

Brazil Institute | July 2017



EVENT SUMMARY

Dr. Rodrigo Janot on the Role of  
Plea Bargains in the Fight Against  
Corruption in Brazil



Moreover, the defendant must enter the plea bargain process voluntarily and “spontaneously,” to avoid the appearance of coercion on the part of the prosecution. Janot strongly refuted the claim that plea bargains are coercive. Critics of the practice argue that pre-trial detention and other restrictions on free movement are used to pressure defendants into making plea deals. Janot stated, however, that 85 percent of plea bargains are made with defendants who presented themselves freely.

Under the general framework set forth in the 2013 law, the defendant can pursue a number of objectives: they may seek pardons, reduced sentences, less restrictive conditions for sentence completion, fines instead of imprisonment, and more. Attorneys have significant discretion in shaping the negotiations, so long as the defendant assists in identifying those who engaged in organized crime; reveals the structure, hierarchy, and roles of the criminal organization; helps prevent future infractions; and/or enables the state to reclaim illicit benefits.

Judges are prohibited from participating in these negotiations, allowing for greater independence in hashing out deals. However, a defense lawyer’s presence is mandatory for the express purpose of assisting and protecting the rights of the defendant.

Janot repeatedly stated that the more the defendant collaborates, the greater their ability to negotiate. Less collaboration means less or even no bargaining. Additionally, immunity can be granted, though “no one feels joy in giving immunity to a criminal,” he said.

The final written plea bargain must contain a negotiation report, the possible results of the negotiation, the proposed conditions from the public prosecutor’s office or other agency, the defense’s written acceptance of the terms, and the signatures of all involved.

Janot noted that the prosecution has learned from past mistakes to be more meticulous. He referred explicitly to the large-scale 2003 Caso Banestado investigation, and seemed to allude to Alberto Youssef’s involvement in both that case and the current Lava Jato Operation. In the past (including in the Caso Banestado case), the prosecution remained bound to the plea bargains’ provisions even when defendants broke the terms of the contract. Now, prosecutors avoid requesting reduced sentences as part of these deals, so that they may impose normal sentences if a defendant later violates the terms of the deal.

Though the plea bargains benefit both sides, Janot spoke of a metaphorical Sword of Damocles hanging over the defendant. If they misbehave, the prosecution can revoke the deal and use all evidence provided against them and others, guaranteeing the defendant’s proactivity. However, if the prosecution reneges on the deal, any evidence provided may not be used against the defendant.

Although judges do not play a role in the negotiation of terms, the final deal must be approved by the courts. The Brazilian Supreme Court recently ruled that judges should determine only the plea bargain’s effectiveness in evidence collection, not the appropriateness of the concessions made to the defendant. According to Janot, had this decision been the reverse, it would have sent a message to defendants entering plea bargains that the justice system might not follow through with its



The infographic to the right was provided by the Brazilian Public Ministry, to accompany Dr. Janot's speech at the Wilson Center on July 17, 2017



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