

Court rulings deepen pressure on social security over fraud cases

State courts order reimbursements as federal judges weigh INSS liability

As the Lula administration evaluates how to compensate retirees and pensioners affected by unauthorized deductions made by associations, state court decisions are already ordering reimbursements, according to a Valor review of legal cases. Meanwhile, federal courts are still weighing whether the National Social Security Institute (INSS) can also be held legally responsible—a scenario that could increase the federal government’s financial exposure. The issue is of particular concern to economic officials, as the restitution could further complicate the drafting of the Primary Revenue and Expenditure Report, scheduled for release on the 22nd.

Between January and May, the São Paulo State Court (TJSP) ruled on 1,007 cases involving association dues similar to those under investigation in the Federal Police and Federal Comptroller General’s Office (CGU) “Sem Desconto” (No Deduction) operation launched in late April.

The prevailing understanding in state courts is that the association must reimburse the victim when an improper charge is proven. Some TJSP rulings go further, ordering double reimbursement of the deducted amounts and awarding damages.

On April 30, the court ordered the association UNASPUB to pay R\$5,000 in damages and to return double the amount deducted. UNASPUB is among the entities under investigation, and its technical cooperation agreement with the government has been suspended since the inquiry began.

Valor contacted UNASPUB through the contact information available on its website but received no response.

Also on April 30, TJSP’s 6th Civil Chamber ordered the association called AMBEC to return double the deducted value to a retiree and pay her R\$4,000 in damages. The presiding judge, Judge Vito Guglielmi, noted that AMBEC “is a defendant in several lawsuits with the same cause.” In a statement dated April 24, AMBEC denied wrongdoing and claimed that the recruitment of members had been handled by third-party private firms, saying that “if any fraud occurred, the association is as much a victim as its members.”

As for the INSS, whether it will be held liable remains uncertain. Valor identified a recent precedent set by a federal court, which ruled in April that, as the entity responsible for executing deductions, the INSS has a “duty of diligence in verifying the legitimacy of deductions” and may be held accountable if there is “evidence of its involvement.”

The National Uniformization Panel (TNU), which harmonizes rulings in federal lower courts, is also expected to decide whether the INSS can be held liable for allowing unauthorized deductions of association dues from pension benefits. The ruling was initially scheduled for June 14 but was withdrawn from the agenda at the request of Judge Odilon Romano Neto.

Depending on the outcome, the INSS could be required to share liability in cases involving moral damages. “The TNU’s decision will set an important precedent for federal small claims courts and their appeals panels, though it is not binding on federal appellate courts,” said João Badari, a lawyer specializing in social security law.

According to Mr. Badari, the Consumer Protection Code allows for double reimbursements from private associations, but not from government bodies like the INSS. “I don’t see how double reimbursement could apply to the INSS. The National Tax Code does not allow this type of penalty against the Treasury.”

Nonetheless, if the TNU rules in favor of shared liability, the INSS could be ordered to pay part of the pain and suffering awarded against the associations. “In such cases, both the association and the INSS could be named as defendants. However, I find it unlikely that the INSS would be held liable for pain and suffering, as this would require proof of bad faith and would place a heavy financial burden on the public coffers,” Mr. Badari said. So far, the argument is that the INSS was negligent in failing to monitor the deductions properly.

Since the investigation began, the government has been working to create a compensation plan, though nothing has been formally proposed. On Monday (June 5), senior officials at the Planalto Palace met again to discuss the issue. During the meeting, aides to President Lula urged involved agencies to act with urgency. The goal is to resolve the issue quickly and limit political fallout.

Valor has learned that the push is also intended to shield the president from extended criticism in the press and on social media. The scandal has already led to the departures of Alessandro Stefanutto, former head of the INSS, and Carlos Lupi, who was replaced as social security minister by executive secretary Wolney Queiroz.

The situation also presents a fiscal challenge. The deductions under investigation amount to R\$6.3 billion. Their reimbursement adds complexity to the upcoming fiscal report, which projects revenues and expenditures for 2025 and indicates whether government spending will need to be frozen to meet fiscal rules.

Uncertainty remains as to whether the reimbursements will be factored into this year's budget—and, if so, at what cost. As of now, no decision has been made.

According to a government source, current discussions are still focused on determining the state's degree of responsibility. This will help estimate the overall value of potential compensation. Officials also need to distinguish between beneficiaries who authorized the deductions and those who did not.

For now, the issue remains in the administrative and legal realm and has not yet reached the economic policy level, where decisions would be made about how to account for the expense under Brazil's fiscal rules.

Last week, when asked about the reimbursements, Treasury Secretary Rogério Ceron said it was too soon to know whether additional funds would be needed. He noted that no official request had been submitted and did not mention the possibility of issuing an emergency credit decree.

Mr. Ceron also suggested the INSS might be able to cover the costs within its existing budget by reallocating funds internally. However, this view is contested by experts, who say the pension system is already underfunded. According to estimates from the Independent Fiscal Institution (IFI), a Senate-affiliated fiscal policy watchdog, social security spending is underestimated by R\$16 billion.

Another possibility, according to Mr. Ceron, would be to divert funds from other areas of the federal budget, a move that would require approval from the Budget Execution Board, which includes the ministries of Finance, Planning, Chief of Staff, and Management.

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