

TRANSPARENCY AND ACCESS TO INFORMATION IN THE JUDICIAL SYSTEM

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Transparency and access to information in the courts are incipient concepts in Mexico. There has been progress, but there is still a long way to go. Here I offer a few comments on the status of reform efforts. First, I address the way the discussion of transparency and access to information reached the judiciary, and its results. I then review current topics of debate in the field, and finish with remarks on some issues that I believe deserve particular attention.

The courts began discussing transparency and access to information when it emerged as an issue in other areas of public life. One of the main catalysts, in particular, was the wave of legislative action underway throughout the country. The first judicial authority in Mexico to consider the information access issue was the state court of Sinaloa. In April, 2003, it published an agreement to regulate access to court information, in compliance with state law. Sinaloa's example was then followed by the Federal Judicial System, which issued two agreements regulating access to judicial information, in keeping with the Federal Law for Transparency and Access to Information (LFTAIPG in Spanish). However, these two resolutions were heavily criticized as representing an extremely narrow view of the right to access information. The Federal Court reconsidered, and published a new set of regulations that clearly establish the public nature of information with which it is entrusted, outlines the procedures for handling it, and defines the means to ensure that citizens can access information from the Federal Courts. The appearance of this document was a significant advance. It not only facilitated access to information in the Federal Judicial System, but has shaped the regulations issued by other courts as well.

The next major turn of events occurred in July, 2004, when the state of Nuevo León broadened access to court information by approving reforms to its procedural laws and to its laws on access to information. The new rules provide access to file contents, even while trials are underway. Up until then, regulations had focused on access to court decisions once these were definitive—that is, after all appeals had been resolved. Additionally, the new laws created a catalogue identifying circumstances in which information may be denied. Individuals' personal information is protected, as are matters having to do with families, minors, and situations where disclosure could cause damage. However,

soon after Nuevo León approved its laws, the Federal Attorney General filed an appeal with the Supreme Court, (case number 25/2004), on the grounds that the state law was unconstitutional. Discussion around the challenge follows below.

Another important development in recent years, parallel to the new regulations—and constituting a first step towards fulfilling transparency policies—has been the creation of websites for the respective judicial systems. The sites have gradually expanded, offering users more information, and many of them even have spaces designed specifically to fulfill their legal obligations to provide transparency and access to information. Today, nearly all the judicial systems in the country have a site that at least provides information about their different branches, and in some cases, the sites give the public a very good idea of the way the institutions work.

Debates on the transparency of the judicial system generally center on issues concerned with access to information produced in court trials. These debates have focused on issues of the timeliness of access to case data and the reach of new information access rights, especially regarding the public's right to know the sentences. The debate gathered momentum after the state of Nuevo León allowed access to the active case files, and the federal government's subsequent constitutional challenge. The Attorney General's appeal argued that Nuevo León's law could impinge on the privacy of individuals involved in trials; and that trials are solely the concern of those involved in them. In its defense, the state of Nuevo León argues that trials are public matters and maintains that the privacy and other rights of parties involved in trials are protected by the new legislation. The question before the Supreme Court is: at what point do citizens' rights to privacy and other rights of third parties (people named in others' legal cases) conflict with their right to access court information?

One result of all the interest generated by debate over access to trial information is that it has eclipsed other issues of transparency and access to judicial information. For instance, judges appear reluctant to share information about disciplinary procedures, or about the ways in which they confront demands for the administration of justice, or even their own perception of these issues. There has been little discussion about the quality and scope of information publicly available in these areas and on a whole range of judicial functions. Yet, we need to recognize that the problem is not just about lack of will within the judiciary. Many judges do not have access themselves to the tools that would allow them to communicate publicly and precisely about how they work. The first step would seem to be the creation of a comprehensive information system for the institutions that administer justice.

Many judicial systems post lists on their websites for those involved in legal processes. People can then go on-line and check for updates, which cuts out the step of lawyers having to go down to the local court in person to see whether there has been action in a particular case. The first wave of internet publication of case proceedings set off other innovations—for example, some court systems have internet setups that allow users to consult legal file contents on-line. The debate in this area focuses on the cost of such consultation. While some systems offer update information for free on the web, others have chosen to charge users a fee to access data pertaining to their cases.

Conclusions and Proposals

First, it should be pointed out that the progress in access to court information does not necessarily reflect progress in other transparency issues. Transparency is a much broader project, as it implies a cultural change in the government officials who serve in the courts and related agencies. Obviously, these changes are going to take a long time; however, any effort to improve transparency ought to address judges' conduct.

The eventual resolution of the case involving the constitutionality of Nuevo León's law has the potential to resolve a number of debates. However, it seems to me that the case defines the problem of access to judicial information in a very narrow way. The principles and rights at stake must be carefully considered. On the one hand, we have the right to access information and on the other, the right to privacy, the rights of vulnerable groups and even economic rights. However, we also have the principle of procedural disclosure, derived from the right of due process. The latter seems to have received the least attention of all in the debate, but it seems unlikely that any kind of satisfactory resolution will emerge from this case unless it is addressed.

Moreover, the appeal itself is based on an excessively formal and decontextualized concept of procedure. Not all procedures are the same. A constitutional case is different from a family matter, for instance; and procedures also vary according to the specific parties involved. For example, when a case revolves around a public figure, the rules may be different from those that apply to two private individuals. The Supreme Court's decision on the appeal should take these factors into account. When all is said and done, it seems the solution may not necessarily be about developing more regulations, but about granting more powers of discretion to judges so they can allow or reject access depending on the merits of a given case.

In any case, most of the judicial institutions need to improve their generation of information, as well as the mechanisms for citizen access. If citizens do not even know that issues exist, it is unlikely they will be interested in finding out more about them.