

More transparency

The Supreme Court has recently reasserted its independence by convicting former top government officials. However, the judiciary needs to considerably improve its governance and become more efficient to meet society's expectations of justice for all.

Kalinka Iaquinto

THE BRAZILIAN JUDICIARY is still very closed but it is becoming increasingly more relevant for society. The latest proof of this is the visibility the Federal Supreme Court (STF) and its justices have acquired as the court tried top officials of former President Lula on charges of diverting public funds to buy political support for his coalition government when it came into power (popularly known as the mensalão scandal). The Supreme Court opted to broadcast the trial live on TV to show transparency and assert the important role that the judiciary has among the three branches. However, the greater influence of the court, which has been building since 1988, brings with it a problem, says Joaquim Falcão, director of the FGV Law School: "There is a positive side to the [Supreme Court's] rising power, but it creates a social demand [for justice] that the judiciary is unable to respond to, generating a crisis of confidence and management."

The judiciary reform embodied in Amendment 45 to the Constitution (2004) created management tools such as the National Council of Justice (CNJ), which is intended to improve the work of the courts, especially with regard to administrative

transparency and procedures. "From this starts a renewal that has two pillars, one that is ethical in terms of transparency, and one that deals with management efficiency," Falcão says. In coming years, issues involving the internal structure of the judiciary and the Supreme Court itself should be high on the reform agenda.

A major challenge, according to Falcão, is to end the corporatism of the judiciary, especially the hierarchical structure of the courts. "There is no internal consensus, and wages are sometimes excessive. Moreover, chief justices have only two-year terms. This rotation causes administrative discontinuity," he says.

José Antonio Maristrello Porto, professor at the FGV Law School, agrees with the need for change: "We could start by changing the way public employees are selected . . . or through changes in the academic education of lawyers." He believes that "court decisions based on the economic analysis of law . . . are far more concerned with the future behavior of individuals."

Falcão also thinks it would be advisable to review the concept of tenure for justices and judges, saying "We should keep the age limit at 70, but limit the term in office to 15 years." For him, the current system prevents renewal of the judiciary. "The National Organic Law of the Judiciary of 1970s is outdated and needs to be modernized. All concepts of management, efficiency, and ethical independence need to be strengthened," he says.

2012 A MILESTONE

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JOAQUIM FALCÃO

2012 will be remembered as the year when the Supreme Court drew closer to Brazilian citizens and their concerns. In recent years, the Supreme Court has ruled on such controversial issues as the requirement that electoral candidates have clean criminal records, same-sex marriage, authorization for stem cell research, legalization of the abortion of anencephalic fetuses, social and racial quotas for college admission, and demarcation of indigenous lands. The Supreme Court is making very important decisions that affect the everyday lives of Brazilians.

The very image of the Supreme Court justices is changing. Social networks and other media vehicles popularize their names and images to the point where they may be even better known than ministers and members of congress. Falcão says the live broadcast of the mensalão trial brings transparency to the judiciary that often does not exist in other countries: "It's a great educational process about how the justices arrive at their conclusions. This process is extremely positive for democracy because it undoes myths and shows the reality of justice."

According to Falcão, the voice of Brazilian public opinion has been heard. "Public opinion is crucial, because it is one of the factors that influence votes," he says. He points out that



Chief Justice Joaquim Barbosa

"Based on the Constitution, judges can form their decisions freely. It does not make sense to require that a magistrate take certain positions. Based on constitutional law, justices are to use their discretion. But when they are aware of Brazilian public opinion, the justices are closer to the citizen's sense of justice. That's good."

Carlos Pereira, professor, Brazilian School of Public and Business Administration FGV, points out that the punishment that will be applied to the defendants of the mensalão trial matters: "Brazilians feel that only the black and the poor are sent to prison. The mensalão has broken that belief." However, Falcão believes

there may be conflicting expectations. "Part of society believes that only sending the defendants to jail is real punishment. These expectations are likely to be disappointed, since that will not happen with all defendants," but, he notes, "Whatever the sentences are, they will be applied and respected. The Supreme Court could not act otherwise." ❏

Photo: José Cruz/Agência Brasil.



Supreme Court Justices Rosa Weber, Antonio Dias Toffoli, Ricardo Lewandowski, Gilmar Mendes and Celso de Melo.