

TCU and its “non-mandates”



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ABSTRACT

Contrary to what many people believe, the powers constitutionally granted to the Federal Court of Accounts of Brazil (TCU) do not comprise every matter regarding the management of money or property of the federal government. The Court’s monitoring powers have clear limits when it comes to matters that do not concern external control, such as tax, criminal and labor demands. However, there are areas where such limits are not so precise. The Court has been issuing resolutions that seek to more strongly mark off the actual limits of its powers in recent years, affirming not to be of competent jurisdiction to judge such matters. This article presents some limits of the competent jurisdiction of the Federal Court of Accounts of Brazil, including some controversial matters that its ministers affirmed to be out of TCU’s scope of monitoring powers.

Keywords: External control. Federal Court of Accounts of Brazil. Jurisdiction. Limits.

1. INTRODUCTION

Article 71 of the Constitution grants the Federal Court of Accounts of Brazil monitoring powers, which can be summarized as follows: to oversee the investment of funds of the federal



government and evaluate the accounts of administrators and others responsible for the money, assets, and values of the federal government. The other courts of auditors in the country hold similar powers and what sets each one of them apart is the ownership of public resources under their competent jurisdiction.

TCU's competent jurisdiction is not automatically initiated by the mere existence of federal resources. It is also necessary that the matter under discussion is included among the powers granted to the Court according to Article 71 of the Federal Constitution. That means that not every investigation of irregularities in the use of funds of the federal government shall be subjected to TCU. Tax or criminal matters, for example, are not under the external control exercised by the courts of accounts. Even administrative matters can often be outside the limits of such control. In a 2004 full court trial, for example, the Supreme Court vetoed the TCU to meddle in decisions regarding the desirability

and advisability of decisions made by the public administration, even in cases where federal funds were involved¹.

The following paragraphs discuss the most controversial limits among those that the Federal Court of Accounts of Brazil affirmed it was out of their competent jurisdiction to judge them, despite seeming otherwise. Such funds may either not be understood as federal government funds, or the monitoring of its use is outside TCU's scope of external control monitoring body.

2. FINANCIAL TRANSACTION WITH OFFICIAL BANKS

Financial institutions like *Banco do Brasil* (BB), *Caixa Economica Federal* (CEF) and *Banco Nacional de Desenvolvimento Econômico e Social* (BNDES) are under the competent jurisdiction of TCU because they have federal assets and their transactions manage federal funds. Nevertheless, TCU's external control is not

Table 1

Competent jurisdiction of the Courts of Accounts in Brazil

Court	Location	Holder of Public Resources Under Jurisdiction of the Court
Federal Court of Accounts of Brazil	Brazil	Federal Government
State Court of Accounts	One in each state plus the one in the Federal District	State or Federal District where the court is located. In states where there is no municipal court of accounts, the competent jurisdiction is of the State Court of Accounts
Municipalities Court of Accounts	Bahia, Ceará, Goiás and Pará	Municipalities of the state where the court is located
Municipal Court of Accounts	Cities of São Paulo and Rio de Janeiro	Municipality where the Court of Accounts is located

extended to the monitoring of the implementation of such resources.

Loans and financing granted by federal banks have basically three recipients: individuals, private companies and government agencies. Whenever controlling these transactions, TCU's role is restricted to the examining of the legality, legitimacy and purpose of the operation, overseeing that they do not end up being detrimental to the bank and, therefore, to federal government. In summary, the Court evaluates three requirements: if there was compliance with the rules of the bank to ensure the correctness of the transaction; if the collateral offered by the credit borrower is sufficient and payable; and if the funds met their intended purpose, since TCU does not accept, for example, that the bank employs such funds for a different social program than it was intended to or an incentive given to a different economic activity. However, once these requirements are met at the grant stage of the financial transaction, TCU's competent jurisdiction to oversee the investment of funds is over. This is due to the fact that, from the moment it leaves the treasury of the official bank, the money loses its nature of federal fund. Either it becomes a private resource, when granted to an individual or a private company or the competent jurisdiction is then transferred to the corresponding court of accounts, in cases where the money is granted to a state, the federal district or a municipality.

Minister Valmir Campelo's prevailing opinion of Resolution 3067/2012-TCU-Full Court is very clear about it: "It is worth repeating that under these situations in which the federal government investment is limited to the financing of federal banks, it is up to the TCU to assess the regularity of such credit transactions, only in its constitutional limits, which involves examining the funds and the collateral offered."

Only under two circumstances do the funds remain under the competent jurisdiction of TCU after being released: the first is whenever the credit or financing borrower is part of the federal government itself and is under the competent jurisdiction of the Court, such as Petrobras or *Companhia de Docas de São Paulo*. The second occurs whenever the operation is identified as a fraudulent one and an employee of the financial institution is involved. In this case, the TCU can exercise its competent jurisdiction in order to prosecute and punish those responsible for the damage. The prerogative of the Court is

provided for in its regulation that authorizes the joint responsibility of «the public official who commits the irregularity» and «the third party, such as the contracting party or the individual interested in the irregularity that in any way that contributed to the assessed damage»². While examining *Banco do Brasil's* financing of the state of Pará's navigation company in 2005 TCU identified fraudulent procedures committed by the company's representatives alongside with the bank managers. The Court then determined that the responsibility was of the managers as well as of the company's representatives, and ordered them to give the fraudulently obtained funds back to the treasury (Resolution 39/2005-TCU-Full Court). Substitute-minister Lincoln Magalhães da Rocha recalled that investigated the facts did not deal "merely with unsuccessful trade operations due to default of the company's representatives, which would only be under the competent jurisdiction of courts of general jurisdiction, but it dealt with the commission of serious offenses against the Public Administration, which partially owns this Bank, [...] thus damaging the treasury, since most of these funds make up the assets of the federal government."

However, if an individual or the company borrowing the resources alone commits the fraud without the participation of a bank employee, the appropriate body to take care of this matter would be the courts of general jurisdiction. It is important to mention that the Federal Court of Accounts - Brazil, recently updated its understanding and now considers that the individual agent that damages the public treasury is subject to accountability by TCU whether having acted with the help of a public official or alone. Nevertheless, the rapporteur himself of such innovative resolution³, Minister Benjamin Zymler, made it clear in his vote that the possibility does not reach the credit transactions regularly made by official banks (*italics in the original*):

Also based on this understanding, there may be situations where the nature of the operation that damaged the treasury does not justify or recommend TCU's intervention. Take, for example, default on regularly held private loans by official banks - i.e. in accordance with the relevant regulations. First of all, because the number of such operations would require significant effort and control bodies, removing them from acting in more relevant situations. Second, because they are typically

private transactions in accordance with the separate legal status of private companies that are subject to official financial institutions (article 173, section 1, item II of the Federal Constitution).

Although TCU does not monitor the application of funds, it may determine additional measures aimed at protecting the public treasury in some of the credit lines of these banks. One example is the financing provided by BNDES for the construction sites of the 2014 World Cup in Brazil. The bank created a specific credit program called “ProCopa Arenas” to finance the construction and renovation of stadiums for the competition. The amount of contracted funds reached a sizable figure: 4.15 billion reals⁴. Only Brasilia’s National stadium did not receive any funds from the federal government out of the twelve stadiums built/renewed for the World Cup. Not only due to the large sum involved, but also to preserve the “image of the country abroad, as well as any unintended consequences that may occur following the 2014 World Cup (e.g. increase in public debt due to mismanagement of public resources), “in Ruling 845/2011-TCU-Full Court the court established some conditions to be fulfilled by BNDES financing upon approval and release of funds: a) a thorough analysis of the budget of the works to identify any inaccuracy in costs involving both construction methods or execution time, b) no sum was released if there was any “evidence of irregularities according to federal oversight bodies. Such irregularities should be overcome in order for the funds to be released”, and c) in order to release any installment that represented over 20% of the total amount of resources, there should be a previous approval of both FIFA and the TCU.

Besides these very exceptional situations, since this is about hosting a World Cup with stadiums almost entirely financed by the federal government, the rule for the loans granted by federal banks was, however, that the TCU limited its role to that of overseeing the regularity of the transactions with official banks, and the

following assessment of a possible failure or misuse of such funds are outside its monitoring scope.

3. EXTERNAL CREDIT TRANSACTIONS APPROVED BY THE FEDERAL GOVERNMENT

States, the Federal District and municipalities may take out loans abroad. In order to do so, they should get permission from the Senate, as set forth in Article 52; paragraph V of the Federal Constitution. As the foreign institution usually requests collateral from the federal government, the Senate should also “provide for limits and conditions for the granting” of that security (article 52, section VIII of the Constitution).

The official act by which the Senate authorizes a member of the federation to take out external credit is then forwarded to the TCU to track any guarantees offered by the federal government. Such monitoring by the Court is not, however, the monitoring of the implementation of the funds received, but only a cautious measure to protect the federal government as guarantor of the transaction.

In the prevailing opinion of Resolution 2327/2013-TCU-Full Court, Minister Ana Arraes stated:

[...] Regarding foreign credit operations signed by legal agencies of public bodies, I emphasize that TCU’s competent jurisdiction is to control the guarantees offered by the federal government and its role does not include the monitoring of the implementation of the funds of such financial transactions.

Once the financing transaction is over, the funds belong to the contractor for it is the contractor’s obligation to repay such debt with its own funds. The monitoring of the application of the obtained funds lies with the corresponding court of accounts, highlighting the federalist principle (art. 18 of the Constitution).

Table 2

Resources obtained from official federal banks

Credit Borrower	Authority to oversee the implementation and assess any irregularity
Individual or private company	Courts of general jurisdiction, unless the irregularity is committed alongside with a bank employee, whenever the competent jurisdiction is of the Federal Court of Accounts
Agency within the Federal Government	Federal Court of Accounts of Brazil
State or Federal District	State or Federal District Court of Accounts
Municipality	State Court of Accounts. In Bahia, Ceará, Goiás and Pará the competent jurisdiction lies with the Municipalities Court of Accounts. In the cities of São Paulo and Rio de Janeiro, the competent jurisdiction lies with the corresponding Municipal Court Accounts

Should the federal agency that borrowed the money default the debt and the guarantor, the federal government, become responsible for paying such debt, the National Treasury is required to report such situation to the Federal Court of Accounts and the Senate within 10 days “stating the measures taken and those that will be taken in order to receive the money back”⁵. According to Article 18, section 4 of resolution 43/2001 of the Senate, “the State, the Federal District or the Municipality that had the federal government pay its debt [...] as a result of a guarantee provided for a foreign loan can not take out new credit loans until the full settlement of the aforesaid debt.”

4. LOAN WITH FGTS FUNDS

According to the law governing the Guarantee Fund for Time of Service (FGTS), the fund’s resources should be invested in housing, sanitation and urban infrastructure⁶. With regard to investments in sanitation and urban infrastructure, recipients are generally states and municipalities, although there are also lines of credit to the private sector, as the Sanitation for All Program, aimed at private sanitation concessionaires. The financial institution responsible for the collection and application of fund resources is the *Caixa Economica Federal* (CEF).

Although the FGTS consists of deposits raised to Brazilian workers - holders of the funds - the Federal Court of Accounts has understood that such resources are of a public nature. Minister Adhemar Paladini Ghisi stated in his prevailing opinion vote of Resolution 241/1993-TCU-Full Court of June 16, 1993 that:

There are, however, among the resources that make up the FGTS and savings accounts - in this case, the ones held at CEF - differences to be considered. Both undoubtedly belong to individuals that hold individual accounts. However, there are huge differences in the withdrawing and destination of both. While the first, FGTS, is governed and disciplined by a series of rules issued by the State, as regards to the funds destination for housing and sanitation programs, as well as to the mere handling by the account holder. In the second, savings accounts, we have funds that can be very flexibly used, according to what best suits the account holder.

Then we understand that the mere interest of the state to provide the FGTS grants it the

condition of *res publica* (a public affair, in English), becoming then responsible for a more effective supervision.

New arguments were added to such understanding by Resolution 833/1997-TCU-Full Court of November 26, 1997. Minister Benedict Joseph Bugarin was the rapporteur:

Nevertheless, there is evidence of the competent jurisdiction of the Federal Court of Accounts due to the fact that the CEF is the operating agent of the FGTS, pursuant to article 4 of Law No. 8.036/90, “the federal government may be responsible for its misuse” [...]. Consequently, despite the court precedents that disqualify the FGTS as a public revenue and therefore as tax revenues as well, its everyday use and even legislation (Law No. 8.844/94) have treated it as public fund.

Once the debate about the public nature of the deposits that make up the fund is over, TCU’s monitoring of loans granted by *Caixa Economica Federal* with FGTS follows the same rule applied to other loans and financing granted by official banks: the Court evaluates only the regularity of the loan and ensures that resources reach their intended purpose and that the collateral offered by the borrower is sufficient.

Based on this understanding, TCU has repeatedly declared itself without competent jurisdiction to oversee the implementation of FGTS (Resolution 166/2000-TCU-Full Court and Resolutions 2768/2006-TCU-Second Chamber and 678/2010-TCU-Full Court, among others). Minister Marcos Vilaça presented insightful thoughts on the matter on the prevailing vote of Resolution 1007/2000-TCU-Full Court:

I think it is not among the attributions granted by the Federal Constitution to the TCU, in its article 71, the monitoring of the application of funds transferred by the federal government to federal agencies through funding agreements. Once such funds have been transferred to State (or Municipal) Treasuries, in my opinion, they become property of those agencies and should be monitored by the State (or Municipal) Court of Auditors, according to our federal pact. Such funds

lent to states through onerous contracts, should be returned in the contractually established form to the lender, and they are not to be mistaken with the "straight-grant" funds transferred by the federal government to States and Municipalities through "covenants, agreements, arrangements or other similar instruments" that assign TCU the monitoring responsibility according to clause of Article VI of the Constitution and section VII of article 5 of the TCU Regulations.

When managing covenant funds, the State or the municipality is using federal funds in order to achieve goals that are also of the federal government, and is therefore subject to monitoring from both parties. Such funds are linked to the purpose for which they are intended, and shall be applied as established in the covenant, otherwise they shall be given back to the federal government, and are also subject to sanctions by the TCU.

Whenever managing funds from loan or financing, the federal agency is ultimately managing its own resources whose future availability is anticipated, at the cost of the interest involved in the transaction. Therefore, it is up to the State or Municipal Court of Auditors to monitor the implementation of these funds.

Admittedly project financing contracts often contain disciplinary clauses for the application of funds, entered by the lender as a way to ensure the fulfillment of the project and hence the return on the investment. In such cases, and the contract determines the monitoring of the implementation of the funds by the lender. This, however, does not grant competent jurisdiction for the TCU to monitor the implementation of such funds.

5. COMPETITIVE BIDDING

Article 113, section 1 of the Law 8.666/1993 (Competitive Bidding Law) authorizes "any bidder, contractor, or person or agency" to make a complaint to the TCU against irregularities in bids or contracts involving federal funds. As the Court has the precautionary power to halt competitive biddings, it eventually became the major recipient of complaints intended to challenge errors in competitive bidding processes or contracts by agencies and organs that involve the use of federal funds.

The certainty that the budget allocation is of federal nature used in the competitive bidding or

contract does not, however, guarantee that TCU has the competitive jurisdiction over the reported error. The Court has been stating in a number of rulings that it is not of competent jurisdiction to examine complaints that do not privilege the public interest in recent years. The position of Minister Benjamin Zymler in the prevailing opinion of Resolution 789/2009-TCU-Full Court stated that:

We recognize TCU's competent jurisdiction to receive complaints concerning companies hired by the federal government, due to irregularities in the implementation of the Statute of Competitive Bidding as set forth in article 113, section 1.

However, there is no protecting private interests in this Court. Despite any previous resolutions, any ruling given by TCU that may eventually seem to benefit a company that has filed a complaint reporting possible contractual irregularities happens for the benefit of the public interest, since it remains the most important thing in the analysis of contracts between the Administration and private interests, for the most important aspect of the regulations of competitive bidding as set forth in article 113, section 1, of the Competitive Bidding Law, is to preserve and protect the public interest and not private ones.

If public interest is not identified in the contractual relationship, the competent jurisdiction of the TCU must be excluded, for it is not the to not the appropriate forum to make such analysis.

Substitute-Minister Weder de Oliveira follows that same line of thought in his opinion of Ruling 8071/2010-TCU-First Chamber:

The possibility of filing a complaint at this Court as set forth in article 113, section 1, of Law 8.666/1993 is broad and in principle can involve any and all administrative actions governed by the competitive bidding law, including the decommissioning of proposals.

[...].

However, one cannot forget that the competitive bidding process and the right to file a complaint do not seek the protection of individual interests when the public interest is not clear.

[...].

To bring the analysis of administrative acts in a competitive bidding process before the TCU, in which the public interest is not clear turns it into a new instance of appeal for bidding processes in the various agencies and organs of the Federal Public Administration, something that is clearly not in compliance with the Brazilian Laws.

The consolidation of such understanding has led to important changes in the regulations of the Court itself, introduced on January 1, 2012. Until then, Article 276 of the TCU's regulation authorized it to adopt precautionary measures "in case of emergency, a well-founded fear of serious harm to the treasury or the rights of others or the risk of ineffective decisions on the merits." In the new wording of the regulation, however, the same article went on to determine the adoption of the precautionary measure could no longer be founded on the fear of serious harm "to others' rights", but on well-founded fear of serious harm "to the public interest"⁷.

Based both on consolidated court precedents as well as on the new wording of its regulation, the Court started excluding complaints whose purpose are not to protect the public interest, but private ones. Therefore, even in situations whenever there is a flagrant violation of the law or the bidding invitation in a competitive bidding process that does not harm the public interest, TCU understands that the Judiciary must address such third-party complaints.

In Resolution 4056/2010-TCU-First Chamber, for example, the Court found irregularities in the bidding invitation that restricted competition. Nevertheless, its rapporteur, Minister Walton Alencar Rodrigues, considered that the failure in question did not result in damage to the public interest because the event a reasonable number of bidders and there had been big discounts after the first bidding phase. Besides that, the administration had used electronic bidding methods, which "encourage competition and lower the probability of irregularities".

6. ADDITIONAL SITUATIONS OUT OF TCU'S SCOPE

There is a list of the additional situations below that are also out of TCU's scope of monitoring. They are exposed more briefly, clarifying the reasons for the matter to be out of TCU's scope of monitoring and with excerpts of the resolutions that settled them.

- i. Use of initial credit for those who benefited from the Land Reform Program

Why is it not TCU's competent jurisdiction?

Although granted by the federal government through the National Institute of Colonization and Agrarian Reform (INCRA), the initial credit becomes of a private nature at the moment that the beneficiary receives it. TCU's task is only to monitor the regularity of the grant operation and the actions taken by Incra for credit recovery.

Court precedents

Resolution 2001/2010-TCU-Full Court, reported by substitute-Minister Weder de Oliveira:

Once the credits are granted, they are no longer public funds, but they now belong to the program beneficiaries. In the public sphere the record of the receivable from each of the borrowers remains, but not of the funds themselves.

[...]. The program beneficiaries should be the most interested in ensuring the proper application of their own resources, and that in due time, the funds shall be restored to the treasury under the conditions specified in the financing [...].

The misapplication or misuse of these resources will harm the beneficiaries, and not the public treasury directly. Possible harm to the treasury will occur in the event of default in payment of installments of the loan agreement [...]. The correct management of the grantor, however, shall mitigate the risk of default and will increase the credit quality and the results the government intends to achieve with it.

- ii. Management of federal ports and highways granted to states and municipalities

Why is it not TCU's competent jurisdiction?

After the delegation agreement signed in accordance with the law 9.277/1996, management acts - those that do not involve the use of funds of the federal government - undertaken by state or municipal authority in charge of the federal port or highway shall be monitored by the corresponding State or Municipal Court of Accounts.

Court precedents

Summary of Resolution 1168/2013-TCU-Full Court, reported by Minister Ana Arraes:

REQUEST OF AUDIT SENT BY THE PRESIDENT OF THE COMMITTEE ON FINANCIAL SUPERVISION AND CONTROL OF HOUSE OF REPRESENTATIVES. POSSIBLE IRREGULARITIES IN THE MANAGEMENT OF THE *Paranaguá* and *Antonina* (APPA) PORTS. COMPLAINT WAS DENIED. LACK OF COMPETENT JURISDICTION OF THE COURT. FORWARD THE INFORMATION. DISMISS THE REQUEST.

It is up to the State Court of Accounts to oversee the management actions practiced by state and local authorities that have been granted federal public goods that do not involve the use of funds of the federal government.

- iii. Funding of the National Program for Strengthening Family Agriculture (Pronaf)

Why is it not TCU's competent jurisdiction?

Although granted by the federal government through the Department of Family Agriculture (SAF) of the Ministry of Agrarian Development and with the aid of federal banks as agents, the Pronaf funding becomes of a private nature once it is given to the farmer. The competent jurisdiction of the TCU is to oversee if the SAF and the Central Bank adopted measures set forth in the regulations of the program (SAF Ordinance 12/2010, MDA Ordinance 17/2010 and the Rural Credit Guideline).

Court Precedents

Resolution 1942/2013-TCU-Full Court, reported by Minister Ana Arraes:

First, it is important to clarify that it is essential to know the nature of the funding granted under the agrarian reform programs to assess whether they are under the competent jurisdiction of the TCU. When they refer to the relationship formed between an individual and a financial institution, there is no longer competent jurisdiction of the Federal Court of Accounts.

The program of transfer of funds here, Pronaf A, is a line of investment structuring properties of settlers. In this sense, in principle, the withdrawal of the settlement does not harm the treasury, because there is no evidence that the resources for investment in the property have not been used for this purpose. As a rule, loans to dropouts or excluded beneficiaries are paid

off or assumed by new beneficiaries, since the expenditure is made on the property.

- iv. Issuing an opinion for the beginning of an investigation or administrative proceeding of another institution

Why is it not TCU's competent jurisdiction?

To issue an opinion on documents filed by federal prosecutors, the Federal Police or other institutions for instructional purposes of investigation or administrative procedure is not a part of the constitutional or legal powers granted to the Federal Court of Accounts

Court Precedents

Resolution 356/2010-TCU-Full Court, reported by Minister substitute Weder de Oliveira:

I emphasize, however, that is not one of the functions, powers and duties of the Federal Court of Accounts, as established in the Constitution, in its organic law, in its internal regulations and other laws, to express opinions on documents referred by other institutions for the purposes of beginning administrative investigation procedures.

Thus, despite being relevant, the requests for support of this external control agency are not met in the way requested.

The Federal Court of Accounts can participate in joint actions for the investigation of offenses practiced against the public administration, either through external control of its own processes, or to support actions undertaken by other State agencies.

7. CONCLUSION

Judges, federal prosecutors, Federal Police agents and even the Congressmen/women forward certain requests to the Federal Court of Accounts believing that, since they contain administrative matters or address the use of federal funds, they are in compliance with the mandatory powers granted to the TCU by the Federal Constitution. Complaints and irregularity claims from individuals and companies involve the same mistake. Many of these demands, however, are outside of the competent jurisdiction of TCU.

In the matters regarding the limits of the Federal Court of Accounts that are still not very certain, its ministers have sought to mark them off through court precedents in which the court repels matters outside its external control monitoring powers. Knowing and

respecting such limits is essential not only for the legal certainty of TCU's own decisions, but also to situate it properly and enhance its role within the current control structure of the government - a structure that holds TCU alongside great institutions such as the Office of the Federal Comptroller General, federal prosecutors and the legislative and judicial branches.

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NOTES

- 1 ADMINISTRATIVE LAW. DISCRETIONARY POWER. CHOICE OF CLERKS FOR THE PRESIDENT OF THE COURT. PER DIEM AND TRAVEL EXPENSES. The Presidents of the courts have, within the margin of discretion afforded to them, the power to decide on the timing and convenience in choosing servers to perform extraordinary tasks related to the administration's interest, due to the fact that they have a significant role in the administrative structure of the judiciary. Security granted. (WRIT OF MANDAMUS 23981. Rapporteur: Ellen Gracie. Full Court. Judged on February 19, 2004, Published on March 26, 2004).
- 2 Article 16, section 2, paragraphs “a” and “b” of the Law 8.443/1992.
- 3 Resolution 946/2013-TCU-Full Court, reported at the annual meeting of April 17, 2013 by Minister Benjamin Zymler.
- 4 According to figures in the table included in Resolution 2225/2013-TCU-Full Court, a total of 400 million reais were granted to Itaquera Arena through a financing that had the CEF as the intermediary.
- 5 Article 4, item I of normative instruction 59/2009 of the TCU.
- 6 Article 9, section 2 of the Law 8.036/1990.
- 7 Original wording of article 276: “The Full Court, the rapporteur, or, in the case of article 28, item XVI, the President may, in case of urgency based on the fear of serious harm to the treasury or to the rights of others or the risk of ineffective decision on the merits, *ex officio* or upon request, adopt a precautionary measure, with or without the hearing the parties involved, in order to determine, among other measures, the suspension of the contested act or procedure until the Court decides on the merits of the question raised, pursuant to article 45 of Law No. 8443, 1992”. New wording in force since 2012: “The Full Court, the rapporteur, or, in the case of article 28, item XVI, the President may, in case of urgency, based on the fear of serious harm to the treasury, the public interest, or risk of ineffective decision on the merits, *ex officio* or upon request, adopt a precautionary measure, with or without the hearing the parties involved, in order to determine, among other measures, the suspension of the contested act or procedure until the Court decides on the merits of the question raised, pursuant to article 45 of Law No. 8443, 1992”. contested act or procedure until the Court decides on the merits of the question raised, pursuant to article 45 of Law No. 8443, 1992”.