



ARTICLE 19

Paths of Transparency

The Access to Information Law and the Law Courts

May 2016
Executive summary

EXECUTION

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RESEARCH AND TEXT

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INTRODUCTION

Every year on the anniversary of the Brazilian Access to Information Law (AIL), which will have been in effect for four years on May 16, 2016, ARTICLE 19 publishes a report that analyses its implementation amongst Brazil's government bodies. This year, the report has focused on evaluating the Judicial Branch of the Government

Entitled “Paths of Transparency - the Access to Information Law and the Law Courts”, the most recent report published by ARTICLE 19 analyses the levels of transparency of the courts in all of Brazil's 26 states and the Federal District of Brasília. The work is based upon the provisions contained in the AIL and on Resolution nº 215 published by the National Council of Justice (CNJ).

The decision to restrict the report to the judiciary was taken due to the importance of the agencies linked to it in relation to the future of the AIL. It is worth remembering that the judicial branch has a double relationship with the transparency of public administration in the sense that it has to submit itself to the provisions of the AIL as well as act as the final deciding body in the interpretation and application of the law. Another factor that influenced the choice was that, in previous studies, government agencies linked to the judiciary were guilty of the worst results when compared to the executive and legislative powers.

Furthermore, the AIL establishes that all spheres and levels of the State are subject to its directives, and that includes the judiciary – an unprecedented aspect, when compared to similar legal frameworks anywhere else in the world.

Finally, the judiciary should always be open to scrutiny and the participation of society, especially as it exercises an increasingly significant role in the definition of important social issues. This role includes ensuring fundamental rights, exercising control over other branches of government (in the sense of contributing to the system of checks and balances), as well as analysing and supporting the development of public policies.

METHODOLOGY

The report evaluates the transparency of the courts, considering their administrative and jurisdictional functions which relate to the achievement of justice. The administrative transparency was evaluated according to requisites of “active transparency” and “passive transparency”.

In terms of “active transparency”, the report analyses information made freely available on the courts' websites. Six different criteria were studied, with each of these being divided into 18 different sub-items, all of which are classified as information requiring obligatory publication by the AIL and by the National Council of Justice's Resolution nº 215.

In relation to “passive transparency”, ARTICLE 19 has sought to understand how the courts respond to requests from society for information on issues relating to the institution's activities. To do so, three questions were created for each of the courts, with a total of 81 requests.

In the chapter on “Transparency in the Jurisdictional Role”, the analysis focused on the access to information relating to the operation of the judicial system, including the progress of cases, jurisprudence, the designation of judges, and the election of Court Chief Justices, amongst other information.

Active Transparency

None of the courts we sent requests to fulfilled all the transparency requirements established by the AIL.

The State Court of Sergipe fulfilled the highest number of criteria (five of the six), although it failed in the area of participation by the general public. The courts with the worst evaluation results were those of the states of Piauí and Rondônia, each of which only managed to fulfill one of the criteria.

On the other hand, the criteria relating to the information on budgets and programs and projects was very well complied with, registering results of 81.5% and 85.2%, respectively.

Only the State Court of Sergipe revealed a list of classified and unclassified documents on its website, this being one of the obligations established by the AIL. Low levels of compliance were also noted in the analysis of information on the general public's participation in the judicial system: only three courts revealed this information (those of the states of Goiás, Minas Gerais and Maranhão).

Passive Transparency

One of the most alarming findings was the number of requests for information that were simply ignored. In more than half of the cases (56.8%) no response was made to the requests sent in. Worse, of the total number of replies that the courts provided, less than a third (29.6%) were considered to be satisfactory and the average response time was 26 days.

ARTICLE 19 needed to file a great many appeals to be able to obtain responses to its requests. Of the 81 requests for information made, it was necessary to file 57 lower court appeals in relation to replies being denied. Of these, 43 went to the appeal court and three to the superior federal courts.

Another worrying issue was that less than half the courts (10 of the 27) made specific forms available on their websites for requests for information to be made.

Transparency in the Jurisdictional Role

One finding which was of particular note was that requests for access concerning the content of judicial processes made available online can only be made by those who are directly connected with the case or by attorneys with their professional identification number. These requirements do not exist for requests on cases made in person at the courts of law and represent an obstacle to the access of information.

Only two states' websites provided clear information on how to file a lawsuit, with guidance in easy-to-access locations: those of Minas Gerais and Roraima.

Another problem is the language used on the websites, which, in general, is not user-friendly or easy to understand for the average individual without legal expertise. This fact goes against the content of Article 5 of the CNJ's Resolution nº 215, which states that the courts should inform the members of the public of their rights and the way in which the courts operate in simple and accessible language.

CONCLUSIONS

Over the last few years, we have seen a number of significant advances concerning transparency in the judiciary, but there is still a long way to go. Our analysis shows that the courts are still far below expectations five years after approval of the AIL.

Any initiatives designed to improve the openness of the judiciary should pay special attention to the various aspects of transparency: both active and passive, as well as availability of information relating to the activities exercised by this branch of government.

Compliance with the AIL and Resolution n° 215, however, is only part of the challenge involved in achieving greater transparency in the judiciary. Other issues should be discussed and investigated in more depth, specifically those concerning information on the jurisdictional activities of the courts and the judges, as well as the designation processes for judges and their placement in management positions and in superior courts.

RECOMMENDATIONS

Recommendations for increasing compliance with active transparency in the judiciary

- Dissemination of information on participation by the public through the use of specific sections on the state websites
- Publication of the opening hours and locations where services to the public are provided, with the organisation of all co-related information into a single section
- Publication of contracts, agreements, bidding regulations and the results of public bidding processes by the courts of each state
- Use of more accessible language and formats on the state websites
- Publication of trial dockets and the agendas of Court Chief Justices and the Judges of the Superior Courts

Recommendations for increasing compliance with passive transparency in the judiciary

- Improvement in the responsiveness to requests for information, with action taken by those responsible for internal control to guarantee that the low rate of reply to requests made by the public is improved in the short term
- Greater control of compliance with periods within which replies to requests for information should be provided
- Greater facilitation of the appeal system, including advising the user of this line of action at the time a response is provided to their request for information (preferably by means of an 'e-SIC' [Citizen's Electronic Information Service System]), or in cases where a reply has not been provided
- Dismissal of the additional requirements for identification and encouragement to file requests for information
- Systematisation of the statistical reports concerning the requests for information received and their use in the improvement of information services

Recommendations for medium and long-term periods for the implementation of the AIL

- Constant improvement of document management by the courts
- Training of public servants to improve their understanding of the AIL
- Drafting of the list of classified and unclassified documents or a clear declaration of their non-existence
- Greater openness in relation to court cases, allowing wider and more accessible searches by individuals who are not directly involved in a case, whilst ensuring all due protection for sensitive information and confidential judicial matters
- Greater dissemination of information on public access to the courts, especially in relation to the avai-

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liability of information on the functioning of the system, on how to file a suit in defense of one's rights and how to obtain legal assistance

- Allocation of a specific budget for the improvement of the system providing access to information established in the AIL
- Monitoring of the implementation of the AIL in the courts and councils, and presentation of periodic reports on their compliance, with effective monitoring of the progress
- Improvement of the information systems and participation in the allocation of judges to positions of management and representation, and especially greater transparency in the designation criteria for the election and nomination of Court Chief Justices and the Judges of the Superior Courts
- Development of studies on transparency in the judiciary focusing on identifying areas for improvement that lie outside the limits of the AIL and the Transparency Law and its regulations



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