

Brazilian Supreme Court: possible change to the understanding for the statutes of limitations to start reimbursement lawsuits related to improbity acts– article 37, § 5th, of the Federal Constitution

Article 37, § 5th, of the Federal Constitution sets forth that *"the law must establish the statutes of limitations for illegal acts practiced by any agent, regardless of being a public agent or not, which cause damages to the public treasury, exception made to the reimbursement lawsuits"*.

The mentioned provision has been discussed in Brazil since the enactment of the Federal Constitution, as public entities are entitled to file lawsuits against public agents and private parties, at any time, to claim for reimbursements related to damages caused to the public treasury. In Brazil, the acts performed by public agents that are deemed by the law harmful to the public treasury are classified as "improbity acts".

Although the Brazilian Law for Improbity Acts¹ does not address the acts practiced by private parties, it establishes that any agent or party that take benefits from an improbity act must be punished according to said law. The recovery of the damages caused to the public treasury is one of the most important mechanisms established by the Law for Improbity Acts.

Since the lack of statutes of limitations is a unique situation in the Brazilian legal system, various lawsuits have been filed with the Supreme Court to dispute article 37, § 5th, of the Federal Constitution. The Supreme Court has been reinforcing the lack of statutes of limitations for filing lawsuits to seek reimbursement for damages caused to the public treasury². On 2016/02/03, the Supreme Court reopened the discussions regarding the lack of statutes of limitations³. The majority of Ministers understood that they should limit the interpretation of article 37, § 5th, of the Federal Constitution to the lawsuits involving civil violations.

In the same judgement, the Ministers discussed whether the statutes of limitations should apply to file lawsuits aiming reimbursement to the public treasury due to damages caused by improbity acts. However, after intense debate, the Ministers decided to narrow the judgement down to the statutes

1 Federal Law nº 8,429/92.

2 Please refer to the following decisions from the Brazilian Supreme Court: (i) MS 26.210 (Reporting Minister RICARDO LEWANDOWSKI, j. 2008/09/04); (ii) AI 848.482 (Reporting Minister LUIZ FUX, j. 2012/11/27), (iii) RE 719.079 (Reporting Minister GILMAR MENDES, j. 2013/02/19) e (iv) RE 606.224 (Reporting Minister CÁRMEN LÚCIA, j. 2013/03/19).

3 RE 669.069 (Reporting Minister TEORI ZAVASCKI).

of limitations applicable to civil violations. Therefore, the understanding established for civil violations did not cover improbity acts.

Recently, the Supreme Court declared the *Repercussão Geral* of the constitutional matters regarding to the statutes of limitations to start reimbursement lawsuits related to acts qualified as improbity acts. The *Repercussão Geral* is a procedure the Supreme Court adopts to establish an understanding about the interpretation of constitutional provisions.

On 2017/03/22, Minister Alexandre de Moraes was assigned as the case Reporting Minister due to the sudden death of Minister Teori Zavascki. Currently, the matter is pending judgement.

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