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The regulation of statute of limitations within the scope of the TCU

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After many years of adopting an understanding that diverged from the jurisprudence of the Federal Supreme Court – STF on the statute of limitations applicable to proceedings in the audit courts, the Federal Court of Auditors – TCU revised its position and issued, on October 19, 2022, Resolution No. 344/2022, which recognizes the incidence of the five-year period provided for in Law No. 9.873/1999.

The main novelty brought by Resolution No. 344 is the overcoming of the understanding that the general ten-year term provided for in art. 205 of the Civil Code, since the STF consolidated its jurisprudence to apply to TCU the five-year limitation period provided for in Law No. 9.873/1999. In line with the jurisprudence of the Supreme Court, therefore, Resolution No. 344 points out that the statute of limitations under the TCU will comply with said Law.

This, however, will not entirely prevent controversies on the subject. Resolution No. 344 establishes that the accrual of the statute of limitations begins with the filing of the accounts' report (or on the date on which the filing should occur) or from the knowledge of the fact by TCU, when there is no obligation to render an accounts' report. The date of knowledge of the fact, however, cannot always be objectively identified, which should lead to new discussions within the scope of the TCU itself and also the Judiciary.

Another relevant novelty brought by the Resolution is the regulation of interim statute of limitations, which will occur whenever the process is stopped in court for more than three years without judgment or order. Also according to the new legislation, both regular and interim statute of limitations can be assessed ex officio by the court or by provocation of the interested party at any time.

Resolution No. 344/2022 also reflects the statute of limitations interruptive causes provided for in Law No. 9.873/1999. Thus, according to the new rule, the statute of limitations within the TCU can be interrupted by (i) notification, testifying, summons, or hearing of the respondent; (ii) by any unequivocal act of investigation of the fact; (iii) by the attempt at a conciliatory solution; and, finally, (iv) by the appealable decision.

Although there is no precise definition of what would constitute an unequivocal act of investigation of the fact, the Resolution expressly states that acts of mere procedural instruction that do not materially interfere in the course of the investigations (such as request and granting of access, issuance of certificates, provision of information and filing of power of attorney) do not interrupt the interim statute of limitations.

If the statute of limitations is confirmed, the court must dismiss the case. However, this does not prevent, in the most relevant cases, the analysis of the accounts and the determination of the adoption of measures in order to guide the Public Administration. Although not reflected in Resolution No. 344/2022, the TCU Plenary approved a R$10 million floor amount for the possible continuity of processes in which the statute of limitations has already been recognized.

Resolution No. 344/2022 is already in force and, according to its language, applies only to processes in which there is no final decision within the TCU. However, it is possible to have requests for review of cases that have already become final, as well as the filing of lawsuits to have TCU decisions rendered before the Resolution barred by statute of limitations.

Despite controversies that may remain, it is expected that the new rule will provide greater predictability and security for public administrators and private parties that maintain relations with the Public Administration.

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