RCMOS - Multidisciplinary Scientific Journal of Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.1 2025. | submission: 2025-10-09 | accepted: 2025-10-11 | published: 2025-10-13

Arbitration and conflicts involving public administration

Arbitration and disputes involving the public administration

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SUMMARY

This study analyzes the use of arbitration in disputes involving public administration, seeking to understand its foundations, benefits, and limitations within the context of contemporary administrative law. The bibliographical and exploratory research brought together doctrinal works, scientific articles, and institutional documents that address the relationship between arbitration clauses, administrative contracts, and constitutional principles. The results showed that arbitration contributes to greater efficiency, predictability, and legal certainty, especially in highly complex contracts, such as concessions and public-private partnerships. However, it was identified that the consolidation of the institution requires specific adaptations, with attention to transparency and social control, in order to align it with the principles of legality, publicity, and morality. It was also observed that arbitration strengthens the relationship between the State and society, bringing public administration closer to modern governance practices. Thus, the study concludes that arbitration presents itself as a strategic instrument for the modernization of public administration.

Keywords: Arbitration; Public administration; Administrative contracts; Legal conflicts; Public governance.

ABSTRACT

The present study analyzes the use of arbitration in conflicts involving the public administration, seeking to understand its foundations, benefits and limitations in the context of contemporary administrative law. The research, of a bibliographic and exploratory nature, brought together doctrinal works, scientific articles and institutional documents that address the relationship between arbitration clauses, administrative contracts and constitutional principles.
The results showed that arbitration contributes to greater efficiency, predictability and legal certainty, especially in highly complex contracts, such as concessions and public-private partnerships. It was identified, however, that the consolidation of the institute requires specific adaptations, with attention to transparency and social control, in order to make it compatible with the principles of legality, publicity and morality. It was also observed that arbitration strengthens the relationship between State and society, bringing public management closer to modern governance practices. Thus, the research concludes that arbitration is a strategic instrument for the modernization of public administration.

Keywords: Arbitration; Public administration; Administrative contracts; Legal conflicts; Public governance.

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INTRODUCTION

Arbitration, as an alternative method of dispute resolution, has been gaining space in the Brazilian legal scenario, especially in the context of conflicts involving the public administration. Traditionally, such disputes were resolved exclusively by the Judiciary, which often resulted in long and difficult-to-conclude processes. In However, the adoption of arbitration by the public administration preserves the autonomy of the parties and promotes a more favorable environment for negotiation, representing an advance in the way of dealing with contractual disputes (BORBA, sd).

When analyzing the evolution of arbitration in the public sector, it is observed that the reform of the Law Arbitration, in 2015, opened space for state entities to use this mechanism. This legislative change was fundamental to legitimize the practice and expand the legal certainty, especially in highly complex contracts, such as concessions and public-private partnerships, consolidating arbitration as a strategic tool for the State (SCHMIDT, 2018).

In federal highway concession contracts, arbitration has proven capable to bring greater speed and efficiency to dispute resolution processes. In this sector specific, issues related to economic-financial balance and contractual execution find in arbitration a more technical and specialized way, which reinforces the importance this mechanism to ensure investments and maintain the continuity of public services (ROCHA, 2023).

From an institutional point of view, arbitration applied to public administration requires specific adaptations, due to the constitutional principles of legality, publicity and morality. In this sense, it must be conducted in a transparent manner, with wide dissemination of the acts, so that it is not confused with a private space for confidential conflict resolution, ensuring balance between efficiency and social control (SERRA et al., sd).

The specialized literature also highlights the need for manuals and guidelines that guide the application of arbitration in the public sphere. In this regard, the work dedicated to the topic highlights that the use of this mechanism strengthens confidence in administrative contracts and generates greater attractiveness for national and foreign investments, by ensuring predictability in dispute resolution mechanisms, especially in contracts long-term infrastructure (MANUAL OF ARBITRATION IN PUBLIC ADMINISTRATION, 2019).

The analysis of arbitration clauses in administrative contracts shows that its adoption has been increasingly frequent, but the main challenges lie in clarity and compatibility with the legal-administrative regime. Inadequate wording may compromise the validity of the arbitration procedure and generate legal uncertainty, highlighting the need for greater technical training to draft these devices (YAMAMOTO, 2018).

In initial reflections, the doctrinal debate on arbitration involving the administration public is still marked by resistance. Part of the doctrine questions whether arbitration is in fact aligned with the public interest, since it transfers the solution of the dispute to arbitrators private. However, there are those who argue that, as long as constitutional principles are observed, arbitration respects and reinforces the collective interest by ensuring greater efficiency in resolving issues conflicts (NETO, 2013).

From a theoretical perspective, arbitration must be understood as an instrument of strengthening of the Democratic Rule of Law. In this sense, its application should not be seen as a departure from state control, but as a mechanism of public governance which adds greater technicality to decisions and helps to relieve the Judiciary (GALICIA, 2024).

The interdisciplinary study of arbitration in administrative contracts also highlights that it reduces transaction costs and litigation time, making contract enforcement more efficient. However, it is worth noting that external control carried out by supervisory bodies, such as courts of auditors, cannot be suppressed and must coexist in harmony with the arbitration procedure (FERREIRA et al., 2019).

Given this panorama, the present research is justified by the relevance of arbitration in contemporary administrative law, especially for its role in the modernization of management public and in expanding legal certainty in contracts with great economic impact and social. The objective of the article is to critically analyze arbitration in public administration, identifying its foundations, benefits, limits and challenges, in order to contribute to the consolidation of this institute as an efficient mechanism for resolving conflicts involving the State.

MATERIALS AND METHODS

The present study was developed from a qualitative and exploratory approach, focused on the critical analysis of the use of arbitration in conflicts involving the administration

public. To achieve the proposed objectives, it was decided to carry out a survey bibliographical and documentary, bringing together academic works, scientific articles, legislation and institutional reports dealing with the topic. This methodological choice was justified by the need to understand both the legal foundations and the practical aspects related to the use of arbitration in administrative contracts and public interest relations.

Data collection was carried out in different academic and legal databases, prioritizing sources of broad credibility. Among the platforms used were SciELO, Google Scholar, CAPES Journals, ProQuest, JSTOR, as well as institutional repositories of Brazilian and international universities. To complement the survey, digital libraries of publishers specializing in Law and legal portals were consulted focused on administrative law and arbitration.

Specific descriptors were established for the research in order to refine the results and ensure relevance. Key terms selected included: “arbitration,” “public administration”, “administrative contracts”, “legal conflicts”, “concessions public” and “arbitration clause”. In English, the descriptors “arbitration” were used, “public administration”, “administrative contracts” and “government disputes”, while in Spanish the terms “arbitraje” and “administración pública” were also applied. This linguistic variation sought to broaden the scope of the investigation and allow the inclusion of comparative experiences in different countries.

The search strategy combined the descriptors using Boolean operators, such as AND, OR, and NOT to refine the results. For example, expressions like “arbitration” AND public administration” and “arbitration AND public administration” were recurring. This system made it possible to retrieve articles that, in addition to addressing the central theme, also explore complementary perspectives, such as procedural efficiency, constitutional limits and transparency in arbitration procedures involving public entities.

The publication period selected for the bibliographic survey covered 2010 to 2025, with priority given to more recent works, without disregarding classical texts and legislative milestones that influenced the development of arbitration in Brazil. This section temporal allowed to capture the normative, doctrinal and jurisprudential evolution on the subject, especially after the changes introduced in the Arbitration Law, which consolidated the participation of public administration in arbitration proceedings.

After collection, the documents were organized into spreadsheets, classifying them according to criteria of thematic relevance, year of publication, type of source and country of origin. In then, an exploratory reading was carried out to identify content that was most relevant to the

objectives of the study. This initial screening process allowed us to eliminate publications redundant, superficial or not directly related to the object of the research.

Data analysis was carried out based on critical and comparative reading of the works selected, prioritizing the identification of convergences and divergences between the authors. Elements such as the legitimacy of arbitration in the public sector were observed, constitutional foundations involved, the practical efficiency of the procedures and the risks or limitations pointed out in the literature. The synthesis of this material resulted in a broad and updated on the topic.

RESULTS AND DISCUSSION

The results that were achieved through the thorough analysis of the works that were object of study show that the practice of arbitration, when used in the context of public administration, reveals itself as a phenomenon that brings with it both advances considerable as a series of challenges, both from a practical and theoretical point of view. Therefore, it is possible to state that, while arbitration provides significant improvements, also raises complex issues that need to be addressed and understood. The analysis from the sources consulted demonstrated that the institute, over time, evolved from a situation marked by a certain distrust towards a position of solid legal consolidation. This advance became especially evident, especially after there was recognition, on the part of of the legislation, the applicability of this institute in administrative contracts. This legislative recognition emphasizes the importance of the relentless pursuit of improvement continuous (YAMAMOTO, 2018).

Specialized literature reveals that, even with the expansion of related standards to arbitration, there is still a certain resistance both in the cultural and institutional spheres when it comes to adopting this mechanism as a way of resolving disputes involving public administration and the State. This resistance can be seen in the way in which traditional practices still remain preferred over arbitration, which suggests the need for greater awareness and acceptance of arbitration as an effective method and valid for resolving conflicts that may arise between citizens and entities government. This resistance that is observed is largely attributed to the concern in aligning the constitutional principles involving publicity, morality and legality with the autonomy that characterizes the arbitration procedure. This tension between the constitutional principles and the autonomy of arbitration is a topic that still raises intense

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debates and discussions between scholars, jurists and professionals working in the field of law, as pointed out by Neto in his analysis carried out in 2013.

The theoretical research carried out revealed that the application of arbitration in the context of public administration needs to be understood from a different perspective, where one cannot just to replicate the model used in the private sector. This differentiated approach is essential so that arbitration is effective and appropriate to the peculiarities and requirements of the public sector. Thus, it involves a set of considerations and characteristics that make it unique, moving away from the simple transposition of private sector methods. It is essential to make adjustments that ensure the maintenance of the interests of society as a whole and the protection of the assets that are for collective use, without compromising the effectiveness and speed that are striking characteristics of arbitration process (GALIZA, 2024). Therefore, it is necessary to find a balance that preserve these essential values.

An additional aspect that deserves to be highlighted is the link that exists between arbitration and the branch of administrative law. This connection is of utmost importance, since Arbitration, as a dispute resolution mechanism, can have significant implications for administrative issues, including how decisions are made and the effectiveness of public management. The research carried out clearly demonstrated that the practice of arbitration plays a significant role in promoting the efficiency and effectiveness of contracts administrative costs. This is mainly due to arbitration's ability to reduce costs related to transactions and, at the same time, reduce the time spent on disputes judicial. In this way, arbitration proves to be a valuable tool for optimizing the administrative process. However, it was noted that the use of this resource should not, in any way, some, disregard the importance of external control that is carried out by the courts of accounts and other bodies responsible for oversight. This is because the interaction harmonious relationship between these different control mechanisms is essential to ensure that there is an appropriate balance between the efficiency of state activities and the responsibility that the State has towards society (FERREIRA et al., 2019).

Within the scope of the comparative analysis between nations, the results obtained indicated that the experiences lived in other countries, such as what happens in Portugal, offer significant and pertinent examples that can be very useful for Brazil. This type of comparison is fundamental to understanding how successful practices can be adapted to Brazilian reality, thus contributing to the development and improvement of several areas in the country. In the context of this country, the practice of arbitration that involves the administration public has already become something well established and consolidated. This practice not only serves as

an important reference for the creation and institutionalization of arbitration chambers that are specialized in this type of conflict resolution, but also contributes significantly for the social legitimization of the institution of arbitration. Thus, it can be stated that arbitration plays a fundamental role in modernizing and strengthening the public system.
This comparative analysis makes it possible to conclude that Brazil is following a trend observed at an international level, which consists of the growing appreciation of arbitration, being This is a tool that promotes the modernization of the State (NOBRE JUNIOR, 2021).

The investigations carried out also showed that arbitration has the capacity to act strategically to promote a rapprochement between the State and society.
This process can be fundamental to strengthening ties and strengthening the relationship between government institutions and citizens, enabling more effective dialogue and building a more collaborative and harmonious environment. The implementation of this mechanism suggests a clear intention to promote modernization in administration public, while seeking to overcome the negative perception that is often associated with excessive bureaucracy and slowness in procedural steps which, unfortunately, are still characteristic marks of the Judiciary. This change in perspective indicates an effort to streamline processes and make justice more efficient and accessible. This In this way, by opting to use arbitration, the public administration demonstrates a clear intention to promote efficiency and predictability in the interactions it establishes through contracts (BATISTA, 2024). This choice reflects a commitment to seeking mechanisms that can ensure more effective and organized management, thus contributing to an environment of greater trust and stability in contractual relationships.

Another result that was identified in this context was the observation that the arbitration acts to strengthen the autonomy of the parties involved in a contract, in addition to contributing significantly to the creation of a business environment that proves more balanced and fair for everyone involved. This practice provides a space in which the parties are free to decide on their own conditions and terms, thus contributing for more harmonious and efficient negotiation. This phenomenon occurs due to the fact that that, when choosing to use arbitration clauses, the public administration provides a more robust guarantee to contractors, which culminates in a reduction in the probability that prolonged and unpredictable litigation occurs in the judicial system. Thus, this strategy aims to optimize the resolution of legitimate disputes that may arise between the parties involved. This phenomenon acquires significant importance, especially in areas

such as those involving concessions and public-private partnerships, as pointed out by Borba (sd).

The investigation carried out brought to light the finding that the acceptance and validity of arbitration in the context of public administration were considerably influenced by changes in the laws that were implemented in Brazil from 2015 onwards. The update normative that was carried out expanded the opportunities for using this institute, as it now allows explicitly so that state entities can use it in various contracts administrative. This change not only strengthened legal certainty, but also encouraged an increase in investor confidence in the deals signed, as pointed out by Schmidt in 2018.

In contracts involving highway concessions at the federal level, for example, it was possible to note that arbitration has played a role of utmost importance in mediation and resolution of conflicts that relate to both the economic and financial balance of contracts and the adequate execution of the agreed obligations. This practice reveals itself essential to ensure that the parties involved can resolve their disputes in a more agile and efficient, avoiding the wear and tear that could be caused by a possible legal process. Detailed investigation of practical cases revealed that by implementing this mechanism specifically, the public administration managed not only to reduce response times, but also ensure a high level of technicality in the decisions made. This, in turn, ensured that the continuity of essential services was maintained effectively and efficiently (ROCHA, 2023).

Furthermore, the works carried out made it clear that the arbitration process that took place intended for public administration must be conducted in a manner that is not restrictive or limited, but, on the contrary, must allow ample space for its application and its development. This implies a more open and accessible approach, which considers the importance of maintaining transparency and participation in the conduct of procedures arbitration within the context of public management. Contrary to what one might think, it is it is essential that it pays attention to the mechanisms that promote transparency, thus ensuring that there is adequate dissemination of the actions carried out, in addition to guarantee the social legitimacy of the entire process involved. This statement emphasizes the importance that public arbitration must be adjusted to suit the regime administrative, while maintaining efficiency, which is a fundamental characteristic and distinctive of this mechanism (SERRA et al., sd).

The research carried out made it clear that the strengthening of arbitration within the sector public is closely linked to the dissemination of manuals, practical guides and internal standards that provide precise guidelines on how to apply this effective problem-solving method conflicts. The presence of resources and support materials plays a crucial role in strengthen the security of institutions, while reducing the feeling of insecurity that managers may feel. This approach also favors standardization of clauses involving arbitration agreements, acting preventively against possible failures that could jeopardize the validity of the arbitration process (MANUAL OF ARBITRATION IN PUBLIC ADMINISTRATION, 2019).

Another aspect that was addressed in the results is the crucial need for provide adequate training for public officials who perform functions related to the preparation, analysis and execution of administrative contracts. This training is essential to ensure that these professionals have the necessary knowledge to act effectively and responsibly in their activities, thus contributing to the improvement of administrative processes and the correct application of the relevant rules. The lack of appropriate technical knowledge can result in significant resistance, or even in a feeling of insecurity, when the time comes to establish clauses arbitration clauses. These clauses, which are essential for conflict resolution, can be viewed with suspicion if those involved do not feel sufficiently informed or prepared to deal with the terms and implications they involve. Therefore, the lack of a adequate understanding of the subject can create obstacles that hinder confidence in formalization of these agreements. In this way, the training and qualification of both employees how many managers are of paramount importance in establishing arbitration as a common and habitual activity in public administration, as pointed out by Yamamoto in 2018.

It was also possible to note that, despite the benefits being clearly visible associated with the use of this practice, there are, however, risks related to improper use of arbitration by the public sector. These risks may compromise the effectiveness of the process and undermine confidence in the decisions made. Among the aspects that deserve highlight, we can mention the possibility of abuses occurring in the use of clauses compromise agreements that are not supported by adequate grounds. Furthermore, there is also a lack of well-defined criteria in terms of transparency, which can undermine the acceptance and social legitimacy of this institute. These challenges clearly indicate

the importance of constant regulation and continuous monitoring of activities and processes involved, as mentioned by Neto in 2013.

In a comprehensive manner, the results obtained demonstrate significant progress in the consolidation of arbitration within the public administration of Brazil. This phenomenon occurs in a manner aligned and harmonious with practices adopted internationally. However, literature that was the object of analysis highlights that the process in question is still relatively new and, therefore, demands a series of adjustments that involve normative, cultural and institutional institutions so that its complete and effective functionality can be achieved. The process of maturation that is being analyzed does not only concern changes in laws, but also to the adoption and assimilation of this institute both by public managers and by society in general (GALIZA, 2024). This internalization is essential for understanding and practice related to the institute become effective and relevant in the daily lives of administrations and social interactions.

In this way, the proposed analysis shows that arbitration can no longer be seen as an occasional novelty within the field of administrative law. On the contrary, it presents itself as a well-established instrument, which is in constant development and improvement over time. This continuous evolution demonstrates the importance and relevance of arbitration in current legal practices. The results obtained indicate advances significant in terms of efficiency, legal certainty and modernization within the scope of management public. Furthermore, this information highlights the importance of maintaining vigilance continuous and the need to improve regulation to ensure that the practices adopted are not only effective, but also transparent and appropriately aligned with the interests of society in general (FERREIRA et al., 2019).

FINAL CONSIDERATIONS

The analysis carried out showed that arbitration within the scope of public administration already occupies a consolidated space as a conflict resolution mechanism, offering faster and more specialized alternatives than the traditional judicial route. The study showed that, when incorporated into administrative contracts, arbitration promotes efficiency, predictability and legal certainty, becoming an instrument for modernizing the State.

The results also demonstrated that arbitration favors the strengthening of trust between public administration and private individuals, especially in large contracts social and economic impact, such as infrastructure and concessions. The adoption of clauses

well-structured arbitration agreements allow for greater stability in contractual relationships and contributes to the continuity of public services, reducing the risk of interruption due to litigation prolonged.

Despite the advances, it was found that the practice still requires specific care, especially with regard to transparency and the training of public officials. The adaptation from arbitration to the administrative regime requires mechanisms that ensure compliance with constitutional principles, guaranteeing legitimacy and social control, without compromising the efficiency that characterizes this procedure.

Overall, it is concluded that arbitration is a promising instrument for strengthening administrative law and public governance, while at the same time contributes to attracting investments and consolidating a more legal environment stable. The challenge from now on is to balance efficiency and transparency, ensuring that the institute is used responsibly and in line with the public interest.

REFERENCES

BATISTA, L.P. Arbitration in Public Administration and its potential to reinvigorate the relationship between the State and society. **Journal of Administrative Law,** 2024. Available at: https://journalppc.com/RPPC/article/view/833. Accessed on: September 20, 2025.

BORBA, João Paulo Santos. **Public administration and the option to use arbitration.** [sl]: [sn], [sd]. Available at: https://editorathoth.com.br/produto/a-administracao-publica-ea-opcao-pela-utilizacao-da-arbitragem-a-preservacao-da-autonomia-do-metodo-de-solucao-de-disputas-contratuais-ea-criacao-de-ambiente-negocial-favoravel/1052. Accessed on: September 20, 2025.

FERREIRA, DB, et al. "Arbitration in administrative law" (Article). **Brazilian Administrative Journal (RBADR),** Available at : https://rbadr.emnuvens.com.br/rbadr/article/download/47/30. Accessed on: September 20, 2025.

GALIZA, IA Arbitration with public administration: theoretical aspects" (Article). **FT Magazine,** [sl], 2024. Available at: https://revistaft.com.br/arbitragem-com-a-administracao-publica-aspectos-teoricos/. Accessed on: September 20, 2025.

MANUAL of Arbitration in Public Administration. 1st ed. [sl]: Juspodivm, 2019. 224 p. Available at: https://www.editorajuspodivm.com.br/manual-de-arbitragem-na-administracao-publica-2019?srsltid=AfmBOoqS7XdFGiiha7CQBua_WlAdfdv2n7w40CMccaDdsMqmCv85OcRG. Accessed on: September 20, 2025.

NETO, PM Arbitration and public administration – first reflections on arbitration involving public administration. (Article). **Brazilian Journal of Arbitration,** sl, v. 13, n. 51, p. –, 2013. Available

at: https://kluwerlawonline.com/journalarticle/Revista%2BBrasileira%2Bde%2BArbitragem /13.51/RBA2016031. Accessed on: September 20, 2025.

NOBRE JUNIOR, EP "Public administration and arbitration from a comparative perspective with the Portuguese legal system" (Article). **Revista RJLB,** [sl], v. 7, n. 4, p. 327-387, 2021.
Available at: https://www.cidp.pt/revistas/rjlb/2021/4/2021_04_0327_0387.pdf. Accessed on: September 20, 2025.

ROCHA, OCJ **Arbitration in public administration: a look at federal highway concessions.** (Monograph). 2023. Available at: https://sites.tcu.gov.br/recursos/trabalhos-pos-graduacao/pdfs/ Arbitragem%20na%20administração%20pública_%20um%20olhar%20sobre %20as%20concessões%20rodoviárias%20federais.pdf. Accessed on: September 20, 2025.

SCHMIDT, Gustavo da Rocha. **Arbitration in Public Administration.** 1st ed. Rio de Janeiro: Editora Fórum, 2018.
Available at: https://www.travessa.com.br/arbitragem-na-administracao-publica/artigo/d944604d-6d42-4475-bd20-9b79845a1dd7. Accessed on: September 20, 2025.

SERRA, AA, et al. Arbitration in public administration. (Article). **APEB Journal,** [sl], n. 2, p. –, [sd]. Available at: https://apeb.org.br/images/revista/REV%202%20APEB%20- %20ARTICLES%20ARBITRAGE%20NA%20ADM%20PUBLICA%2021X30%20- %20NOVO.pdf. Accessed on: September 20, 2025.

YAMAMOTO, Ricardo. **Arbitration and public administration: an analysis of arbitration clauses in administrative contracts.** 1st ed. São Paulo: [sn], 2018. 202 p.
Available at: https://repositorio.fgv.br/bitstreams/a3882416-1456-4a73-a374-5cb434dba05a/download. Accessed on: September 20, 2025.