



## Further clarity on the term of the statute of limitations for agency fees

*Judgment of the Supreme Court of 23 November 2021*

### Background

In the case of agency contracts, the agent promotes commercial transactions on behalf of the principal in exchange for a commission. Unless a more beneficial contractual provision for the agent exists, the commission accrues upon execution of the commercial transaction promoted by the agent (art. 14 of Law 12/1992). Payment must be made before the last day of the month following the calendar quarter in which the commission accrued (art. 16 of Law 12/1992). Until when may the agent defer claiming the payment of commissions?

### Position of the Supreme Court

The Court assumes that the statute of limitations period is 3 years (art. 1967 of the Civil Code) and analyses whether this period is to be calculated as from the date on which the commission is earned (as argued by the principal) or the date of termination of the contract (as argued by the agent). The Civil Code merely states that this period shall be calculated as from the date on which “the relevant services cease to be rendered”. The Court decides favourably to the principal and concludes that the term of the statute of limitations for each commission starts to run from accrual. To support this thesis, the Court considers agency contracts as continuing performance contracts (where each act of performance fully satisfies the interest of both parties). Furthermore, the judgment states that deferring the beginning of the term of the statute of limitations to the date of termination of the contract would imply extending it excessively,

which is contrary to the spirit of the law and the principle of legal certainty.

### Conclusion

In light of this judgment, we make the following remarks. Firstly, the agent loses the right to claim the payment of commissions three years after the accrual thereof, unless the statute of limitations period had been interrupted. The statute of limitations period may be interrupted by a judicial or extrajudicial claim or whenever the principal expressly acknowledges the agent's right. Therefore, it is advisable to check the date of accrual whenever the principal receives a claim for commissions. In the case of commissions older than three years, the prescription period may be used as a defence argument.

Secondly, to provide for greater legal certainty, we believe it is advisable to include an express provision in agency contracts whereby the agent's rights to commissions expire three years after the date of accrual.

Thirdly, the conclusions of this judgment do not affect the rights of the agent in relation to potential compensations for clientele or damages. These are governed by different rules. Their statute of limitations period is one year from the date of termination of the contract.