

THE STATUTE OF LIMITATIONS IN SUITS RELATING TO PUBLIC
CORRUPTION ACCORDING TO THE CASE LAW OF THE STF AND STJ

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The Federal Constitution, in article 37, paragraph 5, provides that the statutory limitations periods for unlawful acts against the Brazilian treasury shall be established by law, except for suits for reimbursement. This caveat admitted the emergence of at least three lines of interpretation regarding the absence of any time-bar: it affects any suit for reimbursement to the treasury; it only pertains to suits for reimbursement due to criminal offenses or administrative acts of corruption; or it does not contemplate any kind of action.

In this context, debates on the statute of limitations for suits for public corruption are of extreme relevance insofar as they represent one of the main issues raised in defense by public agents and third-party beneficiaries of acts of public corruption, with significant repercussion also in the scope of public civil actions.

Before the recognition of the general repercussion of the matter via an en banc decision by the Federal Supreme Court (STF) in 2013, controversies regarding the application of the sanctions provided for in the Public Corruption Law (Law No. 8,429/92) were understood to be of an infra-constitutional nature, such that indirect offense against the Federal Constitution did not allow for the admissibility of extraordinary appeals.

Having overcome debates on the nature of the matter, in 2016, the STF validated the understanding that suits involving unlawful actions against the treasury may be time-barred upon reviewing Extraordinary Appeal No. 669.069/MG, which was admitted based on the general repercussion regime. The court explained, however, that the guidance contained in the judgment does not apply to reimbursement of damages to the treasury due to the commission of acts of administrative corruption, which was found not to be subject to a time-bar by virtue of the interpretation of the rule set forth in article 37 of the Federal Constitution.

In other words, the STF understands that the no-time-bar rule for suits for reimbursement to the public treasury has exceptions (including suits for reimbursement of damages for misconduct characterized as public corruption and suits arising from criminal offenses).

The Superior Court of Justice (STJ), in the wake of the STF's ruling, established a position that suits for reimbursement of damages to the treasury due to acts of public corruption cannot be not time-barred.

With regard to civil penalties and sanctions (removal from office, civil fine, prohibition against contracting with the Public Authorities, prohibition on receiving benefits/tax incentives), the understanding settled under the scope of the STJ is that the limitations period is five years, and that limitations period runs as of the actual holding of the position by the public agent.

That is, with regard to the civil penalties under the Public Corruption Law, it is possible to argue for the limitations period of five-years, including for companies that are beneficiaries of the alleged corrupt act. Thus, it is possible to avoid the severe penalty of prohibition on contracting with the public authorities and to receive tax benefits and incentives after the expiration of five years.

Finally, it is worth discussing the STJ's understanding on tolling the statute of limitations on suits for public corruption, which is recognized as of the mere filing of the suit within a period of five years, counted from the end of the term of office of the commissioned position or a position of trust, even if the defendant's summons is effected after that time limit.

