

Brief Commentaries on the change to the Law of Introduction to the Brazilian Law Norms - LINDB



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On April 27, 2018, Law 13655/18 was enacted and introduced new articles to the Law of Introduction to Brazilian Law Norms - LINDB. The purpose of the law is to provide greater legal certainty in relations between public officials and decision-making bodies, be it judicial, administrative or control. Such law has been the object of praise and criticism on the part of academic writing. On the one hand, the control bodies, the Judiciary and the Prosecution Office, point out that some aspects may in the end lead to impunity. To the contrary, several jurists have expressed their support for the law, emphasizing that it is a mechanism capable of conferring predictability in relations with these bodies, which, consequently, will make government more efficient, since managers will opt for the best result instead of choosing the route that entails the lowest risk of liability.

Article 20 of Law 13555/18 ensures that decisions issued by administrative, control and judicial bodies cannot be based on "abstract legal values without considering the practical consequences of the decision". What is clear from the wording of the aforementioned provision is that, in issuing a decision-making content, the judge must take into account the concrete difficulties of the manager, that is, he will have to make a comparison of those factual circumstances to accommodate or dismiss a particular note. In addition, the sole paragraph of the provision in question imposes a kind of argumentative burden, inasmuch as it ensures that the reasoning must demonstrate the necessity and adequacy of the measure imposed or the invalidation of the act, contract, agreement, process or administrative rule. Although there is already a legal provision regarding the need to provide a reason for administrative acts under Law 9784/99 (and also as a crucial principle of the Rule of Law and of the legal-administrative regime), the new law has more defined contours for everyday situations faced by the public administrator.

Article 28, on the other hand, deals with the personal liability of public agents and indicates that managers will be held personally liable for their decisions or technical opinions in the event of fraud or gross error. Although the paragraphs have been vetoed, the remaining content of the provision seeks to provide the necessary security so that the agent can duly act towards seeking the public interest for fear of facing any penalty.





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It will be fundamental to follow up on the legal issues that will be raised by the articles incorporated into the Law of Introduction to the Brazilian Law Norms, in order to understand their effective application and even from a sociological perspective, to verify if the issues that it aims to tackle in practice are being addressed, within an expected evolutionary perspective of finally taking root in the much-desired legal certainty in the country.