



Taking Rights Seriously

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If you have any questions regarding the matters discussed in this publication, please contact the office.

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Asset-freezing orders against individuals and legal entities based on acts of misconduct in public office has become routine in the Judiciary, wherefor it is increasingly rare to find situations in which Defendants do not have their assets blocked at the beginning of the proceedings, before even hearing the charges against them.

This measure aims to ensure that defendants have sufficient property to compensate the treasury, and the complaint must demonstrate, with sufficient argumentative burden and robust evidence, the actual occurrence of damage to the treasury or unlawful enrichment of the agent, as determined by Article 7 of the Misconduct in Public Office Law.

However, what we have seen is that, in some cases, the freezing of assets is determined as a form of early punishment on the Defendants, without a consistent concern about the need to block the assets to guarantee occasional future reimbursement to the treasury.

The situation is even more worrying if we consider the actions of misconduct in public office filed on the basis of Article 11 of the aforementioned law, given that this legal provision sets forth hypotheses concerning acts that violate the principles of public administration, namely, the duties of honesty, impartiality, legality and loyalty to institutions. When the practice of these conducts does not involve money, it is not possible to speak of damage to the treasury, which makes the granting of injunctions based on it unfeasible. Acts of misconduct in public office that inflict damage of an effective monetary nature are broken down into specific articles, namely, Articles 9 and 10 of Law 8429/92.

The first lesson that remains from these brief reflections is to draw attention to the need for robust evidence in determining the freezing of assets of defendants accused of misconduct in public office, since these are exceptional, restrictive measures of law, which must be imposed by the court in situations where the agent's intent to undermine his assets in a way to defraud the anti-corruption system proves unequivocal. Appearance does not suffice!





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The second lesson is to demonstrate that in the case of legal actions based on misconduct in public office under Article 11 of the Misconduct in Public Office Law, there is no legal plausibility in determining the freezing of assets in cases that do not involve pecuniary values.

It is really necessary to take this exceptional measure seriously, lest we turn back to the times of the absolutist kings of France and suffer irreparable harm to the Rule of Law, as per our constitutional framework.