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ANNULMENT OF ARBITRAL
AWARDS IN BRAZIL

SEPTEMBER | 2024

HOW DO COURTS
OF APPEAL AND THE
SUPERIOR COURT
OF JUSTICE DECIDE

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P R E S E N T A T I O N

The mission of the FGV Justiça is to identify, understand, systematize, develop and upgrade solutions aimed at improving the justice system.

At the moment, FGV Justiça has the following lines of research: (1) digital governance and innovation; (2) sustainability and social responsibility; (3) democracy; (4) human rights; (5) dispute resolution; (6) social justice; (7) infrastructure; (8) public finance and taxation. The present study on annulment suits filed against arbitral award, which were rendered in Brazil, is part of our dispute resolution research line. It aims at contributing to the academic and scientific discussion on arbitration in Brazil.

Fostering the appropriate use of alternative dispute resolution methods is a central pillar of our research that aims to build on a more efficient and speedy justice system. That aim is at the heart of the National Council of Justice's (CNJ) five years strategy for the Judiciary that has been prevailing for the period 2021 to 2026. The strategy highlights, among the numerous challenges that exist, the following tasks: addressing the scope of internal processes, improving the agility and productivity of judicial provisions, fostering the prevention of disputes, adopting consensual solutions of conflicts, improving the administration of procedures, and strengthening the governance of the judicial system.

The interaction between State and Federal Courts, on the one side, and arbitral tribunals, on the other, should be characterized by a cooperative spirit and mutual respect. In this sense the CNJ adopted Resolution Number 421 (released in 2021), which establishes guidelines and procedures on national judicial cooperation in matters of arbitration.

The present study has the same purpose as the CNJ's Resolution. It intends to provide a technical and objective analysis of annulment proceedings filed against arbitral awards that were rendered on Brazilian territory. The study is based on data that was delivered by Jusbrasil. We hope that our analysis will contribute to a more effective system of justice, and ultimately foster the development of our country.

Luis Felipe Salomão

Coordinator of FGV Justiça

INTRODUCTORY NOTES

Annulment suits against arbitral awards are one of the “hottest” topics in the current discussions about arbitration in Brazil. There is broad and robust consensus that arbitration is an important element of Brazil’s justice system. In fact, the Brazilian arbitration and civil procedure laws put arbitration awards, in principle, on equal footprint with Court rulings. However, under exceptional circumstance Courts can set (annul or vacate – all three terms are used herein as synonyms) arbitral award aside, not vice-versa.

A low number of (successful) annulments is crucial for the success of arbitration as a legal institute. Hence, the Brazilian arbitration community, like any other arbitration community around the world, is very much concerned with a possible rise of annulments suits and the success rate of such suits. The reason is crystal clear: A key promise of arbitration is providing a faster and more specialized dispute resolution method when compared to classical Court proceedings.

The promise of greater speed depends, first and foremost, on arbitration being a one-stop dispute resolution mechanism, in other words, the lack of access to a second instance. Hence, there must be no ordinary recourse or appeal against an arbitral award. The annulment suits provided for in most arbitration laws around the world, and obviously in Brazil, are different in nature and scope when compared to ordinary recourses or appeals provided for in Civil Procedure Codes. However, there is naturally a tension between the mere existence of annulment suits and the so-called “one stop” principle which is essential to keep the promise of speedy dispute resolution.

If the perception of an increase in annulment suits against Brazilian arbitral awards – a topic frequently debated upon arbitration events – is really true, a cornerstone of arbitration, the “one stop” principle, would be at risk. Furthermore, such a development would conflict with the traditional approach of the Brazilian Courts to the application of section 32 of the Brazilian Arbitration Act (Law Number 9,307 of 1996) on annulment suits. That norm, which basically follows the UNCITRAL Model Law on International Commercial Arbitration, has been traditionally interpreted by the Brazilian Courts as proving an extraordinary “recourse” that is limited to very exceptional situations and rarely applicable.

The purpose of the present study is to verify if there is really an increase in annulment suits against Brazilian arbitral awards, and also measure the success rate of such suits. Hence, the objective of the study is to provide a report on how Brazilian Appeal Courts

and, especially, the Brazilian Superior Court of Justice rule on requests to set arbitral awards aside. We did not analyze decisions of the Courts of First Instance, for most of these decisions are challenged anyway before the Appeal Courts.

Notably, in Brazil annulment suits start before the Courts of First Instance, and not seldomly end up before the highest court in Civil and Commercial Law matters, the so-called Superior Court of Justice (STJ). Hence, annulment suits may take several years. While such suits are pending, the Courts can suspend the execution of the challenged arbitral award and thereby jeopardize the effectiveness of arbitration. Consequently, not only the success rate of setting aside proceedings matter, but also their duration, especially in the light of broader policy aim: to guarantee legal certainty.

The study provides an unprecedented quantitative analyzes of the reality of setting aside proceedings in Brazil. By focusing on facts and “real” numbers, not on “guessing”, the study aims to help strengthening arbitration in Brazil, its international competitiveness, and also to support legal certainty in general. In the context of competitiveness, it should be highlighted that commercial parties can freely agree (in the underlying business contract or in a separate arbitration clause) on where to seat arbitration, in Brazil or elsewhere.

Legal certainty of awards, hence their robustness, is a crucial criterion when choosing the seat of arbitration. Our study will show that the concerns about an assumed growing success of annulments suits is largely exaggerated. The increase, in terms of absolute number, is mainly a consequence of the increase of arbitration proceedings over the last two decades. Especially on the level of the Superior Court of Justice, the success rate of annulment suits continues to be low. However, the overall duration of such suits is indeed an issue that is rooted in civil procedure law and the three instances approach.

The study concludes that Brazilian Courts continue to respect arbitral awards. They intervene only when public policy and constitutional principles requires them to do so. The respective Court rulings are pretty much in line with international practice.

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C

CONTEXTUALIZATION

CONTEXTUALIZATION

Arbitration has been growing in Brazil since the beginning of the 21st century. While there is still growth, the growth rates have been slowing down in recent years, which is completely normal for a mature arbitration market. Today, the total amount of arbitral awards rendered in Brazil is significantly higher than two decades ago. Naturally, the number of legal professionals working in the field increased. A considerable number of arbitration institutions emerged; in fact, the number of competing in the Brazilian arbitration market is significantly higher than in other markets. Notably, arbitration in Brazil moves a significant amount of money, both in terms of value in dispute and in revenues for legal professionals. The ICC statistics clearly demonstrate that Brazil is consistently top five in the international arbitration market.

However, two local particularities have emerged which one must keep in mind when comparing Brazil with countries where arbitration and other alternative dispute resolution methods have a much longer tradition. In Europe and the US, commercial arbitration is used mainly to resolve cross-border disputes. Hence, to a lesser extent for the resolution of disputes between parties of the same country. Brazilian business use arbitration to opt out of the local Courts.

In Brazil, domestic arbitration dominates, even though a significant number of arbitration proceedings involve (in the background) a foreign holding company or have other international elements. Importantly, the Brazilian Arbitration Act does not distinguish between international and domestic arbitration. Whenever the seat of arbitration (and consequently the place where the arbitral award shall be rendered) is in Brazil, the Brazilian Arbitration Act classifies the arbitration as domestic arbitration, no matter how many international elements there may be.

The importance of domestic arbitration and, of course, the geographical dimensions of Brazil explain, in part, the huge number of arbitration institutions. In more traditional markets, especially in Europe, are much more consolidated. Most European arbitration accounts for just one domestic (or a few) arbitration institution. This applies, for example, to: Switzerland (SAC/SCAI), Germany (DIS), Austria (VIAC), England (LCIA), Sweden (SCC), Spain (CEA/CIAM), Portugal (CAC) and Italy (CAM).

The dominance of domestic arbitration, often in combination with domestic procedural and substantive law, might have another important consequence. Courts may require greater coherence of arbitral awards and proceedings with national justice standards.

The promise of arbitration – as an institution – is to resolve disputes quicker than the Courts. The tool are professionals (arbitrators) that have a lower caseload than judges and that posse a high degree of specialization in the matter that underpins the legal relationship between the parties. Considering that Brazilian judges have to face several hundreds, sometimes even thousands, of new cases per year, the first point, lower caseload, is naturally always given in Brazil. The existence of a higher degree of specialization is much more difficult to evaluate.

Whether or not arbitration, provides really a faster dispute resolution method does not depend only on the duration of an arbitration proceeding counted from the constitution of the tribunal to the date of the final award. Such numbers can be very misleading. First, sometimes the constitution of arbitral tribunals takes many months, if not 1–2 years. Second, if a party challenges an award in the Courts and successfully requests suspension of the award’s enforceability while the challenge is pending (easily several years in Brazil), than arbitration was ultimately unable to provide speedy dispute resolutions. What matters for users is the time between filing of a request for arbitration and the day, when the defeated party either complied voluntarily with the award (or a settlement agreement) or when the award can really be enforced. Consequently, we need to have a closer look on annulments suits.

According to the Brazilian Arbitration Act, Law Number 9,307 of 1996, there is no ordinary appeal against an arbitral award. However, parties may request the arbitrators (i) to correct a material error and/or (ii) to clarify a certain obscurity, doubt or contradiction of the arbitral award. Most arbitration laws around the world provide for such a request. Notably, Brazilian parties make extensive use of such request. A practice, that not seldomly delays considerably the rendering of the definite wording of the final award. Such delays may extend to several months, especially if the arbitration institutions that administrates the respective case, subjects the arbitrators’ decision on the request to its scrutiny process. Rarely, are such request successfully.

More important, is the possibility of the defeated party to file an annulment suit in the courts or request a kind of “injunction” to block enforcement of the award. The reasons that justify such request are very limited. The request for annulment suits, on which we will focus, are enumerated in sections 32 and 33 of Act Number 9,307 of 1996. Importantly, a challenge must be filed, in principle, within 90-days after the award was rendered.

Sections 32 of Law No. 9,307 of 1996 enumerates seven conditions under which the arbitral award may be set aside or vacated: (i) the arbitral clause or agreement was null; (ii) one of the arbitrators must not have acted in this capacity; (iii) the ward does not meet the requirements of section 26 of the Arbitration Act; (iv) the award trespassed the borderlines of the arbitration clause, agreement or request for arbitration; (vi) it is proven

that the awards is based on malfeasance, collusion or passive corruption; (vii) the award was delivered after the deadline, respecting the provisions of section 12, item III, of the Arbitration Act; and (viii) if the principles referred to in section 21, § 2, of the Arbitration Act are disrespected. Notably, item V was revoked by Act Number 13,129 of 2015.

As previously mentioned, in recent years there were rumors that the number of annulment suits is growing considerably. Such a development cannot be ruled out immediately because the total number of arbitrations increased, and Brazil is characterized by a high very strong litigation culture.¹ However, whether and to what extent such rumors or “guessing” a supported by facts, needs a careful quantitative and qualitative analysis which this study aims to provide.

In order to understand, why the Brazilian litigation culture has a significant spillover effect on arbitration, it is important to keep in mind that arbitration in Brazil is still relatively young. As previously mentioned, the market took off only twenty years ago, while traditional arbitration countries (such as France, England, and Switzerland) started in the 1960s, hence in the aftermath of the New York Convention of 1956.

The vast majority of Brazilian arbitration professionals began their careers in classical litigation business. Most lawyers doing counsel work in arbitration continued to have a split practice, arbitration and litigation. In Europe, the last division of labor between trial lawyers and arbitral counsel has become much more pronounced over that last 7–8 decades. French and Swiss international arbitration culture, is almost completely detached from litigating in national courts. This is not the case in Brazil. The influence of the traditional approach practiced in Brazilian courts keeps on having a strong influence on arbitration practice. This is especially true when it comes to the use of request for clarifications of awards and annulments suits.

The possible consequences of an increase in (successful) annulment suits and are evident: the promise of arbitration leading to faster dispute resolution may be an illusion and legal uncertainty may increase.² In fact, the so-called “judicialization” of the “same” dispute after the arbitral award was rendered, would increase the overall costs and duration of dispute resolution (costs of arbitration plus costs of subsequent court proceeding). Furthermore, legal certainty would suffer. Ultimately this could frustrate the expectations of arbitration users, lead to a lower degree of acceptance in the Brazilian (legal) society, and cause a setback for Brazil's competitiveness as a seat of international arbitral. But is there really an increase in (successful) annulment suits?

In order to answer the question, we investigated the numbers and ratios. How many annulment suits are filed in the Brazilian Judiciary, and how many awards are annulled, partially or fully? How did absolute numbers and ratios delved over the last five years? While these generic topic “annulment suits” is always present in discussions,

¹ The Justice in Numbers 2023 report from the National Council of Justice points out that, in 2022, there were 81.4 million cases being processed in the Brazilian Judiciary. See CONSELHO NACIONAL DE JUSTIÇA. Relatório Justiça em Números 2023. Brasília: CNJ, 2024, p. 92. Available on: <https://www.cnj.jus.br/wp-content/uploads/2024/02/justica-em-numeros-2023-16022024.pdf>. Accessed in: 25 Mar. 2024.

² GARY, B. Born, Introduction: The International Practitioner's Perspective of Arbitral in Brazil. SESTER, Peter (ed), International Arbitral : Law and Practice. Oxford: Oxford University Press, 2000, p. lii–liii.

there is still a lack of data to support a more in-depth analysis. A first initiative to close the gap was taken by the Brazilian Arbitral Committee (CBAr), in partnership with the Brazilian Jurimetry Association (ABJ), in 2023. However, it was limited to the Court of Appeal of the State of São Paulo.³ In order to get the full picture, especially the practice of the Superior Court of Justice, FGV's Center for Judicial Innovation, Administration and Research – FGV Justiça, carried out an unprecedented survey. We analyzed the numbers of all Brazilian Appeal Courts and, obviously, those of the Superior Court of Justice, which sets the benchmark for the application of the Brazilian Arbitration Act. We aimed to map and provided the basis for a more fact based discussion about annulment suits in Brazil.

Objectives

General objective:

Carry out an empirical and analytical study of arbitral decision annulment actions filed in Brazil between the years 2018 and 2023, with the aim of mapping trends, evaluating the effectiveness of the arbitral system and understanding the legal motivations that underlie requests for annulment.

Specific objectives:

- Quantify how many appeals and how many REsp of actions to annul arbitral awards were judged in the period from 2018 to 2023;
- Classify the matters discussed in the context of annulment actions of arbitral award;
- Identify the parties, the body that issued the court decision, the year of the decision, the State in which the case originated and whether the court decision upheld or annulled the arbitral award;
- Categorize the legal grounds invoked in requests for actions to annul an arbitral award, based on the list in art. 32 of Law No. 9,307, of 1996;
- Identify the Chambers responsible for managing arbitral procedures that generated appeals and REsp in annulment action of arbitral award.

³ Available on: <https://cbar.org.br/site/wp-content/uploads/2023/11/relatorio-observatorio-da-arbitragem-cbar-abj.pdf>. Accessed in: 25 Mar. 2024.

Justification

The issue of annulling the arbitral award is very sensitive to the legal security of the procedure and the confidence of the parties and lawyers in directing cases to arbitral justice. Brazil is an important arbitral market, which generates significant financial resources. Furthermore, Brazil has the potential to establish itself as an international seat of arbitral, which requires a high degree of legal security.

A more in-depth understanding of the topic, in Brazil, still lacks more data that would make it possible to understand the lack of consolidation of the Arbitral Chambers existing in the country and the number of arbitral cases they receive annually. Some data in this regard are the subject of the survey carried out by the annual survey “Arbitragem em Números” (Arbitral in Numbers, in a free translation), carried out by Prof. Selma Ferreira Lemes.⁴

The relevance of the research is due, above all, to the scope of the sample. This is the first research in the country that analyzed the decisions in all Courts of Justice and the Superior Court of Justice which faced the annulment of the arbitral award as the central theme of the decision. The research questionnaire proposed the examination of 33 (thirty-three) points related to the appeal and special appeal that dealt with the annulment of an arbitral award.

This is an initiative of unprecedented scope that proposes the compilation and analysis of data on the annulment of an arbitral award through the categorization of scientific data. In this way, a better understanding of the subject will be possible, with the aim of diagnosing the functioning of the annulment action and improving arbitral in Brazil with greater legal certainty.

Methodology

The research was carried out in partnership with Jusbrasil, which provided a database with 1,916 judicial decisions, based on the following keywords: “Law”, “arbitral” and “annulment”. Only decisions in which these three terms were present were selected by Jusbrasil. The time span covered the period from 2018 to 2023. From this base, 13 links were found to be “offline” and, therefore, were discarded from the analysis. Therefore, 1,903 decisions remained.

A novelty implemented by Jusbrasil in this research was the use of a simple artificial intelligence prototype to read excerpts of the decisions and check whether: (1) the arbitral award was annulled; (2) arbitral award was upheld; (3) only the analysis of the conflict of competence occurred and (4) N/A, when it is not possible to identify.

⁴ The 2023 edition is available on: <https://canalarbitragem.com.br/wp-content/uploads/2023/10/Arbitragem-em-Numeros-2023-VF.pdf>. Accessed in: 25 Mar. 2024.

In any case, the researchers analyzed each decision individually, without being based on these results proposed by AI.

From this set of 1,903 decisions obtained through the search for the three keywords, the research was restricted to the analysis of appeal and special appeal decisions.⁵ The research sample covered all 27 Courts of Justice and the STJ.

The research questionnaire contains 33 items that included, among others, the type of process, the court, the rapporteur, the body and year of the decision, the type of contractual relationship that supported the arbitral procedure, whether the public authority was an integral part of the contract, if the case was decided by an arbitrator or arbitral court, the Chamber responsible for managing the procedure and the item(s) of art. 32 that justified the annulment of the arbitral award. The full questionnaire is available in Appendix 1 of this study.

It is worth noting that the research did not seek to analyze, directly, the number of annulment actions that reached the Judiciary in the period from 2018 to 2023. However, by examining the entire content of the decisions taken in appeals and special appeals, it was possible to verify, in most cases, whether the decision was annulled or maintained by the lower court, which allowed a robust analysis, including in relation to the position of the first-degree judges.

The research data was consolidated into an interactive panel in Power BI software, with access available to the public. In the “Conclusion” tab, the “hierarchical tree” feature was used to visualize, per court, the positioning of the rapporteurs of the appeals and the REsp who dealt with the annulment of an arbitral award on a given matter. Through this tool, this study shows the understanding of each STJ rapporteur.

However, it is important to explain that this “Conclusion” tab, present in Power BI, as it uses the “hierarchical tree” feature, is not visible to the public due to the limitations of the software itself.⁶

The research results and study are publicly available at the following link: <https://ciapj.fgv.br/publicacoes/relatorios-pesquisa>.

5 The following types of processes were then excluded from the detailed analysis:

- Interlocutory Appeal;
- Special appeal;
- Internal appeal in the special appeal in an arbitral award declaratory action;
- Embargoes for Declaration;
- Internal appeal in civil appeal;
- Request for a suspensive effect on the appeal;
- Provisional protection in the special appeal;
- Ordinary appeal to the Labor Court;
- Incident of uniformity of jurisprudence;
- Conflict of competence;
- Special appeal that discusses the annulment of an arbitral clause;
- Unnamed resource;
- Appeals in the Labor Court;
- Special appeal admissibility decisions.

6 Create and exhibit hierarchical three views in Power BI. Available on: <https://learn.microsoft.com/pt-br/power-bi/visuals/power-bi-visualization-decomposition-tree>. Accessed in: 5 Apr. 2024.

R

RESULTS

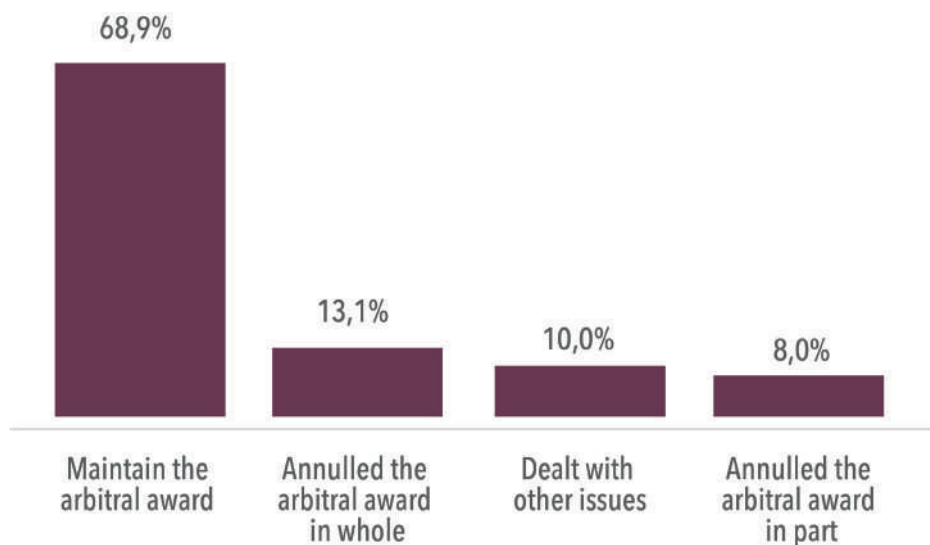
RESULTS

Of the 1,903 decisions analyzed, coming from the Jusbrasil database, 389 were eligible for further analysis. Of this group, 358 decisions were given on appeal and 31 on special appeal.

1. Outlook

As shown in figure 1 below, the court upheld the arbitral award in 68.90% of the decisions on appeal and special appeal, in 13.10%, it fully annulled the arbitral award and, in 8%, it partially annulled the arbitral award.

Figure 1 - Result of the court decision on appeal and REsp



In 10% of the cases, the court decision dealt with other issues. The analysis of these decisions showed the following occurrences:

- Sending of the files to the competent court of the Reserved Chambers of Business Law within the scope of the TJSP;
- Prevention;
- Discussion restricted to the value attributed to the cause;
- Gross error in opposing embargoes on execution;
- Extinction of the process, without resolving the merits, as the arbitral clause is consi-

dered valid, with recognition of the jurisdiction of the arbitral court to examine the matter;

- Decision on appeal that declared the non-occurrence of the loss of material rights (decadence) for the filing of the declaratory action of nullity of the arbitral award and determined the return of the case to its origin;
- Recognition of the timeliness of the nullity action and return of the case to the court of origin;
- Recognition of the offense against due legal process and the nullity of the 1st degree sentence, with the return of the case to its origin for the rendering of a new decision and the renewal of the acts carried out;
- Judicial sentence appealed on generic grounds, therefore being null and void;
- Impossibility of re-examining facts and evidence in a special appeal;
- Revocation of the 1st degree sentence and order to return the case to the 1st degree for the hearing of the witnesses listed by the appellant and regular instruction;
- Revocation of the 1st degree sentence, as the party should have been previously notified before deciding whether to prescribe or expire, in compliance with the principles of non-surprise and cooperation, materialized in arts. 9 and 101 and in the sole paragraph of art. 487, of the Code of Civil Procedure (CPC);
- Revocation of the 1st degree sentence that extinguished the case without resolving the merits due to lack of procedural interest, with the consequent referral of the case to the court of origin.

2. Distribution by court

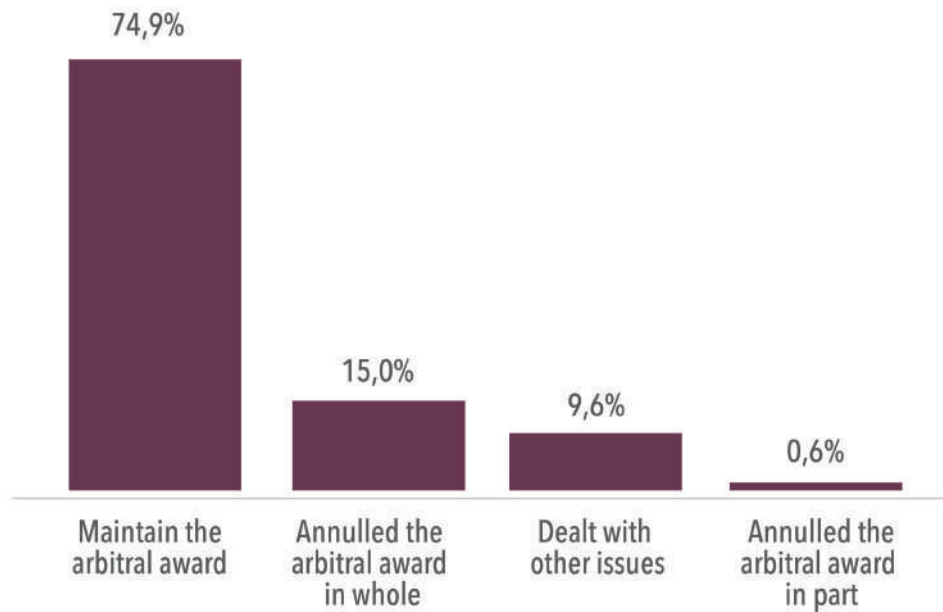
In this topic, the volume of appeals in actions to annul arbitral awards in each Court of Appeal will be presented, from 2018 to 2023, as well as the main topics discussed by the arbitral awards that are the subject of these annulment actions.

2.1. Court of Appeal of the State of Goiás

The TJGO is the court with the largest number of appeals for annulment of arbitral awards, judged between 2018 and 2023, which represents 46.65% of the total of 358 appeals analyzed.

During this period, the TJGO's position in relation to arbitral awards was to maintain the arbitral sentence in 74.90% of decisions on appeal. In 15.60% of cases, the TJGO annulled the arbitral award and, in 9.60% of decisions, it dealt with other issues.

Figure 2 – TJGO's position in relation to arbitral awards



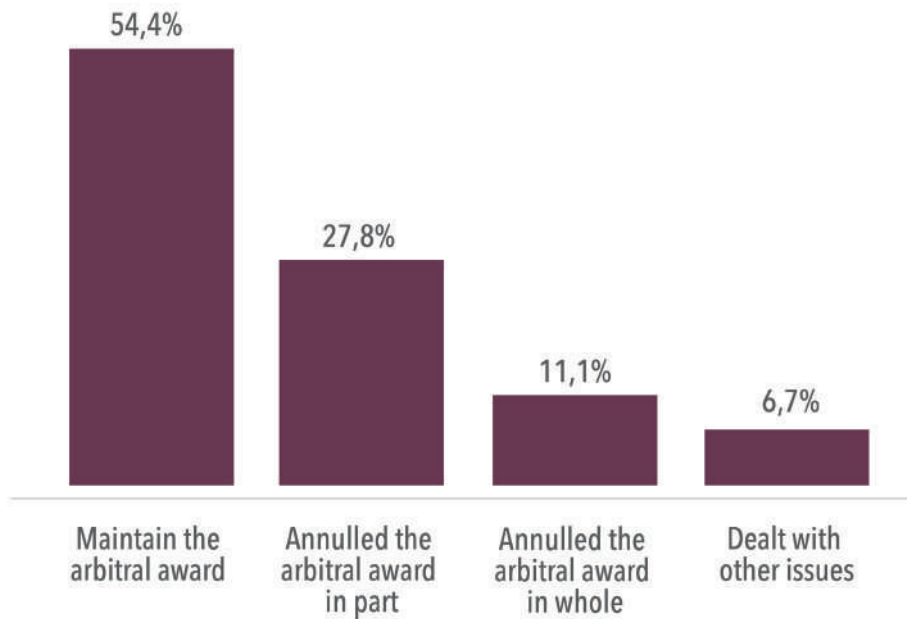
In the TJGO, the most recurring matters in the arbitral award, that is, the largest number of cases, were related to civil issues. Only a single case dealt with a business matter. In 52 cases, it was not possible to identify the material being treated. With regard to civil matters, arbitral discussions were mostly limited to the purchase and sale of properties, promises to buy and sell, leases.

2.2. Court of Appeal of the State of Sao Paulo

The TJSP is the second court with the highest number of appeals judged, referring to the annulment of an arbitral award, between 2018 and 2023, which corresponds to 25.14% of the total appeals analyzed.

During this period, the TJSP's position in relation to arbitral awards was to maintain the arbitral award in 54.40% of decisions on appeal. In 38.90% of cases, the TJSP annulled the arbitral award (in whole or in part) and, in 6.7% of decisions, it dealt with other issues.

Figure 3 – TJSP's position in relation to arbitral awards

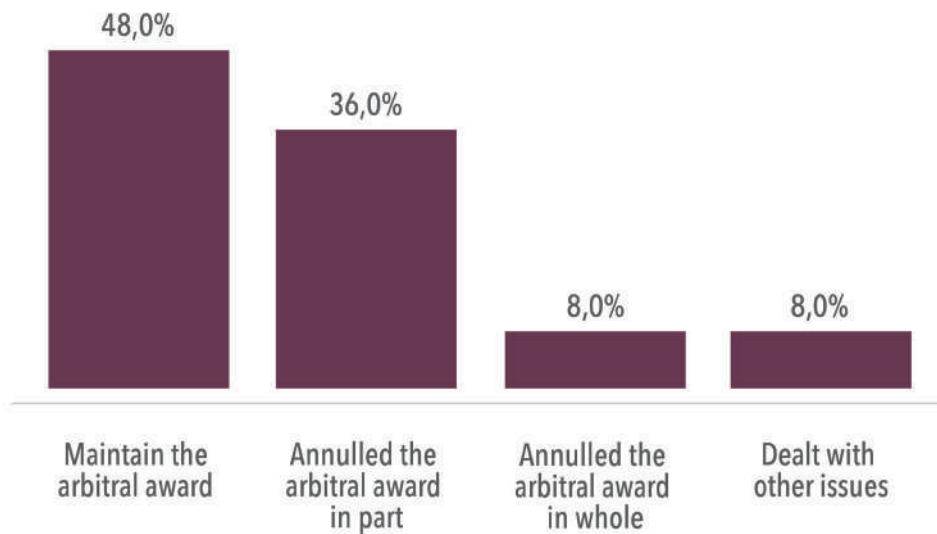


The matters discussed by the arbitral awards taken for consideration by the TJSP were, first and foremost, the contracts of the Unimed cooperative system, followed by civil, franchise, corporate, business and infrastructure matters. In three cases, it was not possible to identify the subject discussed in the arbitral procedure.

The cooperative contracts of the Unimed cooperative system overloaded the volume of appeals in annulment actions at the TJSP, as they corresponded to around 55.50% of the appeals decisions in annulment actions of the court in the period from 2018 to 2023. During this period, 50 were identified decisions on appeal on the subject. Of this set, 28 decisions chose to annul the arbitral award, 18 maintained the arbitral award and 4 dealt with other issues. All these cases were managed by the Unimed Forum's Arbitral Chamber.

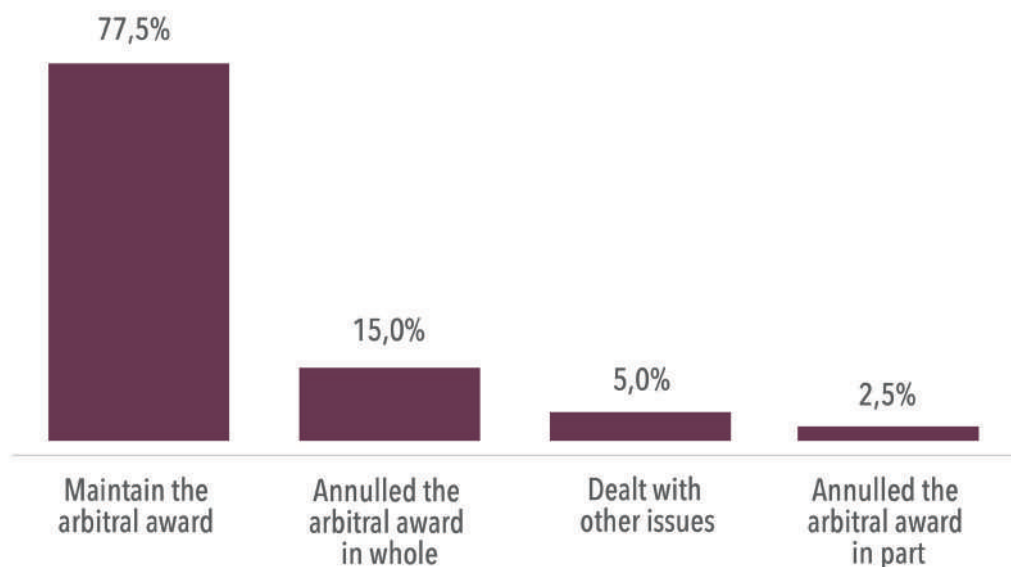
The impact of Unimed cooperative system over decisions of appeals in annulment of arbitral awards appeals in TJSP is quite significative, as can be seen in the next figure.

Figure 4 – TJSP's position in relation to arbitral awards in Unimed cooperative system contracts



If the contracts of the Unimed cooperative system are not considered in the TJSP's analysis, the proceeding rate for annulment of appeal actions goes from 38.90% to 17.50% (15% for full annulments and 2.50% for partial annulments), as shown in the following figure.

Figure 5 – TJSP's position in relation to arbitral awards without considering Unimed cooperative system contracts



It is also worth noting that the TJSP has two specialized Chambers competent to judge arbitral matters: the 1st and 2nd Reserved Chambers of Business Law. The research observed that, in the 1st Reserved Chamber of Business Law, if contracts from the Unimed cooperative system are considered, it is concluded that actions to

annul arbitral awards had a success rate (total or partial) of 47.60%. Without computing these contracts, the rate in the 1st Reserved Chamber of Business Law goes to 20%.

Figure 6 - Success rate in the 1st Reserved Chamber of Business Law of the TJSP considering Unimed cooperative system contracts

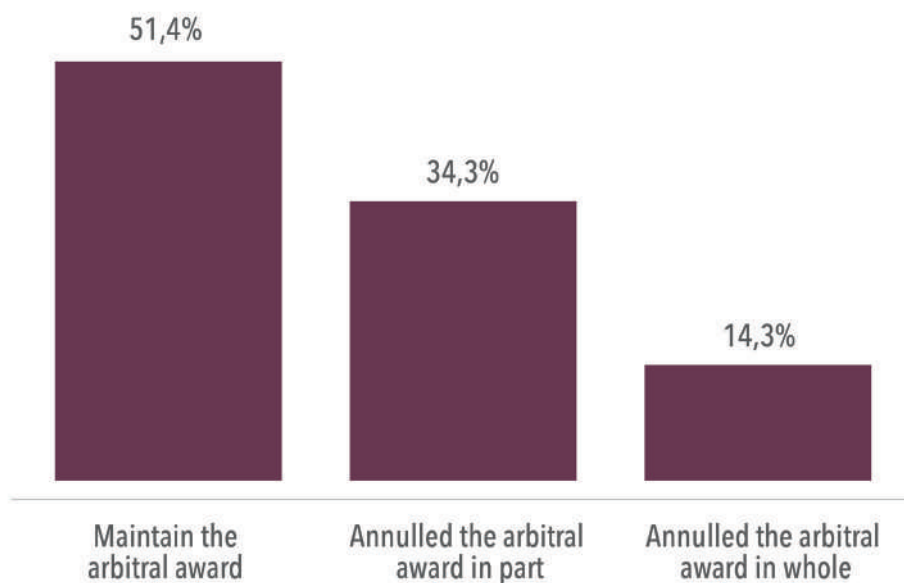
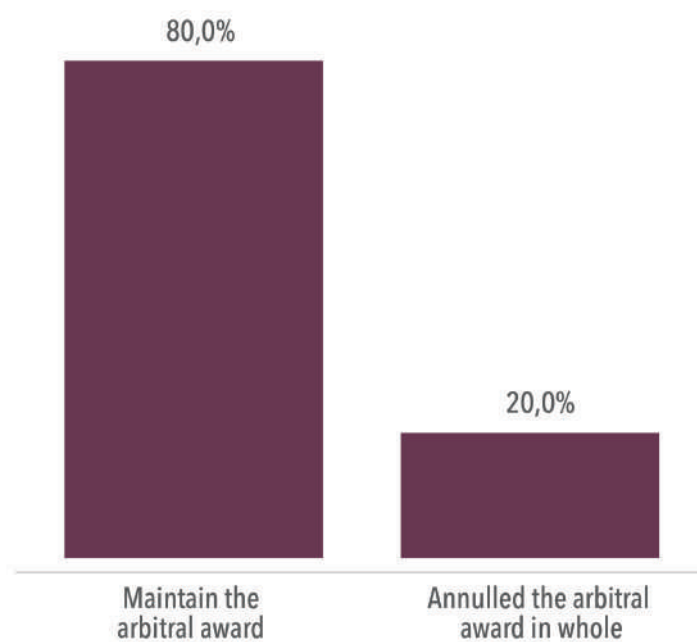


Figure 7 - Success rate in the 1st Reserved Chamber of Business Law of the TJSP without considering Unimed cooperative system contracts



In the 2nd Reserved Chamber of Business Law, if contracts from the Unimed cooperative system are considered, it is concluded that actions to annul arbitral awards had a success rate (total or partial) of 46.90%. Without computing these contracts, the rate in the 2nd Reserved Chamber of Business Law goes to 18.20%.

Figure 8 – Success rate in the 2nd Reserved Chamber of Business Law of the TJSP considering Unimed cooperative system contracts

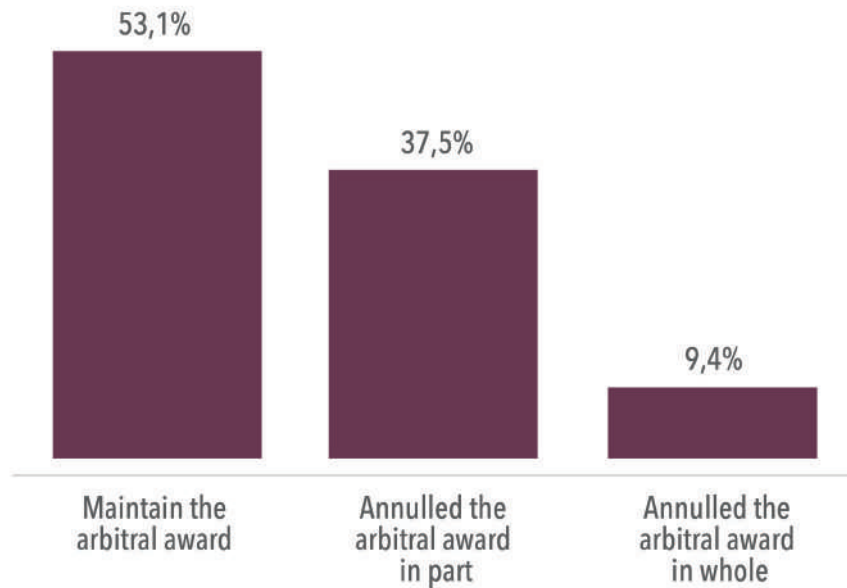
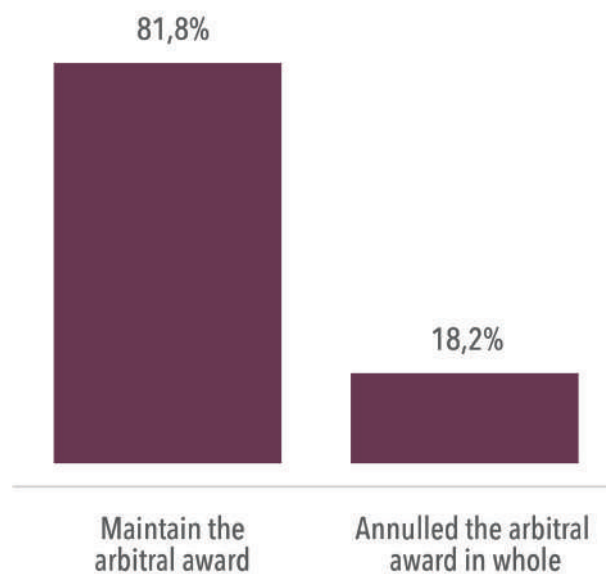


Figure 9 – Success rate in the 2nd Reserved Chamber of Business Law of the TJSP without considering Unimed cooperative system contracts

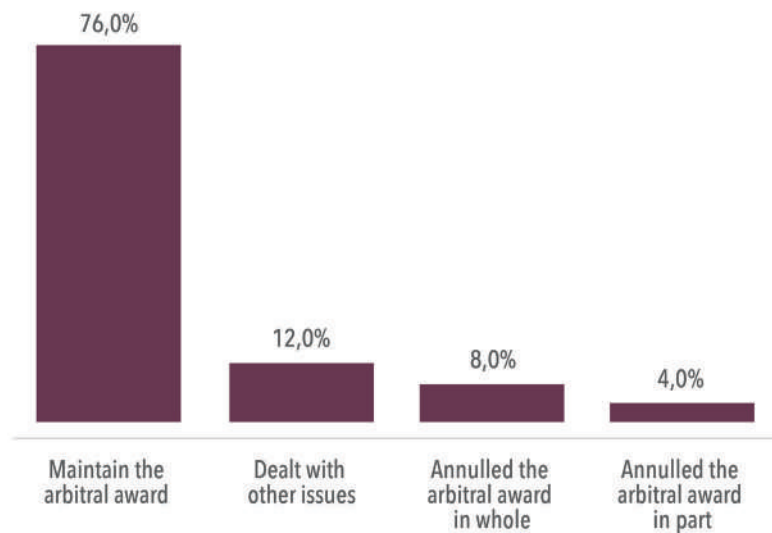


2.3. Court of Appeal of the State of Parana

The TJPR judged 25 appeals regarding the annulment of an arbitral award between 2018 and 2023, which corresponds to 6.98% of the total appeals analyzed in the research.

During this period, the TJPR's position in relation to arbitral awards was to maintain the arbitral award in 76% of decisions in appeal no. In 12% of cases, the TJPR annulled the arbitral award (in whole or in part) and, in 12% of decisions, it dealt with other issues.

Figure 10 – TJPR's position in relation to arbitral awards



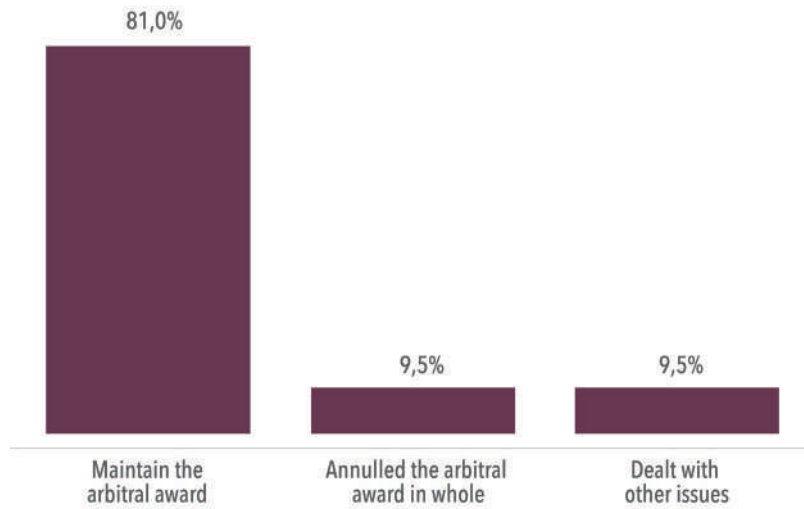
The matters discussed by the arbitral awards taken for consideration by the TJPR were civil, business and commercial concession.

2.4. Court of Appeal of the State of Santa Catarina

The TJSC judged 21 appeals regarding the annulment of an arbitral award between 2018 and 2023, which corresponds to 5.87% of the total appeals analyzed in the research.

During this period, the TJSC's position in relation to arbitral awards was to maintain the arbitral award in 81% of decisions on appeal. In 9.50% of cases, the TJSC annulled the arbitral award and, in another 9.50%, it dealt with other issues.

Figure 11 – TJSC's position in relation to arbitral awards



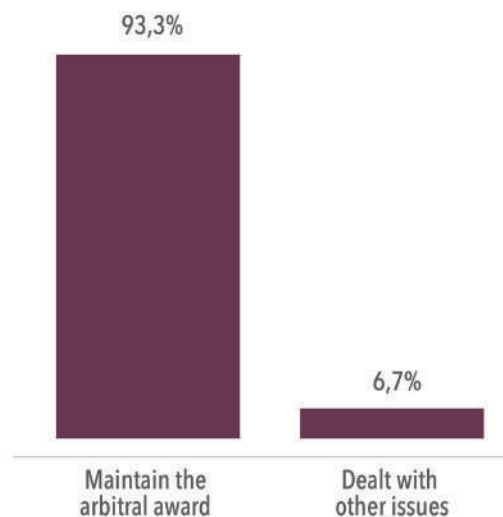
The matters discussed by the arbitral awards taken for consideration by the TJSC were: civil, franchise and corporate.

2.5. Court of Appeal of the State of Rio de Janeiro

The TJRJ judged 15 appeals regarding the annulment of an arbitration award between 2018 and 2023, which corresponds to 4.19% of the total appeals analyzed in the research.

During this period, the TJRJ's position in relation to arbitration awards was to maintain the arbitration award in 93.30% of decisions on appeal. In 6.70% of cases it dealt with other issues.

Figure 12 – TJRJ's position in relation to arbitration awards



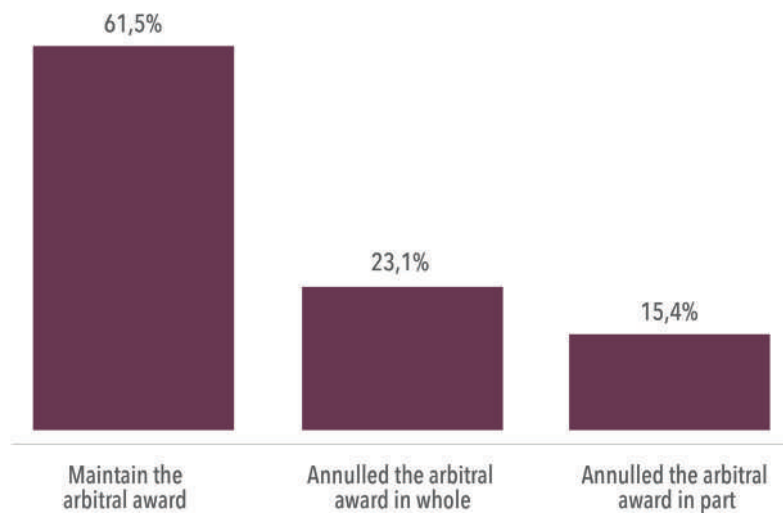
The matters discussed by the arbitration awards taken for consideration by the TJRJ were: civil, energy and business.

2.6. Court of Appeal of the State of Minas Gerais

The TJMG judged 13 appeals regarding the annulment of an arbitration award between 2018 and 2023, which corresponds to 3.63% of the total appeals analyzed in the research.

During this period, the TJMG's position in relation to arbitration awards was to maintain the arbitration award in 61.50% of decisions on appeal. In 38.50% of cases, the TJMG annulled the arbitration award (in whole or in part).

Figure 13 – TJMG's position in relation to arbitration awards



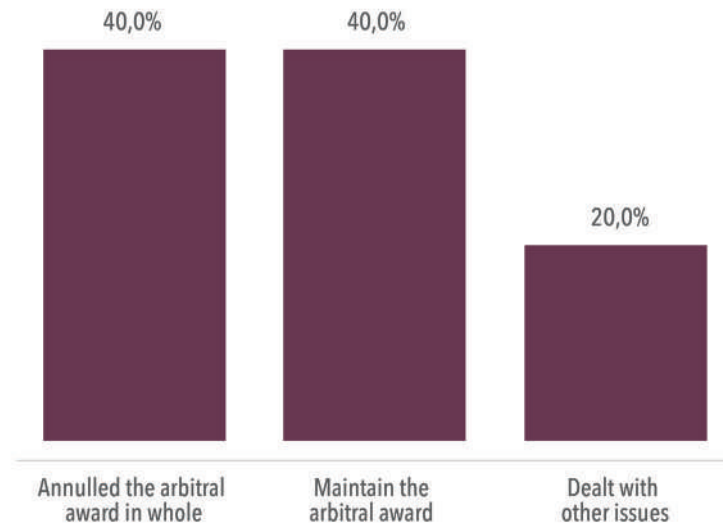
The matters discussed by the arbitration awards taken for consideration by the TJMG were: civil, franchise and corporate.

2.7. Court of Appeal of the State of Rio Grande do Sul

The TJRS judged 5 appeals on the annulment of an arbitration award between 2018 and 2023, which corresponds to 1.40% of the total of appeals in which the annulment of the arbitration award was the central theme of the decision.

During this period, the TJRS' position in relation to arbitration awards was to maintain the arbitration award in 40% of decisions on appeal. In 40% of cases, the TJRS annulled the arbitration award and, in 20%, dealt with other issues.

Figure 14 – TJRS position in relation to arbitration awards



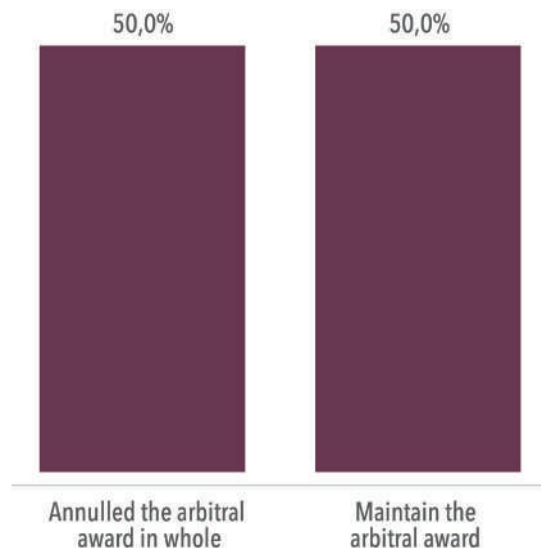
The matters discussed by the arbitration awards taken for consideration by the TJRS were: civil and business.

2.8. Court of Appeal of the State of Amazonas

The TJAM judged 4 appeals on the annulment of an arbitration award from 2018 to 2023, which corresponds to 1.12% of the total of appeals in which the annulment of the arbitration award was the central theme of the decision.

During this period, TJAM's position in relation to arbitration awards was to maintain the arbitration award in 50% of decisions on appeal. In 50% of cases, the TJAM annulled the arbitration award.

Figure 15 – TJAM's position in relation to arbitration awards



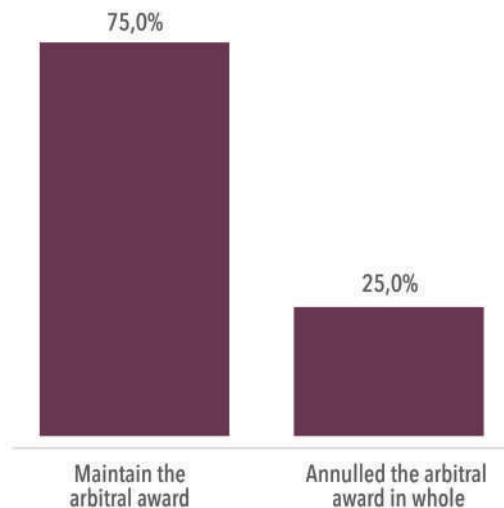
The matters discussed by the arbitration awards taken for consideration by the TJAM were: civil and corporate.

2.9. Court of Appeal of the State of Ceara

The TJCE judged 4 appeals on the annulment of an arbitration award from 2018 to 2023, which corresponds to 1.12% of the total of appeals in which the annulment of the arbitration award was the central theme of the decision.

During this period, the ECJ's position in relation to arbitration awards was to maintain the arbitration award in 75% of decisions on appeal. In 25% of cases, the ECJ annulled the arbitration award.

Figure 16 - TJEC's position in relation to arbitration awards



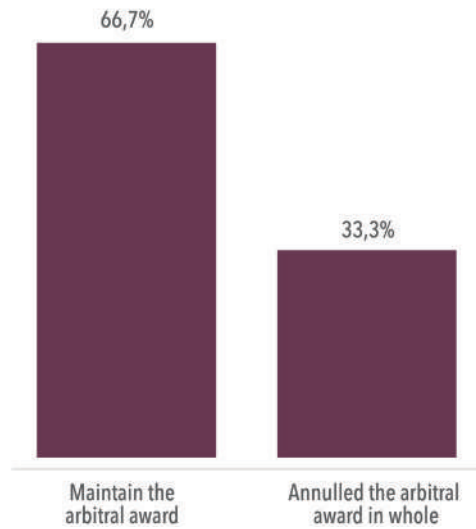
The matters discussed by the arbitration awards taken for consideration by the TJEC were: energy and corporate.

2.10. Court of Appeal of Federal District and Territories

The TJDFT judged 3 appeals on the annulment of an arbitration award from 2018 to 2023, which corresponds to 0.84% of the total of appeals in which the annulment of the arbitration award was the central theme of the decision.

During this period, the TJDFT's position in relation to arbitration awards was to maintain the arbitration award in 66.70% of decisions on appeal. In 33.30% of cases, the TJDFT annulled the arbitration award.

Figure 17 – TJDFT's position in relation to arbitration awards



The matters discussed by the arbitration awards taken for consideration by the TJDFT were: business and civil.

2.11. Court of Appeal of the State of Bahia

The TJBA judged 2 appeals on the annulment of an arbitration award from 2018 to 2023, which corresponds to 0.56% of the total of appeals in which the annulment of the arbitration award was the central theme of the decision.

During this period, the TJBA's position in relation to arbitration awards was to maintain the arbitration award in 100% of decisions on appeal.

Figure 18 – TJBA's position in relation to arbitration awards



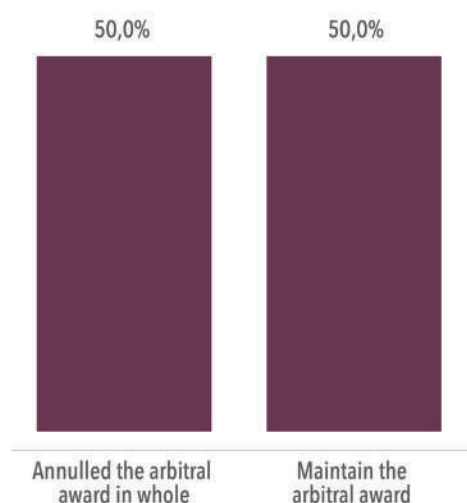
The matters discussed by the arbitration awards taken for consideration by the TJBA were: civil and franchise.

2.12. Court of Appeal of the State of Mato Grosso

The TJMT judged 2 appeals on the annulment of an arbitration award from 2018 to 2023, which corresponds to 0.56% of the total of appeals in which the annulment of the arbitration award was the central theme of the decision.

During this period, the TJMT's position in relation to arbitration awards was to maintain the arbitration award in 50% of decisions on appeal. In 50% of cases, the TJMT annulled the arbitration award (partially).

Figure 19 - TJMT's position in relation to arbitration awards



The matters discussed by the arbitration awards submitted to the TJMT were: civil and Unimed cooperative system contract.

2.13. Court of Appeal of the State of Tocantins

The TJTO judged 2 appeals on the annulment of an arbitration award from 2018 to 2023, which corresponds to 0.56% of the total of appeals in which the annulment of the arbitration award was the central theme of the decision in this period.

During this period, the TJTO's position in relation to arbitration awards was to maintain the arbitration award in 100% of decisions on appeal.

Figure 20 – TJTO's position in relation to arbitration awards



The matter discussed by the arbitration awards taken for consideration by the TJTO was civil.

2.14. Court of Appeal of the State of Alagoas

The TJAL judged 1 appeal on the annulment of an arbitration award from 2018 to 2023, which corresponds to 0.28% of the total of appeals in which the annulment of the arbitration award was the central theme of the decision.

During this period, the TJAL's position was to annul the arbitration award on appeal.

Figure 21 – TJAL's position in relation to arbitration awards



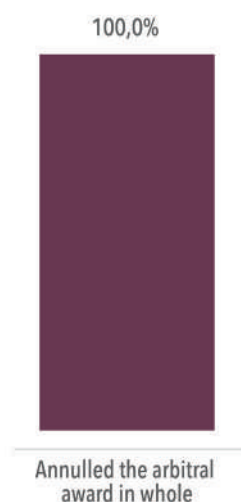
The matter discussed by the arbitration award taken for consideration by the TJAL was civil.

2.15. Court of Appeal of the State of Pará

The TJPA judged 1 appeal on the annulment of an arbitration award from 2018 to 2023, which corresponds to 0.28% of the total of appeals in which the annulment of the arbitration award was the central theme of the decision.

During this period, the TJPA's position was to annul the arbitration award on appeal.

Figure 22 – TJPA's position in relation to the arbitration award



The matter discussed by the arbitration award taken for consideration by the TJPA was energy.

2.16. Court of Appeal of the State of Pernambuco

The TJPE judged 1 appeal on the annulment of an arbitration award from 2018 to 2023, which corresponds to 0.28% of the total of appeals in which the annulment of the arbitration award was the central theme of the decision.

During this period, the TJPE's position was to maintain the arbitration award on appeal.

Figure 23 – TJPE's position in relation to the arbitration award



The matter discussed by the arbitration award taken for consideration by the TJPE was civil.

2.17. Court of Appeal of the State of Rio Grande do Norte

The TJRN judged 1 appeal on the annulment of an arbitration award from 2018 to 2023, which corresponds to 0.28% of the total of appeals in which the annulment of the arbitration award was the central theme of the decision.

During this period, the TJRN's position was to annul the arbitration award on appeal.

Figure 24 – TJRN's position in relation to the arbitration award



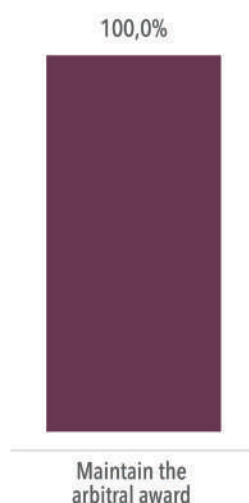
The matter discussed by the arbitration award taken for consideration by the TJRN was civil.

2.18. Court of Appeal of the State of Rondônia

The TJRO judged 1 appeal on the annulment of an arbitration award from 2018 to 2023, which corresponds to 0.28% of the total of appeals in which the annulment of the arbitration award was the central theme of the decision.

During this period, the TJRO's position was to maintain the arbitration award on appeal.

Figure 25 - TJRO's position in relation to the arbitration award

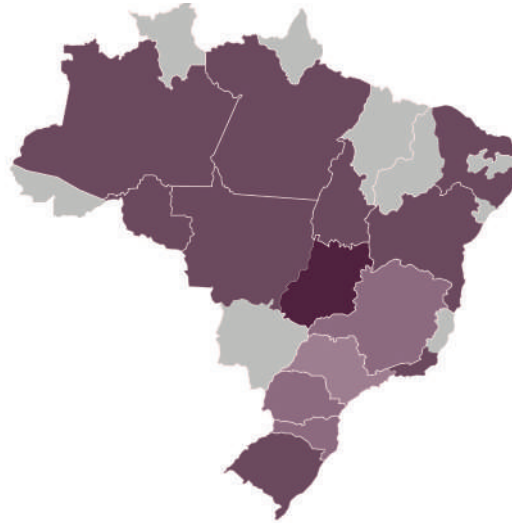


It was not possible to identify the matter discussed in the arbitration award submitted for consideration by the TJRO.

2.19. General considerations

Of the 27 Courts of Justice, 19 decided, on appeal, to annul the arbitration award in the period from 2018 to 2023. The figure below identifies the courts that handed down these decisions in blue. No decisions were identified in the Courts of Justice of the states of Acre, Roraima, Amapá, Maranhão, Piauí, Paraíba, Sergipe, Espírito Santo and Mato Grosso do Sul..

Figure 26 – States of the Federation with decisions on appeal regarding the annulment of an arbitration award



The TJGO and TJSP, together, judged more than 71% of the decisions on appeal regarding the annulment of an arbitration award. Table 1 below shows the ranking and percentages of each court in relation to the total number of appeals analyzed.

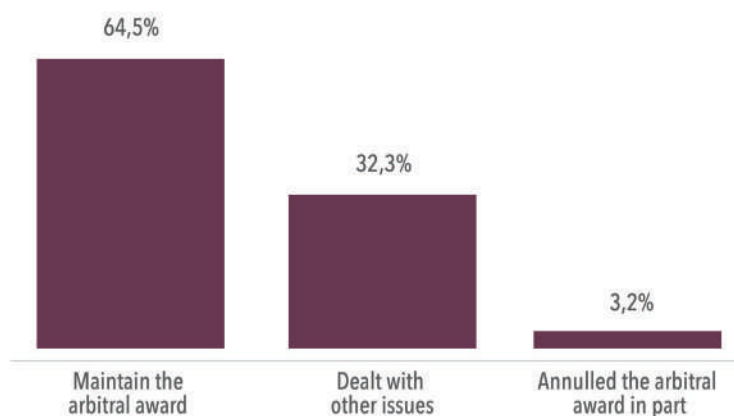
Table 1 – Distribution of decisions on appeal on the annulment of an arbitration award by a court

Court	Distribution of decisions on appeal on the annulment of an arbitration award by a court	Percentages of each court in relation to the total number of appeals analyzed
TJGO	167	46,65%
TJSP	90	25,14%
TJPR	25	6,98%
TJSC	21	5,87%
TJRJ	15	4,19%
TJMG	13	3,63%
TJRS	5	1,40%
TJAM	4	1,12%
TJCE	4	1,12%
TJDFT	3	0,84%
TJBA	2	0,56%
TJMT	2	0,56%
TJTO	2	0,56%
TJAL	1	0,28%
TJPA	1	0,28%
TJPE	1	0,28%
TJRN	1	0,28%
TJRO	1	0,28%

3. Superior Court of Justice

In the case of the Superior Court of Justice (STJ), the portrait of decisions in special appeals was consolidated in figure 27. In 64.50% of the decisions, the STJ maintained the arbitration award, in 32.30%, it dealt with other issues and, in 3.20%, it partially annulled the arbitration award.

Figure 27 – Position of the STJ in a special appeal in relation to annulment actions

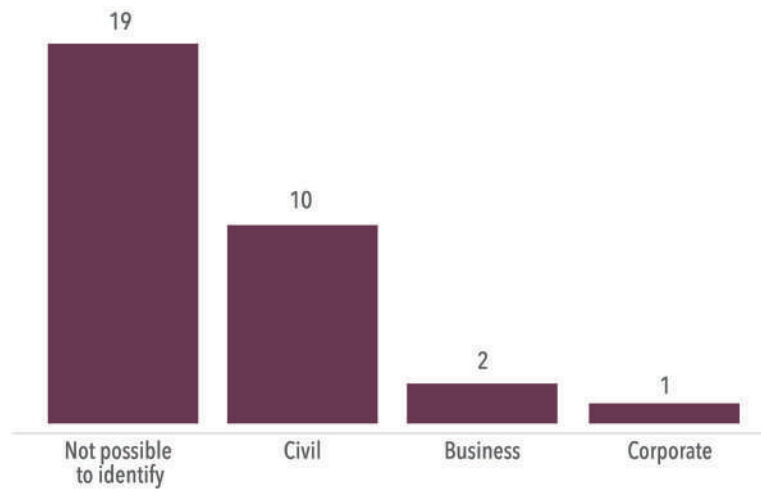


In 32.30% of cases, the decision addressed other issues, which included:

- Impossibility of filing a rescission action with the intention of
- deconstitution of a sentence ratifying the agreement;
- Impaired appeal claim;
- Value of the case;
- Increase in loss fees;
- Lack of preparation of the appeal;
- Admissibility of the special appeal;
- Impossibility of re-examining facts and evidence in a special appeal;
- Prevention.

The most recurring matters in the arbitration procedure, which arrived for analysis by the STJ, were civil, business and corporate. In 19 of the 31 REsp analyzed, it was not possible to identify the subject discussed, as shown in the following figure.

Figure 28 – Recurring matters of the arbitration award analyzed by the STJ



3.1. Positioning of ministers regarding the arbitral awards

The research analyzed the special appeals that focused on the annulment of an arbitration award and that were decided by each minister, also taking into account that they occurred in the period from 2018 to 2023. Nine of the thirty-three ministers that make up the STJ were rapporteurs of the REsp who stopped at the annulment of an arbitration award.

Minister Antonio Carlos Ferreira was the rapporteur of five REsp on the subject, maintained the arbitration decision in 20% and dealt with other issues in 80% of cases.

Regarding other issues, in REsp nº 1.630.526 – MG (2016/0203919-0), the discussion was restricted to a challenge to the value of the case. In the decision, Antonio Carlos Ferreira upheld the REsp, as he recognized that the value of the case in the declaratory action corresponded to that of the conviction set in the arbitration award that was intended to be declared null and void.

In REsp nº 1.890.938 – PR (2020/0213036-0), the discussion focused on the increase in legal fees for succumbing. The appealed ruling from the TJPR arbitrated the legal fees based on § 8 of art. 85 of CPC/2015. The annulment action seeking to overturn the arbitration award would give rise to execution in the amount of approximately R\$5,065,258.66. The vote of the rapporteur minister Antonio Carlos Ferreira stated, therefore, that there was a measurable economic benefit, so that the legal fees must be fixed between the percentages established in § 2 of the art. 85 of CPC/2015. The appeal was granted so that the legal fees could be set at 10% of the sentencing value established in the arbitration award that is the subject of the annulment request.

In REsp nº 1.678.026 – GO (2013/0178027-9), it was found that the special resource was not instructed with the preparation guides and the respective proof of payment. Thus, it was considered desert.

In REsp nº 1.876.430 – GO (2018/0141396-6), Minister Antonio Carlos Ferreira ruled out the 90-day statute of limitations and determined that the TJGO should continue with the judgment of the interlocutory appeal.

Minister Marco Aurélio Bellizze was the rapporteur of five REsp on the subject and maintained the arbitration decision in 100% of cases.

Minister Marco Buzzi was the rapporteur of an REsp on the topic and maintained the arbitration award.

Minister Isabel Gallotti was the rapporteur of two REsp on annulment of arbitration awards and one of them dealt with other issues, as illustrated in figure 69. In REsp nº 1.532.680 – GO (2015/0117378-1), the minister's vote addressed the appropriateness of rescission action in an arbitration award.

Minister Moura Ribeiro was the rapporteur of three REsp. He upheld the arbitration award in 100%.

Minister Nancy Andrighi was the rapporteur of nine REsp, maintained the arbitration award in 55.60%, partially annulled it in 11.10% and dealt with other issues in 33.30% of the cases.

Regarding the treatment of other topics, in REsp nº 2.039.991 – MG (2022/0367173-0), minister Nancy Andrighi stated that there was no violation of art. 1,022, item II, of CPC/2015, nor to art. 489, § 1, item IV, of CPC/2015, given that the issues on the merits have been duly analyzed and discussed, and the judgment under appeal is sufficiently substantiated, so as to exhaust the judicial provision. As for the period of suspension of the process, it was limited to one year,

In REsp No. 1.892.633 – MG (2020/0221834-4), the minister, based on the statement of summary 735 of the STF, reaffirmed that a special appeal was not applicable to re-examine a decision that grants or rejects an injunction or anticipation of relief, given the precarious nature of the decision. Furthermore, the case would require a re-examination of facts and evidence, which is obstructed by the statement of Precedent No. 7 of the STJ.

In REsp nº 1.731.200 – RJ (2018/0065545-2), there was a monocratic decision by Minister Nancy Andrighi. A request to withdraw the special appeal was made.

Minister Paulo de Tarso Sanseverino was the rapporteur of five REsp, in which he maintained the arbitration award in 60% of the cases and dealt with other issues in 40%.

In cases where he dealt with other issues, Paulo de Tarso Sanseverino, in Special Appeal No. 1,639,035 – SP (2015/0257748-2), discussed the application of the statement in Precedent No. 7 of the STJ. In Special Appeal No. 1,700,311 – RN (2017/0244578-8), the appeal claim remained impaired. In the specific case, the object of debate initiated in the first degree court concerned, solely, the possibility or not of suspending compliance with the arbitration award pending the judgment of

Special Appeal No. 1,598,220. However, in the trial session held the previous day, the Third Panel, by unanimous vote, granted Special Appeal No. 1,598,220-/RN, to extinguish the declaratory action combined with the subsidiary request for damages filed by TPG do Brasil Ltda., now defendant, against Sonangol Starfish Oil & Gás S.A., now appellant, in which the nullity of the arbitration clause stipulated by the parties was recognized, thus reestablishing its validity and legal effectiveness. Therefore, it decided to continue with compliance with the arbitration award that had been suspended.

Minister Regina Helena Costa was the rapporteur of an REsp on annulment of an arbitration award and maintained the arbitration award.

The table below consolidates the information about the REsp judgment in the STJ:

Table 2 – Special appeals for annulment actions of arbitral awards

	Special appeals	Link	Rapporteur	Result
1	SPECIAL APPEAL no. 1.639.035 – SP (2015/0257748-2)	https://www.jusbrasil.com.br/jurisprudencia/stj/638039184	Paulo de Tarso Sanseverino	Special appeal dismissed. Dealt with other matters (Sum. 7 STJ).
2	SPECIAL APPEAL no. 1.903.359 – RJ (2018/0320599-9)	https://www.jusbrasil.com.br/jurisprudencia/stj/1212213974	Marco Aurélio Bellizze	The arbitration award was maintained.
3	SPECIAL APPEAL no. 1.928.951 – TO (2021/0085653-8)	https://www.jusbrasil.com.br/jurisprudencia/stj/1397796864	Nancy Andrichi	The arbitration award was maintained.
4	SPECIAL APPEAL no. 1.735.538 – SP (2017/0270963-0)	https://www.jusbrasil.com.br/jurisprudencia/stj/1101140452	Marco Aurélio Bellizze	The arbitration award was maintained.
5	SPECIAL APPEAL no. 1.862.147 – MG (2020/0036910-5)	https://www.jusbrasil.com.br/jurisprudencia/stj/1283528970	Marco Aurélio Bellizze	The arbitration award was maintained.
6	SPECIAL APPEAL no. 2.001.912 – GO (2022/0045176-2)	https://www.jusbrasil.com.br/jurisprudencia/stj/1562195608	Nancy Andrichi	The arbitration award was maintained.
7	SPECIAL APPEAL no. 1.854.483 – GO (2019/0182240-9)	https://www.jusbrasil.com.br/jurisprudencia/stj/1101110010	Nancy Andrichi	The arbitration award was maintained.
8	SPECIAL APPEAL no. 1.720.121 – RJ (2018/0016125-3)	https://www.jusbrasil.com.br/jurisprudencia/stj/1298644937	Paulo de Tarso Sanseverino	The arbitration award was maintained.
9	SPECIAL APPEAL no. 1.803.601 – PR (2019/0072417-3)	https://www.jusbrasil.com.br/jurisprudencia/stj/1525408762	Moura Ribeiro	Monocratic decision: The arbitration award was maintained.
10	SPECIAL APPEAL no. 1.736.646 – RJ (2013/0356043-7)	https://www.jusbrasil.com.br/jurisprudencia/stj/595912009	Nancy Andrichi	Partially annulled the arbitration award due to legal fees.
11	SPECIAL APPEAL no. 1.940.160 – TO (2021/0159786-0)	https://www.jusbrasil.com.br/jurisprudencia/stj/1316393382	Paulo de Tarso Sanseverino	Monocratic decision: The arbitration award was maintained.
12	SPECIAL APPEAL no. 2.051.713 – SP (2023/0040536-9)	https://www.jusbrasil.com.br/jurisprudencia/stj/1777996592	Regina Helena Costa	Monocratic decision: The arbitration award was maintained.
13	SPECIAL APPEAL no. 1.797.217 – PR (2019/0039738-7)	https://www.jusbrasil.com.br/jurisprudencia/stj/1199156303	Moura Ribeiro	Monocratic decision: The arbitration award was maintained.

	Special appeals	Link	Rapporteur	Result
14	SPECIAL APPEAL no. 1.935.921 - AM (2021/0130680-2)	https://www.jusbrasil.com.br/jurisprudencia/stj/1543711394	Moura Ribeiro	Monocratic decision: The arbitration award was maintained.
15	SPECIAL APPEAL no. 1.953.212 - RJ (2021/0170952-3)	https://www.jusbrasil.com.br/jurisprudencia/stj/1330088074	Nancy Andrichi	The arbitration award was maintained.
16	SPECIAL APPEAL no. 1.762.176 - MG (2017/0093732-3)	https://www.jusbrasil.com.br/jurisprudencia/stj/1240298177	Antonio Carlos Ferreira	Monocratic decision: The arbitration award was maintained.
17	SPECIAL APPEAL no. 1.940.886 - TO (2021/0163284-8)	https://www.jusbrasil.com.br/jurisprudencia/stj/1467262997	Marco Buzzi	Monocratic decision: The arbitration award was maintained.
18	SPECIAL APPEAL no. 1.882.567 - GO (2020/0163530-7)	https://www.jusbrasil.com.br/jurisprudencia/stj/920622798	Paulo de Tarso Sanseverino	Monocratic decision: Did not recognize the special appeal. The arbitration award was maintained.
19	SPECIAL APPEAL no. 1.692.275 - GO (2017/0204214-5)	https://www.jusbrasil.com.br/jurisprudencia/stj/1260904670	Isabel Gallotti	Monocratic decision: The arbitration award was maintained.
20	SPECIAL APPEAL no. 1.532.680 - GO (2015/0117378-1)	https://www.jusbrasil.com.br/jurisprudencia/stj/882434110	Isabel Gallotti	Monocratic decision: He dealt with other issues. Controversy over the possibility of rescission action in an arbitration award.
21	SPECIAL APPEAL no. 2.066.262 - SP (2023/0110852-4)	https://www.jusbrasil.com.br/jurisprudencia/stj/1833668833/inteiro-teor-1833668836	Marco Aurélio Bellizze	Monocratic decision: The arbitration award was maintained.
22	SPECIAL APPEAL no. 1.876.430 - GO (2018/0141396-6)	https://www.jusbrasil.com.br/jurisprudencia/stj/1202874819	Antonio Carlos Ferreira	Monocratic decision: Dealt with other issues.
23	SPECIAL APPEAL no. 1.826.384 - AM (2019/0204047-4)	https://www.jusbrasil.com.br/jurisprudencia/stj/858343645	Marco Aurélio Bellizze	Monocratic decision: The arbitration award was maintained.
24	SPECIAL APPEAL no. 1.700.311 - RN (2017/0244578-8)	https://www.jusbrasil.com.br/jurisprudencia/stj/891339611	Paulo de Tarso Sanseverino	Monocratic decision: Special appeal not known. He dealt with other issues.
25	SPECIAL APPEAL no. 1.630.526 - MG (2016/0203919-0)	https://www.jusbrasil.com.br/jurisprudencia/stj/1172111107	Antonio Carlos Ferreira	Monocratic decision: Dealt with other issues (lawyer fees).
26	SPECIAL APPEAL no. 1.890.938 - PR (2020/0213036-0)	https://www.jusbrasil.com.br/jurisprudencia/stj/1828976363/inteiro-teor-1828976369	Antonio Carlos Ferreira	Monocratic decision: Dealt with other issues (lawyer fees).
27	SPECIAL APPEAL no. 1.678.026 - GO (2013/0178027-9)	https://www.jusbrasil.com.br/jurisprudencia/stj/881920073	Antonio Carlos Ferreira	Monocratic decision: Appeal not known. He dealt with other issues (lawyer fees).
28	SPECIAL APPEAL no. 2.039.991 - MG (2022/0367173-0)	https://www.jusbrasil.com.br/jurisprudencia/stj/1730196866	Nancy Andrichi	Dealt with other issues.
29	SPECIAL APPEAL no. 1.892.633 - MG (2020/0221834-4)	https://www.jusbrasil.com.br/jurisprudencia/stj/1238249135	Nancy Andrichi	Monocratic decision: Dealt with other issues. The imposed fine was removed.
30	SPECIAL APPEAL no. 1.731.200 - RJ (2018/0065545-2)	https://www.jusbrasil.com.br/jurisprudencia/stj/571401886	Nancy Andrichi	Decisão monocrática: Tratou de outras questões (pedido de desistência do recurso especial).
31	SPECIAL APPEAL no. 1.900.136 - SP (2020/0034599-1)	https://www.jusbrasil.com.br/jurisprudencia/stj/1205705549	Nancy Andrichi	The arbitration award was maintained.

3.2. Position of each reporting minister on the matter discussed in the arbitration award

The consolidation of research data made it possible to ascertain the position of each minister in relation to the specific matter discussed in the arbitration award.

3.2.1. Minister Nancy Andrichi

Minister Nancy Andrichi was the rapporteur of nine REsp that dealt with the annulment of an arbitration award between 2018 and 2023. In six of them, it was not possible to identify the matter discussed in the arbitration. Three REsp dealt with civil matters in general and, in one of them, the arbitration award was partially annulled, while in the others it was maintained.

3.2.2. Minister Antonio Carlos Ferreira

In the five REsp reported by Minister Antonio Carlos Ferreira, it was not possible to identify the matter that was the subject of arbitration, with four cases dealing with other issues and, in one of them, the arbitration award was maintained.

3.2.3. Minister Marco Aurélio Bellizze

Minister Marco Aurélio Bellizze was the rapporteur of five REsp during this period, in which two dealt with civil matters, one with business matters and the other with corporate matters. In all of them, the arbitration award was upheld.

3.2.4. Minister Paulo de Tarso Sanseverino

Minister Paulo de Tarso Sanseverino was the rapporteur of five REsp on annulment of arbitration awards in the period analyzed by the research, of which three dealt with civil matters. The arbitration award was upheld in one of them and, in the others, the REsp dealt with other issues. In two cases, it was not possible to identify the topic discussed in the arbitration procedure.

3.2.5. Minister Moura Ribeiro

Minister Moura Ribeiro was the rapporteur of three REsp that discussed the annulment of an arbitration award in the period analyzed by the research. Two cases dealt with civil matters and the arbitration award was upheld in both. In one case, it was not possible to identify the topic discussed in the arbitration procedure.

3.2.6. Minister Isabel Gallotti

Minister Isabel Gallotti was the rapporteur of two REsp that dealt with the annulment of an arbitration award during the period investigated by the research. In these two cases, it was not possible to identify the matter discussed in the arbitration procedure. In one of them, the arbitration award was maintained and, in the other, it dealt with other issues.

3.2.7. Minister Marco Buzzi

Minister Marco Buzzi was the rapporteur of one single REsp annulling an arbitration award during the period investigated by the research. In this case, it was not possible to identify the matter discussed in the arbitration procedure and the arbitration award was maintained.

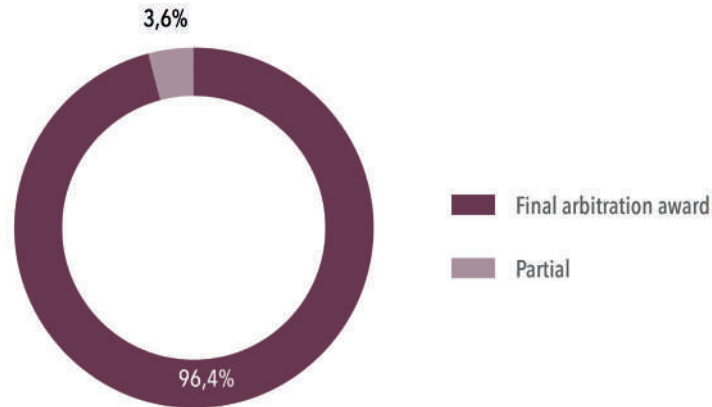
3.2.8. Minister Regina Helena Costa

Minister Regina Helena Costa was the rapporteur of an REsp that discussed the annulment of an arbitration award, but it was not possible to identify the matter. The court decision upheld the arbitration award.

4. Arbitral award

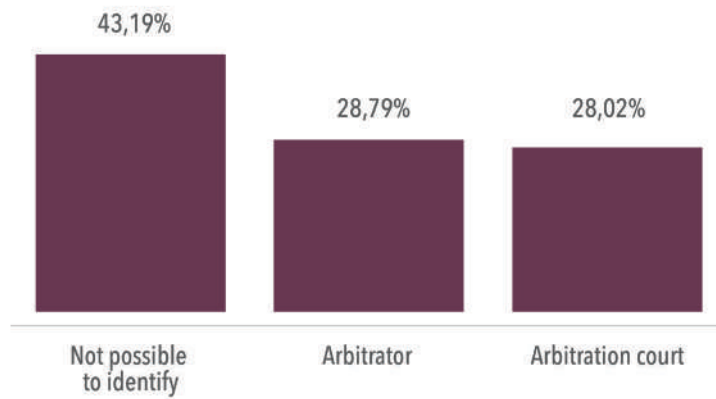
The in-depth analysis of 389 decisions from the Jusbrasil base, on appeal and REsp, which dealt with the annulment of an arbitration award, allowed us to verify that, in 96.40% of cases, the arbitration award decided on the entirety of the issues submitted to the arbitration procedure (final arbitration award). In 3.60% of cases, the arbitration award was partial, as shown in the figure below.

Figure 29 – Type of arbitral award



In the cases in which it was possible to verify, 28.79% had the arbitration award handed down by an arbitrator and 28.02% by an arbitration court.

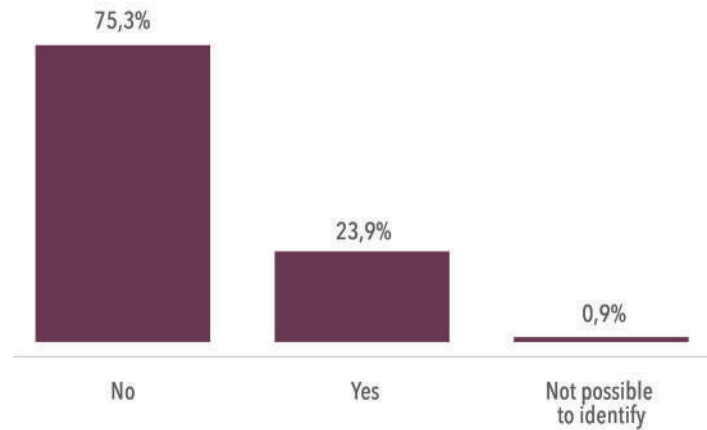
Figure 30 – Arbitration award judging body



4.1. Approval of annulment actions

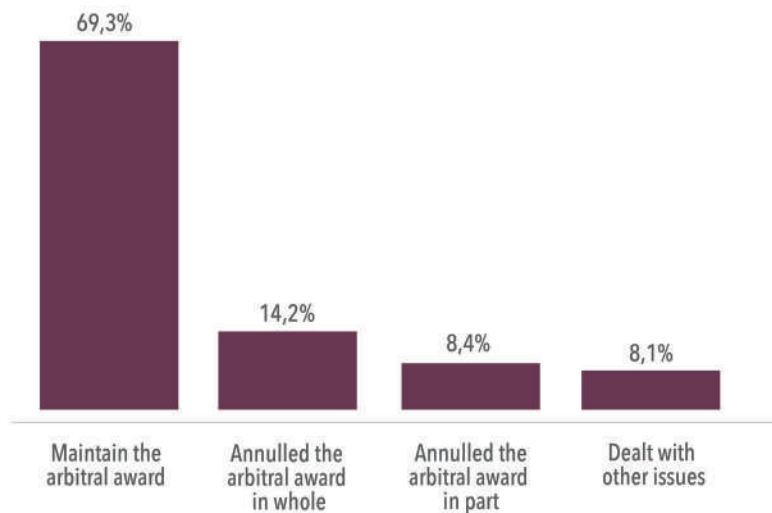
The analysis of appeals, based on the Jusbrasil database, in the period from 2018 to 2023, allowed us to verify that, in 75.30% of the annulment actions, the arbitration award was upheld in the first instance and, in 23.90%, the court of origin annulled the arbitration award, as illustrated in the figure below.

Figure 31 – Approval of annulatory actions in 1st instance



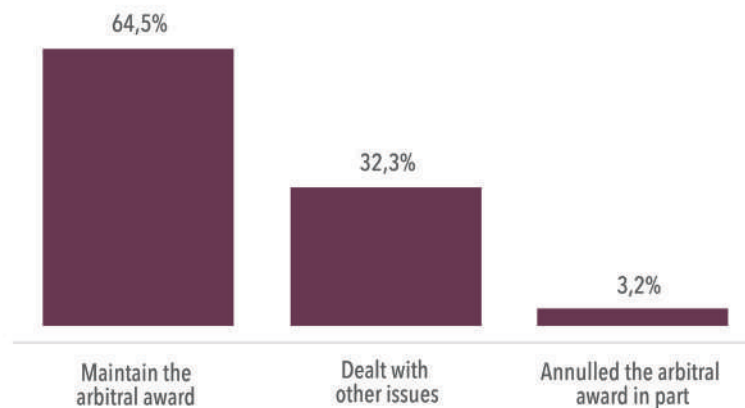
In the second instance, in the same period, the rate of validity of annulment actions was 22.60%, which shows a reduction of only 1.30% in the percentage of annulment of the original court. Thus, it is possible to verify that the courts basically maintained the understanding of the body a quo in relation to the arbitration award.

Figure 32 – Approval of annulatory actions in 2nd instance



At the STJ, the (partial) approval index for annulment actions was 3.20% in the period from 2018 to 2023.

Figure 33 – Approval of annulatory actions at STJ



4.2. Legal basis for annulment of the arbitration award

The research examined the legal provisions that supported the annulment of the arbitration award, based on the sections of art. 32 of Law No. 9,307, of 1996. The sections of art. 32 that provided the most basis for the annulment of an arbitration award, in whole or in part, was item I of art. 32 of Law No. 9,307, of 1996, followed by item IV of art. 32 and by section VIII of the same art.

5. Arbitration Chambers

Through the analysis of the 389 appeals and REsp that had the annulment of the arbitration award as the central theme of the decision, based on Jusbrasil, 51 Arbitration Chambers responsible for managing the procedure were identified. Three facts drew attention to this analysis: (i) the spread of Arbitration Chambers across the national territory; (ii) the particular reality of the state of Goiás and (iii) the denomination of some Chambers as “Court”, which could cause confusion with the bodies of the Judiciary.

It is worth noting that, only in the state of Goiás, the following Chambers were identified that managed arbitration procedures and were the subject of annulment action:

- 12th International Court of Conciliation, Mediation and Arbitration of Goiania;
- 11th Arbitration Court of Goiania;
- 10th Chamber of Mediation, Conciliation and Arbitration of Goiania;
- 8th Chamber of Mediation, Conciliation and Arbitration of Goiania;

- 2nd Court of Conciliation and Arbitration of Goiania;
- 1st Court of Conciliation and Arbitration of Goiania;
- 1st Court of Conciliation and Arbitration of Anapolis;
- Chamber of Arbitration and Mediation of the state of Goiás;
- Court of Conciliation and Arbitration of the District of Caldas Novas;
- Chamber of Mediation and Arbitration of Rio Verde;
- Mediation and Conciliation Court of Formosa.

As shown in the following table, some of these Chambers, in the state of Goiás, filed, in absolute numbers, a greater number of actions to annul arbitration awards.

It is worth highlighting that it was not possible to perform a comparative percentage analysis of the number of arbitration award annulments in relation to the number of arbitrations that each Chamber managed, between 2018 and 2023, due to the lack of consolidated data, nationally, relating to this volume.

Table 3 – Number of annulment actions per Chamber 6. Public Authorities

	Chamber	Annulment of the arbitration award	Maintenance of the arbitration award	Dealt with other issues	Total
1	2º Corte de Conciliação e Arbitragem de Goiânia	14	55	5	74
2	Câmara Arbitral do Fórum Unimed	28	18	4	50
3	8ª Câmara de Conciliação e Arbitragem de Goiânia	1	17	2	20
4	Câmara de Comércio Brasil-Canadá (CAM-CCBC)	2	12	1	15
5	Câmara de Mediação e Arbitragem do Paraná (CMA/PR)	2	11	1	14
6	Câmara de Conciliação, Mediação e Arbitragem da CIESP/FIESP	-	11	-	11
7	Corte Internacional de Arbitragem	2	4	3	9
8	1ª Corte de Conciliação e Arbitragem de Anápolis	-	6	2	8
9	Câmara de Mediação e Arbitragem de Brusque	-	7	-	7
10	Câmara de Mediação e Arbitragem Empresarial – Brasil (CAMARB)	3	3	-	6
11	Câmara de Mediação e Arbitragem da FGV	1	4	-	5

	Chamber	Annulment of the arbitration award	Maintenance of the arbitration award	Dealt with other issues	Total
12	1º Corte de Conciliação e Arbitragem de Goiânia	1	3	-	4
13	Câmara de Mediação e Arbitragem da Associação Comercial do Paraná (ARBITAC)	-	3	1	4
14	Câmara de Mediação e Arbitragem de Joinville	-	3	1	4
15	Câmara Mineira de Arbitragem Empresarial (CAMINAS)	1	3	-	4
16	Câmara Brasil Sul de Mediação e Arbitragem (CBSUL)	1	2	-	3
17	Câmara de Mediação e Arbitragem do Amazonas (CAMAM)	3	-	-	3
18	1ª Corte Arbitral do Estado do Tocantins	-	2	-	2
19	Câmara de Arbitragem da Bolsa Brasileira de Mercadorias (BBM)	-	2	-	2
20	Conciliar - Câmara Sul Brasileira de Mediação e Arbitragem	1	1	-	2
21	Tribunal de Mediação e Conciliação de Formosa	-	2	-	2
22	10ª Câmara de Mediação, Conciliação e Arbitragem de Goiânia	1	-	-	1
23	11ª Corte de Arbitragem de Goiânia	-	1	-	1
24	12ª Corte Internacional de Conciliação, Mediação e Arbitragem de Goiânia	-	1	-	1
25	1ª Câmara Regional de Justiça Arbitral da Comarca de Sumaré	-	1	-	1
26	2ª Câmara de Conciliação e Arbitragem	-	1	-	1
27	3ª Câmara de Mediação e Arbitragem da 5ª Região	-	1	-	1
28	5ª Câmara de Conciliação e Arbitragem do Tribunal de Justiça Arbitral e Mediação do Mercosul	1	-	-	1
29	Câmara Arbitral AMESCO	-	1	-	1
30	Câmara de Justiça Arbitral e Mediação do Estado de Goiás (CAMEGO)	-	-	1	1
31	Câmara de Mediação e Arbitragem de Alagoas	1	-	-	1
32	Câmara de Mediação e Arbitragem de Florianópolis	-	1	-	1
33	Câmara de Mediação e Arbitragem de Pernambuco	-	1	-	1
34	Câmara de Mediação e Arbitragem de Rio Verde	-	1	-	1
35	Câmara de Mediação e Arbitragem de São José do Rio Preto	-	1	-	1

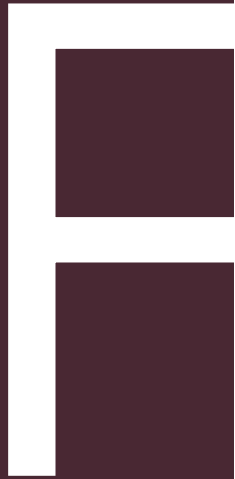
	Chamber	Annulment of the arbitration award	Maintenance of the arbitration award	Dealt with other issues	Total
36	Câmara de Mediação e Arbitragem do Rio Grande do Norte	1	-	-	1
37	Câmara Internacional de Conciliação e Arbitragem	-	1	-	1
38	Câmara Nacional Arbitral	1	-	-	1
39	Câmara Sul Brasileira de Justiça Arbitral	-	1	-	1
40	Centro de Arbitragem EIRELI	1	-	-	1
41	Conselho Arbitral do Estado de São Paulo (CAESP)	1	-	-	1
42	Corte Catarinense de Mediação e Arbitragem	-	1	-	1
43	Corte de Conciliação e Arbitragem da Comarca de Caldas Novas	-	1	-	1
44	Corte Internacional de Mediação, Conciliação e Arbitragem Extrajudicial (ARBITRARE)	-	1	-	1
45	Instituto Brasileiro de Mediação e Arbitragem	-	1	-	1
46	Instituto Nacional de Mediação e Arbitragem (INAMA)	1	-	-	1
47	Junta de Mediação e Arbitragem do Amazonas (JUMAM)	-	1	-	1
48	Tribunal Arbitral de São Paulo	-	-	1	1
49	Tribunal de Arbitragem, Mediação e Conciliação de Maringá	-	1	-	1
50	Tribunal de Justiça Arbitral, Mediação e Conciliação	1	-	-	1
51	Tribunal Superior Federal de Justiça Arbitral	-	1	-	1

6. Public Authorities

During the period investigated by the research, public authorities were little affected by the annulment of an arbitration award on appeal and REsp, since only two cases were identified on the basis provided by Jusbrasil. Information about these processes is consolidated in the following table.

Table 4 – Appeals and REsp for annulment of an arbitration award in which the public authorities were a party

Appeal nº. 1008052-51.2021.8.26.0286	
Link	https://www.jusbrasil.com.br/jurisprudencia/tj-sp/1989675368
Type of Process	Appeal
Matter	Infrastructure
Plainttiff	Municipality of Itu
Defendant	Águas de Itu Gestão Empresarial S.A. – in judicial recovery
Judicial decision	Partially annulled the arbitration award
Appeal nº. 0236412-78.2011.8.09.0051	
Link	https://www.jusbrasil.com.br/jurisprudencia/tj-go/1860693386
Type of Process	Appeal
Matter	Civil in general
Plainttiff	Construtora Ápia Ltda. and Agência Goiana de Infraestrutura e Transportes (GOINFRA)
Defendant	Construtora Ápia Ltda. e Agência Goiana de Infraestrutura e Transportes (GOINFRA)
Judicial decision	Fully annulled the arbitration award.



FINAL
CONSIDERATIONS

FINAL CONSIDERATIONS

The 389 decisions on appeal and REsp that dealt with the annulment of an arbitration award, which occurred in the period from 2018 to 2023 and extracted from the Jusbrasil database, reveal a picture of annulment of an arbitration award, totally or partially, in 21,10% of the cases. annulment actions analyzed. Specifically in the case of the STJ, the annulment percentage was 3.20% in the 1st instance, while in the 2nd instance, it was 22,60%.

In this study, it was possible to observe some points that deserve attention to improve arbitration in Brazil. In the context of the Courts of Justice, the research showed higher numbers in the TJGO and TJSP which, together, hold more than 70% of the appeals discussing annulment of an arbitration award. In Goiás, the multiplicity of Chambers and a market concentrated in civil matters, particularly in the purchase and sale of properties and rentals, draws attention. The percentage of annulment of arbitration awards by the TJGO was 15.60%.

At TJSP, cases of annulment of arbitration awards made in Unimed cooperative system contracts have a strong impact on the court's numbers. In absolute numbers, 90 appeals regarding the annulment of an arbitration award were identified, of which 35 annulled the decision given in the arbitration. Of this group, Unimed was responsible for 50 appeals, of which 28 resulted in the annulment of the arbitration award. The percentage of annulment of arbitration awards by the TJSP was 38.90%, and the Unimed cooperative system contributed 56% of this amount. Without the cases of the Unimed cooperative system, the proceeding rate for TJSP annulment actions would rise to 17.50%.

The study found that the main defects in the arbitration procedures present in the Unimed system contracts refer to the determination of compensation of credits after the approval of the extrajudicial settlement by the arbitration award, which violates the competition of creditors of the liquidating estate, under the terms of the Normative Resolution 316/12 of the ANS, art. 33, §§ 1st, 2nd and 3rd, and art. 36, sole paragraph, c/c. Law No. 9,656/98, art. 24, caput, art. 24-C and art. 24-D. It is important to emphasize that the extrajudicial liquidation regime involves the establishment of a competition between creditors, with its own procedure for determining the liquidator's assets and liabilities and offsetting amounts.

