# ACCESS TO JUSTICE IN EAST ASIA AND IN LATIN AMERICA: COMPARATIVE PERSPECTIVES IN JAPANESE AND BRAZILIAN LEGAL AID SERVICES

## *ACESSO À JUSTIÇA NO LESTE ASIÁTICO E NA AMÉRICA LATINA: PERSPECTIVA COMPARATIVA ENTRE OS SERVIÇOS DE ASSISTÊNCIA JURÍDICA JAPONÊS E BRASILEIRO*

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**RESUME:** The present paper analyzes the historical and social roots that have led East Asia and Latin America to adopt their current legal aid systems, explaining why these countries have been able to withstand the global economic crisis. Furthermore, this paper analyzes the similarities and differences between the East Asian and Latin American legal aid models, focusing on the Japanese and Brazilian systems.

**KEYWORDS:** Legal aid. Access to justice. Comparative Study. East Asia. Latin America.

**RESUMO:** O presente artigo analisa as raízes históricas e sociais que levaram o Leste Asiático e a América Latina a adotarem seus atuais sistemas de assistência jurídica, explicando porque esses países foram capazes de resistir à crise econômica global. Além disso, este trabalho analisa as semelhanças e diferenças entre os modelos de assistência jurídica do Leste Asiático e da América Latina, com foco nos sistemas japonês e brasileiro.

**PALAVRAS-CHAVE:** Assistência jurídica. Acesso à Justiça. Estudo Comparativo. Leste Asiático. América Latina

## 1 INTRODUCTION

Legal aid is widely recognized as a foundation for the enjoyment of other rights, not only the procedural/instrumental right to a fair trial but also many other "substantive" rights that are established by law and whose exercise is being denied or contested in given/concrete life situations. According to Alan Paterson, "substantive legal rights are of little value to citizens if the latter lack the awareness, capacity, facilities or (the effective possibility) of enforcing these rights or of participating effectively in the justice system" (PATERSON, 2012, p. 69).

In general terms, the right of access to justice derives directly from the theory of the social contract, as the founding matrix of the State and the social order. When individuals surrendered their rights, including their right to settle disputes through the use of force, they receive in return from the State the corresponding justice, peace, and the possibility of a better life. Since the State assumed the monopoly of jurisdiction, it also assumed the commitment to ensure equality before the law, as well as guarantee equality of opportunity to access the justice system (JOHNSON JR., 2009, p. 02).

The effectiveness of the right of equal access to justice presupposes not only the prohibition of any economic barrier, but also presents a positive dimension, which imply in the State obligation to ensure that all should have effective conditions to exercise the right of action and defend their rights before the justice system, regardless of their condition of fortune. Precisely for this reason, denial of access to justice, by action or by omission, represents the rupture of the fundamental bases of the social contract, generating the exclusion and marginalization of the poorest part of society.

In order to comply with the commitment to deliver free legal assistance (advice and representation) to the poor, different jurisdictions, influenced by their cultural background and local history, had adopted diverse ways and developed varied models. Currently, four basic models of legal aid services can be identified around the world: (a) *pro bono systems*, in which the legal assistance to the poor is given by private attorneys, who act under a charitable

regimen and motivated for professional ethics reasons, without any kind of financial compensation from the public purse; (b) *judicare systems*, in which the legal assistance is delivered by private attorneys, who receive financial compensation from the public purse in a case-by-case basis; (c) *salaried staff model*, in which the lawyers are employed directly by government agencies (or through private organizations) and they receive monthly fixed compensation, irrespectively to the load of service or of the tasks effectively fulfilled, normally in a full time basis; and finally (d) *hybrid or mixing systems*, that basically juxtapose the models mentioned above, in diverse possible combinations (ALVES, 2006, p. 49).

During the second half of the twentieth century there was a broad expansion and development of legal aid mechanisms, especially in the main industrialized democracies of the western world. Amongst all of these examples, one notes the legal aid scheme established in England & Wales, that attained its peak at the end of the 70's and the beginning of the 80's of the last century. However, beginning in the 90's and in the first two decades of the 21st century, in the majority of countries that had otherwise possessed legal aid systems thought to be "advanced", the scenario has been one of regression and a cutting of the provision of services, with severe restrictions in terms of funding and support (CASTRO; ALVES; ESTEVES; SILVA, 2017, p. 35-36).

In contrast to these scenarios, East Asian and Latin American countries are experiencing a continuous process of expansion and consolidation of legal aid services subsidized by the State. Although situated in opposing sides of the globe and besides possessing completely distinct cultural roots, Latin America and East Asia have been following similar paths, investing in legal aid even during a global period of austerity.

Therefore, the comparative study of these systems can be useful to supply a valuable perspective about how to constantly guarantee for everyone the full and effective access to justice, overcoming eventual economic limitations imposed by some economic crisis scenario. After all, the world does not experience the first economic crisis and certainly this will not be the last.

The present paper will begin by analyzing the historical and social roots that have led Latin America and East Asia to adopt their current legal aid systems, explaining why these countries have been able to withstand the global economic crisis. Then, this paper will analyze the similarities and differences between the East Asian and Latin American legal aid models, focusing on the Japanese and Brazilian systems. The choice of these countries as a matter for this research did not arises by chance. It has elapsed due to the strategic importance

of these countries in the respective continents. Beyond being qualified between the most important economic powers of East Asia and Latin America, Japan and Brazil possess highly developed legal aid systems, both from a normative/regulatory viewpoint as well as regarding to the institutional structure. Besides, these countries present an extremely interesting legal particularity in the world-wide scene, therefore they belong to a select/small group of States that have expressly guaranteed the right to legal aid in its Constitutions. All these features make the Japanese and Brazilian legal aid models an obligatory subject of research for those who desire to understand adequately the legal aid and access to justice in East Asia and Latin America.

This paper uses the empirical research methodology, as a result of a research mission undertaken by the authors to East Asia in June 2016. In addition, bibliographical and documentary research will be used as a complementary mechanism for structuring the theoretical bases of the conclusions.

## 2 THE ECONOMIC CRISIS AND THE INCREASE OF LEGAL AID SERVICES IN EAST ASIA

In the 1970s, as a direct result of the globalization process, capital flight has put an end to the rapid economic growth that Japan had been experiencing since the end of the Second World War. In addition to capital flight, the size of the unemployed population and the number of part-time workers has increased since the 1990s, and income gaps and poverty emerged in association with the review of public works and deregulation (IKENAGA, 2013, p. 04).

Furthermore, the economic crisis experienced by East Asian countries since 1997 produced a massive wave of unemployment, increasing poverty levels.

Thereby, the need to strengthen social safety nets emerged in East Asia, triggering policies to support the unemployed, to provide medical care, and other subsidized services. This process of developing welfare institutions has directly impacted on expanding the provision of legal aid services to those in need, especially in Japan, Korea, China and Taiwan.

Curiously, therefore, the economic crisis of the East Asian countries ended up generating the phenomenon of strengthening legal aid models, following a political line

completely opposite to that adopted by the European countries, where the crisis caused the retraction of the judicare system.

In Korea, the legal aid service were structured in 1987, with the founding of *Korea Legal Aid Corporation* (대한법률구조공단). After gradually extending its scope of action over the years, KLAC currently provides legal assistance with judicare attorneys and staff attorneys, adopting a mixing system.

In China, since 1994, the government initiated a legal assistance pilot program in major cities of the country, using resources from provinces and municipalities. In 1995, the first legal aid center was established in Guangzhou (*Guangzhou Municipal Legal Aid Center*), followed by the establishment of other centers in the provinces of Guangdong and Sichuan (JOHNSON JR., 2016, p. 1237). Currently, there are about 3.000 legal aid centers in China, with provides legal assistance with judicare attorneys and staff attorneys (CHEN, 2015, p. 01).

The legal assistance model adopted by Hong Kong's special administrative region differs from the model found in China, with legal assistance provided by the *Legal Aid Department – LAD* (法律援助署), under the supervision of the *Legal Aid Service Concil – LASC* (法律援助署), established in 1996. In the majority of cases, the legal aid service are provided by judicare attorneys, and the indications are made in accordance with the degree of experience and technical ability of the professional, taking into account the degree of complexity of the case. However, the Legal Aid Department currently has 76 staff attorneys, who carry out internal activities and, in sporadic cases, can be assigned to provide direct legal assistance. Therefore, the Hong Kong legal assistance model also follows the mixed system (salaried staff and judicare, with a wide prevalence of the last one).

In Taiwan, with the evolution of democratization and legalization of the country, the social need for access to justice increased proportionately. Since 1998, a number of private entities (such as the *Judicial Reform Foundation*, *Taipei Bar Association* and *Taiwan Association for Human Rights*) have initiated a legislative movement to establish the public legal aid service. In 2004, the Legal Aid Act was enacted, which resulted in the creation of the *Legal Aid Foundation* – LAF (財團法人法律扶助基金會), designed to provide legal assistance to poor people using the judicare system.

## 3 THE JAPANESE LEGAL AID MODEL

Under the Japanese Constitution of 1946, indigent criminal defendants had the right to be represented by court-appointed attorneys at the government's expense (article 37).

Following the constitutional determination, in 1952 the *Japan Legal Aid Association* (JLAA) was established, has an incorporated foundation sponsored mainly by Japan Federation of Bar Associations. Increasing the extension of the right established in the Japanese Constitution, the JLAA started to provided civil legal aid in 1958 (subsidized by the Ministry of Justice) and legal aid for suspects in criminal cases in 1992 (funded by Japan Federation of Bar Association).

With the country industrialization and urbanization process, the traditional social control methods has became less effective, resulting in a great increase of lawsuits and, consequently, the judicial litigation (KOJIMA, 1979, p. 191/203). In order to enable the transition from "small-scale justice" to "large-scale justice", the Japanese judicial system has been in the midst of major reforms for over the past decade.

In 1999, the government established a Judicial Reform Council to study basic policies and programs to achieve a judicial system that is more accessible to the general public, encourage greater participation of the general public to the judicial procedures and improve the skills and abilities of legal professions (IKENAGA, 2013, p. 03).

Among the changes implemented by the wave of judicial reform stands out the *Civil Legal Aid Act* (2000) enactment, prescribing the responsibility of government to expand civil legal aid for the first time. Because of it, the governmental subsidy for civil legal aid has increased sharply and the number of legal aid provided by JLAA also increased rapidly.

After the Judicial Reform Council released the statement containing the basics basis reform of Japanese legal aid system (2001), the *Comprehensive Legal Support Act* was enacted (2004), in order to "contribute to the formation of a freer and fairer society by providing not only the basic principles, the responsibilities of the national and local

government and other basic matters, but also the organization and operation of the Japan Legal Support Center which is the core body of comprehensive support" (article 1).

In 2006, under the Comprehensive Legal Support Act, was created the government-funded legal aid organization Japan Legal Support Center – JLSC (also know as "*Houterasu*" – 法テラス), then the JLAA was dissolved in 2007.

The nickname "*Houterasu*" (法テラス) were created to make the organization easily identifiable and approachable. With "*Hou*" meaning "*law*" and "*Terasu*" meaning "*to shine*" in Japanese "*Houterasu*" is meant "*to shed light*" on the path to resolving matters through legal means.

The JLSC was established as a "quasi-incorporated administrative agency", providing both civil and criminal legal aid. In a tech term way, an incorporated administrative agency is a judicial person that acts independently of the state and manages business operations such as research, inspection and trade insurance that were formerly performed by the state. A particular feature of such agencies is that they can independently consider how to perform their operations, and run these operations in a better, more efficient manner on their own responsibility (IKENAGA, 2013, p. 04).

The Japan Legal Support Center provides five services, as prescribed in article 30, paragraph 1 of Comprehensive Legal Support Act: (i) information services; (ii) civil legal aid; (iii) legal aid for criminal defense; (iv) measures for areas with limited legal services; and (v) support for victims of crime.

Japan adopted a mixed legal aid system, bringing together *judicare attorneys* and *staff attorneys*. The *judicare attorneys* generally provide legal assistance in metropolitan areas, where there is a greater supply of legal services. On the other hand, the *staff attorneys* generally work in interior areas with deficits in legal services ("*legal depopulation*"). According to Kashimura, "*legal depopulation* refers to situations in a locality where it is difficult for clients to access and consult with legal staff, or request handling of cases from lawyers because there is only one lawyer (including attorneys and judicial scriveners) or none at all, or where there is difficulty in such access as a result of geographical distances" (KASHIMURA, 2016, p. 199).

In addition, the *staff attorneys* are also being assigned to high-cost criminal cases as an economical measure of the legal aid system, and to perform activities that require proactive posture.

Currently, the budget of the *Japan Legal Support Center* is comprised mainly of government subsidies, revenue for criminal legal aid and reimbursement for civil legal aid. According to data released by the JLSC in 2015, government subsidies totaled ¥15,206,000.00 (equivalent to R$595,923,140.00), revenue for criminal legal aid amounted to ¥17,230,000.00 (equivalent to R$675,243,700.00) and the reimbursement for civil legal aid e reached ¥ 10,958,000.00 (equivalent to R$374,654,020.00).

The reimbursement system is a peculiarity of Japan and is currently the key to maintaining the actuarial balance of the Japanese legal aid model. In Japan, when a person needs legal services, JLSC pays the attorney fees, and the aid recipient is required to repay that amount in monthly installments. However, if the aid recipients are on welfare support, and are facing severe financial difficulty in their lives after the settlement of the cases, such recipients may be exempted from the reimbursement (IKENAGA; TAKIZAWA; HIRAI, 2011, p. 08). According to Tomoki Ikenaga "the actual ratio of exemption from the reimbursement has remained low (75% of reimbursement is achieved on the average)" (IKENAGA, 2007, p. 10/11).

This peculiar reimbursement system originates from the genesis of Japan's civil legal aid system. As noted earlier, civil legal aid began to be provided in Japan in 1952, through the private Japan Legal Aid Association. Initially, JLAA received no government subsidies and was mainly funded by the Japan Federation of Bar Associations. Therefore, the continuity of the services provided by the association depended on the reimbursement made by the aid recipients. Even after the Japanese government started to subsidize JLAA (1958), public resources were so small that the reimbursement system remained the only alternative to guarantee the maintenance of the legal assistance system. Currently, the reimbursement system continues to represent an important source of income and was therefore maintained by the wave of reforms of the Japanese legal system.

Despite the world economic crisis scenario, Japan has maintained a extensive territorial coverage, with offices in each of the areas where the district courts are located throughout Japan, as well as in areas suffering from a shortage of attorneys. Since JLSC was established, the number of aided matters as well as annual budgets has increased relatively steadily across the country.

## 4 THE REDEMOCRATIZATION PROCESS AND THE INCREASE OF LEGAL AID SERVICES IN LATIN AMERICA

In the late 1970s, a search for a new political and legal order, which was truly democratic and committed to the realization of human rights, began to gain momentum in Latin America. After a long period of dictatorial rule, several conflicts and negotiations boosted the process of political opening and democratic transition in the region, marking the return of the rule of law.

Although the legal aid service in Latin America has historical antecedents, after the process of redemocratization emerges in the region a movement of consolidation of the public legal aid models. Faced with the clear concern to avoid that normative achievements were only in the field of legal abstractions, numerous instruments were created to give concreteness to fundamental rights, especially in relation to historically excluded and marginalized citizens. In this new democratic architecture, a decisive role was conferred on the Judiciary, which leaves aside the position of technical-legal detachment and takes a central position in the social and political order. Due to the inertia of the jurisdiction, the consequent need arises for the creation and development of mechanisms capable of triggering the justice system, guaranteeing the broad and unrestricted access to justice.

Given this political and social scenario, the free legal aid services gradually assume the necessary role in consolidating the democratic regime of Latin America, on the end of the 1980s.

Due to the historical, political, social and cultural peculiarities of the region, the development of legal aid models in Latin America ended up following a path different from that adopted by the countries of Europe. Contrary to the legal aid services existing on the European continent, which were developed predominantly around the judicare system, in Latin American countries there was a preponderant dissemination of the salaried staff model.

In Argentina, the current model of *Defensa Pública* arises from the constitutional reform of 1994, which introduced article 120 in the Argentine Constitution. In 1998, the *Ley Orgánica del Ministério Público* (*Ley nº 24.946*), consolidating the creation of the *Ministério Público de la Defensa* that, next to the *Ministério Público Fiscal*, forms the denominated *Ministério Público de la Nación*. Recently, in 2015, the *Ley Orgánica del Ministério Público de la Defensa* (*Ley nº 27.149*) was enacted, which regulated the structure, organization and

functions of the Argentine *Defensa Pública*. Adopting the salaried staff model, the *Ministério Público de la Defensa* has the responsibility of guaranteeing the protection and defense of human rights, as well as ensuring access to justice and full legal assistance, in individual or collective demands, promoting the defense of fundamental rights of people, especially those in situations of vulnerability.

In 2005, Uruguay enacted the *Ley nº 17.930*, establishing the *Defensa Pública*, with the function of providing legal assistance in civil and criminal cases, following the salaried staff model.

In Paraguay, the current legal aid model was disciplined by the *Ley Orgánica del Ministerio de la Defensa Pública* (*Ley nº 4423*), enacted in 2011. The main purpose of the Paraguayan *Defensa Pública* is to safeguard human rights, promote legal assistance for poor people who do not have sufficient resources to access the justice system, promote conciliation and the application of alternative means for conflict resolution (*Ley nº 4423, artículo 9º*).

With the promulgation of the Constitution of the Bolivarian Republic of Venezuela in 1999, a new legal-political stage began in the country, formally constituting Venezuela as a Democratic and Social State of Law and Justice. At that moment, the Constituent Power formalized the provision of *Defensa Pública* as a constitutional body, integrating the Venezuelan justice system. Currently, the Venezuelan *Defensa Pública* is regulated by the *Ley Orgánica de la Defensa Pública* (*Gaceta Oficial nº 39.021, de 2008*), with the function of guaranteeing effective judicial protection of the constitutional right of defense, in civil and criminal cases.

Lastly, it is important to note that the Organization of American States (OAS) enacted the Resolutions AG/RES nº 2.656/2011, nº 2714/2012, nº 2.801/2013 and nº 2.821/2014, to encourage member states that still do not have the institution of public defense to consider creating it in their legal systems.

## 5 THE BRAZILIAN LEGAL AID MODEL

The promulgation of a new Constitution in Brazil in 1988 represented a real milestone for the implementation of the Democratic Rule of Law in the country. It should be seen as part of a movement of affirmation of the rule of law and democracy in several Latin American

countries after periods of military dictatorship. There was great concern at the time that the democratic regime and its objective of the social inclusion of the majority of the population would not simply be viewed as vague notions but rather, as having the mechanisms to make them effectively achievable. In this sense, the issue of access to justice, especially for the poorest people, was a priority for those who were given the mission to write a new Constitution in 1988.

In order to ensure such access to justice, the 1988 Brazilian Constitution determined that "the State will provide comprehensive/integral/full and free legal aid to those who can prove insufficiency of resources" (article 5º, LXXIV). The "integral legal aid" covers not only *legal representation* in any kind of civil or criminal case, but also *legal advice* (preventive advocacy, assistance in writing contracts and legal documents and defense in "extra-judicial" jurisdictions).

Beyond, the 1988 Brazilian Constitution expressly regulated the manner of implementation of these rights, giving an explicit order for the government to organize and maintain a specific agency mandated with the obligation to deliver legal aid services, titled "*Defensoria Pública*" (article 134 of the Constitution).

For this reason, legal aid services in Brazil are provided by staff attorneys, selected by a tough public service exams and titles (article 134 of the Constitution). After been approved by the public service exams, the attorney could only be fired by a judicial sentence, by a pass decision in an administrative process or by an evaluation period leaded by the Public Defense itself (article 40 of the Constitution).

The Brazilian legal aid model, possess some interesting constitutional particularities, which distinguish from other models present across the world.

Following the traditional Empowerment division consecrated by Montesquieu, the 1988 Brazilian Constitution discipline the State Function Organization (Title IV – "The Empowerment Organization"), dividing into Legislature Power (Chapter I), Executive Power (Chapter II) and Judiciary Power (Chapter III).

Besides these elementary State Powers, inside the same Title IV, the Brazilian Constitution established a fourth organic complex, titled "Essential Function to Justice" (Chapter IV), comprehend the Public Ministry and Public Defense.

Therefore, verify that the Brazilian Constitution, in order to organize the state empowerment, did not limited by the traditional decentralized resulting from the power

participation of (Legislature, Executive and Judiciary), being established a fourth organic complex, although is not technically defined as Fourth Power, received in its cargo the fourth power exert politic function, stood by the legislature, executive and jurisdictional: the *justice provision function* (ESTEVES; SILVA, 2017, p. 65).

In the Brazilian Constitutional System, the Public Defense is not connected to the State Power at all, not being under subordinated to the Executive Power, Legislature Power and Judiciary Power.

As a natural consequence of this not entailment, the Brazilian Constitution attribute express to the Public Defense a functional, administrative and financial autonomy (article 134, 2° e 3° of the Constitution), besides to ensure the possibility to propose the legislature the service interest laws addiction of legal aid.

The *functional autonomy* make sure to the Public Defense total freedom to act in the practice of this institutional function, subordinated only to the determinate limit by the Constitution, by law and by the own mind of the members. Towards this functional autonomy, the Public Defense is protected from all and any external interference, ensuring the Public Defenders the possibility to act with freedom in defense to the socially oppressed class rights, even against the Public Power.

On the other hand, the *administrative autonomy* guarantee the Public Defense total freedom in the resource management, being able to practice, in a independent way and free of the state powers influence, own management acts, such as: purchase goods, contract service, establish the Public Defenders territorial distribution, elaborate the paperwork payment salary, writing a intern regiment and practice the staff management administrative general acts.

Lastly, the *financial autonomy* ensure the Public Defense be able to elaborate their own annual budged propose, which is submitted to the legislature approval. Therefore, the public defense might value which financial resources needed to develop property this function, respecting the established limits by the budget legislation.

Because of the total constitutional autonomy, the Brazilian Public Defense members hold total freedom and independency to achieve a poor people interest property defense, being total armored against an extern interference sort.

The budget of the Public Defender's Office in Brazil is comprised mainly of government subsidies, loss of suit fees, and fixed percentage of the collection obtained by the courts. In objective terms, the Public Defender's budget has seen sharp growth in recent years.

In 2014, the annual budget of the Public Defender's Office in Brazil, together with the proceeds from the Public Power and its own sources of revenue, totaled R$ 3,534,018,183.42. In comparison to the budget approved for the Public Defender's Office between 2006 and 2014, a raise of more than 1.000% is seen.

Instead of what have been observed in majority of legal aid model present in the world, which across a scene of regression and a cutting of the provision of services, the Brazilian legal aid services are experiencing a continuous process of expansion and consolidation.

Nevertheless, after 28 years of the current Constitution we still cannot say that constitutional provisions on the legal aid scheme and Public Defenders service are being effectively and fully met today. In some states the public defender system works in a very piecemeal fashion, with the number of professionals falling far below the demand to be met.

Seeking to end this disparity, in June 2014 the Brazilian Parliament passed a new constitutional amendment legislating that within eight years each "district" (in the Portuguese language we use the word: "*comarcas*") should have at least one office of the public defender of the country. This amendment also stipulates that the number of defenders should be proportional to the effective demand for services and to the population that is eligible for legal aid in a given area. It also provides that, over the following eight years, the criteria for allocation of new public defenders should prioritize regions with higher levels of social exclusion.

This 2014 constitutional amendment determined the allocation of sufficient budgetary resources and, because it is a constitutional rule unalterable by any future Parliamentary majorities, is not dependent on the political makeup of the future governments at either federal or state levels. In the event of any failure of implementation, the matter may be brought to the Supreme Court to mandate that the government takes concrete measures (especially budgetary ones) to fulfill this constitutional provision.

## CONCLUSION

Although Brazil and Japan have different historical and social roots, the result produced by the combination of these factors in the area of legal assistance ended up being similar:

these countries chose to strengthen the legal aid service as a way to guarantee greater legal protection for the poorer sectors of society.

In Japan, the economic crisis ended up generating the phenomenon of strengthening the social safety nets, triggering policies to support the unemployed and to provide legal aid to the poor. On the other hand, in Brazil the recent strengthening of legal aid system is a result of the process of redemocratization of the region and the need to ensure that normative achievements do not remain only in the field of legal abstractions, especially in relation to marginalized citizens.

In both Japan and Brazil, the legal framework of legal aid agencies guarantees independence and autonomy for the proper exercise of their functions. This is a fundamental factor to ensure quality and to prevent governmental intervention in the legal aid services.

In the economic field, the reimbursement system used in Japan guarantees the actuarial balance of the legal aid model. In Brazil, the adoption of the salaried staff model is the key factor to preserving stability of the legal aid system; as lawyers are hired on a permanent basis, the system remains protected against economic fluctuations.

No contemporary legal aid system is exempt from criticism, nor can any of them be regarded as correct or ideal. As pointed out by Professor Roger Smith, in all legal aid systems already studied there is only one constant: “good public legal aid services always correspond to high levels of availability of financial resources” (SMITH, 2011, p.13).

As a result, modern studies on legal aid in the world has cast aside the utopian search for the perfect model, and has sought, in a realistic way, the proper maximization of cost-benefit ratio, given the peculiarities of each country.

The Brazilian legal aid model has been criticized because of the accumulation of work and the excessive number of cases attributed to each Public Defender. On the other hand, the Japanese legal aid system has also been criticized for its peculiar repayment system, which differs from the main models currently available in the world.

Despite the criticisms, the Japanese and Brazilian systems have provided extensive legal aid, presenting a high cost-benefit ratio. In addition, this legal aid systems have an undeniable positive characteristic: it has been able to preserve a growth strand, even in the face of economic crisis.

Different to what have been observed in the majority of legal aid systems in the world, which are facing a scenery of reflux and of financial/budgetary cuts in the provision of services, the Japanese and Brazilian legal aid systems have experienced a continuous process of expansion and consolidation.

Therefore, Japan and Brazil provides two important perspectives of how it is possible to do more with less, and guarantee (or, at least try to guarantee) for everyone the full and effective access to justice, even in austerity times.

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