



For immediate release – 14 July 2009

PRESS RELEASE

Brazil: Supreme Court OKs Publication of Civil Servants' Salaries

On 8 July 2009, the Supreme Court of Brazil held that the Mayor of the Municipality of Sao Paulo could order the salary of all municipal civil servants to be put online. The Superior Court of Sao Paulo had previously suspended the Mayor's decision to do this, on grounds of personal security.

On 16 June 2009, the Mayor of Sao Paulo, Gilberto Kassab, decided that the new website, Keeping an Eye on Public Costs (*De Olho nas Contas*), should include a nominal list of all civil servants attached to the municipality – including 147,000 employees of the central administration and another 15,000 employed indirectly – with their posts, salaries and place of work.

Two associations of civil servants (representing professors, engineers and architects) filed lawsuits against this decision. They were granted an urgent provisional decision by the Superior Court of Sao Paulo, and the information was taken off-line. The Municipality appealed to the Supreme Court, which cancelled the provisional decision and held that the information could be disseminated.

The two associations argued that the disclosures would, among other things, breach their constitutional rights to privacy and security of person. The Municipality argued that to refuse to disclose the data would be a violation of the constitutional right to information and principles of publicity of all administrative acts.

The Sao Paulo Superior Court held that the information could put people at risk, and also accepted some procedural arguments. The Supreme Court judge who ruled on the case, Justice Gilmar Mendes, referred to the fact that the Internet has transformed the citizen-State relationship, particularly in relation to social control over public expenditure. The judge recognised that in some cases, openness could legitimately be limited. However, in this case, the public interest in having the information was stronger than the rights of civil servants, and “public order” would be violated by enforcing a judicial decision that undermined the Municipality's policy of transparency, in favour of individual rights.

ARTICLE 19 welcomes the decision of the Brazilian Supreme Court and calls on the Brazilian judiciary to apply such standards in all right to information cases. Genuine acceptance of the right to information will sometimes require balancing with other rights, and the forward-looking stance of the Supreme Court in undertaking this

balancing, rather than simply falling back on accepted notions of privacy and security, which are more established in the jurisprudence, is very welcome.

We also salute the progressive position of the Mayor of Sao Paulo and call on other public bodies also to adopt strong measures on openness of information. This is particularly pertinent and important in light of the new bill on the right to information presented by President Lula to Congress in May 2009.

NOTES TO EDITORS:

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- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.