Courts and Arbitration in Brazil:
A View from the Superior Court of Justice (STJ)

Arbitraje en Brasil y su Reconocimiento por el Poder Judicial


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SUMMARY
• The Superior Court of Justice (STJ) has a strong pro-arbitration position.
• The STJ is the competent court for the recognition of foreign arbitral awards and judgments. For foreign awards, the place where the award is rendered is the decisive element to define whether recognition by the STJ is required. The STJ is also the apex court for the interpretation of federal law in the Brazilian court system.

• In the early days of arbitration, courts were suspicious of this new form of dispute resolution and feared losing importance and power. Courts now have come to understand that arbitration and courts complement each other. Courts are a key element for the enforcement of awards.

• Enforcement is the crucial issue. The STJ is careful not to let the enforcement phase become an opportunity for the defeated party to seek a review or a modification of the award. The governing principle is that of strict faithfulness to the contents of the award. The STJ is aware that it cannot allow abusive behavior that would destroy
arbitration. It must uphold arbitration, which has greatly assisted courts in their mission.

- There is a necessary and actually existing dialogue between courts and arbitration. Both collaborate in the pursuit of justice.
- Courts must foster arbitration, and this role is especially present and important in the enforcement of awards. Brazilian courts are bound by the Brazilian State’s commitment to offer dispute resolution with reasonable duration. They would breach this commitment if they failed to provide the adequate means for enforcement.
- Due process of law in arbitration is another relevant issue, and it is closely related to the need of clarity in arbitral awards.
- Arbitrators and arbitral institutions must be aware that the lack of clarity in arbitral awards makes it more difficult for courts to enforce them. This generates frustration and delays, and it can be easily avoided by careful drafting.
- Recognition of foreign awards is since 2004 under the competence of the STJ. This court handles all recognition cases. The enforcement of the awards after recognition lies with the federal district courts.
- This arrangement is still possible because the number of awards submitted for recognition by the STJ is not large. It is also convenient because the STJ and a strong and
predictable pro-arbitration view. However, arbitration in Brazil is growing steadily, and this will eventually translate into an increase in the number of awards to be recognized. When this happens, the allocation of attributions regarding recognition may have to be revisited and new solutions may need to be discussed.

- **Arbitration as an alternative is inherent to democracy.** The parties must have the possibility of resorting to a private decision-maker, with the time and expertise sought by the parties to resolve their dispute.
- **An important line of case law within the STJ relates to government-owned or –controlled corporations.** If the government entity engages in commercial activity, there is no possible doubt that their actions can be submitted to arbitration. Arguments based on public interest or policy must be dismissed. Public interest is not incompatible with arbitration, but it is rather a goal to be achieved through arbitration.
- **The next step forward for Brazilian courts and especially the STJ will be to focus on enforcement.** The recognition of the award is done by the STJ, but the award is then taken to a federal district court for enforcement. Court rulings regarding enforcement will be subject to all levels of appeals until the case finally reaches the ultimate appeal on federal law before the STJ.
- **Tener el arbitraje como una alternativa es inherente a la democracia.** Las partes deben tener la posibilidad de recurrir a una persona privada con el tiempo y la expertise para resolver su litigio.
- **Una línea importante de jurisprudencia en el STJ está relacionada a empresas gubernamentales o controladas por el gobierno.** Si el ente gubernamental realiza actividades comerciales, es indudable que tales acciones pueden ser sometidas a arbitraje. Argumentos basados en interés público o política pública deben ser desestimados. El interés público no es incompatible con el arbitraje, pero es más bien una meta a ser alcanzada por medio del arbitraje.

El próximo paso de las cortes brasileñas y especialmente el STJ será centrarse en la ejecución. El reconocimiento de la sentencia es hecho por el STJ, pero luego es llevado a un tribunal federal para ejecución. Decisiones de cortes relacionadas a ejecución estarán sujetas a todos los niveles de apelación hasta que el caso finalmente llegue a la apelación última en la ley federal ante el STJ.
• When hearing appeals on enforcement of recognized foreign awards or regarding domestic awards, the STJ will have the opportunity to ensure their adequate enforcement.

• By providing the necessary means for enforcement, the STJ will advance and promote arbitration as an expression of party autonomy, democratic choice, free market and the comprehensive pursuit of Justice.

• Quando se analicen apelaciones sobre ejecución de sentencias extranjeras reconocidas o de sentencias arbitrales nacionales, el STJ tendrá la oportunidad de asegurar su ejecución adecuada.

• Providenciando los medios necesarios para ejecución, el STJ evolucionará y promoverá el arbitraje como una expresión de la autonomía de las partes, de la elección democrática, del libre mercado y de la amplia búsqueda de la Justicia.