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White Collar Crime - Brazil

White collar crime, criminal investigations and politics

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Political interference

Petrobrás scandal

Comment

While criminal proceedings should not interfere with politics, throughout history they have been known to do so. Sometimes this interference is intentional – for example, when investigations are used to influence the democratic process. In many cases, dictatorships will manipulate state agencies in order to hinder opponents of a regime, deciding who must be investigated. Even in well-established democracies such as Brazil, this interference can occur – mostly in the realm of white collar crime.

Political interference

Politicians, particularly in Brazil, often interfere with state-owned companies (eg, gas and oil, post, water and sewage treatment companies) by nominating directors based on personal preference or political agreements, rather than objective professional criteria as in the private sector. In addition, political interference is an undeniable reality in several cases – for example, when it occurs within contracts for public services via concessions granted to private companies (eg, construction, public transport and garbage collection) when the contracts are signed. This illegal interference can involve kickback payment requests (sometimes extortions made by public servants) to sign contracts or even to authorise payments after the contracts have been signed. It is also common to obtain campaign funding illegally through kickback demands via official donations from the same companies that received government contracts, which creates a wide range of corruption possibilities.

The fight against corruption by means of illegal political interference now faces the introduction of leniency agreements for whistleblowers who come forward during an investigation. Brazil recently adopted a stronger bill on leniency agreements (Law 12.850), which reflects the Organisation for Economic Cooperation and Development's anti-corruption treaty and guidelines by expanding immunity to individuals who confess to a criminal scheme, provide the names of others involved in the scheme and return the assets that they illegally obtained.

Further, due to the introduction of leniency agreements and a scandal during the 2014 presidential and general election campaigns, serious concerns have been raised in relation to Brazilian politics and criminal investigations.

Petrobrás scandal

The scandal involved Petrobrás, a state-owned oil company. During President Lula's tenure, Petrobrás purchased a refinery in Pasadena, Texas, which may have caused a loss of over \$1 billion to Brazil and Petrobrás' shareholders.

President Dilma Rousseff (who later became the Brazilian president and is now running for re-election) was president of Petrobrás' board at the time of the purchase and approved it. After the scandal, she denied any knowledge of the risks of the Pasadena contract, claiming that the companies' executive directors never fully informed her or the board of the contract's flaws.

However, during the September/October 2014 presidential and general election campaign, Paulo Roberto Costa – an ex-Petrobrás director who was directly involved in the Pasadena contract – confessed to receiving bribes in relation to several deals. According to the press, Costa confessed because of the possibility of jail time and external pressures, such as the threat of prosecution of his family members that may have been used to hide bribe money. The press also claimed that he had accused 12 senators, 49 federal deputies and one governor of bribery in his confession. Brazilian newspapers printed that he also confessed to receiving \$23 million from a large company that had signed contracts to build a refinery in Pernambuco for Petrobrás called 'Abreu e Lima'. According to the newspapers, Costa claimed that other large companies were also involved.

Costa recently gave a televised statement before the court, claiming that 1% to 3% of the contracts were used to fund the 2010 presidential campaigns of important political parties.

In the same vein, Alberto Youssef – who was the international money operator of several payments to politicians and who has also been jailed – attested to the same in order to obtain a reduction in his sentence.

Understandably, Rousseff's opponents are eager to have full access to the statements that Costa and Youssef gave to the criminal judge in order to use them in their political campaign.

Comment

Costa's confession, cooperation and promise to return the \$23 million he received in bribes were obtained under substantial pressure: Costa faced not only the threat of decades of imprisonment, but also the possibility of his family becoming involved.

This kind of cooperation – which is very useful for criminal prosecutors trying to expedite investigations – presents serious ethical issues. In the Costa case, considering the pressure he was under, it is arguable that his confession was not made as an atonement for his wrongdoings, but instead as a desperate act from a white collar criminal who wanted to return home and protect his family by any means necessary – including by accusing others involved in the corruption and returning part of the money he received.

In cases like this, the whistleblower immunity policy for white collar crime creates significant concerns in the Brazilian political landscape, as one whistleblower may shape an entire presidential campaign. Although Costa's and Youssef's claims must be supported by credible evidence and submitted to cross-examination by those he accused, by the time this happens, the 2014 elections (which end on October 26 2014) will be over.

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