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NATIONAL REPORT: BRAZIL

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Introductory notes:

Seventy five years have gone by since Brazil first established constitutionally[2] the guarantee to free legal aid in favor of the poor subsidized by State entities and over one hundred years since the creation of the first public legal aid service in Rio de Janeiro[3], then the capital of the country. Under Brazil's current Constitution, approved on October 5, 1988, the Government must provide legal aid to anyone unable to pay for an attorney. This guarantee covers advice and representation by counsel in any criminal or civil case, whatever the scope of jurisdiction. Brazil's Constitution establishes the professional staff model as the main form for legal aid services delivered by the Government. Thus both the Federal Government[4] and the States must organize and maintain a specific institution, the Public Defender's Office ("Defensoria Pública"), which has a status and structure similar to that of the Public Ministry (the Prosecutor's Office).

The purpose, however, of assuring equality in the access to law and justice for all still proves to be almost a chimera in Brazil. There is a historical unbalance between theory, better said, between what has been conceived as a paradigmatic model in the constitutional and infra-constitutional legal system and the real situation, impacting on the everyday life of the vast majority of the Brazilian population.

Though Brazil has formally, long since and has recently extended one of the most qualified systems for the guarantee of equality to poor persons in their access to Justice including both in the representation in court, with exemption for the payment of all expenses and procedural costs and the guidance and legal counseling of a preventive nature in favor of persons unable to assume the expenses of hiring a private lawyer - a system based on provisions of the Constitution and legislation, one cannot ignore that reality is a very different matter. Among the states of the Federation, some of them can not effectively claim that the Public Defenders Offices are set up according to the model established by the

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[2] Cf. Art. 113, Paragraph XXXII, of the 1934 Federal Constitution.

[3] Cf. Decree N. 2.457, of February 8th, 1897.

[4] Brazil is a federation consisting of 26 states and the federal district.

Constitution. Rio de Janeiro State is one of those where the Legal Aid System is fully implemented[5] and is operating according to the Constitutional provisions. Rio de Janeiro has a ratio of 1(one) public defender for each 1.3 (one point three) judges; the ratio nationwide is 1(one) public defender for each 3.8 (three point eight) judges. São Paulo, the most populous and industrialized state, has only implemented its Public Defenders Office in 2006: before that, legal aid relied on a limited and deficient scheme of judicare, and on *pro bono* services, incompatibles with the Federal Constitutional model for this service. In 2008, there were already 400 state public defenders in the state of São Paulo, and they have plans to go on increasing this number in order to provide legal aid to all eligible citizens.

At the level of the federal legal system, the lack of sufficient personnel in the legal aid service to those in need of legal assistance is also a problem. But we can see a significant progress in this service, during the latest years: the number of federal public defenders increased from 111 in May 2004, to more than 300 in 2008. There was a proportion of less than 1 (one) public defender for 10 (ten) federal judges in 2004 and now the proportion is 3 (three) federal public defender for 10 (ten) federal judges.

Despite the unbalance between the acknowledged virtues of the Brazilian model of total and free legal aid for the less favored economically and the countless deficiencies verified by the concrete application of this formal model, it cannot be denied that Brazil has cut a path where it has progressively sought to overcome such vicissitudes. Thus, in the recent reform of the judiciary made effective by Constitutional Amendment N. 45/2004, the Federal government's compromise toward the strengthening of the Public Defenders Offices was clear and in such a way, so as to guarantee that the Public Defenders may fulfill the role given to them by the 1988 Constitution. This was expressly declared by the Minister of Justice, Márcio Thomaz Bastos, in the following terms:

> "Reality has shown us that the struggle for legislative changes is only the first step for the effectiveness of rights. The great challenge presently, is to solidify the democratic institutions capable of providing the concretization announced by the 1988 Constitution. One of the biggest knots to be undone is the issue of access to Justice. (...) No doubt all institutions of the juridical world have a relevant role in the construction of access to Justice. However, the

[5] In 1995 the *Interamerican Bar Association*, an entity based in Washington, D.C., conceded to Rio de Janeiro's Public Defender's Office the "Interamerican Prize of Access to Justice", handed out for the first time in its 55 years of existence. Among the entities which competed for the prize won by Brazil, was the *Legal Services Corporation* which, that is a private, nonprofit corporation, created in 1974 and maintained by the U.S. government, with the mission of providing legal aid in civil matters to the economically less favored population of the 50 American states.

Public Defender's Office certainly has a differentiated role. The Defender's Office is **the** institution which has as an aim the concretization of access to Justice, or at least of access to the Judiciary, being vital in the process of effectiveness of rights."[6]

In this same sense, it is worthwhile transcribing Sérgio Renault's comprehension of the matter when he occupied the position of National Secretary of the Reform of the Judiciary Power of the Ministry of Justice. He declared that:

"It should be pointed out that the analysis of the administration and distribution of Justice in Brazil makes evident the precariousness of access to Justice. On this account, the Federal government has established as an essential point of Judiciary's constitutional reform the concession of functional, administrative autonomy and the initiative of a budget proposal for the Public Defender's Office – a way of reverting the process of hypertrophy which has marked its development." [7]

A number of recent facts permit that new horizons be envisioned for the institutional affirmation of the Public Defender's Office and, consequently, for the total fulfillment of the mission specifically conferred to it by the 1988 Constitution, of assuring equal conditions for the entire Brazilian population, despite cultural, social and economical differences, in the access to information on rights and adequate judicial mechanisms for their effectiveness. Several states of the Federation are adapting their internal juridical and political structures to adjust themselves to the constitutional precept which guarantees the autonomy of the Public Defenders Offices.

[6] Extracted from the "Presentation" to the opuscule, "Estudo Diagnóstico – Defensoria Pública no Brasil." We stressed and highlighted the Minister's declaration that the Public Defender's Office is not only "one of the" institutions responsible for the concretization of the access to Justice. He affirms that it is "the" institution in charge of this task.

[7] Extracted from the message "A Defensoria Pública e a Reforma do Judiciário", in the introductory part of the opuscule, "Estudo Diagnóstico – Defensoria Pública no Brasil", mentioned in the previous note. The pioneer initiative in carrying out a study scanning the reality of the Public Defender's Office in Brazil, undertaken by the Ministry of Justice with the support of PNUD/UN and the National Association of Public Defenders is an eloquent sign of the Federal government's concern to know better the institution in order to allow for its improvement so it may adequately fulfill its constitutional mission.

Elegibility Criteria and Merits Test:

The duty assumed by the Federal Constitution and entrusted to the public powers, specifically the Union and the states, regarding the furnishing of integral legal aid, contrary than what occurs with other public services established as being of a universal nature as, for example, health and education, does not have as beneficiaries the whole of Brazil's population. The holders of this subjective public right are only those who find themselves in a situation of hyposufficiency, it being impossible that the access to rights and to Justice by their own means are only meant for those considered "needy." The definition of the universe of the beneficiaries this right must result from the combined interpretation of the constitutional provisions mentioned above within the infra-constitutional legal system.

Traditionally, the "benefit" of judiciary assistance always was granted to those who found themselves in a situation of economic need which prevented them from meeting the expenses normally required for access to Justice. Initially, only those considered poor, totally deprived of financial means, could legally qualify to benefit from this state assistance. However, Brazilian legislation, in a rather precocious manner, assumed a vanguard position in this specific respect, in the sense that the text of Decree N. 2.457 of February 8th, 1897, presented quite an open and flexible definition of the concept of "poor",[8] not defining the parameters or pre-established limits of pecuniary resources as a requisite for the concession of judiciary assistance. This became a tradition in Brazilian law with the same idea maintained in the 1939 Code of Civil Procedure[9] and, later on, in Art. 2, Paragraph One of Act N. 1060/50 (*i.e.* approved in 1950), the text is still presently in use and which establishes the following:

> "Considered needy, for legal ends, is every person whose economic situation does not permit them to pay the lawsuit's costs and the lawyer's fees without harm to his own maintenance or to that of his family."[10]

[8] This text, consecrated over one hundred years ago in a provision of Decree N. 2.457, of 1897, which considered poor, "every person who, having rights to assert those rights in court, is unable to pay or anticipate the costs or expenses of the lawsuit without depriving themselves of the pecuniary means indispensable for the ordinary needs of their own maintenance or their family's."

[9] The following is the provision found in the 1939 Code of Civil Procedure: "Art. 68 – The party who does not have conditions to pay for the costs of the lawsuit without harm to their own maintenance or of their family's, will be granted the benefit of gratuitousness...".

[10] It is true that in the primitive context of the original text of Law N. 1060/50, there was an indication of the parameter of two minimum salaries (a rate of payment established by the Federal government) of a monthly income as a limit for the concession of the "benefit" of judiciary assistance. The original text of Article 4, § 1, of Law N. 1060/50, foresaw the need to present a "poverty certificate" provided by the police or by the mayor, which was not required when there was proof that the applicant received a

Although almost sixty years have gone by and despite the emergence of a new constitutional order, it is undeniable that the provision which defines the concept of a "needy" person, for the purpose of fruition of the right to judiciary assistance, was welcomed by the 1988 Brazilian Constitution. Therefore, the provision of Art. 5, Paragraph LXXIV, which establishes as the beneficiaries of the assistance to be furnished by the state, those who present "insufficient means" must be interpreted in harmony with the infra-constitutional norm of Art. 2, Paragraph One of Law N. 1060/50 transcribed above. This is confirmed by the reading of Article 134 of the Constitution where it mentions that the Public Defender's Office has as mission, including the guidance and the defense in all degrees "of the needy, in the form of Art. 5, LXXIV". Considering the pejorative sense that the word "needy" holds in common language, there are those who propose its replacement by the term "hyposufficient."

Nonetheless, the characterization of the condition of "needy" or "hyposufficient" which prevails is a consecrated idea for over a century in the Brazilian legal system: the universe of possible "beneficiaries" of the assistance which must be furnished by the state with the intention of facilitating the access to Justice is not defined by fixed tables based on the standard of a citizen's earnings.[11] There is embodied in the legal concept which defines the conditions for admission to the "benefit" of legal aid, both judicial and extra-judicial, an ample margin of flexibility which allows for the consideration of all of the person's and their family's economic circumstances, who intends being granted the "benefit" (*rectius*, who intends to see their right recognized). This is, as already mentioned, an important feature of the Brazilian model of legal aid. Thus, though there is information that some Public Defenders Offices in certain states of the Federation, have adopted criteria for eligibility for the service based on the number of minimum salaries of family income, this fixed criterion, pre-established in a general way, does not find any support in the present Brazilian legal constitutional and infra-constitutional system.[12]

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monthly income inferior to two minimum salaries. It cannot be denied that even at that time, the system behaved with reasonable flexibility, mainly if compared to other existing systems in countries considered as developed.

[11] According to Hélio Márcio Campo, "it matters little for the sake of receiving the benefit the amount of the person's income for there are requirements with very high costs, irrespective of the value sought in a lawsuit because the law does not establish any limit." (Cf. CAMPO, Helio Marcio. "*Assistência Jurídica Gratuita, Assistência Judiciária e Gratuidade de Justiça.*" São Paulo, Editora Juarez de Oliveira, 2002, p. 59).

[12] The Diagnostic Study of the Public Defender's Office in Brazil, launched in 2004 by the Ministry of Justice, reports that the Public Defenders Offices in only nine of the states of the Federation work with flexible criteria of eligibility for the admission of clients. In four states (Amapá, Piauí, Maranhão and Rondônia) the limit of family income is fixed on two minimum salaries. Another four states (Amazonas, Espírito Santo, Minas Gerais and Rio Grande do Sul) follow as the limit of family income, three minimum salaries. The States of Acre and Tocantins apply the criterion of income up to four minimum salaries. The State of Roraima applies the criterion of five minimum salaries and in the State of Bahia and the capital Brasília, this income limit

for the admission of clients reaches six

Likewise, there is not, in principle, in Brazilian law, no peremptory prohibition regarding the granting of legal aid to persons that are holders of assets, especially when it may be unproductive capital. This does not mean that the possession of assets is not an important factor in a global vision to set up, or not, the legal condition to meet the classification of "needy." Nevertheless, there is not, beforehand, any legal prohibition for the granting of legal aid by the state in favor of a person who is a holder of patrimony, even if such patrimony is considerable, especially when in concrete circumstances it is not reasonable (or, sometimes, not even possible[13]) to demand that the person disposes of all or part of his patrimony in order to safeguard the person's rights or those of their family.

On the other hand, the interpretation of some jurists have been more flexible, those who glimpse in the concept of "needy," a focus on the right to integral legal aid furnished by the state and not only on the insufficiency of economic means. Thus, according to the teachings of Professor Ada Pellegrini Grinover,

> "the concept of (legal aid) is extended to include the needy on the legal level, although not on the economic level. This is what occurs with the technical criminal defense, necessary as much to the lawsuit as to the structure any conviction. The penal judge cannot be content with the merely the eventual adversary and neither with a purely formal defense. He must verify that the parties effectively litigate under equal of conditions and that the defense is so well structured so that the defendant is, under the penalty of being equally vulnerable. In other words, the accused cannot be considered as being undefended. Here is not the place to question whether there are rich or poor but only if there are those in need of a legal defense."[14]

Approximately in this same sense, the jurist from the State of Rio

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minimum salaries.

[13] An example cited by Hélio Márcio Campo refers to the concrete case which may have been experienced by thousands of Brazilians when ex-President Collor decreed, by a Provisional Measure, his economic plan which intended ending with inflation through the blocking of financial resources, which left the holder a bank account with only a low amount of money. Many persons, though holders of great sums of money, saw themselves, from day to night, in a situation of having insufficient means to meet with certain judicial expenses and for this reason, could not be denied the granting of the "benefit" of state legal aid. (Cf. CAMPO, Helio Márcio. Op. cit., p. 60).

[14] According to a conference given at the II Meeting of Public Defenders of the State of Rio de Janeiro on May 15th, 1986 in Nova Friburgo, State of Rio de Janeiro. *Apud* MORAES, Humberto Peña de. A Assistência Judiciária Pública e os Mecanismos de Acesso à Justiça no Estado Democrático. In: Revista de Direito da Defensoria Pública do Estado do Rio de Janeiro**.** Rio de Janeiro, Defensoria Pública, 1989, Year 2, N º 3, Aug/Sept 1989, p. 85. Following this same line of thought, see the study entitled "Assistência Judiciária e Acesso à Justiça", published by Professor Ada Pellegrini in the book "Novas Tendências do Direito Processual", by the Editora Forense Universitária.

Grande do Sul, Araken de Assis,[15] affirms that the concept of need used in Art. 5, LXXIV of the Constitution is interpreted in a very wide sense not limited to the insufficiency of economic resources. He mentions the expression the "organizational needy", which had been previously applied by Mauro Cappelletti to indicate this vast category of persons who in contemporary mass societies cannot be excluded from the state's attention in the supplying their needs for guidance and assistance to secure the total exercise of their rights of citizenship. [16]

Seeking a systematic interpretation of the Brazilian legal system, the Public Defender from Rio de Janeiro, José Augusto Garcia, calls upon the provisions not only of the Consumer Defense Code but of the Federal Constitution itself to support the understanding that the universe of beneficiaries of free and integral legal aid to be furnished by the State through the Public Defender's Office, is not limited to those ostensibly in economic need but must be seen in a more ample dimension so as to include other types of needs which justify the State's intervention. [17]

There also is no restriction to the granting of legal aid based on the nature of the case for which the "benefit"[18] is requested. Even when the

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[15] Cf. ASSIS, Araken de. *Benefício da Gratuidade*. In: Ajuris. Porto Alegre, XXV (73), July, 1998, p. 173.

[16] We turn, once again, to Professor Ada Pellegrini Grinover who explains that the so-called organizational needy are: "persons who present a particular vulnerability in face of the existing social and legal relationships of contemporary society. (...) All those who in the intense picture of the complex social interactions of today are isolated and fragile when confronting powerful opponents from the economic, social, cultural or organizational viewpoint, deserving, precisely for this reason, greater attention concerning their access to a fair legal order and to participation by means of the lawsuit." (GRINOVER, Ada Pellegrini. "Acesso à Justiça e o Código de Defesa do Consumidor," In*:* O Processo em Evolução**.** Rio de Janeiro, Forense Universitária, 1996, p. 116-117).

[17] Professor José Augusto Garcia thus expressed himself: "(Besides the desubjectivization of the legal order), another crucial contemporary element for our reflection is the plurality of the phenomenon of need for the purpose of special procedural tutelage. This is a subject that has been of interest mainly to the movement of access to Justice, a highly inspiring movement of the Public Defender's Office, on account of its total commitment to the effectiveness of the rights of the weaker as the movement's theoretical structure makes clear. By 'weaker', however, the poor must not be simply understood from the economic and financial point of view. In an extremely complex society such as today's, it is best to avoid reductionisms. Contemporary needs are very varied, not being possible to elect a single model with the objective of protection and to the detriment of the remaining types. The idea of access to Justice is the most encompassing and generous possible. It insists that all those who suffer from some kind of hyposufficiency, despite the modality, may see their rights fulfilled and have their exclusions rejected. Additionally, when groups want to be protected, to the rest is unviable - an analysis of the individual situation regarding the fortune of each of the members of the group." (cf. GARCIA, José Augusto. "Solidarismo Jurídico, Acesso à Justiça e Funções Atípicas da Defensoria Pública." *In:* Revista de Direito da Associação dos Defensores Públicos do Estado do Rio de Janeiro. Rio de Janeiro, Lúmen Júris, Vol. I, July-Sept/2002, p. 164).

[18] The law foresees in certain cases, due to the nature of the lawsuit, the gratuitousness

case is, for example, an action for debt or execution relating to a huge sum of money, if the plaintiff or the judgment creditor does not have the financial condition at the moment bringing the lawsuit, he may obtain gratuitousness of Justice and the support of the Public Defender's Office. And, if at the end he wins the case, because of the winner's legal costs, it will not be possible to demand from him to collect from the public funds the corresponding values covering the expenses from which he was exempt, for in this case, such a burden befits the party that has lost. Equally, lawsuits which concern patrimony as, for example the probate of an estate, an inheritance or usucaption, do not offer in advance any obstacle whatsoever to the granting of gratuitousness of Justice and support of the Public Defender's Office and which will be verified according to the real situation of the personal and family financial circumstances of the interested party.

Still, concerning the conditions of acquiring the right of judiciary assistance and legal aid, the characteristics of flexibility and openness shown by Brazil's present system allow a reasonable equation of the problem faced by other countries regarding the extension of the "benefit" to certain citizens who form the middle class. These often are kept from effective access to Justice due to the unbalance between their financial situation and the expenses to be incurred in filing of a lawsuit and above all, because of certain acts of probative instruction. In the Brazilian model, there is the possibility of granting partial gratuitousness of justice according to the specific economic circumstances of the petitioner, having in mind the value of the procedural expense to be paid by the party. Thus, considering that there is no rigid parameter for monthly income to be taken into account for securing legal aid in general, nor of gratuitousness of justice in particular, in the face of concrete circumstances, it will be possible to grant the "benefit", at least partially, the exemption from the procedural expenses, whose value is superior to the financial possibilities of the litigant, even when he is a member of the middle class.

Another singular aspect of the Brazilian system is the possibility of granting legal aid without any kind of restriction concerning the nationality of the person requesting the "benefit." This is according to Article 2 of Law N. 1060/50 which, though originally relative only to the "benefit" of gratuitousness of justice and judiciary assistance, must be

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of justice, exempting the author from anticipating the payment of procedural expenses. For example, in the cases of labor claims, the complainant is exempt from anticipating the costs of the lawsuit. Also in a suit for alimony, Law N. 5478/68 which already exempted the alimony creditor from observing the formalities required for receiving the fruition of the "benefit" of judiciary assistance (which involved obtaining of a poverty certificate from the police or municipal authority). Recently in the State of Rio de Janeiro, the State Legislature approved a bill which automatically established the exemption of payment of costs in the filing of an alimony suit, although such a project was vetoed by Governor Rosinha Garotinho, cf. DOERJ November 24th, 2005.

considered as definition of a more extensive universe of the beneficiaries of the integral legal aid, as foreseen under the present constitutional regime. Thus, both Brazilians and foreigners living in Brazil and are admittedly needy under the law, are assured the possibility of obtaining from the state legal, judicial or extra-judicial aid in order to have their rights granted.[19]

Also regarding the conditions of admission to the right of judiciary assistance and integral aid and according to the majority understanding of the Brazilian doctrine and jurisprudence, there is not, in principle, any legal or constitutional veto that may be granted in favor of legal entities considered needy. There is also, as is the case of the State of Rio de Janeiro, express prevision in the constitutional context, admitting such a hypothesis.[20] This possibility is verified concerning a legal entity with profit-making objectives such as, for example, in the case of a small family company or a businessman who works as an "individual enterprise" and whose monthly earnings does not permit the payment of the procedural expenses and lawyer's fees without endangering the continuity of the company's activities. In these cases, the concession of legal aid is instituted also as a reflex of the protection that persons who direct the legal entities deserve. The possibility of granting judicial or extra-judicial, legal aid must be granted to non-profit legal entities of a philanthropic nature, whose patrimony is entirely dedicated to the achievement of its institutional aims and which do not have the financial means to cover the procedural expenses without doing harm to the fulfillment of its mission in favor of public interest. This does not occur, however, in cases of merely recreational entities, such as social clubs and cultural societies whose expenses could be paid by raising the contribution charged from the associates. In the case of associations of residents, situated in neighborhoods of the economically less favored social class, we understand that they can easily obtain the "benefit" of legal aid in both modalities, judicial and extra-judicial assistance, including the gratuitousness of justice in order to defend in court the collective interests of the low income community which the represent. It would be extremely onerous to oblige them to collect financial resources from the members of the community or from the associations themselves, to pay of the procedural expenses for the defense of the collective interests represented by the association.

A last issue must be approached on the subject concerning the granting of gratuitousness of justice in general and judiciary assistance in

[19] In the regime prior to Law N. 1060/50, as determined by Article 70 of the 1939 Code of Civil Procedure, only foreigners resident in Brazil with Brazilian children would have the possibility of obtaining judiciary assistance. They were also guaranteed the "benefit" in cases where the national law of their country of origin granted reciprocal treatment to Brazilians living in their country.

[20] See Art. 179, Paragraph V, subparagraph "h", of the State of Rio de Janeiro's Constitution.

particular. It is concerning the complete lack of a legal requirement in the present Brazilian legal system regarding an opinion of merit on the "viability" of the case to be proposed to Justice. In many countries before the "benefit" of judiciary assistance is granted, it is common that an evaluation of the relevance and expectations of success of the case be made: if it is considered impossible or lacking in consistency, judiciary assistance will be denied. This criterion adopted in other countries seems to us rather hasty, as in reality it may translate into an undue violation of the constitutional principle of the permanency of judicial control. There is a sort of "pre-judgment" of the case for the purpose of granting or not of judiciary assistance which, in turn, becomes indispensable so that the matter may be submitted for the consideration of the jurisdictional entity responsible for handing out a suitable decision of merit. Therefore, we consider the criterion adopted by the Brazilian model concerning this specific point to be most adequate.

According to the legal norms presently in use in Brazil only in "teratological" cases will it be possible for the Public Defender to deny to furnish legal aid – and consequently not propose planned judicial measures – requested by a citizen who personally qualifies as a beneficiary for the service. It should be mentioned here that according to Article 17 of the Code of Civil Procedure,[21] it is the lawyer's duty to deny support to inconsistent or careless lawsuits, the Public Defender is also bound to the same ethic and procedural duties. Nonetheless, such an evaluation must be very carefully made to avoid the refusal of support to a case which could be translated into an undue denial of Justice. Precisely on this account, Complementary Law Nº 80/1994 recognizes as the Public Defender's prerogative of "not supporting a lawsuit when it is manifestly unacceptable or inconvenient to the interests of the party",[22] with the obligation, however, of communicating the fact to the General Public Defender, indicating in writing the reasons for his determination. It is not sufficient to refuse support, because of the Public Defender's conviction that reasonable perspectives of success do not exist or that the "cost" to be supported by the state are not justified in the face of the modest economic benefit pursued by the party. It is the Public Defender's

[21] Thus reads Article 17: Is considered that a litigant is a person of bad faith who: I- infers a specious allegation against, or proffers a defense against, a non-controversial express text of law or fact; II – alters the truth of facts; III – uses the lawsuit to obtain an illegal objective; IV – opposes unjustifiable resistance to the development of the lawsuit; V – proceeds in a reckless manner in any incident or act regarding the lawsuit; VI – provokes incidents openly without evidence; VII – interposes an appeal with the express purpose of delay. These rules apply to all litigants, be they or be they not under the shelter of judiciary assistance or of gratuitousness of justice. Specifically regarding paragraph I mentioned, naturally it does not mean bad faith to infer a specious allegation against an express text of law when the unconstitutionality or the manifest injustice of the law is alleged.

[22] Cf. Article 44, Paragraph XII, regarding the members of the Union's Public Defender's Office and Article 128, Paragraph XII, regarding members of the State Public Defender's Office.

obligation, even when there are limited chances of success, to propose suitable judicial measures. The Public Defender only will be excused from doing so when convinced of the impropriety of any measure or that the measures, possible in thesis, may reveal that they are contrary to the interests of the party.

Services provided and Scope of Legal Aid Scheme:

The scope of action of the right to judiciary assistance, in general and to legal aid in particular, is the most extensive possible. The underlying idea is to grant total effectiveness to the principle of legal isonomy, as established by the Federal Constitution, in such a way that social and economic inequalities may not be an impediment to the full exercise of the rights assured by the legal system to all Brazilians. Thus, in thesis, all of the relevant considerations of a legal or judicial nature which a person may have access to with financial resources to pay for such services must be equally assured to the needy by the State, by the Public Defender's Office. Regarding this specific item of the "benefit's" scope under discussion, the main normative reference is the text of Law Nº 1060/50 which in its second Article establishes that its application reach the levels of penal, civil, military or labor Justice. In any field of the legal universe, it is possible to have conceded free and integral legal aid, be it for the support of interests in court or for the guidance and information on personal situations of a legal nature faced by the citizenry in their daily lives.

Another provision of Law Nº 1060/50, regarding the scope of the right under discussion is Article 9 which establishes that "the benefits of judiciary assistance include all the acts of the lawsuit until the litigation's final decision in all stages of the lawsuit." Thus, once conceded, the benefit of gratuitousness of justice is automatically extended to all stages of the lawsuit necessary to the issue, also encompassing the interposition of appeals, the bringing suit for incidental actions and the measures of judicial foreclosure to make the judgment materially effective. Therefore, there is no need for a new formal procedure to confirm the gratuitousness of justice conceded, even when the decision on the merit of the case on the first jurisdiction is not favorable to the beneficiary: in this case, he/she may apply for resources, without the need to demonstrate the appeal's legal viability, except in the hypothesis of litigation of bad faith by interposition of appeals with the objective of delay, as foreseen in Article 17, Paragraph VII, of the CCP, which can be applied to all litigants, under the shelter, or not, of judiciary assistance. The revocation or annulment of the right of gratuitousness to justice can only occur based on the absence of the legal requirements regarding the situation of hyposufficiency or with the alteration of the beneficiary's patrimonial condition with no connection whatsoever with the eventual frailty of the legal thesis attempted to be sustained in the appeal phase.

As pointed out above, what was previously understood as a mere "benefit" of gratuitousness of justice and judiciary assistance, circumscribed by the exemption from procedural expenses and lawyer's fees, acquired a more extensive scope with the 1988 Constitution. The new constitutional regime also included consulting and legal guidance/counseling in general besides institutional and educational actions for citizenship and the struggle for the upgrading of the legal system as a whole by means of legislative reforms and political actions focused on the improvement of the conditions of life of poor persons. Thus, an entire new set of services, such as those which classify as preventive advocacy include assistance in writing contracts and performing legal acts in general and the defense of interests in extra-judicial jurisdictions, mainly in administrative lawsuits in public entities and even disciplinary lawsuits confronting infra-state entities, such as several professional corporations, all of which cannot be excluded from the field of free and integral legal aid established by the Constitution as a state duty in favor of the needy or hyposufficient.

The State agents in charge of furnishing integral legal aid, in this case the Public Defenders, must plan institutional actions capable of multiplying the effects of their functional performance, mainly that of preventive work, as previously mentioned. Many barriers must be overcome in this effort for free and integral legal to be effectively furnished with all the extensiveness inherent to them. Standing out among these barriers, in first place, is the population to whom the service is aimed, totally ignorant regarding the possibility of counting on this assistance. Therefore, Augusto Tavares Rosa Marcacini proposes:

> "it is up to the legal aid supplier to promote with certain regularity, talks with the population or collective guidance for persons with the same type of legal problems. The use of mass media communication, especially radio and television, could greatly contribute in this sense, with programs specifically focused on explanations and information for the population, or with the insertion in soap operas of accurate legal explications concerning themes of general interest to the population."[23]

It can be said that these different areas of activity undeniably translate themselves into the unfolding and effectiveness of what determine the constitutional principles of legal isonomy, the required legal lawsuit, the ample defense, the adversary, and above all, the monopoly of judicial control. If the State omits its duty of assuring the furnishing of services of legal and judiciary assistance, it will be depriving a considerable percentage of the population from effective access to Justice. Countless injuries or threats of damage to rights will remain marginal to

[23] MARCACINI, Augusto Tavares Rosa. Op. cit., p. 71.

jurisdictional control,[24] resulting in grave risk of rupturing the democratic system of laws.

The current tendency is to increasingly extend the State's assistance in legal matters, leaving, sometimes, to a second plan, the obligation to configure the state of poverty or economic need. An example of this situation is the right to legal aid guaranteed by law which is not limited to the financial conditions of the beneficiary party is the child's and adolescent's right to free access to the Public Defender's Office, provided by Article 141 of the Child and Adolescent Statute.

Some Statistics on Brazilian Justice System and Legal Aid System:

	Population	GDP	Per Capita GDP	Number of Public Defenders	Number of Judges	Legal Aid Budget	Judiciary Budget
BRASIL (all the 27 States plus Federal Judiciary)	189.600 mill	R$ 2.600.000 mill (US$1.468.926 mill)	R$ 14.000 (US $ 8.000)	4.031	15.174	there is no nationwide recent and precise information	R$ 26.693 bill (US $
RIO DE JANEIRO STATE (only the State Judicial System)	15.700 mill	R$ 338.172 mill (US$ 191.057 Mill)	R$ 21.400 (US$12.000)	757	975	R$ 290 mill (US$ 164 mill)	R$ 1.712 bill (US $

Reference: 2007 (fiscal year)

Petrópolis (RJ-Brazil), 31 de janeiro de 2008.

[24] The fifth Article, Paragraph XXXV, of the Federal Constitution establishes that "the law does not exclude the recognition of the Judiciary Power, injury or threat of right." It is the law that demands payment of the costs and several fees so that cases may be submitted to the jurisdictional entities; and also the law, in most cases, demands that the party be assisted in court by a professional skilled with the capacity to plead, or, in other words, by a lawyer. Thus, if the law does not assure mechanisms capable of dispensing with the payment of these expenses and assuring the gratuitous sponsorship of the person who is withheld to plead, this will – in an indirect way – create impeding barriers so that the threats or damages to the right will be recognized by the Judicial Power and thus translate into a manifestation of unconstitutionality.