LUMEN ET VIRTUS
ISSN: 2177-2789

DAMAGE TO THE TREASURY: AN ANALYSIS ACCORDING TO THE LAW OF ADMINISTRATIVE IMPROBITY[1]

https://doi.org/10.56238/levv16n47-082

Submitted on: 03/22/2025 **Publication date:** 04/22/2025

Gustavo Dias Araújo[2] and Francine A. Rodante Ferrari Nabhan[3]

ABSTRACT

In this work, I analyze the damage to the treasury in the light of the Administrative Improbity Law, with the objective of understanding its impacts on public administration and the legal and institutional mechanisms aimed at its prevention and repression. The research is based on the assumption that the damage to the treasury directly compromises the execution of public policies, the provision of essential services and the credibility of state institutions. From a qualitative approach, based on bibliographic, jurisprudential and documentary review, I explore the fundamental concepts of administrative improbity, with a special focus on the modality that generates damage to public property. I also examine the changes brought about by Law No. 14,230/2021, especially the requirement to prove actual damage, and the effects of this change on the accountability of public officials. In addition, I present the main prevention and combat mechanisms adopted in Brazil, such as the role of the CGU, the TCU and the Public Prosecutor's Office, as well as international experiences applicable to the Brazilian reality. In the end, I conclude that the fight against damage to the treasury requires a combination of effective legislation, active inspection, a culture of integrity and the participation of society. The strengthening of these elements is essential to ensure a more ethical, efficient public management committed to the collective interest.

Keywords: Administrative Improbity. Damage to the Treasury. Public Management. Financial Control.

[1] Article presented to the Bachelor's Degree in Law of the Institute of Higher Education of Southern Maranhão – IESMA/Unisulma.

[2]Student of the Bachelor of Laws course at the Institute of Higher Education of Southern Maranhão – IESMA/Unisulma
E-mail: gusttaaraujo69@gmail.com
[3]Advisor Professor. Master in Management and Regional Development (UNITAU). Specialist in Tax Law, Civil Law and Labor Law and Procedure. Coordinator of the research group Fundamental rights and new rights – UNISULMA. Professor of the Bachelor's Degree in Law at the Institute of Higher Education of Southern Maranhão – IESMA/Unisulma
E-mail: francinenabhan@hotmail.com

INTRODUCTION

This article deals with the damage to the treasury from the perspective of the Administrative Improbity Law, addressing its impacts on public administration and the mechanisms of combat and prevention. The mismanagement of public resources compromises the functioning of the State, affecting the quality of services provided to the population and society's trust in government institutions. Administrative improbity, as conceptualized by Emerson Garcia and Rogério Pacheco Alves, "configures an ethical-functional deviation that affects administrative morality, compromising the public interest and legality that should guide the performance of the public agent" (2007, p. 31). This illicit conduct is manifested through acts that violate the constitutional principles of public administration, generating illicit enrichment, violation of functional duties or damage to the treasury.

Among the forms of administrative improbity, the damage to the treasury stands out, which is characterized by any intentional action or omission of the agent that results in patrimonial loss, misappropriation, misappropriation or dilapidation of public assets or resources. According to Maria Sylvia Zanella Di Pietro, this type of conduct directly compromises the execution of public policies, as it "removes from the State the resources necessary for the efficient provision of essential services, generating a cycle of inefficiency and social discredit" (2022, p. 726).

The choice of the theme is justified by the social and legal relevance of the fight against administrative improbity. From a legal point of view, Law No. 8,429/1992 plays a fundamental role in holding public officials and third parties responsible for causing damage to public property. From a social point of view, the mismanagement of resources directly impacts essential sectors, such as health, education, and infrastructure, aggravating inequalities and hindering sustainable economic development. In particular, the damage to the treasury generates concrete and immediate effects on the lives of the population, by compromising the realization of fundamental rights and the regular functioning of the public administration.

In this context, the guiding question of the present study is: **what are the main impacts of the loss to the treasury on the public administration and what mechanisms are most effective to combat it?** To answer this question, the main concepts related to administrative improbity, the analysis of the consequences of damage to the treasury and the effectiveness of legal and administrative instruments aimed at its prevention and repression will be addressed.

The research aims to analyze the effects of damage to the treasury on public management, identify the challenges faced in the accountability of the agents involved and suggest measures to improve inspection and control mechanisms. Methodologically, this is a qualitative research with documentary analysis, organized through a bibliographic and jurisprudential review, seeking to understand how the current legislation has been applied and what are the challenges faced in the fight against administrative improbity.

FUNDAMENTAL CONCEPTS OF PUBLIC ADMINISTRATION

To fully understand administrative misconduct and its impacts, it is essential to understand the fundamental concepts that govern public administration. The management of public resources must follow legal principles that ensure efficiency, morality and transparency in the conduct of state business. The Federal Constitution of 1988, in its article 37, establishes the basic principles of public administration, known by the acronym LIMPE: legality, impersonality, morality, publicity and efficiency.

The principle of legality, as taught by Celso Antônio Bandeira de Mello, imposes that "the public administration is entirely subject to the law, in such a way that it is only lawful for it to do what the law expressly authorizes" (MELLO, Celso Antônio Bandeira de. *Administrative Law Course*. 34. ed. São Paulo: Malheiros, 2017). Unlike the private individual, who can do everything that the law does not prohibit, the public administrator can only act within the legal limits.

Impersonality, in turn, guarantees equal treatment to citizens. According to José dos Santos Carvalho Filho, it "aims to prevent personal, partisan or subjective interests from interfering in administrative action, and the agent must act on behalf of the State and not for his own benefit or that of third parties" (CARVALHO FILHO, José dos Santos. *Manual de Direito Administrativo*. 33. ed. São Paulo: Atlas, 2020).

The principle of morality goes beyond formal legality. For Maria Sylvia Zanella Di Pietro, "it is not enough for the administrator to comply with the law; it is necessary that he acts with probity, honesty and good faith" (*Direito Administrativo*, 35. ed., São Paulo: Atlas, 2022). Morality requires that the administrative act not only conform to the norm, but also meet the ethical standards required by the public interest.

Publicity ensures the transparency of government actions, allowing social control over the administration. This principle is indispensable for the exercise of citizenship and the fight against corruption, as it allows citizens to monitor and inspect the acts of the State. Efficiency, introduced by Constitutional Amendment No. 19/1998, requires results-oriented

administrative action, seeking the best possible use of public resources, with speed and quality.

In the context of administrative improbity, non-compliance with these principles can result in damage to the treasury, one of the most serious forms of misappropriation of public resources. Damage to the treasury occurs when assets, funds or public assets suffer a negative impact due to fraudulent actions, embezzlement, mismanagement or corruption. These practices directly compromise the provision of essential services, such as health, education, and infrastructure, in addition to weakening society's trust in government institutions.

In addition to the direct financial consequences, the deterioration of administrative principles affects the structure of the State and its ability to meet the demands of the population. When legality and morality are ignored, an environment is created that is conducive to the perpetuation of corrupt practices, making enforcement ineffective and making it difficult to hold offenders accountable. Disrespect for impersonality, in turn, fosters clientelist practices and undue favoritism, compromising the impartiality of public decisions and increasing the risk of damage to the treasury.

Thus, ensuring strict compliance with the principles of public administration is essential to prevent the waste of resources and strengthen governance mechanisms. Measures such as independent audits, active transparency in public management, and strengthening of control bodies are essential to prevent non-compliance with these principles from leading to the misuse of public resources. Only through an integral and transparent administration is it possible to ensure that public assets are managed efficiently, ethically and for the benefit of the community.

ADMINISTRATIVE IMPROBITY: CONCEPTS, IMPACTS AND LEGISLATIVE AND JURISPRUDENTIAL UPDATES

CONCEPTS AND IMPACTS

Administrative improbity consists of the violation of the principles of public administration through acts that result in illicit enrichment, injury to the treasury or offense to the duties of honesty, impartiality, legality and loyalty to public institutions. The Administrative Improbity Law (Law No. 8,429/1992) aims to curb these practices and hold public and private agents accountable for causing damage to public property.

According to Emerson Garcia and Rogério Pacheco Alves, "administrative improbity translates into a functional ethical deviation that compromises public morality and society's trust in the administration." For the authors, the typification of conducts in Law No.

8,429/1992 was essential to accurately delimit the acts harmful to the collective interest, without losing sight of the protection of due process and adversarial proceedings.

The legislation establishes three types of administrative improbity: illicit enrichment, which occurs when a public official obtains an undue patrimonial advantage in the exercise of his function; damage to the treasury, which covers acts that cause financial loss to the State, such as misappropriation of resources, fraud in bids and irregular granting of tax benefits; and violation of administrative principles, which refers to conducts that, even without generating direct financial loss, violate the principles of morality, legality and administrative efficiency.

Damage to the treasury occurs when there is a negative impact on public finances, jeopardizing the execution of public policies and the supply of essential services. In this sense, Marcelo Alexandrino and Vicente Paulo teach that "the damage to the treasury is consummated with any conduct that diminishes, diverts or compromises public assets or values, even if there is no enrichment of the agent." Such a perspective reinforces the seriousness of these conducts, which transcend the economic aspect and compromise the social function of the State.

This type of improbity compromises essential public services, as the lack of resources, as a result of deviations, can lead to the precariousness of fundamental areas such as health and education. According to the doctrinaire Fabrício Motta, "the injury to the treasury directly affects the realization of fundamental rights, by restricting state action where it is most necessary."

In addition, administrative impropriety contributes to the slowdown of economic and social development, as it discourages investments and hinders the growth of the affected municipality or region. The misuse of resources also intensifies social inequalities, mainly affecting the most vulnerable population. Another significant effect of administrative misconduct is the erosion of public trust, as the weakening of the credibility of institutions impacts society's perception of governance and transparency, undermining the legitimacy of public power.

THE NEW WORDING OF THE ADMINISTRATIVE IMPROBITY LAW AND THE JURISPRUDENTIAL UNDERSTANDINGS

It is important to highlight that the Superior Court of Justice (STJ) has taken a clear position on the need for concrete demonstration of damage to the treasury for the configuration of the act of administrative improbity. In a recent judgment (REsp 2.067.709/PR, judged on 02/22/2024), the First Panel reaffirmed that, after the changes

promoted by Law No. 14.230/2021, it is no longer admissible to condemn based on the mere presumption of damage. The damage must be effectively proven, in line with the principle of legality and the requirement of legal certainty in sanctioning proceedings. Such an understanding consolidates the overcoming of the old thesis of "damage in re ipsa" and imposes on the control bodies and the Judiciary a higher evidentiary rigor in actions for improbity.

Imagine that a mayor dismissed a bid to buy medicines for the municipal hospital, claiming an emergency. Later, it was discovered that there was no legal justification for this dismissal, that is, he committed an irregularity in the procedure.

Before the reform of the law (Law 14,230/2021), the mere fact of not following the bidding could already be considered improbity with presumed damage to the treasury, even if the medicines had been purchased at a fair price and delivered normally.

Now, with the new law, it is necessary to prove that there was real damage to the public coffers, such as:

The medicines were overpriced, were never delivered, or were unnecessary and expired.

Without this concrete proof, it is no longer possible to convict for damage to the treasury. This was reinforced by the case law of the STJ in 2024, which understood that the so-called "presumed damage" is no longer admitted.

The requirement to prove the actual damage to the treasury, brought by Law No. 14,230/2021, represents a significant change in the application of the Administrative Improbity Law. From a guarantor perspective, this change can be considered positive, as it avoids convictions based solely on presumptions or assumptions of loss. Previously, practices such as undue exemption from bidding could give rise to sanctions even without concrete demonstration of damage to the public coffers. With the new legal requirement, it seeks to ensure that only acts that effectively cause proven damage are punished, reinforcing legal certainty, the principle of legality and avoiding unfair liability of managers who may have committed formal mistakes without bad faith.

However, from the perspective of control and protection of public property, the change also presents challenges. The requirement of actual damage can make it difficult to hold public agents who act intentionally accountable, but with sufficient sophistication to mask the damage caused. In cases such as disguised overbilling, accounting fraud, or granting of undue benefits, the damage may exist, but be difficult to measure accurately, which tends to weaken the mechanisms to combat corruption. This can even generate an

environment of impunity, especially when the inspection and investigation structure is limited or ineffective.

Thus, the legislative change demands an even more technical, efficient and structured performance of the control bodies, such as the Public Prosecutor's Office, the Courts of Accounts and the Office of the Comptroller General of the Union. In order for the requirement of proof of damage not to become an obstacle to accountability, it is essential to improve auditing tools, professionalize the investigation, and adopt integrity mechanisms in public administration.

Therefore, although the new wording of the law brings important advances in the field of procedural guarantees, it also imposes concrete challenges to the confrontation of administrative improbity. The balance between the protection of individual rights and the effective protection of the public interest will depend on the ability of institutions to adapt to this new scenario and maintain the fight against corruption as a state priority.

MECHANISMS TO PREVENT AND COMBAT DAMAGE TO THE TREASURY

THE ROLE OF THE PUBLIC PROSECUTOR'S OFFICE IN HOLDING PUBLIC OFFICIALS ACCOUNTABLE:

The Public Prosecutor's Office (MP) plays an essential role in the prevention and repression of administrative improbity, especially in cases that result in damage to the treasury. Supported by the Federal Constitution of 1988, the Public Prosecutor's Office has functional and administrative autonomy, allowing it to act independently in the supervision of public administration acts.

Among its attributions, the initiation of civil investigations and the filing of administrative improbity actions (article 17 of Law No. 8,429/1992) stand out, through which it seeks the conviction of those responsible for unlawful acts and the reparation of the damage caused to public property. In addition, the Public Prosecutor's Office can sign Conduct Adjustment Terms (TACs) with public managers, establishing commitments to correct irregularities and prevent new infractions.

Another relevant aspect of the ministerial action is the articulation with other control bodies, such as the Courts of Auditors and the Comptroller's Offices, in order to ensure efficient and coordinated inspection. Through joint investigations, audits and technical opinions, the Public Prosecutor's Office strengthens the fight against corruption and reinforces transparency and integrity in public management.

The MP's performance becomes even more crucial when there is suspicion of damage to the treasury, as it is up to the institution not only to promote the accountability of

improbable agents, but also to seek effective reimbursement of the embezzled amounts. In many lawsuits, the Public Prosecutor's Office acts proactively in the production of evidence, in obtaining the freezing of assets and in the protection of public property during the course of the process, ensuring that the losses do not become definitive for the State.

In addition, the Public Prosecutor's Office has a pedagogical role by exercising its function with firmness and publicity, discouraging practices harmful to the treasury and contributing to the consolidation of a culture of legality and responsibility in public administration. By promoting actions that involve large corruption schemes or mismanagement of resources, the Public Prosecutor's Office reinforces the institutional commitment to integrity, administrative morality and the protection of collective rights, ensuring that the public interest prevails over private interests.

THE OFFICE OF THE COMPTROLLER GENERAL OF THE UNION (CGU) AND THE COURT OF ACCOUNTS OF THE UNION (TCU)

The Office of the Comptroller General of the Union (CGU) and the Court of Accounts of the Union (TCU) play fundamental roles in the inspection and control of public administration, being key players in the prevention and fight against administrative improbity and damage to the treasury. The CGU, as the central body of the internal control system of the Federal Executive Branch, has as its main function to audit, monitor and evaluate the management of public resources. Its duties include conducting audits in agencies and entities of the federal public administration to identify failures in the execution of the budget, misappropriation of resources and inefficiencies in management. In addition, the CGU conducts administrative disciplinary proceedings to investigate irregularities committed by federal public servants, and may apply penalties such as dismissals and retirement revocations.

Another essential role of the CGU is the promotion of public transparency, being responsible for managing the Federal Government's Transparency Portal, which allows society to access information on the budgetary and financial execution of public agencies. In addition, the CGU also acts in the execution of leniency agreements with companies involved in unlawful acts against the public administration, allowing their collaboration in investigations in exchange for legal benefits, such as reduction of fines. In this way, the CGU not only acts preventively, preventing damage to the treasury from occurring, but also promotes corrective actions to recover embezzled amounts and hold those involved accountable.

On the other hand, the Federal Court of Accounts (TCU) is responsible for the external control of the federal public administration, assisting the National Congress in overseeing the use of public resources. Among its functions, the analysis and judgment of the accounts of public managers who manage federal resources stands out, being able to apply sanctions and determine the restitution of amounts to the treasury in cases of irregularities. The TCU also inspects bids and administrative contracts, verifying the legality and economics of public contracts and identifying any fraud and overbilling that may cause damage to public property.

In addition, the TCU can impose penalties on public and private agents involved in irregularities, imposing fines, declaring the unsuitability of companies to contract with the public administration and recommending the ineligibility of political agents involved in illegal acts. Another relevant attribution of the Court is the monitoring of public policies by conducting operational audits that evaluate the efficiency, effectiveness and effectiveness of government actions, ensuring that public resources are applied appropriately and in accordance with the public interest. In this way, the TCU's performance complements that of the CGU, forming a robust control system that seeks to prevent fraud and waste, in addition to holding accountable those who cause losses to the treasury.

COMPLIANCE AND INTEGRITY TOOLS IN THE PUBLIC SECTOR

Compliance and integrity tools in the public sector play an essential role in preventing administrative misconduct and mitigating losses to the treasury. Compliance, in the context of public administration, refers to the set of standards, processes, and practices aimed at ensuring that government activities are conducted in accordance with legislation and ethical principles. Integrity programs, on the other hand, aim to promote an organizational culture based on transparency, accountability, and the fight against corruption, strengthening public governance.

Among the main compliance tools in the public sector are codes of conduct and ethics for civil servants, the continuous training of managers and employees on good governance practices, the implementation of safe and effective reporting channels, and the conduct of frequent internal audits to detect irregularities. In addition, risk management policies are adopted to identify vulnerabilities in administrative processes and create mitigation mechanisms. In Brazil, the Anti-Corruption Law (Law No. 12,846/2013) and Decree No. 11,129/2022, which regulates integrity programs in the public sector, reinforce the need for government agencies to adopt these tools.

MEASURES ADOPTED BY OTHER COUNTRIES AND HOW THEY CAN BE APPLIED IN BRAZIL.

On the international scene, several countries have implemented innovative measures to strengthen integrity in the public sector, which can serve as a reference for Brazil. In the United States, for example, the Foreign Corrupt Practices Act (FCPA) requires companies that interact with the government to adopt rigorous compliance programs to prevent corruption. This approach can be adapted in Brazil to make more robust integrity mechanisms mandatory in companies that enter into contracts with the public administration.

In the United Kingdom, the UK Bribery Act establishes severe penalties for corrupt practices and encourages organizations to adopt systems for continuous monitoring of illegal conduct. Brazil could strengthen its anti-corruption legislation by following this guideline, expanding penalties for public officials involved in corruption schemes and creating incentives for the voluntary adoption of integrity programs by government agencies.

Another relevant example comes from Denmark, one of the countries with the lowest corruption rates in the world, where the culture of transparency is reinforced by mechanisms such as unrestricted access by civil society to government information and intense oversight of public spending. Brazil could improve its transparency system with investments in technologies that facilitate access to and analysis of data on public expenditures, expanding social control and hindering illicit practices.

Therefore, the application of measures inspired by international models can strengthen the compliance and integrity system in Brazil, making the public administration more efficient and less susceptible to deviations and fraud. The implementation of stricter policies and the encouragement of a culture of integrity are fundamental steps to reduce the damage to the treasury and improve public governance.

FINAL REFLECTIONS ON THE MECHANISMS TO PREVENT AND COMBAT DAMAGE TO THE TREASURY

Administrative improbity, especially when it results in damage to the treasury, compromises not only the public coffers, but also the quality of essential services offered to the population. The mismanagement of public resources weakens society's trust in institutions, negatively impacts economic and social development, and deepens structural inequalities. Given this scenario, combating these practices requires the adoption of effective prevention, inspection, and punishment mechanisms.

The performance of bodies such as the Office of the Comptroller General of the Union (CGU) and the Court of Accounts of the Union (TCU) is essential to ensure transparency and accountability of public and private agents who cause damage to state property. Likewise, compliance and integrity tools in the public sector have been consolidating themselves as effective strategies to strengthen governance and prevent irregular conduct. International experiences demonstrate that the combination of strict regulations, independent audits and citizen participation is essential for success in confronting corruption and administrative misconduct.

In this context, civic education and the ethical training of public managers play a central role in building a culture of responsibility and respect for the collective interest. Promoting awareness about the impacts of improbity and encouraging the appreciation of integrity in state action are measures that contribute significantly to preventing deviations and reinforcing the commitment to good administration.

In addition, the strengthening of social control instruments, such as transparency portals, public ombudsman offices and public policy councils, expands society's capacity to monitor the application of resources and report irregularities. When citizens have access to information and effective mechanisms of participation, the risk of injury to the treasury decreases considerably, and the public administration becomes more responsive, democratic and efficient.

Therefore, the fight against damage to the treasury must be a continuous commitment of the State and society. The improvement of standards and inspection institutions, combined with an administrative culture based on ethics and transparency, is essential for the construction of a more efficient and responsible public management. Only with coordinated and effective actions will it be possible to mitigate the impacts of improbity and ensure the correct application of public resources for the benefit of the entire community.

CONCLUSION

The present work aimed to analyze the impacts of the loss to the treasury in the context of administrative improbity, focusing on the responsibility of public agents and the mechanisms of combat and prevention established by the Brazilian legal system. From the theoretical and normative review, it was found that the injury to the treasury is one of the most serious forms of improbity, as it directly affects the State's ability to promote public policies and meet the essential needs of the population.

Based on the analysis of Law No. 8,429/1992, especially in light of the changes promoted by Law No. 14,230/2021, it was observed that the requirement to demonstrate the actual damage to public property was an indispensable condition for the accountability of those involved. Although this change reinforces legal certainty and avoids convictions based only on presumptions, it also poses challenges to control bodies and the Judiciary, requiring more technical investigations and robust evidence.

The study also addressed the importance of prevention, highlighting the performance of institutions such as the Office of the Comptroller General of the Union (CGU), the Court of Accounts of the Union (TCU) and the Public Prosecutor's Office. In addition, international experiences were analyzed, such as the anti-corruption legislation of the United States and the United Kingdom, as well as the transparency model adopted by Denmark. These references demonstrate that the strengthening of public integrity depends both on effective legislation and on an institutional culture committed to ethics, efficiency and social control.

It was also found that the fight against damage to the treasury requires the adoption of constant and effective preventive practices, such as integrity programs, internal audits, training of civil servants and strengthening of reporting channels. The mere existence of norms is not enough: there needs to be political will, institutional resources and engagement of society for these measures to be effectively implemented.

Finally, it is concluded that the confrontation of the loss to the treasury should be treated as a national priority, linked to the idea of fiscal justice, administrative responsibility and respect for constitutional principles. The protection of public property is not limited to an accounting issue, but represents the defense of the Democratic Rule of Law itself and the dignity of the population that depends on it.

REFERENCES

1. Brasil. (1988). Constituição da República Federativa do Brasil de 1988. https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

2. Brasil. (1992). Lei nº 8.429, de 2 de junho de 1992. Dispõe sobre as sanções aplicáveis aos agentes públicos nos casos de enriquecimento ilícito no exercício de mandato, cargo, emprego ou função na administração pública. https://www.planalto.gov.br/ccivil_03/leis/l8429.htm

3. Brasil. (2021). Lei nº 14.230, de 25 de outubro de 2021. Altera a Lei nº 8.429/1992. https://www.planalto.gov.br/ccivil_03/_ato2021-2024/2021/lei/L14230.htm

4. Carvalho Filho, J. S. (2020). Manual de direito administrativo (33rd ed.). Atlas.

5. Danish Agency for Digital Government. (n.d.). Open data and re-use of public sector information. https://en.digst.dk/digital-governance/data/open-data-and-re-use-of-public-sector-information

6. Di Pietro, M. S. Z. (2022). Direito administrativo (35th ed.). Atlas.

7. Garcia, E., & Alves, R. P. (2007). Improbidade administrativa (3rd ed.). Lumen Juris.

8. Mello, C. A. B. (2017). Curso de direito administrativo (34th ed.). Malheiros.

9. Serious Fraud Office. (n.d.). Guidance on the Bribery Act. https://www.sfo.gov.uk/about-us/our-policies-and-publications/guidance-on-the-bribery-act/

10. U.S. Securities and Exchange Commission. (n.d.). FCPA – Foreign Corrupt Practices Act cases. https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml