

The TRT Caseⁱ

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In early 1992, Nicolau dos Santos Neto—then-President of the São Paulo Labor Regional Court of the Second Region (TRT-SP)—published the bidding rules for a public contract to build the Court’s new headquarters for its tribunals of first instance in São Paulo. Nearly 20 years later, the Brazilian justice system is still attempting to resolve what has proven to be a notorious public works scandal. Thus far, Brazilian courts have yet to determine who exactly is responsible for the estimated 160 million reais missing from the public coffers. The case has led to parallel proceedings pending before more than ten judicial bodies in Brazil and Switzerland consisting of more than one hundred appeals and generated thousands of pages of legal minutiae.ⁱⁱ Despite all the fanfare, the chief parties involved in the case remain free from imprisonment and are appealing their convictions. The only exception among them is Nicolau dos Santos Neto (popularly known as “Nicolau”), who remains under house arrest. And the public civil actions which initially froze the assets of those involved were not resolved by trial courts until October 2011—more than a decade after they were brought—and are now awaiting review and appeals.

The construction company that won the bid has now gone bankrupt - and the partners of that and of other companies involved have had their assets blocked since the public civil action (mentioned above) was brought in 1998. Only two proceedings were actually concluded during the period studied. The first was a lawsuit brought by the Brazilian State in the Eleventh Judicial Circuit Court of Florida in Miami, claiming ownership of an apartment valued at one million reais, which had allegedly been purchased by Nicolau dos Santos Neto with money fraudulently obtained over the course of the TRT headquarters’ construction. The trial court ruled in favor of Brazil; the apartment was auctioned and the proceeds deposited in the National Treasury's account within the year. The second proceeding was the disciplinary action taken in the

Brazilian Federal Senate against Luiz Estevão, pursuant to findings published by the Parliamentary Investigation Commission of Justice System (*Comissão Parlamentar de Inquérito* or “CPI”), which resulted in the first expulsion of a federal Senator in Brazil. Luiz Estevão was deemed ineligible for public office for a period of 10 years, but has already stated his intention to run for Congress again.ⁱⁱⁱ All of the other lawsuits remain unresolved, as will be shown below.

This case study is based on interviews and public documents. This narrative details the documentary sources mentioned throughout the text, as well as where they can be found, given that not all of the documents are available at the sites of their respective institutions of origin. The criminal suits and the Public Civil Action are proceeding under court secrecy, but many of the associated documents were included in the attachments to appeals submitted to the Brazilian Supreme Court. These appeals are usually digitalized and made available in their entirety on the courts’ websites. Considering the number of defendants named in the proceedings of first instance, as well as the existence of additional criminal suits being brought against them, we have limited our search to the courts that heard appeals in which Nicolau dos Santos Neto appeared as either appellant or as appellee (Federal Courts of Appeal or “TRFs”, the Superior Court of Justice or “STJ”, and the Brazilian Supreme Court or “STF”). The quantitative results are presented in Attachment 1. In addition to judicial and administrative documents, this report is also based on material from the archives of the newspaper *Folha de São Paulo* and *Veja* Magazine. The collection was systematically studied, as explained in Attachment 2 (media content analysis), and provides the quantitative and qualitative information provided over the course of the report. Finally, in 2010 and 2011, 12 interviews were conducted in São Paulo, Brasília, Washington and Paris, in addition to a number of informal conversations that for various reasons could not be formalized as required by our methodology. The interviews are anonymous and, when mentioned in this text, will only indicate the number assigned to each of the interviewed parties.

This case report is organized into three parts. Part I recounts the events of 1996-1998, a period in which the TRT-SP case was merely one more case of fraud in public works bidding. We describe the bidding process and the contract entered into between the TRT and the construction company, as well as the first stage of investigation by the Federal Accounting Tribunal (*Tribunal de Contas da União* or “TCU”) and the Federal Public Prosecutor (*Ministério Público Federal* or “MPF”). Part II identifies the

formation of a Parliamentary Investigation Commission (CPI) of the judicial system as a turning point in the procedural history of the case. It then describes the arsenal of civil, criminal and administrative proceedings, all arising from the facts laid out in the first part of the report, which were launched in Brazil and abroad beginning in 1999. In Part III we analyze the diverse responses of the Brazilian, Swiss, and American justice systems to the scandal. We then summarize some of the institutional adjustments, changes and reforms that have occurred in Brazil as a result of the TRT case.

The material collected in the course of this research mentions over fifteen persons and legal entities involved in the case: engineers responsible for supervising the construction work, contractors, Nicolau dos Santos Neto's wife, the judge who became president of TRT when Nicolau retired, various attorneys, and others. In analyzing the proceedings related to the construction of the TRT-SP building, this case study focuses on four central figures. The first is Nicolau dos Santos Neto, a judge who presided over the TRT-SP until September, 1992, when he left the position to take on the "Presidency of the TRT's Building Commission."^{iv} Nicolau remained in this position up to July, 1998, when he turned 70 and had to retire pursuant to mandatory retirement rules. The second is Luiz Estevão de Oliveira Neto, a businessman and politician, who was expelled from the Senate in 1999 due to the involvement of one of his companies, the "Grupo OK," in the case. The other two "main characters," Fábio Monteiro de Barros Filho and José Eduardo Correa Teixeira Ferraz, own several companies ("Ikal", "Incal" and "Monteiro de Barros") that participated in the bid for and construction of the building.

1. The beginning (1992-1998): just another fraudulent public works endeavor

The trajectory of the TRT Case began in 1992, a tumultuous year of Brazilian history. During that year, a Parliamentary Investigation Commission (CPI - *comissão parlamentar de inquérito*) resulted in the impeachment of the country's first elected President in three decades. In Brazil, both the Senate and the Chamber of Deputies can create an ad hoc investigatory committee with the approval of a third of their members.^v CPIs are considered to be "one of the most active components of the overall accountability process at the federal level, bringing to light a great number of accusations of political corruption (...)"^{vi} There has been a drove of CPIs in Brazil since the beginning of the nineties. Sometimes they resulted in the expulsion,

resignation or removal of prominent officials,^{vii} and they always received extensive media coverage. In “O jornalismo dos anos 90,” Nassif describes the period as “the era of denunciation”^{viii} It might be said that in the early 90s, it was mostly the media coverage of frauds and schemes involving public money which led to the first studies on corruption in Brazil. From the reports published in widely circulated newspapers, Nahat concluded that public works bidding was the sector most vulnerable to corruption and embezzlement of public money.^{ix} This perception was confirmed 10 years later by Claudio Abramo.^x In fact, this is exactly how our story starts: with a public tender for construction rights of the TRT-SP’s new headquarters.

1.1. The bid edict and the contract

The public tender held by the TRT-SP, via bid edict no. 01/92, was for "the acquisition of real property, appropriate to house at least 79 Judgment and Conciliation Councils of the City of São Paulo, allowing expansion for later establishment of at least 32 further Judgment and Conciliation Councils." Four different proposals were contemplated, concerning (i) property with existing buildings, new or used; (ii) property with buildings already under construction, regardless of the stage; (iii) land with a pre-approved construction project, along with design for adjustment meeting the Council’s requirements, and, finally, (iv) land with buildings designed specifically for establishing the Judgment and Conciliation Councils.^{xi}

Twenty-nine companies picked up the edict, but only three presented formal bids:^{xii} Empreendimentos Patrimoniais Santa Gisele Ltda., Consórcio OK/Augusto Velloso and Incal Indústria e Comércio de Alumínio Ltda. The first was "disqualified" and never actually participated in the bidding process.^{xiii} According to the registry with the Trade Board of the State of São Paulo, Consórcio OK/Augusto Velloso was incorporated on February 21, 1992; the legal representative of its leading company, the Grupo OK Construções e Incorporações S.A., was Luiz Estevão de Oliveira Neto.^{xiv} Finally, the third company, Incal Indústria e Comércio de Alumínio Ltda., incorporated in 1973, was represented by João Julio Cesar Valentini and Maria Paula de Freitas.^{xv}

The results of the bidding were published on March 21, 1992. The bidding commission awarded the contest to a fourth company, Incal Incorporações S.A.^{xvi} Incal was incorporated on February 21, 1992; its partners at the time were Fabio Monteiro de Barros Filho and João Julio Cesar Valentini. According to the registration form filed

with the Trade Board of the State of São Paulo (*Junta Comercial do Estado de São Paulo* or “Jucesp”), José Eduardo Correa Teixeira Ferraz was elected director a few months later, on March 25, 1992.^{xvii} According to the subsequent CPI report (discussed below), Incal Incorporações S.A. was described as the result of an association between the Monteiro de Barros Group and Incal Alumínios.^{xviii}

It was with Incal Incorporações S.A. that TRT-SP entered into the "purchase and sale commitment" contract for the purpose of proceeding with bid 01/92 under the above-mentioned proposal (iv). According to the Instrument of Purchase and Sale of Stock and Mandate referenced by the Federal Public Prosecutor in one of the criminal proceedings, on February 21 Monteiro de Barros Investimentos S/A transferred 90% of its shares of Incal Incorporações, to Grupo OK Construções e Incorporações S/A, which belonged to Luiz Estevão de Oliveira Neto.^{xix} The TRT made the first of many planned payments to Incal Incorporações, Inc. on April 13th, pursuant to “the private receipt of the down payment, principal, and guarantee of rights and obligations,” which had been signed three days earlier. The contract came into force on August 19th, after the deed of sale was registered. It was concluded at a fixed price to be paid in one down payment and seven further installments. The final installment was projected for 1996, when the construction would be completed.

The public civil action later brought by the Federal Public Prosecutor lists three amendments that were later made to the agreement. On September 25, 1996, the Second Addendum CC-01/92 asserted that TRT had delayed in releasing the funds and extended the date of the project’s completion to December 1997. Then, on December 19, 1997, the Third Addendum was made, whereby the date was again extended to December 1998, due to Incal’s allegations that TRT had afforded it neither the resources nor the flexibility needed to complete the Project. Finally, on June 15 and 17, 1998, Délvio Buffulin and Incal executed two "rectification and ratification" writs, filed with the Fourteenth Notary Office of Deeds and Documents of São Paulo, increasing the alleged value of the contract by R\$ 36,931,901.10 due to alleged "economic and financial imbalance of the contract," and postponing the date of completion once again, to April 1999.

According to CPI Report (2000:71), TRT hired an engineer, allegedly to monitor the works and verify if the timetable of construction was adjusted in accordance with the payments made by TRT. The engineer issued reports approving the pace of construction. The financial disclosure obtained by the CPI would later show that

between 1993 and 1994 the engineer had received several checks—ultimately amounting to US \$42,000—from the Monteiro de Barros Group.

1.2. Identification of irregularities: the first phase of the TCU's involvement

Some time after the formation of the contract, between October 26 and November 13, 1992, the São Paulo branch (IRCE-SP; currently SECEX-SP) of the Federal Accounting Tribunal (*Tribunal de Contas da União*, or “TCU”) performed a "regular sectoral inspection" of the TRT-SP. The IRCE-SP team found 17 irregularities in the bidding process and in the contract between TRT and Incal, alleging, in each of them, violation of Decree no. 2300.86, which then regulated public tenders. The report then recommended a number of corrective actions. Among them was the "prompt interruption of payments to Incal Incorporações S.A., a company which did not participate in bid No. 01/92, but nevertheless acquired the enclosed land and was engaged in the construction of the TRT-SP"; the "invalidation of bid No. 01/92 and of the Purchase and Sale Commitment writ"; and the determination that the parties responsible refund “the amounts unduly paid prior to the signature of the contract” to the National Treasury (TCU, Proceeding TC-700.731/92-0, Decision 231/96).

The inspection team's report was not analyzed by the full body of TCU's judges until nearly four years later, in May 1996. Over the course of this period, several technical and legal opinions were produced, leading to new allegations by the Federal Public Prosecutor (*MPF*) as well by the inspection team's analysts. Besides the arguments of its defense lawyers, Incal submitted the opinions of four jurists reinforcing the thesis that the subject matter of the bid was a mere "acquisition of real property", and that the bidding process was free from irregularities. The Tribunal also requested technical opinions from Federal Public Bank (*Caixa Econômica Federal*) and from TCU's Inspections and Audit Bureau (*SAUDI*), which, in addition to reiterating the irregularities identified by the inspection team, also acknowledged "indications of overbilling of the works" (TCU, Proceeding TC-700.731/92-0, Decision 231/96, p. 7 and 20). Finally, the Ministers^{xx} decided, among other things, to "provisionally accept the procedures adopted thus far by the TRT-SP, taking into consideration the final stage of the works of the main building for the Judgment and Conciliation Councils of the City of São Paulo", and "that the President of the TRT-SP should adopt urgent measures to immediately transfer title of the construction site to TRT, as well as observe all rules and principles of the current Federal Statute of Bids and Contracts (Law No. 8666/93)"

(TCU, Proceeding TC-700.731/92-0, Decision 231/96). It appears there was no appeal against this decision.

1.3. The Federal Public Prosecutor in the limelight

In the face of this decision, the National Treasury's payments to Incal continued until July, 1996, when the Federal Public Prosecutor (*Ministério Público Federal, MPF*) obtained a warrant requiring the deposit of the remaining installments with the court. However, since April 1992, Incal Incorporações had already received 80 bank transfers from the National Treasury, amounting to R\$ 226 million. According to the report prepared by TCU's technicians, only R\$ 63 million had been used for the construction of the building.^{xxi} According to this calculation, R\$ 169 million of public funds had been embezzled.

In July, 1998, the Federal Public Prosecutor finally secured an injunction preventing the National Treasury from continuing to transfer funds to Incal,^{xxii} in a civil suit against Nicolau dos Santos Neto, Luiz Estevão, Fábio de Barros, José Eduardo Ferraz and the respective companies involved in the site's construction. The charges were based on evidence collected during the "Public Civil Investigation" beginning in May, 1997, which was first proposed by the Federal Deputy Giovanni Queiroz, a then-member of the National Congress's Budget Commission.^{xxiii} His statement to the MPF expressed concern regarding the project's sluggish pace and the fact that the TCU seemed to have turned a blind eye to the alleged contractual irregularities (CPI 2000, 73). On the 26th of August 1998, the MPF filed a Public Civil Action^{xxiv} before the Federal Court.^{xxv}

The commencement of the Civil Action led to the freezing of several Brazilian bank accounts—which have not been unfrozen to this day. Dozens of appeals were filed in the thirteen years before the first judgment was handed down in 2011. Yet such procedural delays may not be out of the ordinary; in fact, our interviews suggest that Public Civil Actions—especially those involving allegations of administrative misconduct—regularly languish in the Federal Courts.

On February 18, 1996, TCU received an official letter from the Chief Federal Prosecutor of the State of São Paulo, stating that "two years after the Decision No. 231/96 – and of the end of the contractual term agreed between TRT/SP Incal Incorporações S.A. much work remains for the completion of the construction." It requested information concerning the measures to be taken to clarify the facts and

ascertain the responsible parties. This was recorded at the TCU as an independent proceeding (TC-001.025/98-8).

2. The full arsenal (1999-2002): proceedings and appeals

The aforementioned Civil Actions were largely ignored by the public until March 25, 1999, when the Federal Senate charged a Parliamentary Investigation Commission (*Comissão Parlamentar de Inquérito, CPI*) with the task of inquiring into complaints about the Brazilian Justice system. On April 21, 1999 the newspaper *Folha de São Paulo* began to cover the CPI's hearings regarding the involvement of Nicolau dos Santos Neto in the TRT Case. On that day the front cover showed the breach of Santos' bank secrecy. New stories were published virtually every day that week. But the watershed came on April 28, 1999, when the weekly magazine *Veja* published its first report about the case^{xxvi}, which was followed by several more in the *Folha de São Paulo*. The first of the *Folha* articles, which made the front page, took the form of an exposé of Nicolau dos Santos Neto's personal finances. The main source of information for that week's report was Santos's son-in-law, Marco Aurélio Gil de Oliveira. He had been interviewed by *Veja* a few days after his hearing at the CPI. According to *Veja*, Marco Aurélio's resentment of his father-in-law arose from Nicolau's refusal to allow him to retain half of the house that he shared with his wife—Nicolau's daughter—over the course of their separation and divorce. Marco Aurélio accordingly threatened to publicize the existence of Nicolau's overseas bank accounts, luxury properties, jewels and cars that had been purchased since the beginning of the TRT works. But Nicolau refused to believe him: *Veja* reported that, according to Marco Aurélio, Nicolau had retorted that "you may denounce me, but nothing is going to happen to me. I am a respected judge and have powerful friends."^{xxvii} Nicolau was also interviewed at that time and denied any legal irregularities regarding the construction of the TRT-SP building. He denied outright that he owned some assets (cars, houses and apartments) and pointed to an inheritance from his father as the monetary wellspring of the remainder. Still, *Veja* was not dedicating more than two pages per issue to the TRT scandal. Despite including *Veja's* first coverage of the TRT case, the April 28, 1999 issue more prominently featured a *different* scandal: the cover story and accompanying 8-page article concerned itself with the foreign assets of a former Brazilian Central Bank President.^{xxviii}

Following the publication of the CPI report, various institutions were charged with ascertaining the responsible parties, penalizing those involved, and providing compensation. The Senate expelled Luiz Estevão. Meanwhile, TCU acknowledged for the first time the embezzlement of public funds. The first criminal investigation of the case was initiated in Switzerland; charges were soon brought in Brazil, and several of the parties involved were convicted and sentenced. The construction company Ikal went bankrupt, and several affiliated companies were implicated in the resulting litigation. Finally, Brazil secured the repatriation of assets in Miami, which would be the first and only repatriated assets related to the case until January 2013.

2.1. Turning point: the CPI report and involvement of the Federal Senate

The CPI kept the TRT-SP case at the center of public attention over the course of its eight-month investigation. According to the final report, the Commission selected nine cases out of more than four thousand complaints received by the Federal Senate (CPI 2000, 59 and 541). In the same document, the Commission emphatically thanked the then Senate President, Antonio Carlos Magalhães, for his support, saying that he "the great starter of this CPI and made available, for our activities, the entire structure that was essential for the accurate performance of the tasks..." (CPI 2000, 619).

Among the cases selected for monitoring and investigation, the TRT-SP case was "the most clamorous" (CPI 2000, 61).^{xxix} The final 360-page report prepared by the Commission focused on the breach of privacy of the bank accounts of the people and companies involved in the case, as well on fifteen individual depositions. The investigation of Incal's bank documents revealed regular payments to Luiz Estevão's Grupo OK, via transfers made to Grupo Monteiro de Barros (CPI 2000, 114), a discovery which led the CPI to freeze Nicolau dos Santos Neto's assets. Nicolau then requested—and obtained—a warrant from the Brazilian Supreme Court to invalidate the injunction, alleging, among other things, a violation of the *'bis in idem'* principle inasmuch as his assets were already frozen as a result of the decision of the 12th Federal Court (Public Civil Action). At that time, the Brazilian Supreme Court held that although the CPI had the power to investigate private assets, it could not employ coercive measures to secure those assets.^{xxx}

Only two of the many irregularities discovered by the CPI resulted in procedures for repatriation of assets. First, two Swiss bank accounts had received fifteen transfers,

between April 10, 1992 and March 28, 1994,^{xxx} totaling US\$ 6 million. Second, US\$ 720 thousand was transferred from one of Nicolau dos Santos Neto's Swiss accounts to the company Hillside Trading S.A. for the purchase of an apartment in Miami (CPI 2000, 91). According to the CPI's report and interviews, as well as other documents obtained in the course of the investigations, the National Treasury had deposited several more payments into checking accounts in banks located in the Cayman Islands, the Bahamas, and Panama (CPI 2000, 97 and 79; interviews 2, 3 and 9). However, the CPI initiated proceedings only regarding the Swiss bank accounts and the Miami apartment.

The CPI report also laid out 21 recommendations, including mandates to: (i) "institute external control of the Judiciary"; (ii) "speed up the approval of the treaty on Mutual Legal Assistance in Criminal Matters, entered with the United States of America in October, 1997, and the OECD Convention on Combating Public Bribery of Foreign Public Officials, concluded in Paris in December, 1997"; (iii) "Re-examine the constitutional law regarding letters rogatory...in order to expedite cooperation between Brazil and other countries under existing international agreements"; (iv) "require the Senate Foreign Affairs Commission to examine how to more effectively implement bilateral and multilateral agreements of international judicial cooperation to which Brazil is already a party" (CPI 2000, 615 and 616).

On December 8, 1999, just a few weeks after the report was published, several political parties submitted a statement to the Senate Ethics Committee, reporting the facts alleged against Senator Luiz Estevão in the report. According to the statement, the illegal activities reported amounted to a breach of parliamentary decency—and made Estevão subject to expulsion, and disqualified him from holding public office. The statement also alleged, among various other assertions, that "immediately after the first transfers of TRT-SP funds to the Defendant's companies were disclosed, he stated that such transfers were justified because they dealt with the refund of loans made by Bank OK de Investimentos to the MB Group's companies. However, over the course of the investigations—when it was revealed that such transfers were made to other companies of the OK Groups rather than to the bank, and that total transfers added up to approximately US\$ 46 million, while total loans were US\$ 2.7 million only—Senator Luiz Estevão abandoned this thesis.^{xxxii} Luiz Estevão now denies the charges. However, as of June 28, 2000, a majority of the Senate's Plenary Assembly approved Luiz Estevão's expulsion in an extraordinary session."^{xxxiii}

This episode relates to another one that is relevant to understanding the Federal Senate's role in the TRT case. In February, 2001, the magazine *Isto É* published a report questioning the validity of the results of displayed on the Senate's electronic board, when that body voted on Luiz Estevão's expulsion. Questions began to arise about the electronic board—which was initially created to ensure voting secrecy, but was at that point generating complaints to the Senate Ethics Committee. An expert investigation confirmed the alleged voting irregularity, and indicated that the Senate President, Antonio Carlos Magalhães, had in fact *requested* that the “votes” be displayed at exactly that count.^{xxxiv} A few days after Estevão’s expulsion, the Senators implicated, including Magalhães, resigned en masse.^{xxxv}

2.2. The Swiss investigation and the 14-year asset freeze

The press coverage of the CPI case caught the attention of Swiss authorities in April 1999, when Geneva's General Public Prosecutor began a preliminary investigation of Nicolau dos Santos Neto for money laundering (P/5132/99). On May 4, 1999 it breached the secrecy of, and blocked transfers to and from two checking accounts^{xxxvi} at Banco Santander, with balances totaling slightly over US\$ 6.8 million (CPI 2000, 96).

Early in the year 2000, the First District Court of the Federal Tribunal in São Paulo sent a letter rogatory to Geneva, explaining the investigation of Nicolau dos Santos Neto for corruption and embezzlement of public money, and requesting the seizure and repatriation of the assets in the blocked Swiss bank accounts. The Swiss judge granted the motion. On appeal, the "chambre d'accusation" maintained the asset freeze, but held that the assets could not be fully repatriated until the Brazilian judiciary had issued a final, enforceable decision. The "chambre d'accusation" also called attention to the existence of a Swiss procedure - the above mentioned P/5132/99 - which might allow Swiss authorities to seize the assets.^{xxxvii} The Brazilian Attorney General, represented by a team of lawyers in Geneva, made a renewed attempt to repatriate the assets in 2004. Once more the trial judge granted the motion and the "chambre d'accusation" reversed on appeal based on a procedural error in the Brazilian motion and the absence of a decision from the Brazilian judiciary. Finally, in 2007, Nicolau requested a revocation of the trial court decision keeping his accounts frozen. The trial judge denied the request, and Nicolau appealed based on the lapse of over eight years and lack of connection between the Swiss bank accounts and the facts alleged in the CPI report. The appeal was rejected on November 27, 2007^{xxxviii}.

In 2009, the Swiss procedure (P/5132/99) was concluded with a decision of forfeiture of the money frozen ten years before. The decision was confirmed by the *Tribunal de Police de Geneve* in 2010 and became final in August 2012 with a decision of the *Tribunal Federal*^{xxxix}. Besides the repatriation of the funds, the Court also imposed compensation (*créance compensatrice*) of US\$ 2,153,628 in view of the amount that was transferred to foreign institutions^{xl}. As of January 31 2013, the money remains in Switzerland.

2.3. The second phase of the TCU's oversight

On May 5, 1999, the TCU issued decision no. 45/99 (TC-001.025/98-8) concerning the audit conducted pursuant to the request of the Chief Federal Prosecutor of the State of São Paulo on February 1998. In that decision, Délvio Buffulin and Nicolau dos Santos Neto were fined R\$ 17,560.20, and the procedure was converted into a “Special Rendering of Accounts,” so that it could be merged with the cases proceeding against Incal Incorporações S.A., Délvio Buffulin, Nicolau dos Santos Neto, and the engineer Antônio Carlos da Gama e Silva. The decision expressly cited the CPI investigation: "Considering the supervening nature of new facts arising from the CPI's investigation, which were previously unavailable due to bank and fiscal secrecy and which suggest that total damages may be greater than those initially determined by this Court," it would be necessary to conduct "a new inspection of TRT-SP, in order to ascertain if additional damages were incurred in the construction of the TRT-SP building.”

In August 1999, the TCU jointly notified Incal Incorporações S.A. and Grupo OK Construções e Incorporações S.A., in the name of Luiz Estevão de Oliveira Neto Nicolau dos Santos Neto, Délvio Buffulin and Antônio Carlos Gama da Silva, that they were liable for the amount of R\$ 169,491,951.15.^{xli} Gilberto Morand Paixão was also considered jointly responsible for R\$ 13,207,054.28 of this sum.^{xlii}

Only on January 31, 2001, the TCU’s full body of judges imposed a “restraint measure,” wherein “the assets of the responsible parties whose notification was determined upon Decision No. 591/2000, shall remain unavailable for the period of one year in order to pay as much as required to assure refund of the debt.”^{xliii}

Finally, on July 11, 2001 the TCU found in a Special Rendering of Accounts procedure that the accounts were irregular. Délvio Buffulin, Nicolau dos Santos Neto,,

Fábio Monteiro de Barros Filho, Incal Incorporações S.A. (represented by Fábio Monteiro de Barros Filho and José Eduardo Correa Teixeira), and Grupo OK (represented by Luiz Estevão de Olivera Neto and Antônio Carlos da Gama e Silva), were jointly fined R\$ 169,491,951.15. Incal Incorporações, Grupo OK and Nicolau dos Santos Neto, were each fined an additional R\$ 10 million. Délvio Buffulin and Antônio Carlos Gama e Silva were each fined R\$ 1 million and R\$ 17,560.00, respectively.^{xliv}

Motions for reconsideration were submitted by every defendant that was fined in Decision no.163/2001. The decision was largely upheld on December 5, 2001, although Délvio Buffulin succeeded in limiting the value of the joint debt and reducing the applied fine.^{xlv} Despite several attempts by the defendants to prevent enforcement of the decision, the TCU declared on May 8, 2002 that their claims represented "an attempt to delay justice" and that they "shall not interfere with the enforcement of the condemnatory decision."^{xlvi}

The Brazilian Federal Attorney General's Office brought independent actions to enforce the TCU decision and collect damages from the defendants. The suits brought against Grupo OK (n. 2002.34.00.016026-3, in course in the 19th Federal District Court of the Federal District) and Nicolau dos Santos Neto (n. 2003.61.00.011074-9, in course in the 12th Federal District Court of São Paulo) are still proceeding. At the time this study was published we were unable to obtain detailed information about these cases—or even whether parallel foreclosure suits were brought against the other defendants—since any such suits would be brought against each of the defendants separately, and the Brazilian Federal District Court System lacks a uniform search tool.

On August 2012 the Federal Attorney General's Office and Grupo OK signed an agreement to settle part of the proceedings launched by the Federal Attorney., Grupo OK agreed to pay a fine of almost R\$ 19 million in cash and to renounce all appeals regarding that fine. As for the damages, the amount of R\$ 169 million turned into R\$ 991 in eleven years but the agreement only provided for payment of half that amount. Roughly R\$ 450 million will be paid by Group OK: R\$ 80 million in cash (19 million refers to the fine) and the rest in ninety-six installments of R\$ 4 million. The document prepared by the Federal Attorney General's Office to explain the agreement celebrates "the biggest recovery in Brazilian History"^{xlvii}. As of January 2013 collection proceedings for the R\$ 542 million that remains were still under way.

2.4. Criminal cases: awaiting a final decision

The first criminal charge related to the TRT Case was filed in the Superior Court of Justice in May 1999 (Investigation 258/99)^{xlviii}. On February 16th, 2000, in face of the recent repeal of the STF's Precedent No. 394, the Superior Court of Justice declined jurisdiction,^{xlix} and determined that the paperwork necessary to conduct the investigation would have to be filed with the First Federal Criminal Court of São Paulo.¹

After Investigation 258/99 was initiated in the STJ (Superior Court of Justice), but before its remittance to the first instance, a second investigation was launched in the STF (Federal Supreme Court) to examine facts related to the Parliamentary Committee of Inquiry which had investigated Luiz Estevão de Oliveira Neto (STF Investigation 1595). As discussed above, however, Luiz Estevão had already been expelled from the Senate on June 28, becoming in effect a “common citizen.”^{li} Investigation 1595 was then transferred from the STF to the Federal Court of São Paulo.

Two sets of charges were brought against Nicolau dos Santos Neto: the chief set of charges was for corruption and other crimes.^{lii} The MPF then brought separate charges against him for money laundering.^{liii}

The MPF is organized in a somewhat decentralized fashion, in which different prosecutors may bring separate criminal suits and public civil actions against a single defendant, even if those charges arise from the same facts. The criminal suits in which Nicolau dos Santos Neto is now embroiled remain under the cover of secrecy; we could not access the files of the case for the purpose of this study, nor could we even discern the cases' procedural posture from the Federal Court's online information system. In any case, the news media and filing of appeals in the higher courts give us at least some information about the most important decisions and the current stage of proceedings.

The year 2000 was perhaps the most “eventful” year in the course of the TRT case, both in terms of criminal proceedings and media coverage. During this time, charges brought in the first proceeding against Nicolau (corruption, among other crimes), were amended to include additional defendants—Luiz Estevão had not been initially charged—and to change some of the details of the allegations. Though the courts mandated “preventive confinement” for Nicolau dos Santos Neto, Fábio and José Eduardo, only Nicolau was actually detained, and he was only placed under house arrest. Analysis of media reports from the time allows us to reconstruct some of the facts regarding Nicolau's confinement. The year saw by far the most intensive media coverage of the scandal, accounting for 256 articles and 18 front page headlines in the *Folha de São Paulo* (see Appendix 2). Although the confinement decree was issued in

April, 2000, Nicolau was not arrested until December, and then did not make his first public appearance until the beginning of January. Between April 2000 and January 2001 Nicolau was considered as “on the run from justice,” and his mysterious “disappearance” ultimately accounted for 55% of the news articles and almost 67% of the front page stories that were published about the TRT scandal over the course of fifteen years.^{liv}

The trial court decisions came down in June, 2002. Nicolau was sentenced to 8 years of imprisonment for money laundering and influence peddling.^{lv}

All other defendants were acquitted. The acquittal decision was issued by Federal Judge Casem Mazlum, who would later be investigated by the federal police in the so-called “Operation Anaconda” regarding possible sale of sentences by federal judges. Although the federal police’s findings caused Mazlum to lose his office in December, 2004, there was no evidence that the sentences issued in the TRT case had been among those “sold.”^{lvi}

The sentences were made public in the late afternoon of Friday, June 26, 2002. The *Folha de São Paulo* published the news the following Monday, under the headline “Nicolau convicted, Estevão acquitted.” The next story on the case would not appear in the *Folha* until nearly 15 days later. One of our interviewees provided an explanation for the media’s silence: the sentence was published two days before the World Cup final, in which Brazil won its fifth championship.^{lvii} In any case, the subject no longer captivated national audiences: 274 stories were published in 2000, 103 in 2001, and only 24 in 2002.

Meanwhile, the Federal Public Prosecutor had appealed the criminal decision and, in 2006, the Federal Regional Appeals Court of the Third Region (*Tribunal Regional Federal da 3ª Região* or “TRF-3”) overruled the trial court,^{lviii} convicting the four defendants and sentencing them to penalties ranging from 26 to 31 years imprisonment. The award also included fines ranging from R\$ 900 thousand to R\$ 3 million.^{lix} The defendants submitted appeals to the Superior Court of Justice (*Superior Tribunal de Justiça*, or “STJ”) in 2007.

Only Nicolau dos Santos Neto was denied bail pending appeal. He was permitted to remain under house arrest for health reasons. The other defendants, Luiz Estevão, Fábio de Barros and José Eduardo Ferraz, await the STJ’s decision free from confinement. Over the course of the proceedings they were “preventively confined”

only for a few days. One of the explanations for this differential treatment among the defendants is that only Nicolau had failed to appear in court pursuant to his arrest warrant.^{lx}

The media coverage of this second sentence was even lighter than the first, yielding no more than two of the eight news stories related to the TRT scandal published that year.

2.5. The transfer and auction of the Miami apartment

On September 1, 2000, American lawyers retained by the Brazilian State submitted a motion for a temporary injunction to the Eleventh Judicial Circuit Court of Florida in Miami. The motion's purpose was to create a "constructive trust" that would enable the transfer of Nicolau's luxury Miami apartment to the Brazilian State. The property itself had become iconic of the scandal ever since it was showcased in the television show "Fantástico" by the journalist Caco Barcelos in August, 2000. That same week, Nicolau's face appeared on the cover of *Veja* above the headline "Anatomy of a crime: the story of the most outrageous coup in Brazilian history". The ten-page story included photos of the building, as well as of the apartment's interior.^{lxi}

It was also in August, 2000 that the Ministry of Justice formed a task force to coordinate between the several judicial bodies that were handling the case. A law firm in Washington, D.C.—which had already represented the Brazilian interests in the United States, in the context of foreign debt negotiations with the IMF, and in another case of public corruption known as the "Georgina de Freitas Case"—was hired for the task. At that time, the Brazilian National Congress had yet to ratify the bilateral cooperation agreement signed by Brazil and the United States in October, 1997—and would not do so until December 18, 2000, approximately one year after the CPI's express recommendation to speed up the proceedings. In this context, the lawyers representing the Brazilian State believed that litigating the case in the U.S. was a better strategy than submitting a request for international cooperation on the basis of reciprocity.^{lxii}

The petition for enforcement in Miami was brought against Nicolau dos Santos Neto and two legal entities he had established in Florida: Biarritz Properties Corporation (previously known as Hillside Trading Limited) and Stedman Properties,

Incorporated. Brazil sought the imposition of a “constructive trust” over the Miami apartment.^{lxiii}

In this lawsuit, the Brazilian State successfully demonstrated that the apartment had been purchased with funds from Nicolau's account in Switzerland, to which large sums had repeatedly been transferred immediately after the Treasury's payments to Incal. In August 2001, the judge granted the motion and imposed a constructive trust in favor of the Brazilian State over the property.^{lxiv} The apartment was sold at auction in November, 2002 for US\$ 690,113.81, which was deposited in the National Treasury's account.

2.6. Ikal's bankruptcy and disregard of Grupo OK's separate legal personality

In December 2000, the Eighth Civil Trial Court of the State of São Paulo declared Construtora Ikal' bankrupt, upon upholding a law suit brought against Ikal by the company Trox do Brasil in February 1999. According to the Trox complaint, Ikal had failed to pay debts in the amount of R\$69,778.16. In January 2001, Construtora Ikal requested a stay of the bankruptcy order. It alleged, among other things, that it still held R\$202,216.51 in an account with Bank of Brazil (*Banco do Brasil*) (R\$ 202,216.51)—an amount in excess of the damages demanded by the bankruptcy plaintiffs. Those funds remained unavailable, however, due to the Twelfth District's previous order to freeze the account. Despite an official letter sent to the Twelfth District, the request to unfreeze the account was denied.

On December 6, 2001, Fábio Monteiro de Barros Filho, "partner and president director of Construtora Ikal at the time of the bankruptcy, and legal representative of Monteiro de Barros Investimentos S.A.," testified that Construtora Ikal's bankruptcy "was caused by the unavailability of its assets and blocking of its bank accounts, ordered in law suit proposed by the MPF, in course at the 12th District Federal Court of the São Paulo, involving the construction of the TRT-SP's building" (Bankruptcy Law Suit No. 583.00.1999.019813-0, p. 1472).

In June 2002, the bankruptcy court granted the trustee's request to interplead the majority partner Monteiro de Barros Investimentos S.A., Incal Incorporações S.A., SLG S.A., Monteiro de Barros Empreendimentos Imobiliários e Participações Ltda., CMB do Brasil Ltda., and BFA Empreendimentos e Construções. In October 2002, the judge

interpleaded Grupo OK Construções e Incorporações S.A., based on the possibility that INCAL's shares had been sold and thereby changing the ownership structure of INCAL Incorporações S.A. In 2008, however, it was decided that it was too soon to extend the effects of Ikal's bankruptcy to the other companies. They are therefore parties in the litigation but it has not been decided whether they will suffer its effects.

Upon evaluation of the defendants in the bankruptcy proceedings in June 2004, the trustee estimated OK's total debt at R\$ 1,773,724.27, but noted that there were countless creditors that could be included as plaintiffs in further appeals. Up to that time, creditors had collected: one Volkswagen 2000-model Santana; all the money OK held in accounts at the banks BCN, Itaú, Banco do Brasil, Unibanco and Bradesco; and various pieces of real estate. A new valuation of the assets is expected to begin in July 2011, by an expert to be appointed by the trustee.

Meanwhile, in November 1998, the company Grupo OK Construções e Incorporações Ltda. brought suit against Betoncamp Serviços de Concretagem Ltda requesting the annulment of the bonds (amounting to R\$ 177,048.82).^{lxv} In June 1999, the complaint was dismissed due to want of prosecution by Grupo OK. The first phase of foreclosure against Grupo OK commenced immediately after the Betoncamp suit was dismissed. In November 2008, the court ordered, via the "BacenJud 2.0" system,^{lxvi} that R\$43,544.44 be frozen from all accounts held by Grupo OK Construções e Incorporações Ltda. However, it turned out the accounts were empty. In December 2008, the company Concrepav S.A. Engenharia de Concreto (successor of Betoncamp Serviços de Concretagem Ltda.) requested that Grupo OK be dissolved so that its legal representatives could be included as individual defendants. According to the request, the company was unable to post the assets as a bond. Searches made with the registry of motor vehicles ("Detran") and banking institutions were also unavailing. Everything pointed to the conclusion that the company's partners, after performing a number of deals on behalf of the company, had tried to hide behind the legal entity for fraudulent purposes. In April 2009, Grupo OK was dissolved as a legal entity and the partners were notified that they would have to pay the remaining debt—amounting to R\$43,544.44—within 15 days, under penalty of distraint. However, as of January 2013, when this study was concluded, there was nothing to suggest that the debt had been paid or impugned^{lxvii}.

2.7. "Lau-lau's" public skewering

As early as 1999, the Brazilian media had begun to refer to Nicolau dos Santos Neto using the nicknames "Lalau" and "Lau-lau." As the coverage of the case intensified, the nicknames became popular, and "Lau-lau" was immortalized in a 2001 Carnival song.^{lxviii} These nicknames are now the subject of civil disputes seeking indemnification for moral damages and also criminal charges of moral injury. We found nine appeals related to these claims pending in the Appeals Court of the State of São Paulo only. These suits were brought not only by Nicolau dos Santos Neto himself, but also by people close to him, relatives, and plaintiffs who claimed to have suffered "moral injury" as a result of having been compared to "Lau-Lau."^{lxix}

Nicolau dos Santos Neto brought suit against two TV networks which had broadcast commentary that he found offensive to his honor.^{lxx} According to the judicial decisions, Nicolau dos Santos Neto alleged that the comments had falsely imputed crimes to him and disseminated among the population the nickname "Lalau". Both law suits were dismissed by the courts of first instance, and the Court of Appeals affirmed those decisions in January 2009 and March 2011, respectively. The Court's take was essentially that Nicolau had it coming: he was "known to be involved in financial scandal, with severe damage to the federal Treasury, by which he attracted negative attention to himself."^{lxxi}

Three more appeals had been brought against trial court decisions in favor of plaintiffs who had experienced "injuries" after being called as "Lalau" or compared to Nicolau dos Santos Neto. The Court of Appeals upheld all three decisions, in the following terms: "It cannot be argued that the acquittals of the former mayor Pitta and Nicolau dos Santos Neto negate the dignitary offenses. The comparisons were not made in order to prove the alleged illegal conduct, but to enhance the dramatic effect of the irregularities imputed to them, which is why they had offensive content."^{lxxii}

2.8. Finally, the verdicts on the public civil actions of improbity

After more than ten years of proceedings, on October 26, 2011, judgments were handed down in both of the public civil actions^{lxxiii} holding the defendants^{lxxiv} responsible for: material and moral damages caused to the State, "to be arbitrated at the sentencing phase;"^{lxxv} a civil fine equivalent to three times the monetary gain that the defendants accrued from the corrupt acts; and, returning to the State any increase in the value of assets gained unlawfully. The court also revoked the defendants' right to enter

into government contracts, and suspended certain political rights for ten years. Furthermore, the court confirmed an injunction maintaining the unavailability of defendants' assets and blocking their bank accounts.

According to the decision in public civil action n. 98.0036590-7, there was conclusive proof that the defendants had been unjustly enriched, with equivalent losses to public coffers: "it is unquestionable, and well-documented in the records of the criminal decision," that the defendants "misled the public, falsely representing that activities were being carried out pursuant to the contract for the building of the Labor Forum, but, in fact, they hid their true objective, which was to obtain illicit benefits" from the enterprise. Indeed, the judge stresses throughout the decision that the defendants' malicious motives were made clear throughout the course of the corruption proceedings.

The damages for moral and material harm to the Brazilian State and the civil fine will be determined during the execution phase.

In August 2012, after many requests for reconsideration were dismissed, the defendant's appeals were sent to the Federal Court of Appeals (TRF-3), which had not made a decision as of January 2013.

3. A never-ending story

The recovery of the damages resulting from the TRT scandal—and, ultimately, the accountability of the parties involved—hinges on obtaining final, binding decisions against the defendants. The Brazilian State's biggest victory thus far has been the almost seven hundred thousand dollars that it recovered thanks to the sale of the Miami apartment and the half-billion agreement recently signed with Grupo OK. The efforts of the Swiss lawyers representing Brazil took some time to succeed, and provide a good example of transnational asset recovery that goes beyond the traditional extent of international cooperation in criminal matters. Such innovation could speed up transnational anticorruption proceedings and create a new set of tools for prosecutors. On the other hand, it also requires incurring the high costs of attorneys' fees.^{lxxvi}

In any case, the responses of the Brazilian justice system actions to the TRT scandal have not been limited to concrete responses, in terms of accountability and indemnification, which the various institutions involved might achieve. On the contrary, the TRT case has been regarded, by a variety of commentators, as a milestone for the

justice system in dealing with political corruption. It is impossible to establish a precise correlation between the myriad institutional transformations of the last two decades and the case studied here. As far as political corruption is concerned though, the justice system is *a different one* from the one that existed before the TRT case. New institutions that have been created include: the Federal General Inspection Office, the National Justice Council, the Department of Assets Recovery and International Cooperation of the Ministry of Justice, and specialized divisions in the Federal Attorney General's Office and the Office of the Federal Public Prosecutor.

Some changes were almost certainly the direct result of the TRT case. A first example is the ratification of the criminal cooperation agreement with the United States of America, which was signed in 1997 but was languishing in the National Congress when the TRT case first appeared in the press in 1999. As we have seen, in 1999 the CPI recommended that Congress speed up the ratification process; the treaty finally came into force in December 2000.

Other normative and institutional changes catalyzed by the TRT case include the revisions of the rules for “special court venue for public office holders.” The Brazilian Constitution provides that criminal suits against high level public officials should be brought in the Supreme Court, the Superior Court, or even the Federal and State Appeal Courts, according to the rank of the public official. Besides the special venue, a STF Case Law Summary no. 394 of April, 1964, established that if a defendant had “perpetrated the crime in the course of carrying out a public function, the special venue rule would prevail even if the inquiry or criminal suit were brought after the defendant was no longer serving that function.” This Case Law Summary was cancelled by the STF in August 1999. However, the National Congress responded by passing a statute re-instituting the old rule which provided that public officials should benefit from the special venue even if they are no longer serving a public function (Law 10.628/02). It also extended the “special court venue” to the public civil actions. Days after the statute came into force in December 2002, magistrates and prosecutors associations brought suit, challenging the constitutionality of the statute. In September 2005, the STF declared that the statute violated the constitution. As Ferreira shows, these changes in the law were the direct causes of at least 25 appeals - in both criminal proceedings and public civil actions - led to four changes of jurisdiction - among federal and superior courts - and interrupted the proceedings during almost four years.^{lxxvii}

These events gave rise to a series of appeals in the TRT Case questioning the competence of the lower court judges both in the criminal sphere and in the public civil actions.

The chaotic trajectory of the TRT case has also raised a number of questions concerning the capacity of the Brazilian justice system to handle similar cases. Among the most pressing cause of concern seems to be the multiplicity of procedures with very similar concrete purposes. The current institutional design, which allows simultaneous action by several criminal and administrative bodies in response to the same set of facts, must be given a second look. The fragmentation of the State's handling of the TRT case not only complicated the proceedings, but also compromised institutional transparency, and even the quality of the decisions ultimately arrived at by the justice system.

ATTACHMENT 1 – Proceedings and appeals (1998-2012 as of January 31 2013)

Proceedings and Appeals in name of Nicolau dos Santos Neto		Federal Justice	Regional Court of Appeals	Superior Court of Justice	Supreme Court
Total		15	102	59	28
Nicolau's position	Active	0	75	51	22
	Passive	15	27	8	2
	Other	0	0	0	4
Status	Closed	1	76	45	19
	Not-closed	14	26	14	9
Types of proceedings and appeals	Ação Civil Pública	1	0	0	0
	Ação Civil Pública Improbidade	1	0	0	0
	Ação Penal	3	0	1	0
	Agravo de Execução Penal	0	4	0	0
	Agravo de Instrumento	0	27	13	10
	Agravo de Instrumento em Recurso Especial	0	25	1	0
	Apelação Cível	0	6	0	0
	Apelação Criminal	0	7	0	0
	Carta Rogatória	0	0	1	1
	Cautelar Inominada	0	1	0	0
	Conflito de Competência	0	1	3	0
	Cumprimento de Sentença	1	0	0	0
	Exceção de Impedimento Criminal	0	1	0	0
	Exceção de Suspeição Cível	0	1	0	0
	Execução de Título Extrajudicial	1	0	0	0
Execução Fiscal	4	0	0	0	

	Execução Penal	3	0	0	0
	Habeas Corpus	0	14	29	6
	Incidentes Criminais	1	0	0	0
	Inquérito	0	0	1	0
	Mandado de Segurança	0	6	0	1
	Petição/Ação/Medida Cautelar	0	0	1	1
	Petição Cível	0	3	0	0
	Reclamação	0	1	5	4
	Recurso em Habeas Corpus	0	0	0	3
	Recurso em Sentido Estrito	0	5	0	0
	Recurso Especial	0	0	4	0
Year	1998	1	2	0	0
	1999	0	4	1	2
	2000	2	12	2	4
	2001	2	14	9	2
	2002	0	9	3	0
	2003	1	9	14	2
	2004	1	1	3	0
	2005	0	3	3	4
	2006	0	4	6	1
	2007	1	13	3	1
	2008	1	5	4	2
	2009	2	8	5	4
	2010	2	6	4	5
	2011	0	0	1	0
2012	1	8	1	0	

ATTACHMENT 2 – Media

Source: digital collection of “Folha de São Paulo”.

Period: from the first news involving the case, on December 5, 1998 through the last story in 2012 (November, 17, 2012).

Table 1 – Search for “Nicolau dos Santos Neto” per year. News and Covers (1998-2012).

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	total
News	1	35	256	99	23	21	24	16	8	14	7	1	2	5	5	517
Covers	-	3	18	4	1	-	2	1	-	2	-	-	-	1	0	32
Total	1	38	274	103	24	21	26	17	8	16	7	1	2	5	5	549

Table 2 – Number of news per period. 1998-2012. Folha de São Paulo.

	Fábio Monteiro de Barros Filho	Incal Incorporações	Monteiro de Barros Investimentos	Construtora Ikal	Nicolau dos Santos Neto
1999 - 2000	41	26	1	10	312
Total 1998 - 2012	52	26	1	13	549

ATTACHMENT 3 – Table of Sanctions

	TCU (fines)	Criminal: instance 1st	Criminal: instance 2nd	Public Civil Actions	Others
	Judgment 163/2001, (TC-001.025/98-8)	Criminal Suits no. 2000.61.81.001198-1 and 2000.61.81.01248-1	Appellate Review nº 2000.61.81.001198-1 and 2000.61.81.01248-1	Public civil actions n. 98.0036590-7 and 2000.61.00.012554-5.	
Nicolau dos Santos Neto	- Condemned as joint and severally responsible for the payment of R\$ 169.491.951,15 - Fine of R\$ 10 million	Criminal action no. 2000.61.81.01248-1 - Art.1º, V, and § 1º, II, of Law 9.613/98 - 5 years incarceration - Fine: R\$ 960mil - Effect of condemnation: loss in favor of the Union of all values existing in banks abroad and the properties located in /USA and in the city of Guarujá/SP Criminal Action no. 2000.61.81.001198-1 - art.332, “caput”, of the CP - 3 years incarceration - Fine: R\$ 960mil Total after unification - 8 years incarceration - Fine: R\$1.920.000,00 - Initial system: half open	Criminal Appeal no. 2000.61.81.01248-1 - art. 22, sole par. of Statute no. 7.492/86 and art. 1º, par. 1º, I and II of Law no. 9.613/98 -14 years incarceration - Fine: R\$ 600 mil - initially closed system Criminal Appeal no. 2000.61.81.001198-1 - Conviction for peculation, larceny and corruption - 26 years and six months in prison closed system - Fine: R\$ 1,2 million	Public civil action n. 98.0036590-7 - Condemned as co-responsible for moral and material damages and a civil fine. - Loss of assets and estate gained illicitly - Suspension of political rights for ten years -Banned from contracting with the government or from taking tax benefits or incentives - loss of public function.	- US\$ 6 mi cut off in Switzerland - almost US\$ 1 mi confiscated in Miami
Luiz Estevão	- Condemned as joint and severally responsible for the payment of R\$ 169.491.951,15 - Fine of 10 million - Remark: in name of Grupo OK Construções e Incorporações S.A	Acquitted	Criminal Appeal no. 2000.61.81.001198-1 - Conviction for peculation, larceny, corruption, misrepresentation and racketeering - 31 years incarceration - Fine: about R\$ 3 million - Effect of condemnation: loss of values on deposit in irregular accounts abroad.	Public Civic Action nº 2000.61.00.012554-5 - Condemned as co-responsible for moral and material damages and a civil fine. - Loss of assets and estate gained illicitly - Suspension of political rights for ten years -Banned from contracting with the government or from taking tax benefits or incentives - Consolidation of loss of public function.	Senate: ineligible for 10 years
Fabio Monteiro de Barros	Condemned as joint and severally responsible for the payment of R\$ 169.491.951,15 - Fine of 10	Acquitted	Criminal Appeal no. 2000.61.81.001198-1 - Conviction for peculation, larceny, corruption, misrepresentation and racketeering - 31 years incarceration - Fine: about R\$ 3	Public Civil Action number 98.0036590-7 - Condemned as co-responsible for moral and material damages and a civil fine. - Loss of assets and estate gained illicitly - Suspension of political	

	million		million - Effect of condemnation: loss of values on deposit in irregular accounts abroad.	rights for ten years -Banned from contracting with government or from taking tax benefits or incentives - Consolidation of loss of public function.	
José Eduardo Teixeira Ferraz	Condemned as joint and severally responsible for the payment of R\$ 169.491.951,15 - Fine of 10 million - Remark: in name of Incal Incorporações S.A	Acquitted	Criminal Appeal no. 2000.61.81.001198-1 - Conviction for speculation, larceny, corruption, misrepresentation and racketeering - 27 years and eight months incarceration - Fine: R\$ 1,2 million - Effect of condemnation: loss of values on deposit in irregular accounts abroad.	Public Civic Action number 98.0036590-7 - Condemned as co-responsible for moral and material damages and a civil fine. - Loss of assets and estate gained illicitly - Suspension of political rights for ten years -Banned from contracting with government or from taking tax benefits or incentives - Consolidation of loss of public function.	

ⁱ This case study integrates the research on “transnational anti-corruption law in action” coordinated by Kevin Davis (NYU), Guillermo Jorge (San Andres) and Maira Machado (Direito GV). As part of the broader “Global Administrative Law in Developing Countries” project, this project was funded by the International Development Research Centre (IDRC). During the research for preparation of the present case, we have relied greatly on the research of Ana Mara Machado, Yuri Luz and Luisa Ferreira, as well as the trainees Carolina Domingues, Rafael Tatetomoto and Fernanda Geraldini. This work also benefited from very helpful comments and suggestions received from André Rodrigues Correa, Antenor Madruga, Ary Oswaldo Mattos Filho, Bruno Salama, Bruno Paschoal, Carlos Ayres, Flávia Puschel, Juliana Palma, Mario Schapiro, Matthew Taylor, Rochele Ribeiro and Salem Nasser. Kevin Davis and Audrey Feldman revised the English version.

ⁱⁱ Data are as of January 2013, when this case study was concluded. Nicolau dos Santos Neto alone is involved in 102 appeals at the Federal Court of Appeals of the Third Region (Tribunal Regional Federal, TRF 3), 59 at the Superior Court of Justice (Superior Tribunal de Justiça, STJ) and 28 at the Brazilian Supreme Court (Supremo Tribunal Federal, STF). As of January 2013, 49 out of those 182 appeals were still pending decision. See attachment 1 for details.

ⁱⁱⁱ *Isto É*, May 28, 2010, "Luiz Estevão volta ao jogo." This declaration was before the approval of the Lei Ficha Limpa (clean sheet law). Proposed via popular initiative, the Law bars candidates who have been convicted of any crime in an appeals court from running for public office.

^{iv} Nicolau dos Santos Neto was not a career judge. He was appointed as Public Prosecutor before the State began requiring a public examination to be admitted to that institution. Afterward, he became a judge at the TRT-SP due to a provision in the Federal Constitution reserving judicial vacancies for lawyers and members of the public prosecution corps.

^v Parliamentary Investigation Commissions first appeared in the Brazilian Federal Constitution of 1934. The current Constitution, of 1988, is the first to grant CPIs investigation powers equivalent to those possessed by the judicial authorities (Federal Constitution, art. 58, 3rd). Since then, Brazilian Supreme Court jurisprudence has revisited the extent of such powers on several occasions. The following decisions stand out from this body of law: "While CPIs do have investigatory powers, they are subject to the same constitutional limitations" as judicial authorities (STF, MS 23454-DF, Rel. Minister Marco Aurélio, DJ 08/19/99); and that CPIs do *not* have the power "to issue decrees blocking a private person's assets, which is not an investigatory measure, but rather a possible future sentence warrant, which may only be issued by a competent judge." (STF, MS 23466, Rel. Min. Sepúlveda Pertence, DJ 04/06/01).

^{vi} Power, Timothy and Taylor, Matthew. “Accountability institutions and political corruption in Brazil” in *Corruption and democracy in Brazil. The struggle for accountability*. Indiana: University of Notre dame, 2011, p. 18-19.

^{vii} See, e.g., Pedone, Luis et alli. "Controle pelo legislativo" in Bruno Speck (ed.). 'Caminhos da Transparência. Análise dos componentes de um sistema nacional de integridade'. Campinas; Unicamp Publisher, 2002.

^{viii} Nassif, Luis. 'O Jornalismo dos anos 90'. São Paulo; Futura, 2003.

^{ix} Nahat, Ricardo. 'Anatomia da Corrupção'. São Paulo; R. Nahat, 1991, p.19.

^x Abramo, Claudio et alli. "Contratação de obras e serviços (licitações)" in Bruno Speck (ed.). 'Caminhos da Transparência. Análise dos Componentes de um sistema nacional de integridade.' Campinas. Unicamp Publisher, 2002, p.105.

^{xi} Terms of the bid edict, discussed in TCU decision No. 231/1995, p. 03.

^{xii} According to the technical opinion mentioned in TCU's decision No. 231/1996, p. 09, the way in which the subject matter of the bid was defined might have "hampered the participation of interested parties".

^{xiii} The CPI report does not give any additional details (2000:63). The TCU and STF's decisions which were analyzed for this study do not discuss this aspect of the bidding process and, therefore, do not give any complementary information concerning the reasons and circumstances for the company's disqualification.

^{xiv} The information contained in the "complete registry sheet" concerns the company's board, its capital, its corporate purpose, as well as partners or directors at the time of its constitution. It might include excerpts from subsequent filings, amending the initial information. Specifically, in the case of Consórcio Grupo OK Augusto Velloso, there is no additional information recorded in the registry sheet, as per survey carried out on May 23, 2011.

^{xv} Jucesp, on May 23, 2011.

^{xvi} The report of facts contained in TCU's decision No. 231/1996 (p. 03), indicates that Incal Incorporações S.A. was the winner of the auction, and the company with which the contract was executed. The CPI report (2000:63), on the other hand, indicates that the bid winner was Incal Indústria e Comércio de Alumínio Ltda., while the company that actually entered into the contract was Incal Incorporações S.A. In any case, both sources indicate that the company contracted for carrying out the enterprise had not participated in the bidding process.

^{xvii} Jucesp, May 23, 2011. The same document indicates that the partner João Julio Cesar Valentini withdraws from the company on March 23, 1998. The registry sheet's marked item is 'dismissal/resignation".

^{xviii} With respect to the TRT having engaged a company that did not participate in the bidding process, CPI's report indicates that "there was an attempt to explain this fact, by Mr. Fábio Monteiro de Barros Filho, in his testimony to the CPI, when he stated that the association of the Grupo Monteiro de Barros with Incal Aluminios to establish Incal Incorporações, responsible for the enterprise, had already been anticipated since before the bid result" (CPI 2000, 63).

^{xix} Proceeding No. 2000.61.81.001198-1, addendum to the arraignment (p. 04) and judgment (p. 37-38).

^{xx} The Ministers of the Federal Accounting Tribunal (TCU) are responsible for overseeing the accounts of the federal government and also for determining, either individually or as a panel, if there have been any "irregularities" practiced among the companies, administrators or employees responsible for public goods.

^{xxi} Report of the Court of Appeals' decision 591/2000 concerning Rendering of Accounts by TRT-SP for fiscal year 1995 (TC-700.115/1996).

^{xxii} Injunction Relief n. 93.0032242, 12a Federal Civil Circuit Court.

^{xxiii} Note by the Federal Senate's Permanent Commission concerning the 6th Extraordinary Meeting of 08/10/2000 of the CCJ Commission - Judiciary Sub-Commission, p. 04.

^{xxiv} The public civil action was created in 1985 (Federal Statute nº 7.347, of 24/07/85) authorizing the Public Prosecutors, some public bodies and civil associations to begin investigations focused on accountability and reparation for damages in cases which involve the protection of collective rights, such as the environment, consumers' rights and economic rights. When the law of administrative improbity came into force, the public civil action also started being used to investigate civil responsibility in corruption cases.

^{xxv} Public Civil Action n. n. 98.0036590-7. The lawsuit was filed against Nicolau dos Santos Neto, Luiz Estevão, Fábio de Barros, José Eduardo Ferraz, Delvio Buffulin, Antonio Carlos Gama, Incal Incorporações S/A, Monteiro de Barros Investimentos S/A, Fabio Monteiro de Barros Filho, José Eduardo Ferraz, Construtora Ikal Ltda., Incal Ind. and Com. de Alumínio Ltda. The suit was filed before the 12th Federal Criminal Court in light of the motion for injunctive relief.

^{xxvi} *Veja*, April 28, 1999 (Issue No. 1595) and *Folha de São Paulo*, April 21, 1999 (front page and A1.10). It should be stressed that the *Folha* had published, on May 12, 1998, the decree of assets blocking on the Public Civil Action.

^{xxvii} *Veja*, April 28, 1999 (Issue No. 1595), p. 46.

- ^{xxviii} "X-ray of a scandal: Chico Lopes (Central Bank's former president) holds 1.6 million dollars, non-declared, abroad." *Veja*, April 28, 1999 (Issue No. 1595), front page.
- ^{xxix} Because the CPI's investigation also encompassed Regional Labor Courts (TRTs), the CPI refers to the case discussed in this text as "TRT of the Second Region" or "TRT São Paulo," thereby distinguishing it from the cases concerning the TRT of the First Region (Rio de Janeiro) and of the Thirteenth Region (Paraíba), which were also investigated.
- ^{xxx} Brazilian Supreme Court, Warrant No. 23 455-5/DF.
- ^{xxxi} Information contained in a Swiss Federal Court decision denying Nicolau dos Santos Neto's appeal against the seizure of the two checking accounts. Decision available at <http://bstger.weblaw.ch> (last accessed July 7, 2011).
- ^{xxxii} Opinion of the Parliamentary Decency and Ethics Council, reported by Senator Jefferson Peres, p. 04
- ^{xxxiii} Published on the D.O.U., resolution No. 51/2000 of June 29, decreeing the revocation of Luiz Estevão's mandate.
- ^{xxxiv} Opinion of the Parliamentary Decency and Ethics Council, reported by Senator Roberto Saturnino, p. 2.
- ^{xxxv} *Folha de São Paulo*, available at: <http://www1.folha.uol.com.br/folha/brasil/ult96u20590.shtml>. Magalhães's mandate on the 51st legislature (which was quashed) is not indicated in his Senate's website page <http://www.senado.gov.br/senadores/senLegisAnt.asp?leg=a&tipo=3&nlegis=52&end=n&codparl=4>.
- ^{xxxvi} Federal Penal Court. RR 2007.131, p. 2.
- ^{xxxvii} Federal Penal Court. RR 2007.131, p. 2.
- ^{xxxviii} Federal Penal Court. RR 2007.131, p. 7.
- ^{xxxix} Ribeiro, Rochelle (2013). "Reparação dos ativos do caso TRT: equilibrando a interdependência de jurisdições com a utilização de diferentes estratégias legais". in Machado, Ferreira and Machado (eds.). *Sistema de justiça e corrupção no Brasil: estudos sobre o Caso TRT*. (forthcoming).
- ^{xl} This decision is available at http://jumpcgi.bger.ch/cgi-bin/JumpCGI?id=21.08.2012_6B_688/2011 (as of January 28, 2013). According to the decision, roughly US \$ 3,8 mi was transferred abroad between 1994 and 1999.
- ^{xli} This amount stands for the alleged difference between the total payments from the TRT-2nd Region to the construction companies (R\$ 231,953,176.75) and the actual value of the project as it then stood (R\$ 62,461,225.60), all in values from April, 1999.
- ^{xlii} Court of Appeals decision 591/2000, judged on 08/02/00 on the Special Rendering of Accounts concerning the year 1995 (TC-001.025/98-8)
- ^{xliii} Court of Appeals decision 26/2001, judged on 01/31/01, on the petition for unavailability of assets submitted by the MPF No. 017.777/2000-0.
- ^{xliv} Court of Appeals decision 163/2001, judged on 07/11/01, on the Special Rendering of Accounts concerning the year 1995 (TC-001.025/98-8)
- ^{xlv} Court of Appeals decision 301/2001, judged on 12/5/01, on the Special Rendering of Accounts concerning the year 1995 (TC-001.025/98-8).
- ^{xlvi} Court of Appeals decision 158/2002, judged on 5/8/2005, on the Special Rendering of Accounts for the year 1995 (TC-001.025/98-8)
- ^{xlvii} AGU (2012) « Advocacia-Geral fecha acordo com Grupo OK para ressarcir quase R\$ 500 milhões desviados dos cofres públicos ». Aug 23. Available online at: http://www.agu.gov.br/sistemas/site/TemplateImagemTextoThumb.aspx?idConteudo=205939&id_site=3. English version of the story available at: <http://en.mercopress.com/2012/08/24/brazilian-former-senator-agrees-to-reimburse-234-million-dollars-of-looted-money>
- ^{xlviii} Inquiry no. 258, to investigate "crimes against Public Administration." Nicolau dos Santos Neto was the only party identified as under investigation (information taken from the STJ website).
- ^{xlix} In August 1999, the STF (Federal Supreme Court) cancelled Precedent No. 394, of April 1964 which established that "once the crime has been committed during the course of a functional exercise, the special competence prevails by prerogative of function even if the criminal suit is initiated after the exercise is terminated".
- ^l Investigation no. 2000.61.81.001198-1.
- ^{li} Decision given by Min. Marco Aurélio on July 13th, 2000.
- ^{lii} Criminal Suit n. 2000.61.81.001198-1.
- ^{liii} Criminal Suit n 2000.61.81.001248-1
- ^{liv} It is important to note that during this period other topics were covered, besides Nicolau's preventive confinement decree. Most of the reports relating to the case were published in July and August of 2000 - 74 and 83, respectively. The great topic exploited by the media was the possible involvement of Eduardo Jorge, former Secretary General of President Fernando Henrique Cardoso's cabinet.

^{lv} Nicolau was sentenced to a five-year prison term for money laundering in Criminal Suit n. 2000.61.81.001248-1 and to an additional three-year term for influence peddling in Criminal Suit n. 2000.61.81.001198-1. The verdicts were given on the same day and the judge determined that the penalties should be consecutive, in light of the concurrent criminal acts.

^{lvi} The decision of the Federal Court of Appeals of the Third Region (*Tribunal Regional Federal da 3ª Região, TRF-3*), which heard the appeal, stated that "there is no evidence that the first degree condemnatory sentence issued in these records was granted due to prevarication, concussion or corruption on the part of the judge, such there is no reason to invalidate the procedure or impeach the judge, and any possible vice that involves a different procedure does not have any bearing on the present one" (TRF3, Criminal Appeal No. 200061810011981, pages 371/372).

^{lvii} Interview 3 (31:00)

^{lviii} The ruling was handed down on the eve of the expiration of the statute of limitations of the alleged crimes. The defense claimed that the statute of limitations had already run, since the previous year was a leap year, the judging panel rejected this argument (TRF 3, Criminal Appeal number 200061810011981, p. 228).

^{lix} For further details, see attachment 3.

^{lx} According to the Brazilian Code of Criminal Procedure, preventive confinement (before a final sentence is issued) may only be decreed "as an assurance of public order, of economic order, for convenience of the criminal proceedings, or to ensure correct application of the criminal law, if there is proof of existence of the crime and sufficient evidence of authorship" (art. 312 of the Penal Procedure Code). Failure to appear in court is a common reason for issuing such a confinement decree, under the theory that such a measure is needed for the smooth operation of the criminal justice system by ensuring that the defendant will appear in court.

^{lxi} 'Veja', August 02, 2000. Issue 1660. Printing of this issue: 1 257 444 copies.

^{lxii} This refers to the situation in which two countries do not have a formal agreement providing for cooperation and the cooperation is instead based on a case-by-case decision. When a country requests cooperation on the basis of reciprocity it creates the expectation that it will provide cooperation when needed by the requested country.

^{lxiii} A "constructive trust" is a common-law remedy allowing the transfer of an asset *in rem* to a litigant, if there is evidence that the asset has unjustly enriched the holder of the property's title. *American Law Institute. Restatement (Third) of Restitution & Unjust Enrichment* § 55 (T.D. No. 6, 2008). The Restatement provides many historical examples of constructive trusts, some of them of dating back to the Tenth Century. The concept originates from the English common law.

^{lxiv} Details on the procedures followed for this petition and the Miami litigation generally are available on the Miami Circuit and County Courts website, at <http://www2.miami-dadeclerk.com/civil/search.aspx>.

^{lxv} Suit n° 538.00.1998.033693-2, 11ª Civil Court, São Paulo.

^{lxvi} *BacenJud* is a tool for electronic communication between the judiciary and banks, through which judges request blockage of assets and bank account information. The requests are sent directly to banks for immediate compliance. The Brazilian Central Bank is in charge of its management.

^{lxvii} The last decision available on the online database of the trial court, dated October 2012, reports that Grupo OK's representatives have yet to be notified of the decision that disregarded its status as a separate legal entity.

^{lxviii} "Lalau took my money and ran away / Then he came back, but the money didn't / This year I am going to be rich for one day / I'll pretend I'm going to Lalau's "Banda Mole" / Lalau took my money and ran away / Then he came back, but the money was gone / While he was running away / Our people were endlessly asking: / Lalau, Lalau, Lalau / Where is Lalau? / Go tell the Feds / Where did you put my money? / Tell me Nicolau / Lalau". Carnival march of the traditional Banda Mole de Guaratinguetá (Guaratinguetá's Soft Band). Audio available at http://www.jornalonline.com.br/galeria/musicos/banda_mole/body.php?id=8 Latest access on July 14, 2011.

^{lxix} We conducted the search for these suits on the website of the State of São Paulo Court of Appeals (<http://www.tj.sp.gov.br/>), on June 21, 2011. The first search was made on the survey tool "consulta de processos de 2º grau" by "name of the party" (Nicolau dos Santos Neto). However, in order not to conceal other decisions concerning the case under study, another search was made on "consulta de jurisprudência." We entered 'Nicolau dos Santos Neto' and 'Lalau' as search terms.

^{lxx} TJSP, Civil Appeal 613.488-415-00; TJSP Civil Appeal 9185690-42.2006.8.26.0000

^{lxxi} TJSP, Civil Appeal 613.488-415-00. To the same effect, TJSP, Civil Appeal 9185690-42.2006.8.26.0000.

^{lxxii} TJSP, Civil Appeal 236.105-4. And further: "[...]the fact that the two co-defendants are members of the fiscal council does not authorize them to call the appellee, shouting and crying out 'thief, Lalau ...'" (TJSP, Civil Appeal 431.883-4). *See also* TJSP, Civil Appeal 296.931-4/9.

^{lxxiii} In Bill of Review no.2000.03.00.033614, TRF3 (Federal Court of Appeals) recognized a link between ACPs 2000.61.00.012554-5 and 98.0036590-7. And so declared they should be tried together

^{lxxiv} The defendants Jail Machado Silveira, partner-manager of Construtora e Incorporadora CIM, and Délvio Buffulin were acquitted due to lack of evidence. Regarding the latter, the Court of Appeals said: “I find, in the conduct of Délvio Buffulin, the absence of any proof that the co-defendant has acted culpably, let alone with the requisite intent. On the contrary, the Superior Court of Justice indicates not only the utter lack of proof regarding Délvio’s intent, but also the extreme caution he exercised as President of the Regional Labor Court, inasmuch as the defendant ensured proper processing of the budget loan, looking to reestablish the economic-financial balance of the contract with Construtora Incal—this in addition to the total absence of proof of unjust enrichment.” ACP Sentence n. 98.0036590-7, DJ 26.10.11.

^{lxxv} ACP Sentence n. 2000.61.00.012554-5.

^{lxxvi} Our interviews indicate that the amount of money that the Brazilian State spent on international attorneys’ fees over the course of the TRT proceedings roughly cancel out the amount that it had gained back from the sale of Miami apartment. Interview 2 (14:36) and Interview 1 (20:12).

^{lxxvii} Ferreira, Luisa (2013). " O impacto das normas sobre foro especial no Caso TRT " in Machado and Ferreira (eds.). *Sistema de justiça e corrupção no Brasil: estudos sobre o Caso TRT*. São Paulo: Academica Livre (forthcoming).