

THE LEGAL QUALITY OF APPEALS DECISIONS OF THE INSTITUTE FOR ACCESS TO PUBLIC INFORMATION (IFAI)

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Measuring the legal quality of the Federal Institute for Access to Public Information’s (IFAI in Spanish) resolutions is needed for two fundamental reasons: a) to verify whether the principles of legality envisaged in the Mexican Constitution and laws, which benefit citizens, are carried out to the letter, and b) to confirm whether the “definitiveness” model of IFAI resolutions for federal executive branch agencies offers broad legal guarantees to society, which would justify this unprecedented legal attribution that has been understood as a contribution to the right to know.

Both reasons are not just issues that concern an academic army, they also respond to motivations driven by multiple real threats to limit the IFAI’s current power to make final rulings on appeals, through proposals to reform certain ordinances, particularly involving the Federal Court for Fiscal and Administrative Justice, though until now they have not succeeded.

Let us consider the IFAI’s legal nature, in terms of its quasi-jurisdictional characteristics. Article 34 of the Federal Law for Transparency and Access to Information (LFTAIPG in Spanish) states in its first paragraph that, “The Institute will be composed of five commissioners, who will be named by the president. The majority of the Senate will be able to object to these appointments, as can the Permanent Commission when the Senate is in recess. In all cases, the legislative authority will have thirty days to reach a decision, and once the period is over, if there is no decision, it will be understood that the Federal Executive’s appointment has not been rejected.” Furthermore, in the last paragraph, the law establishes that, “The Institute, in terms of its resolutions, will not be subordinate to any authority; it will adopt its decisions with full independence and will have the human and material resources necessary for the fulfillment of its functions.” This is compatible with Article 59 of the LFTAIPG, which states that, “The Institute’s resolutions will be definitive for public institutions and entities: individuals can contest the decisions before the Federal Judicial System [...]”

Similarly, the following powers of the IFAI should be taken into account, as stated in Article 37 of the LFTAIPG, because they are relevant for measuring legal quality: “II. Investigating and resolving appeals claims presented by petitioners. III. Setting up and reviewing

criteria for classification, de-classification and custody of reserved and confidential information [...]. X. Informing the internal control office of each public institution and entity, in compliance with the last paragraph of Article 56, about alleged infractions to this Law and its Regulations. The Institute should be notified of the final resolutions that internal control offices issue and carry out, and should make them public through its annual report.”

Once the IFAI’s quasi-jurisdictional powers are identified, it is necessary to determine measurement parameters and how the legal quality of resolutions from this access to public information enforcement agency will be measured. To begin, it is worth noting that there must be a simple procedure for appellants that does not require the presence of an intermediary lawyer, especially when the governed are involved. This, however, does not mean that the IFAI can skip the principles of legality laid out in the Constitution, general laws and the LFTAIPG. This means that the legal quality should be analyzed through a comparative methodology, in terms of three large elements: a) procedural variables; b) justification variables; and c) motivation variables.

Procedural Variables

Procedural variables are made up of powers that the Law gives the IFAI, as well as due respect for deadlines and the completion of all of the procedural phases during appeal processing. The type of answer that the appellant obtains is also included. Therefore, there are two subdivisions in this first theme: strictly procedural, for example: 1. assisting appellants in correcting deficiencies in their appeals; 2. applying the Investigative Power; 3. holding a hearing, when a) the appellant participated in the hearing and b) the authority participated in the hearing; 4. mandating the start of sanctioning procedures; and 5. issuing within the legal period of time.

For the second subdivision related to the variables involving the meaning of appeals resolutions, four specific variables include: 1. whether it got to the heart of the appeal; 2. whether it ordered handing over the information; 3. whether it ordered the partial disclosure of information; 4. whether it confirmed the denial of access to information; 5. whether it confirmed the inexistence of the information requested; and 6. atypical cases.

For this last point, it is worth pointing out that atypical cases are those that, in spite of being at the heart of the matter, cannot be classified within variables 2 to 5 because of specific characteristics of the case.

Justification Variables

In the case of justification variables, it would be important to point out that this is one of the guarantees of legal security that the Political Constitution of the United Mexican States gives to those governed and defined according to criteria established by the Nation's Supreme Court, as follows: "Justification and motivation. According to Article 16 of the Federal Constitution, all acts of authority ought to be adequate and sufficiently supported and motivated, understanding the former as the fact that the legal precept applicable to the case should be expressed precisely, and the latter that special circumstances, particular reasons or immediate causes which may have been taken into consideration for issuing the act should also be pointed out with precision; if necessary, in addition, there may be adjustments between the motives referred and applicable norms, that is to say, that normative hypotheses be configured in the concrete case."¹

Justification is not only a requirement of the authority's act from the constitutional perspective, but it is also an explicit mandate of the LFTAIPG and other applicable regulations. Also, this is why the IFAI's appeals decisions must be well founded. When analyzing justification, the following elements should be taken into account: 1. legal precepts cited; 2. precision in articles invoked to issue the resolution; 3. precision in articles used to determine IFAI competency; and 4. depending on the case, principles applicable to the matter and their correlation.

Once the reference analysis is performed, the justification quality is evaluated according to the following variables: 1. whether it cited articles on which it bases its competency; and 2. whether it cited articles applicable to the case.

Motivation Variables

Finally, in terms of motivation variables, it is appropriate to define the term according to the Supreme Court: "The legal justification and motivation should be understood, in the first case, by citing the legal precept applicable to the case and, in the second,

¹ Seventh Period:

Appeal in revision 8280/67. Augusto Vallejo Olivo. June, 24, 1968. Five votes.

Appeal in revision 3713/69. Elías Chahin. February, 20, 1970. Five votes.

Appeal in revision 4115/68. Emeterio Rodríguez Romero and others. April, 26, 1971. Five votes.

Appeal in revision 2478/76. María del Socorro Castrejón C. and others. March, 31, 1977. Unanimity 2 out of four votes.

Appeal in revision 5724/76. Ramiro Tarango R. and others. April, 28, 1977. Five votes.

Second Sala, Tesis 902, Apéndice 1988, Segunda Parte, pp. 1481.

the reasons, motives or special circumstances that led the authority to conclude that the specific case fits within the legal norm invoked as justification.² In other words, to motivate implies that the concrete facts that motivated the authority's act are adjusted to the legal hypothesis foreseen in the legal disposition on which such an act or resolution is based. In this section, two elements are analyzed first, which are: 1. interpretation of the articles that were cited as a product of the justification; and 2. explanation of the argument that justifies the decision. Once the prior exercise concludes, and in order to evaluate the quality of motivation, two variables are taken into account: 1. whether or not it carried out an interpretation of cited articles; and 2. whether or not it provided explanations.

² Ninth Period:

Second Collegiate Court from the Sixth Circuit.

Direct appeal 94/88. *Bufete Industrial Construcciones, S. A. de C. V.* June, 28, 1988. Unanimity of votes.

Budget control revision 103/88. Mexican Social Security Institute (IMSS in Spanish). December, 18, 1988. Unanimity of votes.

Appeal in revision 333/88. Adilia Romero. October, 26, 1988. Unanimity of votes.

Appeal in revision 597/95. Emilio Maurer Bretón. November, 15, 1995. Unanimity of votes.

Direct appeal 7/96. Pedro Vicente López Miro. February, 21, 1996. Unanimity of votes.