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NEWS AND DEVELOPMENTS

STF and Statute of Limitations in Administrative Improbability: what are the limits of interim relief?

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Law No. 14,230 of 25 October 2021 introduced a wide-ranging reform of Law No. 8,429/1992, known as the Administrative Improbability Law. Among the most significant changes are the requirement of specific intent (*dolo específico*) for the configuration of acts of improbity, the possibility of civil non-prosecution agreements, the redefinition of sanctioning hypotheses and, above all, changes to the regime of limitation periods and statutes of limitations during proceedings (*prescrição intercorrente*).

In response to these changes, the National Association of Members of the Public Prosecutor's Office (CONAMP) filed Direct Action of Unconstitutionality (ADI) No. 7,236, accompanied by a request for interim relief, alleging that various provisions of the reform violated constitutional principles such as

The issue quickly gained prominence before the Federal Supreme Court (STF). On 27 December 2022, Justice Alexandre de Moraes, the rapporteur, partially granted the injunction, *ad referendum* of the Plenary, suspending provisions of the law relating to prescription. This was followed, on 16 May 2024, by a complementary vote in plenary and, on 23 September 2025, by a new *ex officio* interim decision, motivated by the alleged imminent risk of mass expiry of actions for improbity.

The object of ADI 7,236 fell upon Article 2 of Law No. 14,230/2021, insofar as it amended several provisions of the Administrative Improbity Law. Of these, Article 23, § 5 drew particular attention: it provided that, once the limitation period was interrupted, the deadline would resume at half the original time, that is, only four years. CONAMP argued that this rule was incompatible with the reality of Brazilian civil procedure, in which complex actions take, on average, almost five years to be processed in each instance, which would render accountability for acts of improbity impracticable.

The analysis of interim relief in ADI 7,236 reveals three successive moments in which the Supreme Court sought to balance the risks posed by the immediate application of the reform.

In the first decision, on 27 December 2022, the rapporteur partially granted the injunction, recognising *fumus boni iuris* and *periculum in mora* only in relation to prescription. The provisions dealing with limitation periods and statutes of limitations during proceedings were therefore suspended, while the other requests were denied.

On 16 May 2024, Moraes delivered a vote in Plenary declaring the partial nullity, with reduction of text, of Article 23, § 5, in order to exclude the expression that halved the limitation period. The aim was to prevent the eight-year period, after interruption, from being reduced to four. The judgment, however, was suspended by requests for review from Justices Gilmar Mendes and Edson Fachin.

rapporteur *ex officio* supplemented the interim relief. He reiterated that the regime of prescription during proceedings undermined the effectiveness of the law and once again suspended the validity of the expression that reduced the period.

The rapporteur's decisions were based on some central grounds.

The plausibility of the argument that the reduction of the deadline weakened the constitutional protection of probity (Article 37, caput and § 4 of the Constitution) was emphasised. Also highlighted were the concrete risk of the mass extinction of ongoing proceedings, the incompatibility of the reduced period with the complexity of improbity actions – which require extensive evidentiary proceedings and adversarial debate – and the consistency of the measure with STF precedents, such as ARE 843.989-RG, which recognised the imprescriptibility of claims for damages to the Treasury caused by intentional acts.

Although correct in identifying the danger of generalised prescription, the interim relief may be criticised for its premature character. The immediate suspension of § 5, since 2022, eliminated the effectiveness of the provision at once, without considering alternatives such as modulating effects on the basis of concrete cases of prescription. An intermediate solution would have allowed at least partial preservation of the legislative intent to expedite proceedings.

On the other hand, the complementary measures of 2024 and 2025 show the STF's attention to the practical realities of the judiciary. Data presented by state Public Prosecutors' Offices indicated that application of the rule would result in the limitation of thousands of actions. The Court's action, in this context, illustrates its role as guardian of constitutional effectiveness, adjusting the legal text to bring it into line with the republican principle and administrative morality.

Nevertheless, within the scope of interim relief, the injunction granted presents a serious problem, namely that it empties the Plenary of its jurisdictional competence. By granting relief before the lapse of the time

action. In this sense, it would have sufficed to grant the injunction one day after the lapse of the statutory deadline and thereafter submit the matter to the scrutiny of the Plenary.

The trajectory of ADI 7,236/DF reveals how the Supreme Court progressively intervened, between 2022 and 2025, to set aside the effects of the rules on prescription introduced by Law No. 14,230/2021. The focus was on Article 23, § 5, whose provision for reducing the period, after interruption, could prematurely extinguish thousands of actions for improbity.

The strongest argument for intervention lies in the risk of prescription without inertia on the part of the claimant. In lengthy and complex proceedings, the punitive claim could be extinguished even where the Public Prosecutor's Office or the legitimate public entity had acted diligently, contrary to the very logic of prescription in Brazilian law, which has always been linked to procedural inactivity.

Even so, less drastic solutions could have been envisaged, such as making the reduction of the deadline conditional upon proof of the claimant's inertia, thereby preserving the legislative intent of conferring greater speed on proceedings. The Supreme Court's monocratic decision, in suspending a legal provision dependent upon the passage of a specific period of time, opens the door to criticism of possible premature interference in the normative framework, since the effectiveness of this provision would still depend upon the occurrence of a factual condition.

Ultimately, the interim relief in ADI 7,236 highlights the classic dilemma of constitutional review: protecting administrative probity and ensuring the effectiveness of the accountability system, but at the cost of straining legislative autonomy and the separation of powers. In this context, an injunction cannot be granted in such a way that it empties the very content of the direct action of unconstitutionality, depriving the Plenary of its decision-making competence.

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