far ahead of the rest. This is followed, by a considerable distance, by the non-existence or invalidity of the agreement (art. 41.1.a LA) with 17.95%, deficiencies in the procedural acts of communication (art. 41.1.b LA) with 16.85%, the decision on matters not subject to arbitration (art. 41.1.e LA) with 8.42%. Very discreetly present are the reasons relating to the appointment of the arbitrator or the conduct of the proceedings contrary to what was agreed (art. 41.1.d LA) with 5.13% and the arbitrators exceeding the scope of the decision entrusted to them (art. 41.1.c LA) with 3.66%.

Reason for estimation	Number of judgments
Art. 41.1.a LA	49 (17.95 %)
Art. 41.1.b LA	46 (16.85 %)
Art. 41.1.c LA	10 (3.66 %)
Art. 41.1.d LA	14 (5.13 %)
Art. 41.1.e LA	23 (8.42 %)

of a final judgment at the request of the defendant» (arts. 501 to 505 LEC); and (b) the «appeal in cassation» to denounce procedural infringements provided that there is «interest in the case for the court to hear the case» (art. 477.2 LEC). However, it is impossible to analyse the degree to which the claim (in the first case) or the appeal (in the second) is upheld, since the claim for rescission of a final judgment at the request of the defaulting party is brought before the same court that handed down the judgment in absentia, and there is no statistical data on the number of this type of claim; and with regard to appeals in cassation, the official statistics do not differentiate between when the appeal is based on infringement of substantive or procedural rules, so it is very difficult to know how many appeals are successful only on the grounds of infringement of procedural rules.

²² 24 from the TS and 1 from the HCJ of Catalonia.

²³ All from the TS.

²⁴ 8 of the TS and 1 of the HCJ of Galicia.

²⁵ 19 of the TS and 1 of the HCS of Catalonia.

Art. 41.1.f LA	131 (47.99 %)
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Table 6 (prepared by the author)

We will now highlight the main assumptions that make up each of the grounds for estimation:

- a) The first ground (art. 41.1.a LA) is: «That the arbitration agreement does not exist or is invalid.» Obviously, an award based on a non-existent or invalid arbitration agreement renders it null and void. The casuistry is very diverse, and here we find cases of invalidity of said agreement for being drafted «in excessively small print, which makes it difficult to read, and in an unintelligible and rambling manner»²⁶, or for not including the signature of the arbitrator or the arbitrator's representative, or the signature of the party to the agreement is lacking²⁷ or is forged²⁸. The arbitration clause must be «patent, perceptible, clear and conclusive», although it is not essential for it to be explicit, as it can be deduced from unequivocal and conclusive acts, otherwise in *dubio pro Iurisdictione*²⁹. Similarly, the submission to arbitration may be made by reference, i.e. in documents which do not contain the arbitration agreement but which are closely related to others in which the AC does appear³⁰, or refer in their interpretation to another document containing the arbitration clause³¹. The problem of submission to arbitration in «adhesion» contracts arises here. Is it possible? It is not in the realm of consumer contracts, and thus the arbitration clause is considered unfair, unless it is in favour of consumer arbitration (arts. 10, 57.4, 80, and 90.1 LGDCU; and 9.2 LA). And between entrepreneurs or competitors, the arbitration clause could also be considered unfair if there is evidence of a «significant imbalance imposed between the parties», and an «abuse of a dominant position», that is to say, one that violates the principle of equality between the parties³².
- b) The second ground (art. 41.1.b LA) is: «That the arbitrator has not been duly notified of the appointment or of the arbitral proceedings, or has not been able, for any other reason, to assert his rights.» Logically, for the arbitration to be valid, it is essential that the parties have been duly notified of the appointment of the arbitrator³³.
- c) The third ground (art. 41.1.c LA) is: «That the arbitrators have ruled on issues not submitted to their decision». Normally, Spanish courts tend to examine this problem as the last of the grounds, on the basis that the award infringes «public policy», since the arbitrator's exceeding of his powers means that his award is incoherent.
- d) The fourth ground (art. 41.1.d LA) is: «That the appointment of the arbitrators or the arbitration procedure has not been in accordance with the agreement between the

²⁶ SHCJ of Madrid 18/2020, of 30 June.

²⁷ SHCJ of Catalonia 25/2022, of 13 May; or SHCJ of Madrid 18/2020 of 30 June.

²⁸ SHCJ of Madrid 26/2020, of 10 November.

²⁹ SHCJs of Madrid 28/2019, of 12 September and 75/2016, of 13 December.

³⁰ SHCJ of Catalonia 9/2014, of 6 February.

³¹ SHCJ of Catalonia C 41/2012, of 28 June.

³² SHCJs of Madrid 29/2019, of 12 September, 50/2016, of 28 June, 47/2014, of 16 July, 42/2014, of 25 June and 22/2014, of 29 April; or SHCJ of Catalonia 69/2012, of 19 November.

³³ As well as substitution of the same (SHCJ of Madrid 20/2020, of 2 October).

parties, unless such agreement was contrary to a mandatory rule of this Law, or, in the absence of such agreement, that they have not been in accordance with this Law.» The arbitration procedure or the procedure for appointing the arbitrator is not subject to any restrictions and can be very simple, as long as the principles of equality and contradiction are respected³⁴. The number of arbitrators is fundamental in the functioning of arbitration, as it must always be an «odd number» by mandate of art. 12.1 LA, so that the award is null and void if, taking advantage of the non-appearance of one arbitrator, the other two arbitrators make the ruling³⁵, and is also null and void if rendered by four arbitrators or another even number (despite the will of the parties or the rules of the arbitral tribunal)³⁶.

- e) The fifth ground (art. 41.1.e LA) is: «That the arbitrators have ruled on matters not subject to arbitration.» And, in this regard, art. 2 LA establishes that the matters subject to arbitration are all those «freely disposable according to law».³⁷ Consequently, if the award rules beyond this sphere of competence, it will be null and void.
- f) And, finally, the sixth ground (art. 41.1.f LA), and the one most frequently used by the courts to annul awards is: «That the award is contrary to public policy.» The «public order» is an indeterminate legal concept in which case law includes, in addition to the fundamental rights of the EC, the «set of essential principles and rules that inspire the political, social and economic organisation» of Spain³⁸. The most frequent cases of breach of public policy are: violation of the due independence or impartiality of the arbitrator³⁹; breach of the principle of equality between the parties⁴⁰; the complete lack

³⁴ SHCJ of Catalonia 29/2020, of 13 October.

³⁵ SHCJ of Madrid 23/2019, of 28 June.

³⁶ SHCJs of Madrid 36/2020 of 23 December, 25/2019 of 2 July, 9/2019 of 11 March, 8/2019 of 8 March and 1/2019 of 2 January.

³⁷ However, when the arbitration is international and one of the parties is a state (or a company, organisation or enterprise controlled by a state), it cannot invoke the prerogatives of its own law to avoid the obligations arising from the arbitration agreement (art. 2.2 LA).

³⁸ SSTC 17/2021 of 15 February and 46/2020 of 15 June; SHCJs of Catalonia 17/2020 of 9 June, 2/2019 of 14 January and 96/2016 of 28 November; or SHCJs of Madrid 32/2020 of 15 December and 26/2016 of 1 March.

³⁹ SHCJs of Madrid 49/2020, 16 September; 28/2019, of 12 September; 6/2019, of 18 February; 5/2019, of 15 February; and 76/2016, of 13 December; and SHCJs of Catalonia 36/2020, of 4 November; 32/2020, of 20 October; 38/2019, of 23 May; 50/2014, of 14 July; 78/2012, of 13 December; 69/2012, of 19 November; or 29/2012, of 10 May.

⁴⁰ SHCJs of Madrid 29/2019 of 12 September, 6/2019 of 18 February, 52/2016 of 5 July and 47/2014 of 16 June.

of motivation⁴¹⁻⁴² or coherence of the award⁴³; the indefensibility of one of the parties;⁴⁴ and the infringement of the right to the use of evidence appropriate to their defence⁴⁵.

4. Conclusions

The rate of judicial annulment of awards, which has been decreasing in recent years, is low: a mere 16.5% of the claims filed is not a high figure compared to, for example, annulments of final court judgments (review action), which have a rate of 44%, i.e. almost three times as many annulments. As a result, arbitration is still much more effective than state courts, as its decisions are less frequently overturned than those of state courts. Even so, it would be a positive development for arbitration if the rate of annulment of awards were to continue to fall (as it seems to be looking at the evolution of annulments in the last four years: from 2018 to 2022).

Moreover, the procedure for annulment of awards is efficient as, in practice, it is fast-tracked: 161 days is very little time if we take into account that (a) the judgment is delivered by a court at the highest jurisdictional level in Spain (a High Court of Justice) and (b) it takes almost one third of the time it takes to obtain the annulment of final court judgments.

5. Appendices

5.1. Judgments by year and Spanish Superior Court of Justice

YEAR	A	AR	C	CAN	CANT	CL
2022	5	3	17	7	0	0
2021	12	1	11	4	0	6
2020	12	0	10	2	0	1
2019	3	2	5	2	0	4
2018	12	0	9	1	0	3
2017	10	2	8	6	0	3
2016	17	2	12	3	0	3
2015	13	0	12	3	0	4
2014	17	1	15	1	0	0
2013	12	1	13	4	2	3
TOTAL	113	12	112	33	2	27

⁴¹ STC 17/2021, of 15 February; SHCJs of Madrid 4/2020, of 8 January; 52/2016, of 5 July; 46/2016, of 2 June; 4/2014, of 7 February; and SHCJ of Catalonia 50/2014, of 14 July.

⁴² Consequently, it is not possible to allege: (1) the erroneous application of the substantive law, (2) the greater or lesser correctness of the award, or (3) the correct or incorrect interpretation of the legal rules (STC 17/2021, of 15 February; SHCJs of Catalonia 32/2020, of 20 October; 38/2019, of 23 May; 9/2019, of 11 February; 6/2019, of 18 February; and SHCJs of Madrid 6/2020, of 4 February; 4/2020, of 8 January; 30/2019, of 12 September; 29/2019, of 12 September; 27/2019, of 19 July).

⁴³ SHCJ of Catalonia 6/2022, of 31 January; and SHCJs of Madrid 29/2020, of 19 November; 48/2016, of 15 June and 15/2016, of 9 February.

⁴⁴ SHCJs of Madrid 12/2020 of 3 March, 18/2014 of 1 April, 10/2014 of 24 February and 7/2014 of 17 February.

⁴⁵ When the undue inadmissibility of evidence absolutely fundamental to accrediting the disputed fact, and of «decisive influence» for the award, is alleged and reasoned (SHCJs of Catalonia 17/2020, of 9 June; 64/2019, of 17 December; 37/2014, of 22 May; and SHCJs of Madrid 77/2016, of 20 December; 25/2016, of 1 March; 15/2016, of 9 February; 33/2014, of 3 June and 30/2014, of 22 May).

YEAR	CLM	CV	E	G	IB	LR
2022	3	0	3	0	2	0
2021	5	1	1	8	1	0
2020	2	2	2	7	1	0
2019	4	3	2	12	3	1
2018	1	0	0	9	0	0
2017	0	15	0	5	3	2
2016	6	7	1	13	3	0
2015	1	11	0	38	1	0
2014	1	13	1	24	2	0
2013	3	4	1	11	3	0
TOTAL	26	56	11	127	19	3

YEAR	M	N	PA	PV	RM	TOTAL
2022	40	0	5	9	3	97
2021	64	0	1	5	1	121
2020	22	2	1	6	5	75
2019	33	2	1	8	6	91
2018	36	0	5	4	4	84
2017	56	1	3	9	2	125
2016	57	1	1	8	8	142
2015	77	1	1	10	3	175
2014	66	2	3	9	8	163
2013	85	2	0	7	5	156
TOTAL	536	11	21	75	45	1229

5.2. Average duration of proceedings to set aside awards

YEAR	A	AR	C	CAN	CANT	CL
2022	121	228	208	210	0	0
2021	189	210	233	190	0	124
2020	238	0	365	165	0	147
2019	116	178	185	404	0	142
2018	122	0	193	124	0	140
2017	155	254	263	130	0	107
2016	137	148	313	184	0	164
2015	131	0	236	106	0	119
2014	158	131	279	231	0	0
2013	152	161	280	206	155	114
TOTAL	152	174	256	195	155	106

YEAR	CLM	CV	E	G	IB	LR
2022	187	0	116	0	95	0
2021	167	87	104	242	268	0
2020	199	236	177	273	283	0
2019	224	248	198	204	126	0
2018	234	0	0	274	0	98
2017	0	140	0	204	115	0
2016	158	173	176	186	187	91
2015	94	145	0	173	196	0
2014	90	166	101	204	160	0
2013	195	180	90	216	109	0
TOTAL	179	138	96	198	154	93

YEAR	M	N	PA	PV	RM	AVERAGE
2022	186	0	107	104	179	102
2021	311	0	128	112	179	150
2020	327	103	115	135	317	181
2019	251	144	174	157	277	178
2018	227	0	136	114	219	111
2017	190	53	119	142	237	124
2016	216	143	42	119	168	153
2015	264	193	221	138	195	130
2014	300	122	220	196	204	151
2013	303	399	0	109	161	166
TOTAL	258	116	126	133	206	161

5.3. Degree of judicial recognition of actions for annulment in Spanish High Courts of Justice

YEAR	A		AR		C		CAN		CANT		CL	
	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES
2022	3	2	2	1	13	4	6	1	0	0	0	0
2021	10	2	1	0	10	1	4	0	0	0	3	3
2020	10	2	0	0	9	1	2	0	0	0	1	0
2019	3	0	1	1	2	3	2	0	0	0	2	2
2018	8	4	0	0	8	1	1	0	0	0	3	0
2017	10	0	1	1	7	1	4	2	0	0	3	0
2016	15	2	2	0	11	1	2	1	0	0	3	0
2015	6	7	0	0	11	1	2	1	0	0	4	0
2014	12	5	1	0	13	2	0	1	0	0	0	0
2013	9	3	1	0	9	4	3	1	1	1	3	1
TOTAL	86	27	9	3	93	19	26	7	1	1	22	5

YEAR	CLM		CV		E		G		IB		LR	
	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES
2022	3	0	0	0	3	0	0	0	1	1	0	0
2021	5	0	1	0	0	1	6	2	1	0	0	0
2020	1	1	2	0	1	1	6	1	1	0	0	0
2019	3	1	3	0	2	0	7	5	3	0	1	0
2018	1	0	0	0	0	0	9	0	0	0	0	0
2017	0	0	15	0	0	0	5	0	3	0	1	1
2016	6	0	6	1	0	1	9	4	1	2	0	0
2015	1	0	7	4	0	0	13	25	1	0	0	0
2014	1	0	10	3	0	1	19	5	2	0	0	0
2013	2	1	3	1	1	0	7	4	3	0	0	0
TOTAL	23	3	47	9	7	4	81	46	16	3	2	1

YEAR	M		N		PA		PV		RM	
	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES
2022	36	4	0	0	4	1	9	0	1	2
2021	53	11	0	0	0	1	4	1	1	0
2020	10	12	1	1	0	0	6	0	3	2
2019	18	15	2	0	0	1	6	2	4	2
2018	26	10	0	0	2	3	4	0	3	1
2017	31	25	1	0	2	1	8	1	2	0
2016	40	17	1	0	1	1	6	2	6	2
2015	54	23	0	1	1	0	6	4	3	0
2014	53	13	1	1	3	0	9	0	8	0
2013	73	12	2	0	0	0	6	1	5	0
TOTAL	394	142	8	3	13	8	64	11	36	9

5.4. Degree of judicial estimation of the annulment action by year

	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013
Judgments	97	121	74	91	84	125	143	175	163	156
Dismissal	81 (83,5 %)	99 (82 %)	53 (71,6 %)	59 (64,8 %)	65 (77,4 %)	93 (74,4 %)	109 (76,2 %)	109 (62,3 %)	132 (81 %)	128 (82 %)
Upholding	16 (16,5 %)	22 (18%)	21 (28,4 %)	32 (35,2 %)	19 (22,6 %)	32 (25,6 %)	34 (23,8 %)	66 (37,7 %)	31 (19 %)	28 (18 %)

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