

# Insurer's subrogation right – statute of limitation period

22 January 2019 | Contributed by [Morais Leitão, Galvão Teles, Soares da Silva & Associados](#)

## Introduction

### Divergency at stake

### Comment

## Introduction

A recent Portuguese Supreme Administrative Court (PSAC) jurisprudence uniformising decision held that the statute of limitation period of an insurer's subrogated right had started only when it had paid the damages incurred by the insured due to a motor accident. The court found that only after such payment had been made could the subrogation right be exercised under Articles 498(1) and (2) of the Civil Code.

The decision is a relevant milestone in administrative jurisprudence, as there are divergent opinions in this regard among legal authors and in administrative and judicial law.

## Divergency at stake

According to the Portuguese Insurance Contract Law (PICL), when an insurer pays damages suffered by an insured, the insurer may subrogate the rights that the insured had against the third party responsible for the occurrence. For example, if the insured suffered damages due to a motor accident caused by A, they would have the right to claim compensation from A. However, as the insured has an insurance policy that covers such damages, the compensation will normally be paid by the insurer, but this does not mean that A is no longer liable. Indeed, Article 136 of the PICL provides that the insurer may claim from A up to the amount paid to the insured by exercising the right to compensation that the insured had against A.

The conflicting opinion regarding the date on which the period corresponding to the statute of limitation for compensation begins in the above scenario results from the following differing reasonings. Some authors and jurisprudence argue that when a party subrogates the rights of another entity there is no change to the right itself, which maintains all of its original characteristics, including the respective statute of limitation period (without any reason for suspension or interruption thereof). Therefore, if the insured had three years to exercise its right to compensation, counted from the day of the accident, the insurer would have the same period to exercise its subrogated right (counted from the same starting date).

However, other authors and jurisprudence (including the PSAC's jurisprudence uniformising decision) argue that only when the insurer has paid damages to the insured may the insurer exercise the subrogated right, as before such date there would be no way for it to exercise said right. This explains why, according to this reasoning, the period corresponding to the statute of limitation should begin only after the subrogation occurred. For example, if an accident took place in March 2015 and the applicable statute of limitation was three years, an insurer that paid damages in February 2015 would have until February 2018 to exercise its subrogated right against the party that caused the accident.

## Comment

## AUTHOR

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The PSAC's jurisprudence uniformising decision is not entirely innovative in Portuguese jurisprudence, considering that it is in line with most of the PSAC's recent decisions and the Supreme Court of Justice on this matter.

However, the divergency of opinion mentioned above remains, as evidenced by the fact that four out of nine judges voted against the decision and two of them published their dissenting opinions with somewhat compelling arguments.

Because the rule of precedent does not apply in Portugal, courts are not required to issue decisions that conform to jurisprudence uniformising decisions. However, a contrary decision would be subject to appeal, without any of the common restraints or limitations and, therefore, the likelihood of a court not following such a decision is reduced.

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