

The influence of ILO normative role in Brazil: An analysis of the application of international labor conventions by the Labor Courts

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Why (& how) do HRTs change the behavior of a country?

- In theory of international law, 3 questions regarding international human rights treaties (HRTs) are of particular relevance to global labor governance:
 - (1) whether HRTs result in any change for people in countries that violate human rights? (PEKSEN; BLANTON, 2017);
 - (2) why (& how) do HRTs change the behavior of a country? (VILLASMIL PRIETO, 2011);
 - (3) & why do countries that plan to violate HRDs approve these treaties (Baccini; Koenig-Archibugi, 2014).

This research project elects one of these questions for its analysis: "why (& how) do HRTs change the behavior of a country?". For that, let's take the case of international labor law and the International Labor Organization (ILO).

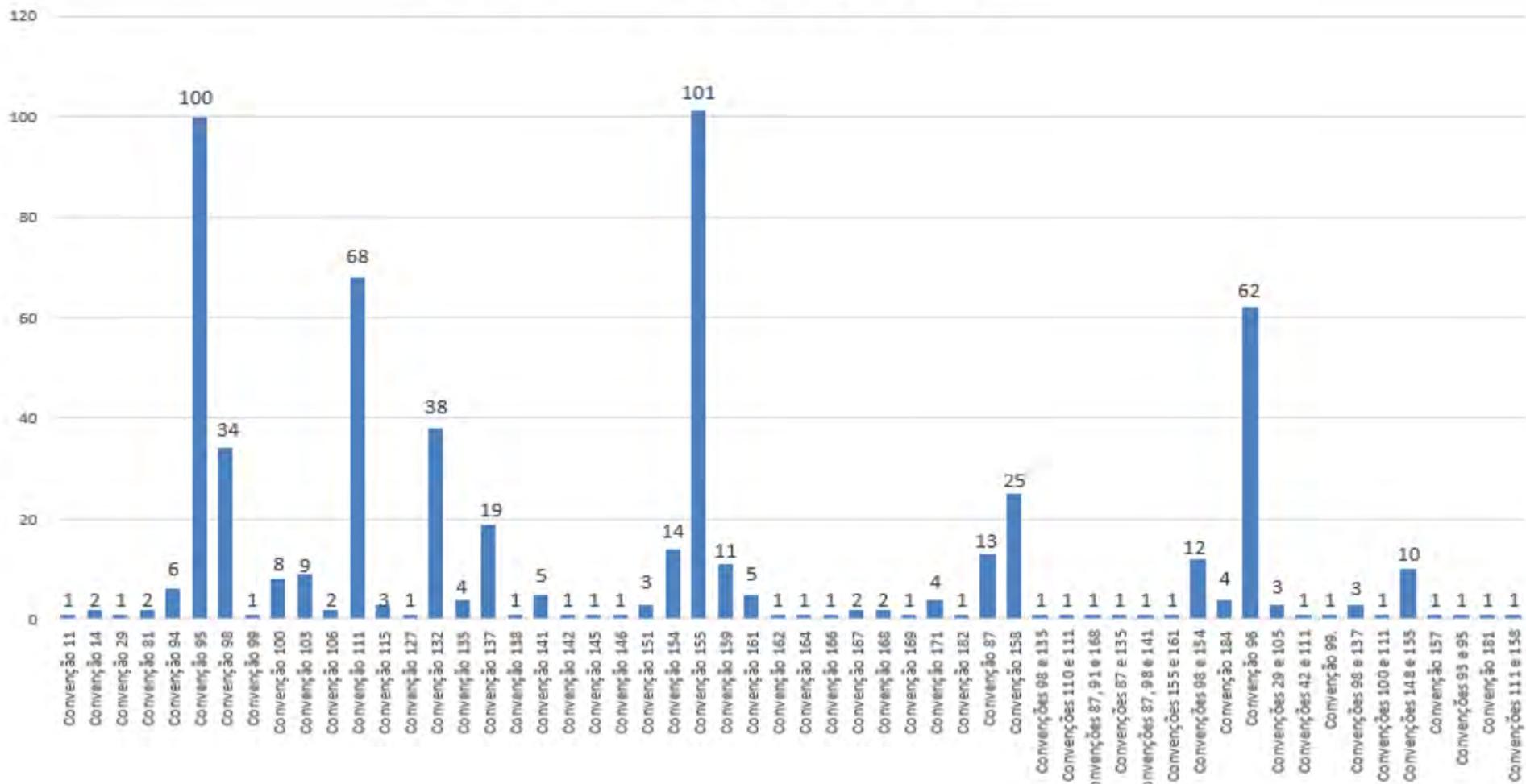
How to measure the ratification of conventions influence in a state?

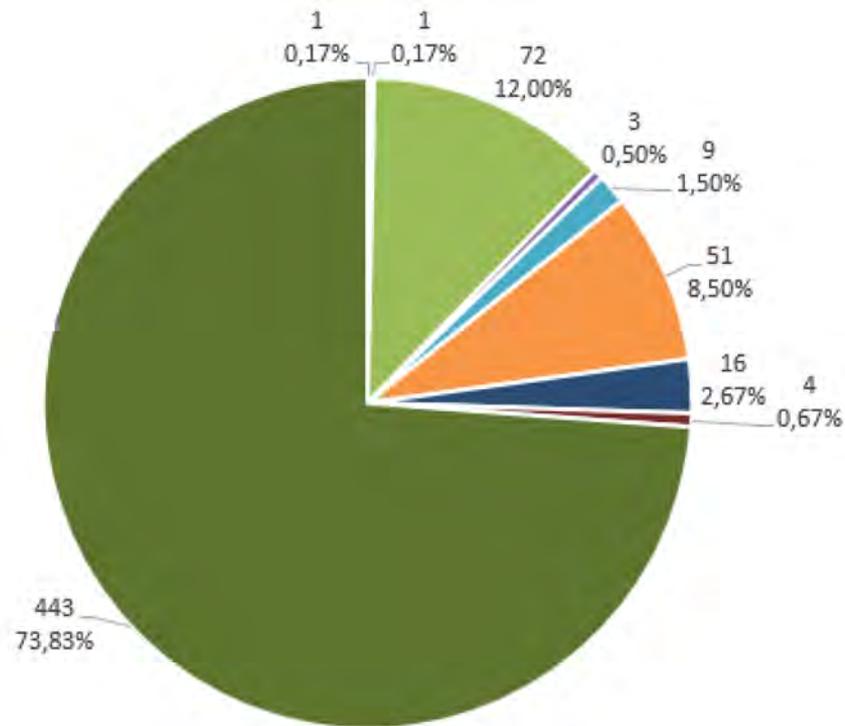
- Brazil is an ILO member and has ratified 97 of the 190 ILO conventions.
- **Objective**: to identify the influence of the ILO's normative performance in Brazil, examining the application of the ratified international labor conventions by the Superior Labor Court.
- **Justification**: to identifying arguments that recognize or undermine the validity of ratified conventions.

Research Methodology

- Collection of data from the TST website (<http://www.tst.jus.br/jurisprudencia>), using the term “ILO Convention”.
- 600 judicial decisions from 2009 to 2019 were analyzed, 60 decisions for each year.
- Use of quantitative analysis software, Statistical Package for the Social Sciences (SPSS version 21).

International Convention discussed in the process



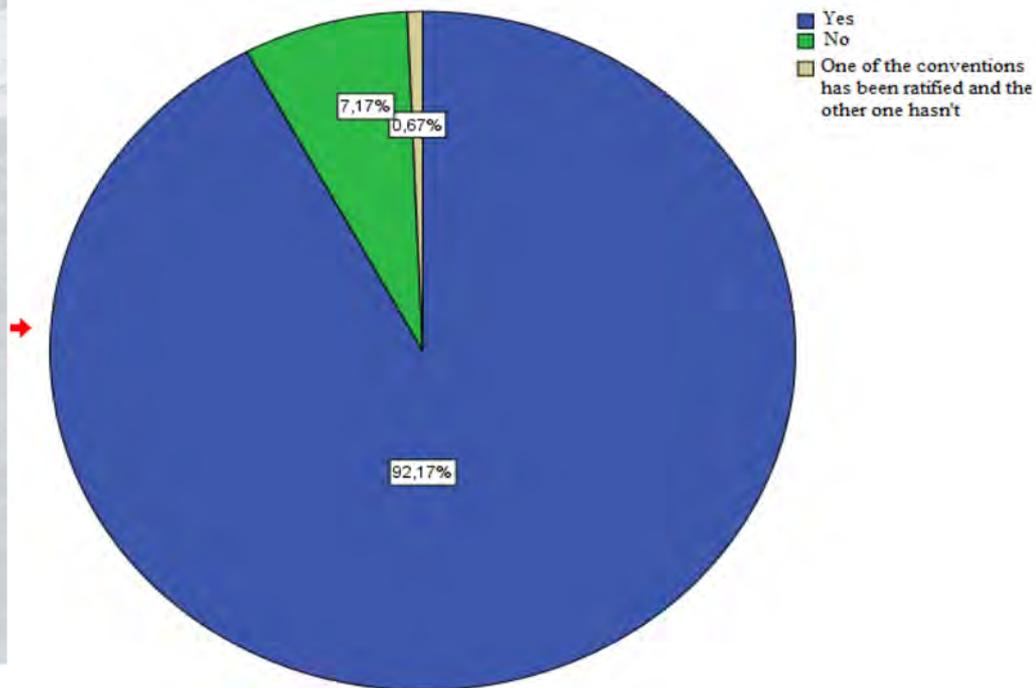


- Convencion 182: Worst Forms of Child Labour
- Convencion 138: Minimum Age Convention
- Convencion 111: Discrimination (Employment and Occupation)
- Convencion 135: Abolition of Forced Labour
- Convencion 100: Equal Remuneration Convention
- Convencion 98: Right to Organise and Collective Bargaining
- Convencion 87: Freedom of Association and Protection of the Right to Organise
- Convencion 29: Forced Labour Convention
- Other convencions

Was the cited convention ratified by Brazil or not?

		Frequency	Percentage	Valid Percent	Cumulative Percentage
Valid	Yes	553	92,2	92,2	92,2
	No	43	7,2	7,2	99,3
	One of the conventions has been ratified and the other one hasn't	4	,7	,7	100,0
		600	100,0	100,0	

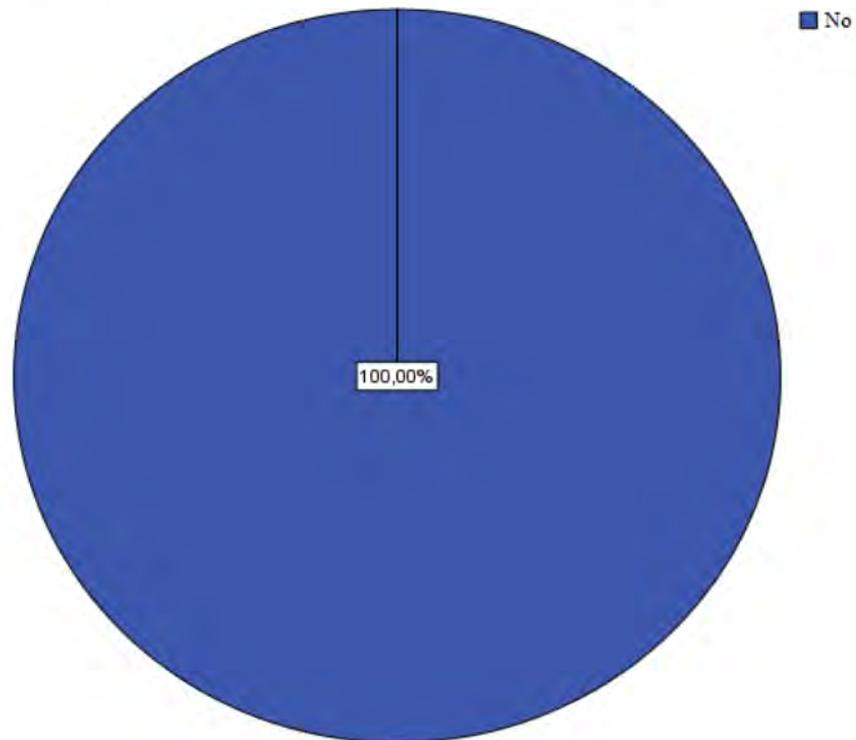
Was the cited convention ratified by Brazil or not?



Have any conventions been implemented, although not ratified, as a subsidiary law's source?

	Frequency	Percentage	Valid Percent	Cumulative Percentage
Valid	600	100,0	100,0	100,0

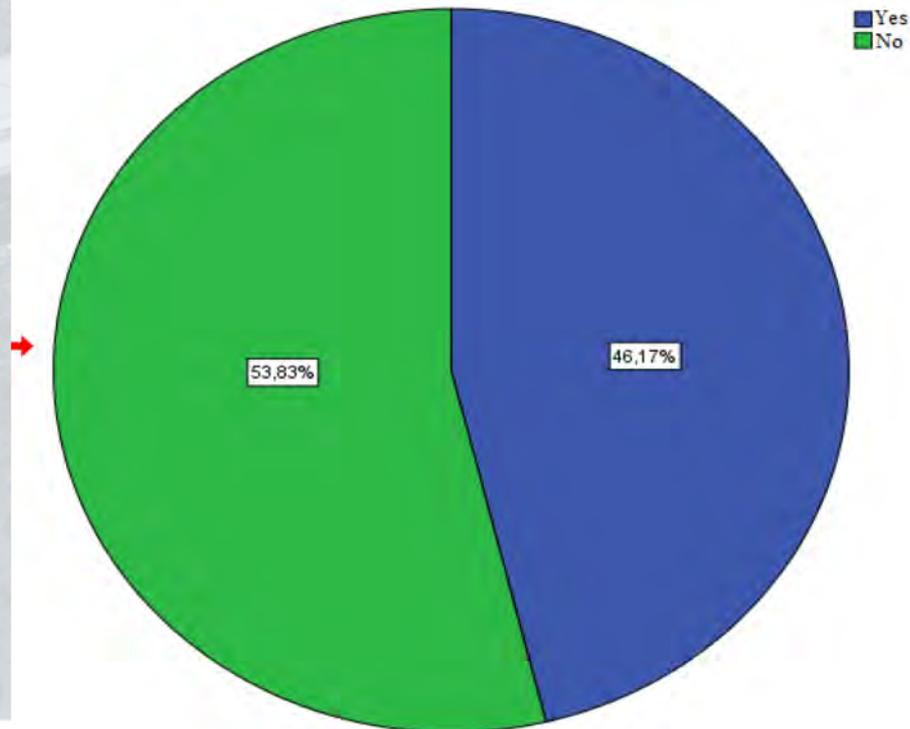
Have any conventions been implemented, although not ratified, as a subsidiary law's source?



Was the convention applied or not applied?

		Frequency	Percentage	Valid Percent	Cumulative Percentage
Valid	Yes	277	46,2	46,2	46,2
	No	323	53,8	53,8	100,0
Total		600	100,0	100,0	

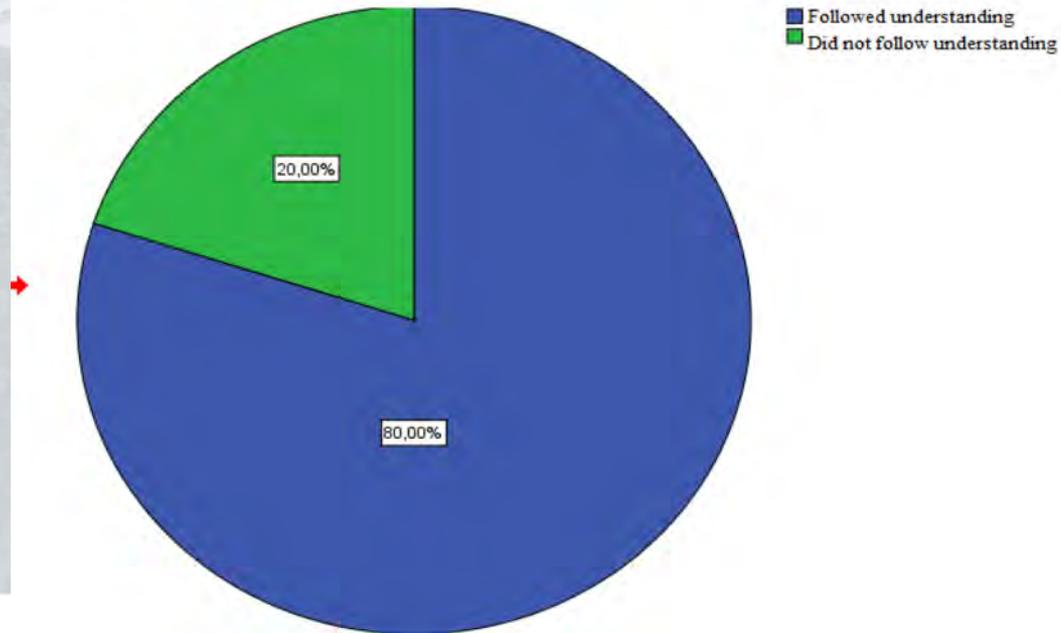
Was the convention applied or not applied?



Concerning the decisions that applied the convention, how many followed the understanding from previous instance?

		Frequency	Percentage	Valid Percent	Cumulative Percentage
Valid	Followed understanding	220	36,7	80,0	80,0
	Did not follow understanding	55	9,2	20,0	100,0
	Total	275	45,8	100,0	
Omitted	System	325	54,2		
	Total	600	100,0		

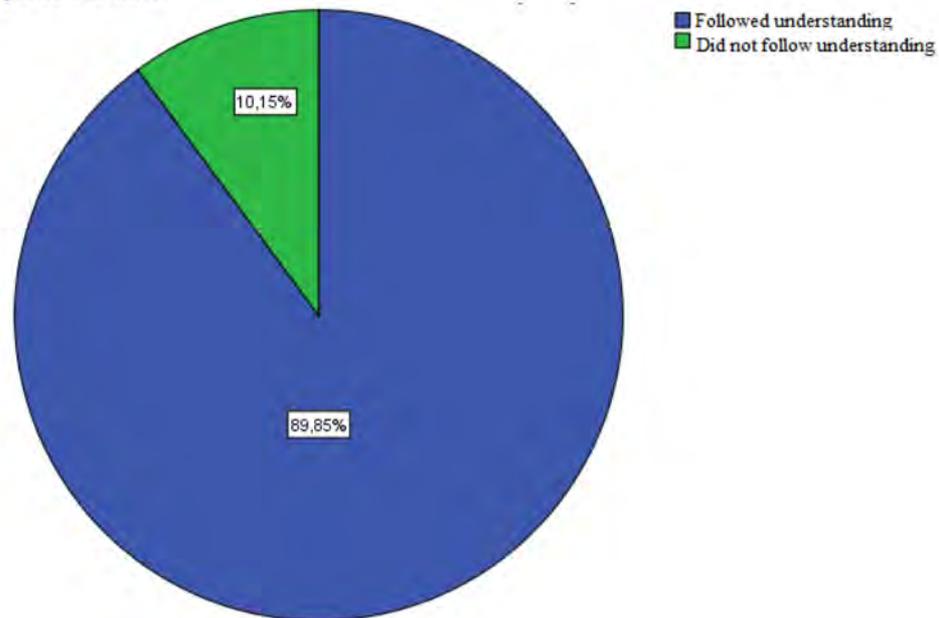
Concerning the decisions that applied the convention, how many followed the understanding from previous instance?



Regarding the decisions that did not apply the convention, how many followed the understanding from previous instance?

		Frequency	Percentage	Valid Percent	Cumulative Percentage
Valid	Followed understanding	292	48,7	89,8	89,8
	Did not follow understanding	33	5,5	10,2	100,0
	Total	325	54,2	100,0	
Omitted	System	275	45,8		
Total		600	100,0		

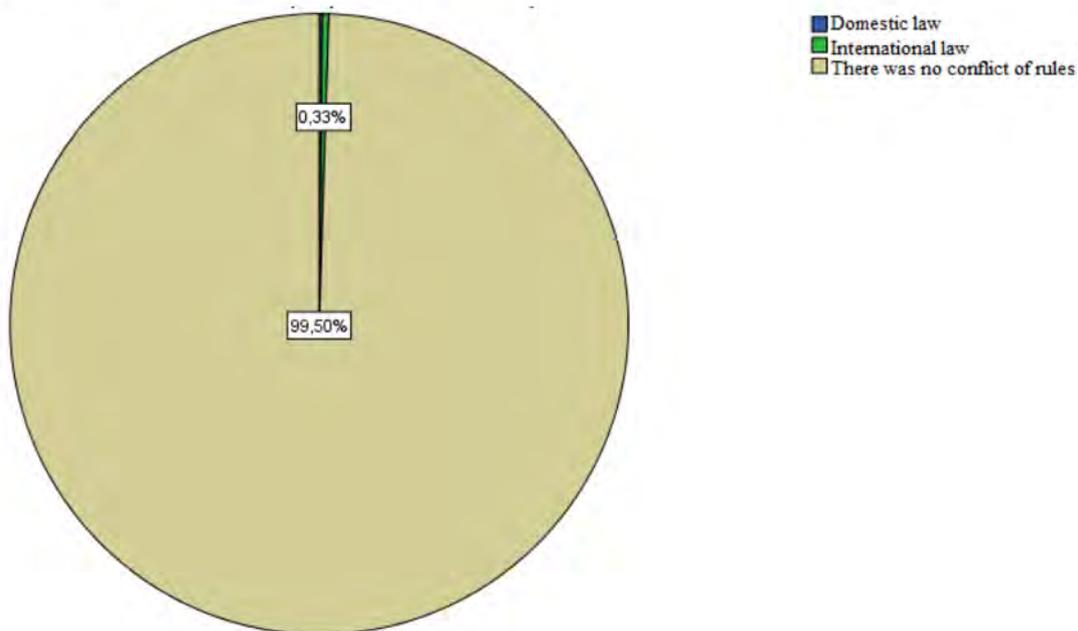
Regarding the decisions that did not apply the convention, how many followed the understanding from previous instance?



In the event of a conflict between the rules of domestic and international law, the Superior Labor Court has decided the preponderance of which rule?

		Frequency	Percentage	Valid Percent	Cumulative Percentage
Valid	Domestic law	1	,2	,2	,2
	Internacional law	2	,3	,3	,5
	There was no conflict of rules	597	99,5	99,5	100,0
Total		600	100,0	100,0	

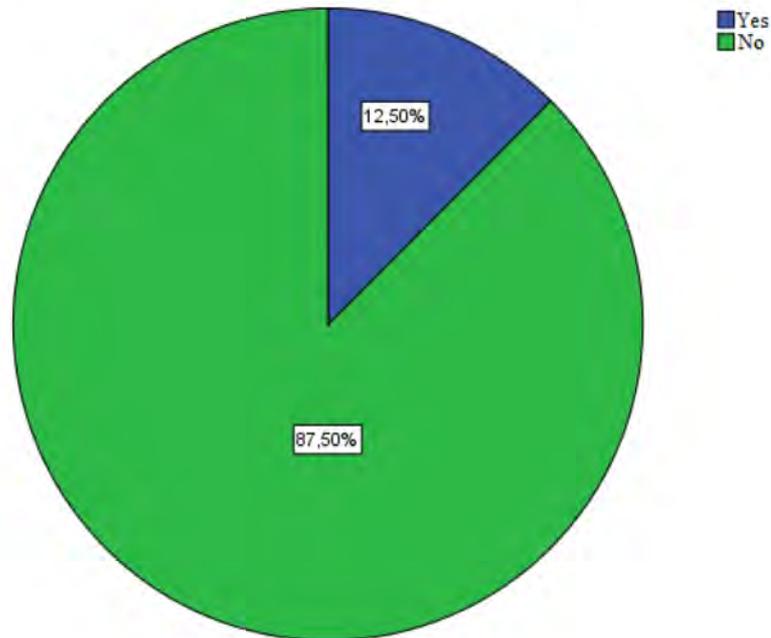
In the event of a conflict between the rules of domestic and international law, the Superior Labor Court has decided the preponderance of which rule?



Has any contract (contract clause) or collective agreement been declared void as a result of non-compliance with the standard in the ILO international convention?

		Frequency	Percentage	Valid Percent	Cumulative Percentage
Valid	Yes	75	12,5	12,5	12,5
	No	525	87,5	87,5	100,0
Total		600	100,0	100,0	

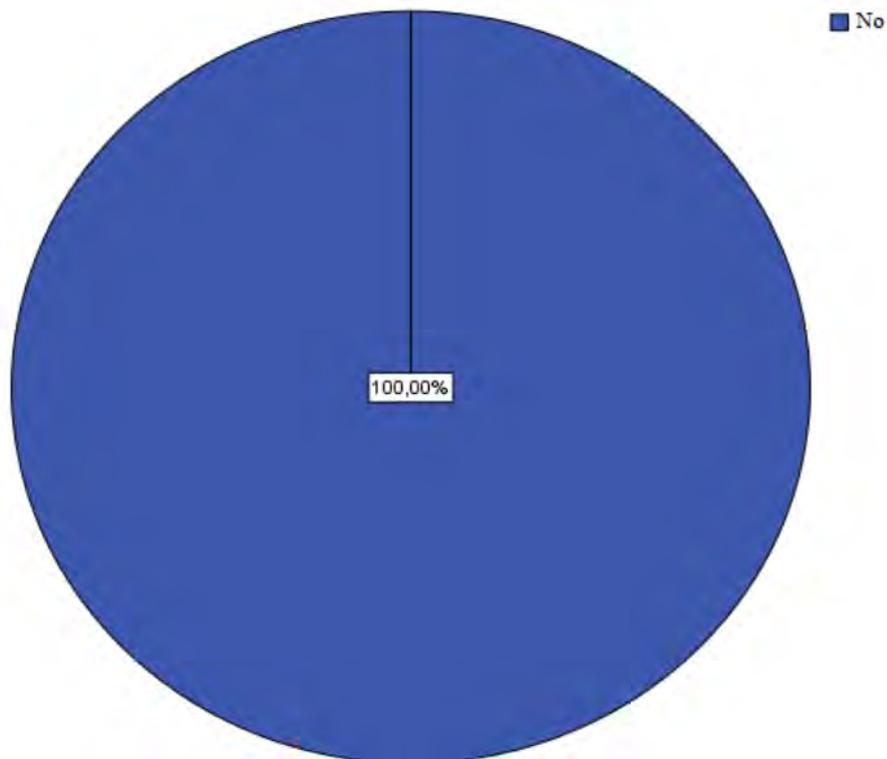
Has any contract (contract clause) or collective agreement been declared void as a result of non-compliance with the standard in the ILO international convention?



Was the international convention applied from the conventionality control?

		Frequency	Percentage	Valid Percent	Cumulative Percentage
Valid	No	210	100,0	100,0	100,0

Was the international convention applied from the conventionality control?



Some findings...

- The 1998 ILO Declaration has been successful, but not all conventions equally.
- Non-ratified conventions do not play the role of subsidiary sources of Labour Law.
- There is almost no use of conventionality control by the TST, even though ILO conventions have a 'supralegal' hierarchy, according to the Supreme Court.
- Expanding the appeal hypotheses with an explicit reference to ILO conventions would strengthen the exercise of conventionality control by the court.



Merci beaucoup!

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