

Academic-scientific institutional partnership

School of Law of São Paulo of the Getulio Vargas Foundation (FGV)

(LAW GV)

Brazilian Committee on Arbitration (CBAr)

SURVEY PROJECT

“Arbitration and the Judiciary”

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1. PRESENTATION AND JUSTIFICATION

The Arbitration Law (Law 9.307/96) completed 10 years of existence in November 2006. Up to this date, among teachers, researchers and attorneys which study and work in the field of arbitration prevails the opinion that arbitration has experienced a revolution in Brazil, having transited from a form of settlement that was completely unknown, as occurred before 1996, to being incorporated evermore to the Brazilian juridical culture, particularly in corporate law practice. This viewpoint is supported by statistical data of several Brazilian and international arbitration organizations, particularly the statistics of the International Court of Arbitration of the International

¹ Research Coordinator of LAW GV during the realization of this empirical mapping

Chamber of Commerce (ICC), which demonstrates an extraordinary growth in the volume of arbitrations which involve Brazilian parties².

The growth in the adoption of arbitration in Brazil inevitably leads to growth in the volume of lawsuits involving Law 9.307/96. This increase does not, *per se* alone, represent any harm to the effectiveness of the institute of arbitration in Brazil; quite to the contrary, arbitration, being a form of extrajudicial dispute resolution, cannot survive without the support of the Judiciary in the cases in which this is necessary. Thus the reason why Brazilian jurists have repeatedly quoted the need for a relation of collaboration and coordination between arbitration (arbitrators and/or arbitral tribunals) and the Judiciary, without such relation ever being transformed into a situation of subordination of one sphere of authority to the other. What is needed, clearly, is the separation of the work of arbitrators and of judges or, in technical lingo, the limitation of the sphere of competence of each, in accordance with the law.

In this sense, again, the viewpoint which prevails among teachers, researchers and attorneys that study and work in the field of arbitration is that the Judiciary in Brazil has been duly supporting arbitration, particularly in the interpretation and application of Law 9.307/96. There are many court precedents that confirm this viewpoint, starting with the Supreme Court (STF)'s ruling in December 2001 that confirmed the constitutionality of Law 9.307/96. This favorable position of the Judiciary in regard to arbitration contributes to the definitive incorporation of the institute of arbitration in Brazilian juridical culture, in an evident virtuous cycle.

However, up to this instance, no scientific survey had ever been conducted to assess, with the proper methodological strictness, the position of the Brazilian Judiciary in regard to the applying and effectiveness of Law 9.307/96. Several preliminary surveys of court decisions have already been conducted, but they all seemed to fail to provide a

² According to the statistical data disclosed by the ICC on the number of Brazilian parties that are parties to arbitration proceedings conducted by the ICC, from the 3 parties in 1996, which is the year in which the Arbitration Law was enacted, Brazil increased to 67 parties in 2006. This rendered Brazil the 4th country in the world that had the most parties involved in ICC arbitration, and the leader in Latin America. Although it no longer holds the position of 4th, Brazil maintained a high number: 35 parties in new cases, corresponding to 11th place.

full empirical map to the same extent that was sought in this survey. Without considering jointly quantity and quality aspects and without distinguishing the time, geographical, material and procedural criteria (set out below), no conclusion may be properly reached in regard to the Brazilian Judiciary's position on the institute of arbitration.

Thus, this survey, which has an empirical-jurisprudential nature and an explorative intention, attempted to map all rulings on arbitration issued from the Brazilian Judiciary at the court of appeals level and at the higher courts level (with a few exceptions, as indicated below) either in the sense of supporting or in the sense of canceling and blocking the development of arbitration, in both cases based on the premise that this diagnosis is very important for the acknowledgment and evaluation of the development of arbitration in Brazil.

This diagnosis of the relation between arbitration and the Judiciary represents an instrument that is important for assessing the extent of acceptance of arbitration, its principles and concepts in Brazil. Although a large part of the universe of Brazilian and international arbitration is separated from the court level (pursuant to the voluntary compliance with the arbitral award), which falls outside of the purposes and universe of this survey, evidently the level of acceptance of arbitration by the Brazilian courts reflects, to a large extent, the level of the country's acceptance of arbitration for that, as previously emphasized, it is not possible for this form of extrajudicial dispute resolution to survive without the Judiciary's due support, in the cases where its collaboration is necessary.

Accordingly, the survey aimed at identifying the position adopted by the Judiciary on **six themes** directly related to the effectiveness of arbitration in Brazil:

- (i) existence, validity and effectiveness of the arbitration agreement;
- (ii) urgent interim measures and coercive remedies;
- (iii) invalidity of the arbitral award;

- (iv)** enforcement and compliance with the arbitral award;
- (v)** specific enforcement of the arbitration agreement – lawsuit provided by Article 7 of the Arbitration Law
- (vi)** enforcement of foreign arbitral awards.

In the 7-month period of Aug. 3, 2007 to Feb. 11, 2008 the data bank of the survey was compiled and the court rulings were analyzed, according to the methodological stages set out heretofore.

As regards the temporal limitation of the survey, which falls over the electronic data bases of the courts' jurisprudence, the starting date considered was the date on which the Arbitration Law was enacted (Nov. 23, 1996) and the ending date was February 2008, except in regard to the TJSP, whose data bank was current up to December 2007³. In regard to the spatial limitation, the survey was conducted in the State Courts of Appeal (TJ), the Federal Courts of Appeals (TRF), and the Higher Courts (STJ and STF), excluding the State Court of Appeal of Piauí (TJPI), which did not have its rulings available on the internet data bank when the survey was conducted.

The labor courts were excluded in view of the huge quantity of court rulings which exist on the matter, the collection of which would ultimately compromise the chronogram of the rest of the survey, which aimed at mapping the jurisprudence in the civil and corporate law fields.

The arbitration court regulated in Articles 24, Paragraph 1 to 26 of Law 9.099/95 (*Juizados Especiais Cíveis* – special courts for commercial & civil law matters of limited value) also was not contemplated in this survey, as well as cases involving draw of Workers' Severance Fund (FGTS), found mainly at the Higher Court of Appeals (STJ) and the Regional Federal Courts of Appeal (TRF).

³ Most of the appellate courts have search tools that enable to limit the search period in the electronic data base. In those that do not have tools, the temporal limitation was done subsequently in the survey.

In the review of the court rulings that were mapped, the following variables were considered, which defined the fields of the charts that were adopted to compile the data bank:

- Temporal – differentiation of the instances prior and subsequent to the STF's ruling as to the constitutionality of Law 9.307/96 (December 2001);
- Geographical – distinction between the several States of Brazil;
- Procedural – distinction between *ad hoc* arbitrations and institutional arbitrations, identifying the institutional arbitration entities that were found;
- Objective – distinction of the nature of the claim (consumer protection law, corporate law, civil law, among others);
- Subjective – specification of the parties (arbitration between private parties or with the participation of governmental entities of the direct or indirect Administration).

The main point of the survey was that, although the Judiciary has been observing Law 9.307/96, particularly in connection with the themes (i) existence, validity and effectiveness of an arbitration agreement, (ii) urgent interim measures and coercive remedies, (iii) invalidity of the arbitral award, (iv) enforcement and compliance with the arbitral award, (v) lawsuit provided by Article 7 of the Arbitration Law and (vi) enforcement of foreign arbitral awards, there are important differences that should be pointed out in regard to the temporal, geographical, procedural, objective and subjective criteria, not being possible to reach conclusions in regard to the Judiciary's position on arbitration without considering this criteria collectively.

2. STAGES OF THE SURVEY

The methodological course of the survey was comprised of three stages:

- **1st stage**: consisted in the analysis of the ‘quality’ of the information that was collected starting with the evaluation of the transparency of the courts’ electronic data banks.
- **2nd stage**: consisted in the search of court rulings based on key words and filtering of the search results based on the summary of the ruling. After being read, cross-referenced and exclusion of some rulings, the universe of the survey was obtained, matter of the analysis of the 3rd stage.
- **3rd stage**: main stage of the survey, the basis of which consisted in the reading of the full contents of the court rulings and their compilation according to the search variables, forming the final data bank.

These stages shall be addressed individually heretofore, presenting the methodology that was adopted and the search results in each of the stages.

In each stage a chart was drawn up: **i.** chart on the quality aspect of the courts’ data banks (1st stage); **ii.** chart on the quantity aspect of the search results found in each Court, pursuant to three filters with the use of different key words (2nd stage); **iii.** chart that, pursuant to the reading of the full contents of the rulings, contains the main parts of each court ruling, segregated by Court (3rd stage).

The completion of the chart data was accompanied and discussed in weekly meetings by the team of researchers, to standardize concepts and lingo (for this purpose a glossary of arbitration lingo was drafted), clarify doubts and fine tune the fields of the chart that were to be filled. Some changes occurred in the course of the survey, with the definition of the fields that had priority in the analysis, based on the variables that were established in the project.

2.1. FIRST STAGE: ASSERTION OF THE EXTENT OF TRANSPARENCY OF THE COURTS’ DATA BANKS

The purpose of this stage was to evaluate the way in which the Courts disclose the rulings, how the searches by key words are conducted and how the data banks are fed, their features and limitations, among other information, to assess the reliability of the data that was obtained in the survey.

Different levels of transparency were observed in the information that was provided, and this influenced directly in the quantity of rulings that were found on the theme before each Court. This finding motivated the preparation of some strategies in the second stage of the survey to reach a more complete universe of court rulings, through several filters and cross-references in the searches by key words.

In the chart on the quality of the courts' data banks that was created for this stage of the survey, the following questions were made, with the answers being obtained either by observation of the website or through contact with the court clerks.

1. Where is the search or sweep of the key words conducted in the courts' data banks? (i) indexation, (ii) summary of the ruling, (iii) full contents.
2. What information does the website provide? (i) full contents of the rulings; (ii) summary; (iii) lower court ruling.
3. Is the use of the connectors "and", "or", "not" possible? Is there a tool for the whole sentence?
4. Is a filter by date possible? Year or date (day/month/year)?
5. Are there limits in the results of the search by key word? If affirmative, inform whether there is a reference to the total universe and the limitation in the results.
6. Are the cases processed under confidentiality found in the universe informed in the website? If affirmative, inform the number of cases.
7. Does the search distinguish punctuation of the key words?
8. Is the data bank complete?
9. Who is the person or department responsible for making the rulings available at the website, when the search was conducted?
10. As of when are the rulings made available?

11. Does the search by key word access the entire data bank?

The compilation of these answers, below, is very useful for other empirical-jurisprudential surveys inasmuch as any analysis and mapping of court rulings must consider their quantity aspect representation in the universe of rulings of a certain court, and this depends on the level of transparency and form in which the information is provided in the data banks of each of them.

This information also enabled, jointly with the data collected in the second stage, to define certain parameters for the selection of the courts to be surveyed in further detail in a first instance (pilot project) serving as a model for the others.

In a space for general notes in this chart some specificities of the search in the data banks of the courts that were surveyed were noted (example: TJMG conducts searches by key word by level of precision in the ruling, i.e. by the number of times the word appears in the text of the ruling; TJRS conducts the search in the JEC; TJRJ presents repetition of results in the searches by key word, among others).

When it was not possible to confirm information, the abbreviation N/A (not available) was used in the chart.

Provided below are information on the level of transparency of each court, stated in the chart based on the answers to the questions set out above. In the case of the TJSP, a search was conducted in the old data bank (which was discontinued in the course of the survey), in the data bank of the Association of Lawyers of the State of São Paulo – AASP, which replicated the old data bank, and the new data bank that was implemented in the course of the survey.

2.2. SECOND STAGE: COLLECTION OF THE COURT RULINGS INVOLVING ARBITRATION, BASED ON FILTERS AND SEPARATIONS IN THE SEARCHES BY KEY WORDS

Analyzed the websites of the courts and how they provide the court rulings, the decisions were then collected based on key words in the electronic data banks. Three separations were adopted, based on searches by different key words, with the purpose of approximating to the maximum the total number of the cases involving arbitration at each court.

The spaces of the quantity chart were filled in with the case numbers that were found based on the searches by key words, generating the comparative chart of the filtering.

In the notes spaces, in each chart, it was also noted whether there is a limit in the results that the court's website provides, whether any field was excluded (in view of the large number of cases results) and the date on which the search was conducted.

After the cases related to the results were identified, the summaries of the corresponding rulings were read to exclude those that were not related to arbitration and rulings that were repeated, attaining a volume of rulings that were thoroughly read and compiled in the third stage of the survey.

The **1st filter** considered the following key words, separately: "arbitration", "arbitrary", "9.307", "9307" and "arbitrate".

In the instance of the reading of the summaries of the rulings that resulted from this filtering, the word "arbitrate" was excluded for that the high number of rulings that were found would render the survey unfeasible. Considering that most of them either did not involve arbitration or were likely to be found through another key word of the filtering, the risk that was assumed by the exclusion of this word and loss of a relevant ruling was considered low.

The **2nd filter** was conducted in the data banks of the appeals courts that allow search by key words with the use of the connector "and", meaning that two words were searched in rulings or summaries, jointly or separately and in any order. The key words that were used were "arbitration" and "submission agreement (*compromisso*)"; "arbitration" and "agreement"; "arbitration" and "clause"; "arbitration" and "nullity";

“arbitration and invalidity”; “award and arbitral”; “court and arbitral”; “clause and commitment”; “commitment and arbitral”; “law and 9.370”; “law and 9370”; “267 and VII and CPC”; “301 and IX and CPC”⁴.

The **3rd filter** was conducted in the appeals courts that allow searches by “precise phrase” and accordingly the search was conducted in the precise order in which the words were typed in and considering the phrase as a whole. The precise phrases that were searched are: “arbitration court”, “submission agreement (*compromisso*)”; “judicial arbitration agreement”; “arbitral award”; “267, VII”; “301, IX”.

The three filters were conceived jointly to reach a number of relevant rulings, without excluding any ruling involving arbitration. Only the ruling summaries that were repeated and did not concern the matter were excluded from the total that were to be reviewed in the third stage of the survey. However, not all appeals courts enabled searches using the three filters, and only the first filter is common to all of the searches.

In the chart on the quantity aspect of the filters, which indicates the number of cases found in each search, it also indicates whether the key words were searched in the text of the lower court’s ruling or of the appeals court’s ruling, determining in the latter whether the search was conducted based on a ruling summary or the entire text. In some appeals courts it is possible to make this distinction in the search and in these cases the fields were separated, conducting two searches. When this did not occur, the search result was compiled as “without criteria”.

TJ	lower court ruling	
	appeals court ruling	summary
		full text
		without criteria

⁴ This filtering was not possible in the State Courts of Appeals (TJ) of the following States: São Paulo, 2nd TAC of São Paulo, Rio Grande do Norte, Bahia, Ceará, all States of the Northern Region, except Tocantins, and in the Regional Federal Courts of Appeals (TRF) of the 2nd and 3rd Regions.

It was determined that, in principle, the date to assert the number of decisions in all appeals courts websites would be Aug. 21, 2007 and all results were obtained on that date. The data banks were later updated up to Feb. 11, 2008 (of the first filter only), except for the TJSP, updated up to December 2007.

The appeals courts that were elected to comprise the pilot project were TJMG (Court of Appeals of the State of Minas Gerais), TJRJ (Rio de Janeiro), TJRS (Rio Grande do Sul), TJPR (Paraná), TFDFT (Court of Appeals of the State of Goiás and Territories), considering the volume of ruling of these courts and the quality and quantity of information provided in their websites.

The TJSP was not included in this pilot project because of the changes that were occurring in its website when the survey was being conducted. The old TJSP data bank, which contained rulings in the period of 1998 up to October 2007, was retired from on-line access for implementation of a new data bank and search system. The old data bank and replicated in a website of the AASP (Association of Lawyers of the State of São Paulo), which was consulted in this search, for that the new data bank that was being adopted was still quite incomplete when the survey was being conducted.

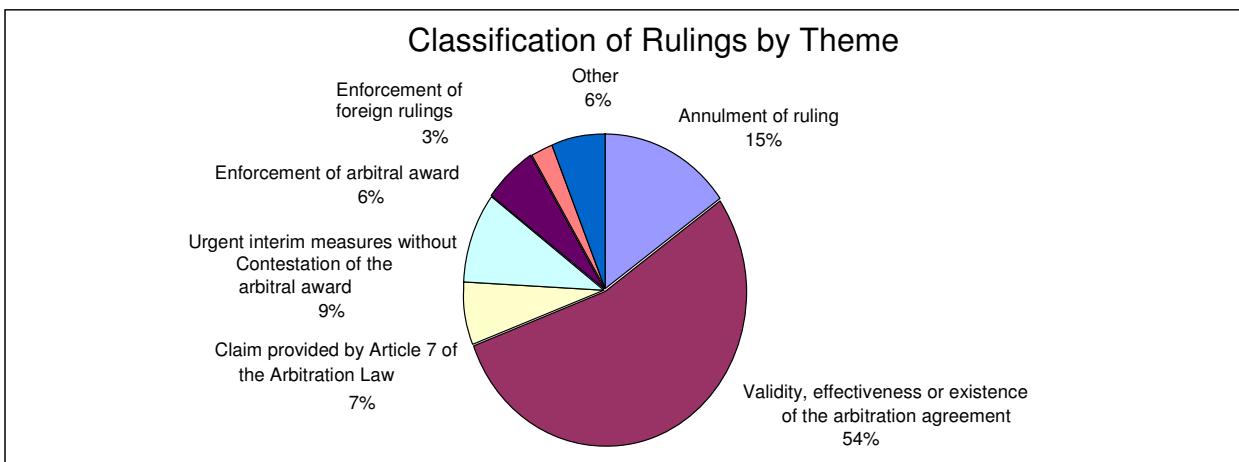
Thus, in São Paulo the three filters of the rulings on arbitration of TJSP were conducted in its new data bank (which was in the phase of implementation) and in AASP's data bank, excluding the cases that were repeated pursuant to the comparison of the summaries of the rulings therein.

After the rulings obtained in the three filters were united, separating only those that effectively referred to arbitration from those that involved other matters, the rulings were read in their integrity and compiled.

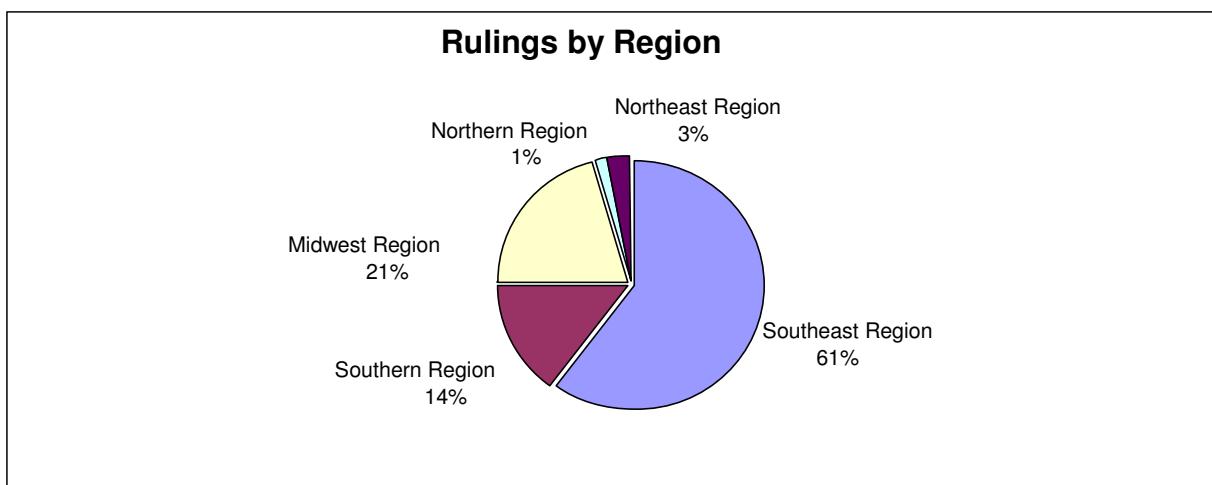
2.3. THIRD STAGE: ANALYSIS AND COMPILATION OF THE COURT RULINGS ON ARBITRATION

2.3.1. OVERALL NUMBERS

A total of 790 rulings were reviewed and compiled, distributed according to the survey theme classification as follows: 54% concern issues related to the effectiveness, validity and existence of the arbitration agreement; 15% concern the invalidity of the award; 9% concern rulings on urgent matters; 7% concern the claims addressed in Article 7 of the Arbitration Law; 6% concern the enforcement of the arbitral award; 3% concern the enforcement of foreign arbitral awards; and 6% concern other cases (residual class of cases that do not fall under the foregoing thematic classes).

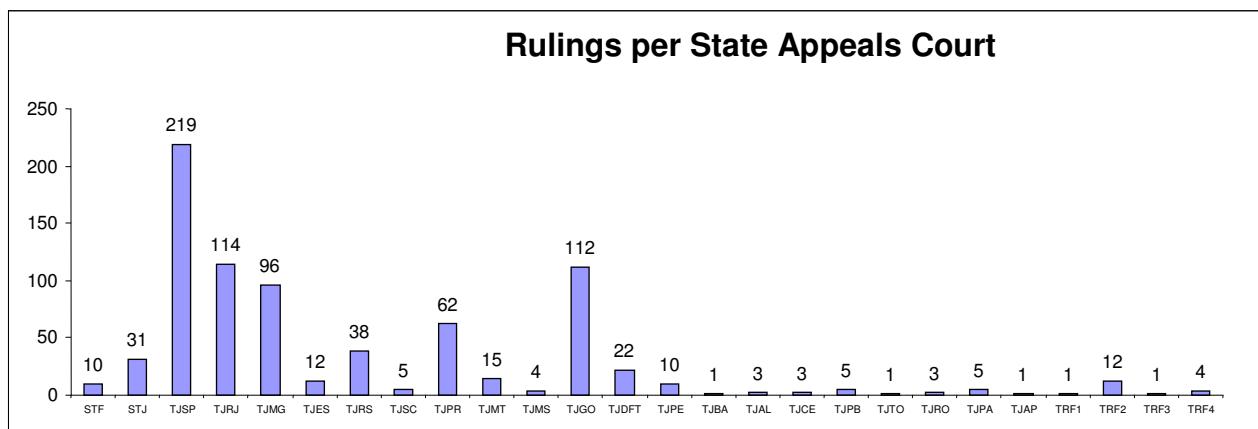


At the level of the State Courts of Appeals 731 rulings were compiled, of which approximately 61% issued from appeals courts of the Southeast Region, 29.76% of which issued from the TJSP; 15.63 from the TJRJ, 13.16% from the TJMG and 1.6% from the TJES.



Other Courts of Appeals that presented representative numbers of rulings were: TJRS (5%), TJPR (8%) and TJGO (15%). In the case of Goiás, the peculiarities of the rulings on arbitration of this Court of Appeals shall be clarified below.

The quantification of the court rulings that were reviewed and compiled is set out below:



It is important to emphasize that the charts containing the data banks of each Court of Appeals are not exhaustive, as there is a relation between the rulings of more than one Court of Appeals and this was stressed in the chart's space of notes, usually with a reference to the number and other data of the related case.

2.3.2. COMPILED DATA

After the full contents of each ruling on arbitration was read, they were individually compiled in the following spaces:

Procedural Class	Case Number	Ruling Court	Plaintiff	Defendant	Lower Court Level			
					Lawsuit	Case Number	Date of Filing	Court

Procedural Theme Classification	Related Themes	Nature of the claim	Appealed Decision	Outcome	Provisions of the Arbitration Law and others invoked			
					Constitution	CPC	Law 9.307	others

Value attributed to	Date of Ruling of	Unanimous	Institutional or "ad hoc"	If institutional,	Indirect sources (not identified)
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the lawsuit	the Appeal	vote?	arbitration?	which?	in the filtering)
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The priority fields are in dark blue and refer to the variables that are adopted in the survey (time, geographic, procedural, material and subjective dimensions).

The first fields of the chart are more formal, filled in based on the ruling data (procedural class – regarding the type of appeal or lawsuit – case number and ruling court). The plaintiff and defendant fields are relevant to the theme of the parties to the arbitration, specifying whether the arbitration involves private parties or with the participation of the Government (direct or indirect Administration entities).

In the lower court level fields, the type of claim, case number, date of filing and court are specified based on the data contained in the record of developments in the appeal or lawsuit proceeding.

In regard to the thematic-procedural classification fields, the following themes were considered: (i) existence, validity and effectiveness of the arbitration agreement; (ii) urgent interim measures and coercive measures; (iii) invalidity of the arbitration award; (iv) enforcement and compliance with the arbitration award; (v) lawsuit provided by Article 7 of the Arbitration Law; and (vi) enforcement of foreign arbitral awards; (vii) other.

The “related themes” field was subsequently inserted in the survey to ease the search by subjects that are not easily deductible based on the thematic-procedural classification, split into 6 generic fields that cover several different themes among them. Thus the importance of specifying the themes related to each ruling, with different subjects related to arbitration that were addressed in the court ruling. The following list is merely exemplifying: 1. Inter-temporal law matter (arbitration law); 2. Subjective Arbitrability (art. 1); 3. Objective Arbitrability (art. 1º); 4. Objective limits of the arbitration agreement; 5. Subjective limits of the arbitration agreement; 6. Seat of arbitration; 7. Matters of public order (art. 2); 8. Arbitration by equity (art. 2); 9. Requirements of the arbitration clause (art. 4); 10. Requirements of the submission

agreement (*compromisso*) (arts. 9 to 11); 11. Negative effects of the arbitration agreement; 12. Negative effects of the arbitration agreement – recognition *ex officio* by the judge; 13. Difference between full and blank clauses (art. 5 and 6); 14. Adhesion contracts (art. 4); 15. Independence of the arbitration clause (art. 8); 16. Competence-Competence (art. 8, sole paragraph); 17. Suspicion and impediment of the arbitrators (arts. 14 and 15); 18. Accountability of the arbitrators; 19. Arbitrators' fee; 20. Due process of law (art. 21); 21. Urgent measures, pre, post or in the course of the arbitration; 22. Coercive measure; 23. Production of evidence (art. 22); 24. Trial in absentia in arbitration; 25. Term for issuance of the arbitral award (art. 23); 26. Stay of the arbitration in the case provided by article 25; 27. Stay of the arbitration by court decision; 28. Stay of the lawsuit based on the arbitration; 29. Stay of lawsuit pursuant to the enforcement of foreign arbitral award before the STF or STJ; 30. Suspension of the enforceability of the arbitral award; 31. Requirements of the arbitration award (art. 26); 32. "Appeal for Clarification" in the arbitration proceeding (art. 30); 33. Partial decision; 34. Enforcement of the arbitral award; 35. Effect of the appeal against ruling determining the opening of the arbitration proceedings; 36. Constitutionality of the Arbitration Law; 37. Irregularities involving the Chamber of Arbitration (which also involves criminal aspects); 38. Use of expressions or designations related to arbitration; 39. Effectiveness of the arbitration clause: the arbitration clause is insufficient, requiring the execution of a covenant to produce effects; 40. Enforcement of the arbitral award; 41. Effects of the arbitral award; 42. Connection, continence and *res judicata* in arbitration; 43. Powers to execute the submission agreement (*compromisso*); 44. Compulsoriness of the arbitration clause; 45. Notification of the party to enter the submission agreement (*compromisso*) (art. 6); 46. Lack of notification of the parties as to the arbitral award (art. 29); 47. Election of the applicable rules (art. 2); 48. Rule of connection between the ruling and the claim in the arbitration; 49. Decease and refusal of the arbitrator; 50. Proper course for alleging nullity/cancellation of the arbitral award – discussion as to the applicability of Writ of

Mandamus; 51. Competence to rule the claim of nullity / cancellation of the arbitral award.

In the blank “nature of the claim” the types that could be filled in were: **i.** civil/commercial; **ii.** corporate civil/commercial (when one of the parties is a company); **iii.** consumer protection; **iv.** administrative (direct or indirect entities of the Government).

The transcription of the appealed decision and the result of the appeal were intended to demonstrate whether any change in the position adopted by the Judiciary occurred in regard to the theme at the appeals court level.

The provisions of the arbitration law that were invoked in the court ruling covered hereby or of the Civil Procedure Code and Federal Constitution were also transcribed, when same refer to the theme of arbitration.

The date of ruling of the appeal is relevant in relation to the temporal variable of the study, to check, for example, whether any change of position occurred prior or after the Supreme Court (STF)'s decision on the constitutionality of Law 9.307/96 (December 2001).

Finally, the space concerning the type of arbitration (institutional or *ad hoc*) relates to the procedural variable of the study, indicating, when expressed in the decision, the institutional arbitration entities that were involved in the case.

The court decisions concerning the same case and parties are near each other in the compilation to ease the subsequent joint analysis. Note that the unit of the study is per decision and not per proceeding or reference case.

In some Courts of Appeals it was not possible to access the full contents of their rulings, only the summaries, thus some spaces of the table were filled out with the abbreviation N/A (information not available) so that the full contents may be obtained later from the State Appeals Courts, through law firms or the local chambers of arbitration.

At the end of the study, as an indirect source of the data bank, some arbitration publications were consulted⁵ on the part concerning national jurisprudence (with or without notes), with the reading of the decisions to cross-reference with those that were already compiled and possible complementation of the data banks. The decisions that had not yet been compiled were included with the specification in the blank "indirect source" of the table, of the data provided in the publication. The decisions that were obtained from the reading of the rulings that were compiled but not identified in the occurrences in the filters of the study (2nd stage) also served as an indirect source.

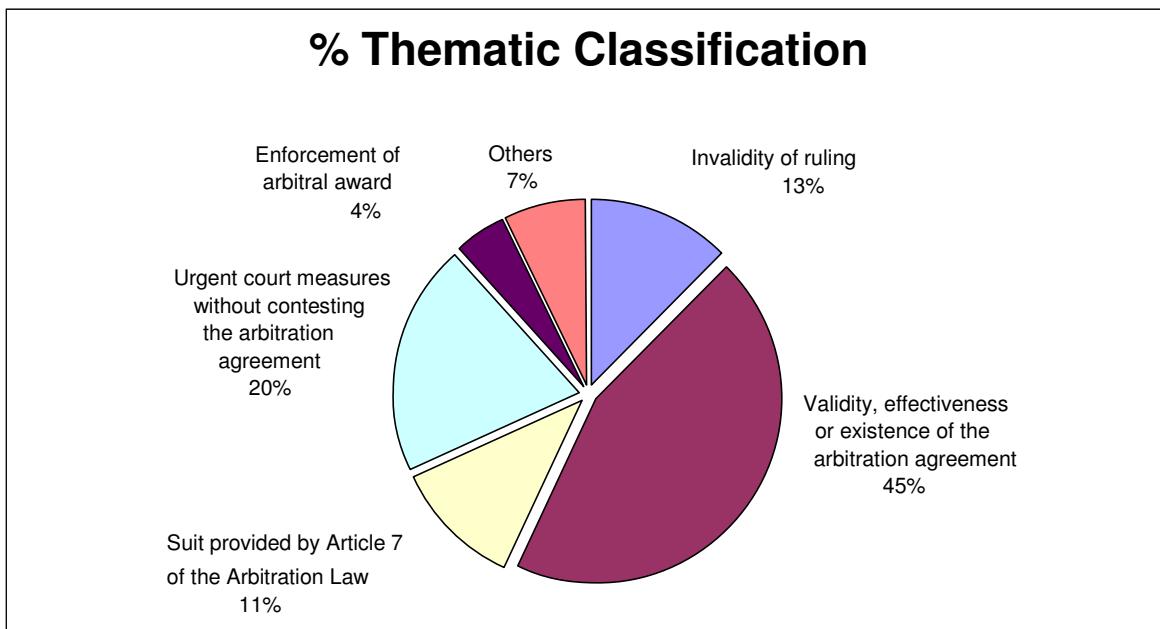
2.3.3. THE PARTICULAR SITUATION OF THE TJGO

At the State Court of Appeals of Goiás (TJGO) a peculiar situation occurred. Judiciary Decree 20/1997, which was published on Jan. 31, 1997, introduced the Courts of Conciliation and Arbitration (CCA) Project in the Timely Justice Program of the Judiciary. This decree intended to ensure the application of arbitration through technical and legal-administrative cooperation agreements between the TJGO, the local chapter of the Brazilian Bar Association (OAB) and class organizations, workers unions and associations. The Chapter of Goiás of the Brazilian Law offered fifteen lawyers to form along with fifteen members of the affiliated entities the Arbitration Group. In December 2007 thirty Courts of Conciliation and Arbitration existed throughout the State, fourteen of which in Goiânia. One of the major controversies in connection with the operation of the CCAs was the supervising judge, who is a judge of law placed at disposal by the Court of Appeals of Goiás that, among other attributions, analyzed the allegations of nullity of arbitration rulings of the courts, which did not exist in the arbitration law. These particular aspects of the State Court of Appeals of Goiás must be considered in the analysis of its decisions on the interpretation and applying of Law 9.307/96.

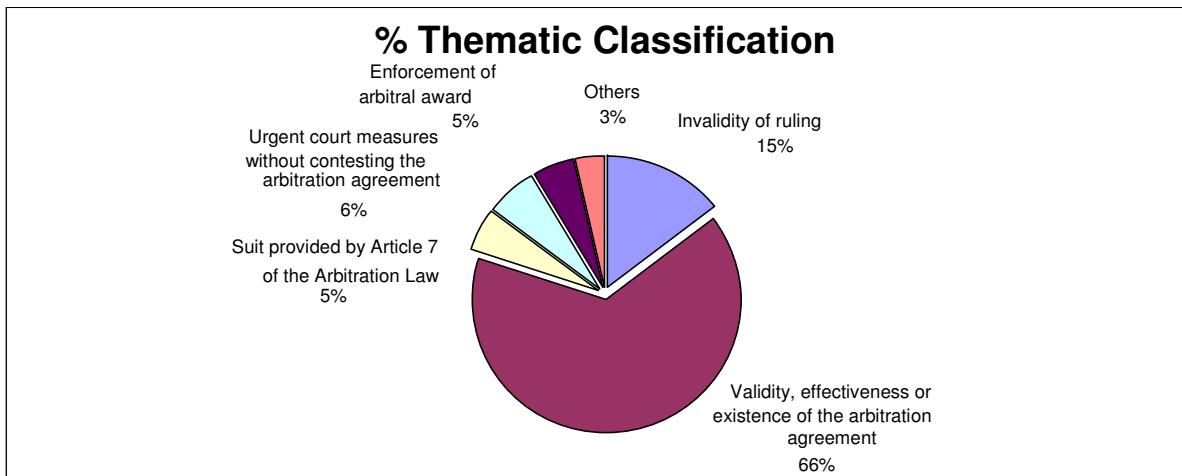
⁵ *Revista Brasileira de arbitragem* (IOB/CBAr), *Revista de Direito Bancário, do Mercado de Capitais e da Arbitragem* (RT) and *Revista de Arbitragem e Mediação* (RT).

3. SOME STATE APPEALS COURTS: CHARTS EXTRACTED BASED ON THE DATA BANKS

TJSP – COURT OF APPEALS OF THE STATE OF SÃO PAULO

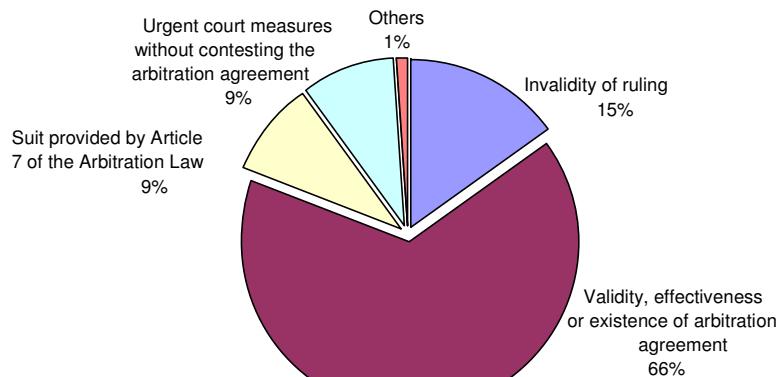


TJRJ – COURT OF APPEALS OF THE STATE OF RIO DE JANEIRO



TJMG – COURT OF APPEALS OF THE STATE OF MINAS GERAIS

% Thematic Classification



TJES – COURT OF APPEALS OF THE STATE OF ESPÍRITO SANTO

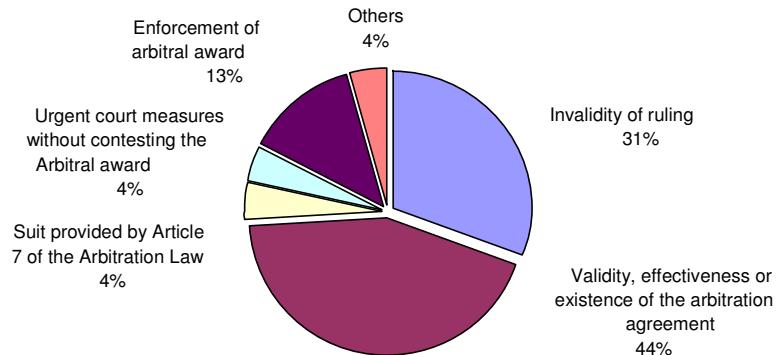
% Thematic Classification

Validity, effectiveness or existence of arbitration agreement
92%

Invalidity of ruling
8%

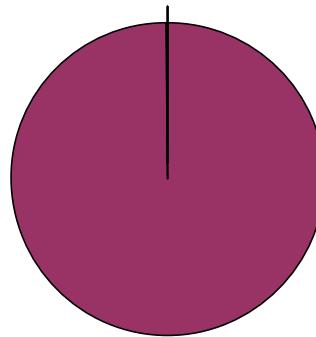
TJDFT – COURT OF APPEALS OF THE STATE OF GOIÁS AND TERRITORIES

% Thematic Classification



TJMS – COURT OF APPEALS OF THE STATE OF MATO GROSSO DO SUL

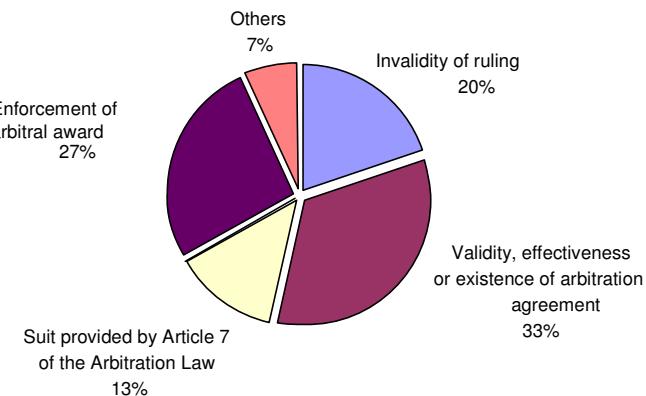
% Thematic Classification



Validity, effectiveness or
existence of the arbitration
agreement
100%

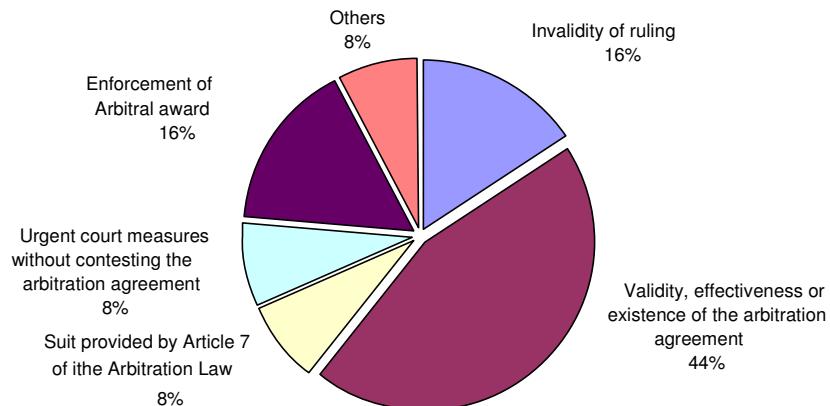
TJMT – COURT OF APPEALS OF THE STATE OF MATO GROSSO

% Thematic Classification

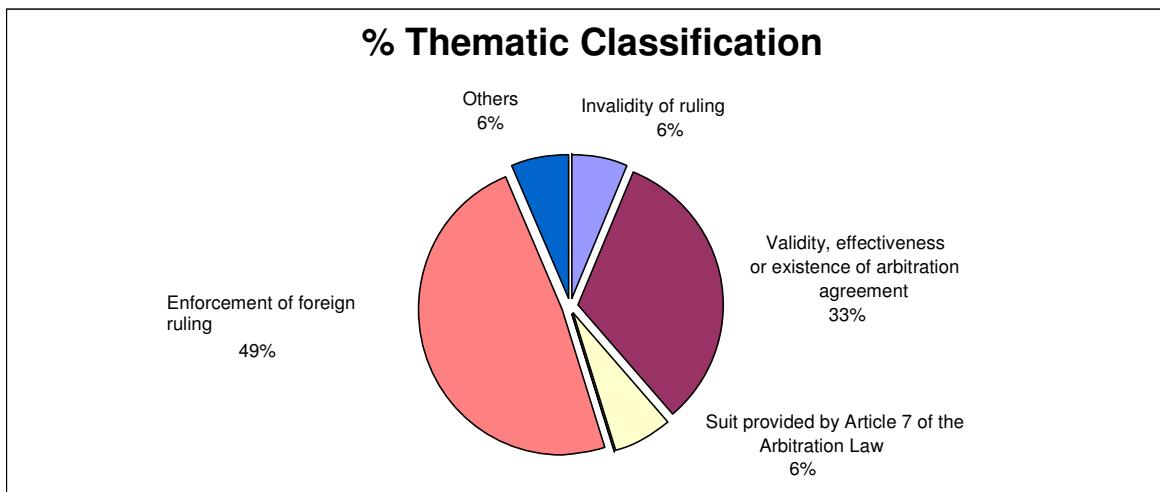


TJRS – COURT OF APPEALS OF THE STATE OF RIO GRANDE DO SUL

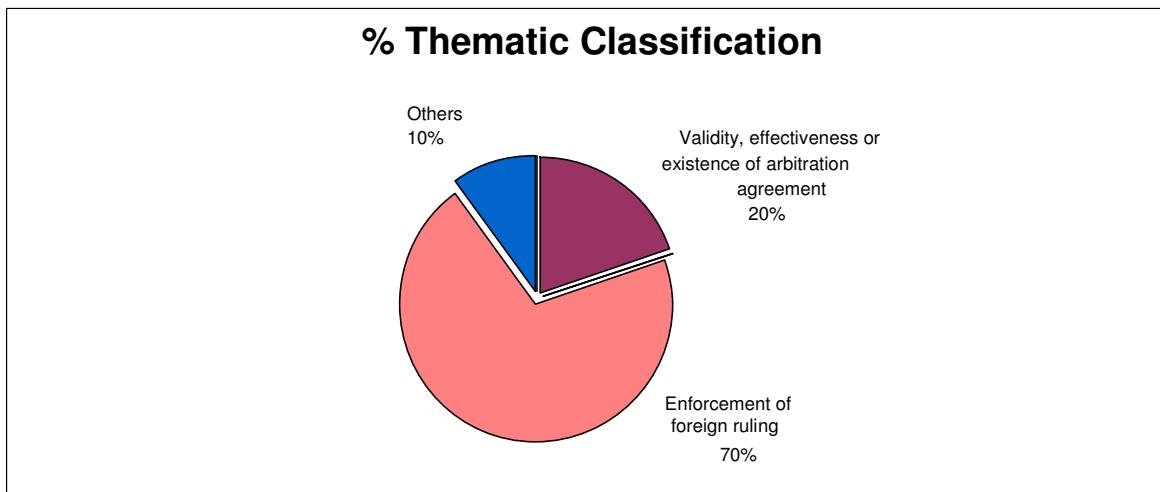
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STJ – HIGHER COURT OF APPEALS



STF – SUPREME COURT



4. NEXT STEPS

Concluded this overall mapping of court of law decisions, with a broad data bank on the cases of arbitration rules by the Brazilian Judiciary at the levels of the State Courts of Appeals, Regional and Higher Federal Courts, it may be periodically updated with the more recent court of law decisions on arbitration, provided that the same search and compilation of data methodology is adopted.

A statistical analysis of these rulings may also generate a numeric indicator of the position of Brazilian jurisprudence on arbitration in the several thematic spaces of the

table, with the possibility of continuous updating of this panoramic diagnosis of the relation between arbitration and the Judiciary.

There are other innumerable possibilities of use and analysis of the data bank. Some variables may be separated to analyze: i. the Appeals Court's position on a certain theme; ii. the change of such position based on the date on which it was adopted (prior or after the arbitration law was declared constitutional) and the geographical location of each Appeals Court; iii. the applying of institutional arbitrations and arbitration *ad hoc*; iv. the legal grounds most frequently adopted in certain rulings; v. the cases most widely quoted in the rulings of each Appeals Court, among several other possibilities and uses of this rich data bank.

The analysis methodology may also range from a broader and quantitative mapping to a survey of the most relevant cases of a certain Appeals Court, with an in-depth analysis of the features of similar decisions on the same type of case or matter.

This initial stage of the survey shall be followed by a more detailed qualitative analysis of the court of law decisions, separating the thematic classification variable to comprehend the Appeals Courts' positions on each theme, with a more detailed reading of the motivation of the decisions that enables a diagnosis of the sensitive issues of the corresponding theme.