
THE CONTROVERSY AROUND RIGHT TO INFORMATION: THE CASE OF “ALIANZA CÍVICA” AND THE PRESIDENCY OF ERNESTO ZEDILLO¹

Alianza Cívica is a non-partisan, plural citizen organization that seeks to contribute to the Mexican democratic transition by encouraging citizen participation in public matters, particularly in government office and electoral processes transparency, and also developing civic education strategies.

Since its creation in April, 1994, Alianza Cívica has concentrated its efforts in the creation of spaces to promote citizen participation in national life. It was created as a response to a general social claim to have reliable electoral processes, ruled by universal justness impartiality and transparency principles.

With the conviction of the fact that democratic transition in Mexico was not just a matter of elections, several years ago Alianza Cívica initiated a new stage in its activity, from which new ways of citizen participation and education were created with the purpose of contributing to the construction of a new relationship between civil society and the State.

Currently, Alianza Cívica is working in three different action lines, each one of them with a distinctive project:

¹ Text based on: Las violaciones al derecho a la información de los mexicanos. Alianza Cívica, Mexico, D.F., 1996.

- I. Electoral Policy;
- II. Transparency and Access to Public Information,
- III. Construction of Citizenship and Civil Society.

As of the citizen movement for an integral observation of 1994 electoral process, our belief that aside from striving for clean and reliable elections we have to continue working in the construction of a democratic culture was confirmed. This is why, with the intention of moving forward promoting citizen participation in public matters, in 1995 an initiative to establish a surveillance system by civil society over the performance of government institutions and the officers that held the responsibility of execution of government activities, was promoted.

This initiative, called “Adopt an Officer” is a citizen initiative oriented to the observation and documentation of the performance of public officers in Mexico from a non -government and non – partisan stand point. The program intends that the citizens become interested in public matters and that officers inform civil society about their activities on a regular basis.

The starting point was the premise that by “adopting an officer” and by supervising government plans and programs fulfillment, in other words, to observe and document both the officer performance and the way in which public policies are exercised, could significantly contribute to stop impunity and corruption in the exercise of power in Mexico.

CITIZEN PROJECT “ADOPT AN OFFICER”

By this program of civil participation in public affairs we intended:

- To broadly promote civic education by fostering citizen participation;
- To force public officers to perform in an honest and effective manner;
- To create the foundation for an officer – citizen relationship in the benefit of the community;
- To document and disclose to the public opinion the result of the follow up of those officers and their performance regarding public policies;
- To create a database available for consultation by citizens about the background and performance of the “adopted officers”;
- To denounce, with the proper groundings and before the appropriate instances, every fault / offense committed by any monitored public servants,

- To create the foundation to promote a fair and precise legislation to stop impunity and corruption.

Because of its importance and symbolism, the first officer to be elected by Alianza Cívica to launch the program was the then in office President Ernesto Zedillo Ponce de Leon. As the supervision and surveillance tasks that we wanted to implement required certain information, we had to refer to the only legal instruments available in those days to guarantee the rights of requesting and obtaining information for citizens, Constitutional Articles 6 and 8.

Constitutional Article 6, now as it was before, states that:

«... the right to information shall be guaranteed by the State»

While Constitutional Article 8 states:

“Public officers and employees shall respect the exercise of the right of information request, provided that such is presented in written form, in a peaceful and respectful manner; though in political matters such right can only be exercised by the Mexican citizens. Every petition must be replied in written form by the questioned authority, who has the obligation of releasing the document to the requester within a brief term”.

For the fulfillment of our endeavor, we invoked the right that any natural or juridical person has regarding the information generated or gathered by the Public Function.

By virtue that the Law states that the requests must be elaborated in a specific manner and signed by a citizen, they must be responded in a reasonable expedite manner by every recipient officer. If such officer ignores the citizen request, even if it is the President himself, he can be summoned by a judge to respond. This was the procedure with a certain degree of success that was followed by Alianza Cívica.

The project had two tracks:

1. The recovery of information over the way in which public budgets were managed and
2. The use of the necessary legal tools to force officers, including the President of the Republic, to submit information about the way in which the public resources or income were spent.

When our program was launched, an important antecedent was still fresh in our memory: President Ernesto Zedillo Ponce de Leon had repeatedly expressed his willingness to respect citizen participation and his commitment with transparency.

During his campaign as candidate, Ernesto Zedillo had claimed that, if he became President, he would promote an «intense citizen participation in the mechanisms of evaluation, follow up and performance control of public servants». He also committed himself to «go deeper in the deregulation process, especially in those aspects where the legal frame allows public servants to be discretionary», and he also claimed that we was «determined to lead an accountable government, compelled to provide citizens with broad, truthful and opportune information»².

The President gathered these ideas in his First State of the Nation Report, when he promised that we would promote «social participation in the tasks of public office surveillance and control and committed himself to foster a more efficient public function and to strengthen the public officers behavior principles to increase the attention and services quality in the benefit of citizenship, as well as to support all actions intended to prevent abnormalities and combat corruption and impunity»³.

In 1994 we had performed an investigation that revealed many serious concerns regarding access to information:

- It was extremely difficult to obtain information on any aspect related to the Presidency of the Republic and the President;
- The President's real income was unknown because there was no report on the excessive and secret budgetary appropriations that were received by high officers by the end of each year;
- The President managed an enormous budget in an extremely discretionary manner that allowed possible abuse, and
- The President had a readily available secret budgetary appropriation of a millionaire amount.

Upon the results of this research, at beginning of 1995 we concluded that our First Servant was in contradiction of his own statements, keeping privileges and

² Reyes Heróles, Federico (Coord.). Cincuenta preguntas a los candidatos, México, FCE, 1994. pp.40 y 55.

³ Federal Executive Power, First State of the Nation Report, Ernesto Zedillo, September 1st., 1995. México, Presidencia de la República, Tomo 1, p.142.

prerogatives in the use of public resources and such lack of transparency has prevailed to these days during his office. This is why we decided to exercise our right of request and sent two letters to the Presidency of the Republic requesting the President to disclose information that was only available to him.

EXERCISE OF THE RIGHT OF REQUEST:

The first request was made on March 19, 1995. On that date, the National Coordination of Alianza Cívica submitted a letter addressed to the President, by which in a peaceful and respectful manner the following information was requested:

- The complete organization chart and functions of all Presidential Offices and Advisors;
- The way in which he had managed the amount allotted to him by law for the discharge of his presidential duties;
- The amount of the President's monthly income, charged against the treasury, including the salary approved by the Congress of the Union, allowance and compensation system, as well as any other amount of money received against the treasury,
- The conditions under which the President would disclose his patrimonial statement.

By a second document, dated April 18, 1995, Citizen Ernesto Zedillo was requested to submit information about the "details and characteristics of the support given by the Presidency of the Republic, in pecuniary or any other fashion or type to the International Press Center and the Association of Foreign Correspondents in Mexico (ACEM, acronym in Spanish)".

EXPECTANCY OF A LARGELY POSTPONED RESPONSE

Despite his previous statements and commitments with the citizens, the Federal Executive did not respond for one year. As this was in breach of the individual guarantees provided by Constitutional Articles 6 and 8, we decided to select one of the two requests to initiate a protection trial that in compliance with Constitutional Articles 103 and 107, was the proper legal instrument. Due to its relevance, we selected the first one.

On March 27, 1996, we filed a lawsuit before the Fifth District Court on Administrative Matters in the Federal District. The complaint progressed; the authority received the lawsuit (File No. 196/96), notified the Presidency about its existence and summoned the parties for a constitutional hearing. After analyzing the case, a sentence in our favor was resolved: The President was then forced to respond to our petition, fact with no precedents in the history of our country.

Alianza Cívica National Coordination received from the Citizen Attention Unit, dependent from the Presidency Office and under the responsibility of lawyer Leonor Ortiz Monasterio, a response to the petition dated March 28, 1995. By this document, we were notified that “each one of the questions therein contained was being replied in the same order of the original request”. (Doc. No: AC/96/170).

THE RUGGED PATH OF A RIGHT: ACCESS TO INFORMATION

By the above-mentioned response, our right of information request was restored. However, to fulfill our endeavor, we had to wait for a year, obtain legal counseling, and file a lawsuit against the Presidency. It is true that we obtained a reply from the Federal Executive office, but it was not enough to restore our right to information, as the submitted data were insufficient to fill the existing information gaps. The information that we needed continued to be undisclosed and absolutely inaccessible to the citizen.

Regarding the information petition dated April 18, 1995 related to payments made to foreign journalistic organizations, the Presidency of the Republic remained silent.

THE UNQUESTIONABLE PRESIDENTIAL “SECRET BUDGETARY APPROPRIATION”

One of the most notorious discretionary spaces in the Mexican Government Expense Budget was the so-called Presidential “Secret Budgetary Appropriation”, agreed upon as a privilege at a constitutional level. This appropriation was allotted for “contingency expenses” on a yearly basis, under the impenetrable veil of discretion, without forcing the Federal Executive to submit account of its use.

Sergio Aguayo considers that the “secret budgetary appropriation” is the most highly refined symbol of excessive presidential power. The Constitution authorized Presidents to have a “secret budgetary appropriation”, without imposing the obligation of submitting accounts. If such appropriations were to be used with

the purpose of comparing presidents, the winner would be Carlos Salinas de Gortari. During his six years in office, he spent 858 million dollars (390 thousand dollars per day), without us being aware of how that money was spent.”⁵

Some analysts recognize that it is during Zedillo’s office where the first constitutional and budgetary changes related to the “secret budgetary appropriation” occurred; during his administration, significant modifications to the exercise of the Federal Expense Budget were made. During such six-year term, the amendment to Constitutional Article 74, Paragraph IV was passed, thereby forbidding the allotment of such kind of appropriations in the public budget.⁶ (See Chart 1)

IMPORTANCE AND DIFFICULTIES IN THE EXERCISE OF THE RIGHT TO INFORMATION

As already stated, our monitoring tasks started in November, 1994 and covered three aspects: the extent of presidential powers, organization of presidential offices, and the available budgets. Each topic line was selected for covering aspects of general interest:

- To be informed in order to understand the way in which the presidential staff works and the manner in which functions were distributed;
- To be aware of the amounts received by the President and his offices, like budgets or salaries for the execution of the presidential office,
- To follow up the administration of such resources and, if necessary, demand their use in compliance with the interests of the citizens.

In order to obtain the information required by the investigation carried out by Alianza Cívica, and before the sentence was resolved in our favor, we referred to several government offices, particularly the Presidency of the Republic, the documentation centers of the parliamentary sectors of the opposing political parties, Partido Acción Nacional (PAN, acronym in Spanish), and Partido Partido de la Revolución Democrática (PRD, acronym in Spanish) at the Congress of the Union, and several libraries and printed material editors.

⁴ Hofbauer Helena, “*El análisis de presupuestos públicos: Una herramienta para la transparencia y la rendición de cuentas*”. At <http://www.revistaprobidad.info/009/art04.html>.

⁵ Aguayo Quezada, Sergio, “*Revolución en el presupuesto*”, in Revista Memoria No. 119, January, 1999.

⁶ Ugalde, Luis Carlos. “*El debate sobre la corrupción en México*”. Paper presented at the CLAD VII International Conference on State Reforms and Public Administration, Lisbon, Portugal, Oct. 8-11, 2002.

The first thing that we identified were the enormous difficulties to obtain information related to the Presidency of the Republic. There was no document equivalent or comparable to the Federal Public Administration Organization Manual (published for the last time 14 years ago, in 1982), detailing the organization and functions of each Federal Government Agency.

According to some versions provided by informed individuals, during the six-year term of Carlos Salinas de Gortari, a brochure was published, explaining the Presidency of the Republic organization and functions, but such publication was not supplied by the Presidency staff in charge of attention to the public. Over and over again, we verified that the personnel dedicated to provide information to the citizens was not doing so and even appeared to feel offended when they were requested for precise details.

During our investigations, we referred to the Citizen Attention Unit, the Presidency Information Department, the Private Secretariat Documentation Unit, the Social Communication General Directorate, the Graphic Service Unit, the Presidential Chronicle Unit, the Press Office at the Official Residence "Los Pinos", and the Publications Division of the Social Communication General Directorate.

Except for the latter instance, where we received a Presidency organization chart (which had already been published in Section 111 of the Biographic Dictionary of Mexican Government in 1992), every referral rendered no other fruit than the recommendation of calling on other agencies.

The existence of an unacceptable secrecy halo became increasingly evident around the Presidency organizational structure and the budgetary exercise. When the Press Room staff in "Los Pinos" was requested to produce a presidency organization chart, they replied that such document did not exist, but for internal use.

Something similar happened during the visit paid to the Expense Undersecretariat Documentation Unit of the Treasury Secretariat, with the purpose of inspecting documents related to the presidential budget and the Federal Executive's salary.

Upon the request of a document indicating the presidential remuneration in compliance with the Federal Expense Budget, the staff in charge of the Unit replied that none was available, as it was confidentially handled information. When they were asked if it was public information, the answer was a laconic: "Theoretically".

In brief, it is important to highlight this confidential characterization of information that was public, despite there was no official disposition whatsoever prohibiting the disclosure of the organization chart and the presidential budgets, or the salary of high level public officers.

If our information search was fruitless in the mentioned government agencies, we did obtain information from the PAN and PRD documentation centers and from the press. In fact, a significant part of the figures presented in the Alianza Cívica Report, published later on, were sourced from official documents that, despite their public character, could not be obtained, but through the intervention of the independent federal congressman, Tonatiuh Bravo, whose help was invaluable for the elaboration of the said report.

Regarding the information related to the way in which the presidential offices were organized, it was outstanding that such did not appear gathered in any official document that could be obtained through publicly accessible channels. With the request to the Presidency, we aimed to complement the information we could not access. In his response, the presidential office referred us to regulations incapable of updating the internal structure, organization and functions of Ernesto Zedillo's Presidential Office. This kept us from having a clear idea of the President's functions and offices. For example, no one was willing to inform about the number of individuals that worked there, or about the hierarchy system or regarding offices with apparently duplicated functions. Thus, it was impossible for us to verify if the very scarce data that we had matched with reality

Synthesizing, in spite of utilizing the legal instruments intended to guarantee our rights to information and request, we were unable to know the way in which the Presidency of the Republic was organized during the office of citizen Ernesto Zedillo Ponce de Leon, all in breach of the right to information of the Mexican people.

After exhausting the national instances, in 1997 Alianza Cívica, through his President, Dr. Sergio Aguayo Quezada presented a lawsuit against the Mexican Government for violating its right to information before the Inter-American Commission of Human Rights (CIDH, acronym in Spanish).

One year later, the CIDH claimed incompetence to hear and resolve the case. So, an important chapter of our country's history of human rights was closed, because the absence of resources, the distress, and the temporary extension of the process forced Alianza Cívica to address other priorities.

If it was indeed that the protection proceedings forced the authorities to respond, it is also a fact that such responses were limited, in the case of budgetary administration, to submitting data from incomplete official sources that we had previously analyzed; or, by the same token and regarding the issue of salaries and patrimonial statements, to the management of scarcely credible figures or the authoritarian declaration that the citizens did not have access to the said information.

It is important to remember that in those days, in the Mexican political system, the Executive was still the central figure and was more important, from the political standpoint, than the Legislative and Judicial Powers. Additionally, the legislative bodies were primarily integrated by members of the party in power. Not even the congressmen and senators of the opposing parties had access to most of this information.

Unfortunately, even today, the management of people's economic resources continues to be a non-accessible topic for the citizens. Both the Federal Executive Power and the State Executives are in the obligation to report to the Legislative Power, though this is not translated into clear and concise information for general society.

ATTAINED IMPACT

This innovative process, based on the simple enforcement of constitutional rights, had important impacts on two key matters:

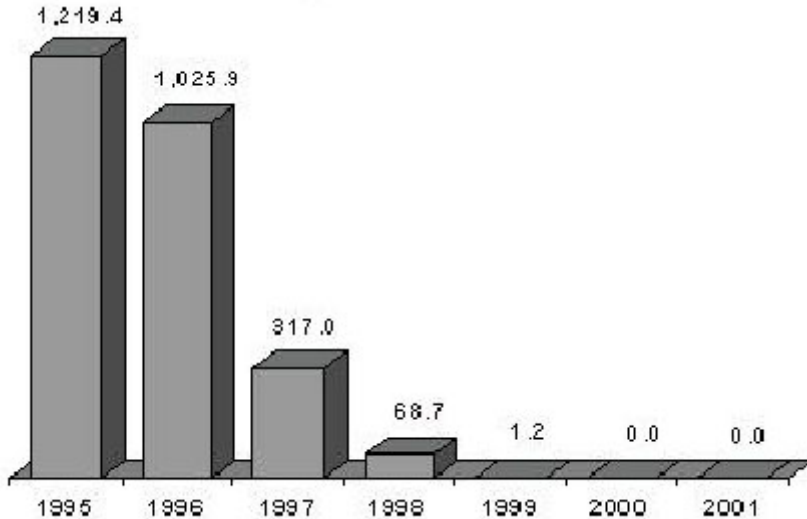
In the case of the President "adoption":

- In subsequent years, the amounts assigned to the "secret budgetary appropriation" were considerably reduced, to the extent that for year 2000, President Zedillo notified that he would not request more money from the Congress for the secret fund for the corresponding budget.
- We contributed to take the first step in the opening of debates regarding the citizen right to free access to information, which –practically – was very far from being public. Further steps were possible thanks to the impact of these initial actions, to the arrival of opposing representatives in key positions within the different commissions of the House of Representatives, to the interest on such issues promoted by the communication media, and to the determination of different social and political actors that undertook the task of achieving a transparent public information.

Chart 1

**AUTHORIZED RESOURCES FOR THE SECRET BUDGETARY
APPROPRIATION 1995-2000⁷**

Constant Millions of Pesos of 2001 ^{1/}



^{1/} Calculated with the implicit GIP price index

On year 2001, President Vicente Fox Office submitted to the consideration of the Honorable Congress of the Union an initiative for a Constitutional Amendment, with the purpose of eliminating those expense appropriations that could not be fiscally supervised. The President proposed to eliminate the “secret appropriation” and to create the “confidential expenses” category, which would be exclusively used for public national security matters. These expenses would be subject to the transparency principles, and to audits by the higher federal competent agency. The most important benefit rendered by these citizen actions, still incipient in our country, is the impact this had on public opinion. As long as our society does not demand the exercise of such a basic right, like knowing how their

⁷ Technical Coordination and Spokes Unit / Social Communication Unit. Treasury Secretariat (SHCP). Report of June 18-22, 2001.

representatives are handling public issues, it shall be difficult to even think about the consolidation of a democratic regime.

Regarding institutional performance, the results obtained by this demand confirmed the relevance of continuing to design and spread all strategies to promote citizen participation in public matters, particularly the supervision of government office, demanding accountability from the officers. We think that this is how we contribute to avoid discretionary application of public resources and decision-making, as well as to fight corruption and impunity.

It is clear that the right of request is a support, though it does not substitute the rest of information mechanisms, and that by passing and enforcing the Federal Law of Transparency and Access to Public Government Information we are significantly progressing into a real citizen right to relevant information on public performance.

We hope that, pursuant the Federal Law of Transparency and Access to Public Government Information, accountability over government actions and decisions becomes a reality and is used to fight corruption, impunity, and the administrative inefficiencies that still prevail in some government sectors, in such a way that it motivates citizens to participate by actions, criticism and proposals over public interest matters, thereby strengthening our country's democratic institutionalism.

All this must be supported by broad and joint educational and broadcasting strategies, both from IFAI and civil organizations, aimed to sensitize and inform citizens and public officers about the importance of knowing, respecting and using this legal instrument, so that any interested individual can access public government information.

Alianza Cívica
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