



National Union Of Attorneys of the National Treasury

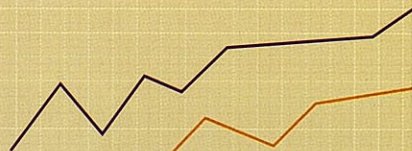
Attorney General Office of the National Treasury in Numbers



B R A Z I L

Attorney General Office of the National Treasury in Numbers

AGONT



This report is authored by the Attorney of the National Treasury **Marco Antônio Gadelha**, from the state of Paraíba. SINPROFAZ contributed with suggestions.

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The institutional relevance of the Attorney General Office of the National Treasury

João Carlos Souto

It is rather odd that a hundred-year-old institution such as the Attorney General Office of the National Treasury should remain as unknown as it is.

More important still than its longevity is its expressive contribution to Brazilian society as a legal consulting body for all subjects of interest to the National Treasury, and as sole executor of all the active tributary debt of the Union, as determined by formal constitutional mandate.

It is important to consider that the Federal Public Attorney's Office, as a whole, has contributed substantially to Brazilian society. However, it has obtained in return from the government neither the corresponding necessary investments, nor the professional recognition its staff members deserve.

The National Union of Attorneys of the National Treasury (SINPROFAZ) have been working since 2005 to increase the institution's, as well as its employees' (Attorneys of the National Treasury) notoriety, in the hopes of obtaining from the government larger investments for this forgotten, surplus-generating institution.

To this effect, communications pieces ranging from pamphlets, to billboards, to radio inserts have been produced, each dealing with relevant themes, and in connection with the AGONT and Attorneys of the National Treasury, such as the PPP (*PAC needs the AGONT*) pamphlet; the publication of the accusation against the attempt at privatizing the collection of the Union's active debt; and later, the document addressing the relevance of the AGONT in the recovery of assets lost after the elimination of the CPMF (*Contribuição Provisória sobre Movimentação ou Transmissão de Valores e de Créditos e Direitos de Natureza Financeira* – Provisional Contribution on Financial Transfers).

Furthermore, the taxpayers' guidebook, published in 2006, contains basic information for taxpayers, such as their elementary tributary rights, how the AGONT operates, as well as procedures to negotiate debt.

The Federal Government seems to be unaware of the fact that, without the threat of legal action, "spontaneous" payments of levies is unlikely to occur. This is a universal truth, independent of either time or place. Legal action is, and always has been, the exclusive activity of the prosecutors, especially upon considering the procedural inertia of the Judiciary Branch, which only reacts upon being provoked.

Noteworthy is the fact that when spontaneous payment does occur, it is the result of legal efforts deployed by the Attorneys of the National Treasury in the courtrooms of this country, efforts that contribute to making Brazil's constitutionality a resounding success and irrefutable truth. The legacy of this success is long-lived, and manifest in the increasing number of collections in subsequent years.

Despite the relevance of institutional assignments, the AGONT and its attorneys have been all but forgotten by the various governments since the late 1990s. Since then, investments have been scarce, installations precarious, financial compensation not only less than commensurate with the complex and voluminous workload, but also lower relatively than that of other federal, state, and even municipal judicial posts.

This disturbing situation has lead, over the years, to a large amount of professional “draining”, as prosecutors choose to migrate towards legal careers with lighter workloads and higher salaries. This situation is all the more preoccupying insomuch as the AGONT loses not only qualified professionals, but also, along with them, its very memory.

In compliance with the decision of the General Assembly, the SINPROFAZ denounced, in September of 2006, this situation to the Federal Public Ministry; the accusation was published in a pamphlet and distributed in all the FPM offices throughout Brazil.

This important work, presented in these pages (complete with graphs, charts, comparatives studies, and gathered data), was produced by Prosecutor Marco Antônio Gadelha, from the state of Paraíba. It is yet another landmark in SINPROFAZ’s quest to increase the Institution's and its activities' visibility and notoriety among opinion-makers. A relatively small number of these reports was printed, because of the limited availability of resources for distribution.

SINPROFAZ embraced, encouraged, suggested and debated the production of Dr. Marco Antônio Gadelha's work. May Brazilian society as a whole finally admire the AGONT's stupendous contribution to the construction of fiscal justice. May governors at long last acknowledge the relevance of the Institution, as well as the quality of its Attorneys' work.

Respectfully,

João Carlos Souto
President, SINPROFAZ.





Table of
contents

1.	What is the AGONT?.....	4
2.	How much is the AGONT worth?	4
2.1.	The AGONT and the struggle against unfair competition	5
3.	How much does the AGONT cost?	6
4.	Is the AGONT self-sufficient?	7
5.	What is being done with the AGONT?	7
5.1.	An increasing work load	8
5.2.	The end of technical support services	10
5.3.	Numbers behind the professional “draining” phenomenon.....	10
6.	Concluding remarks	12

1

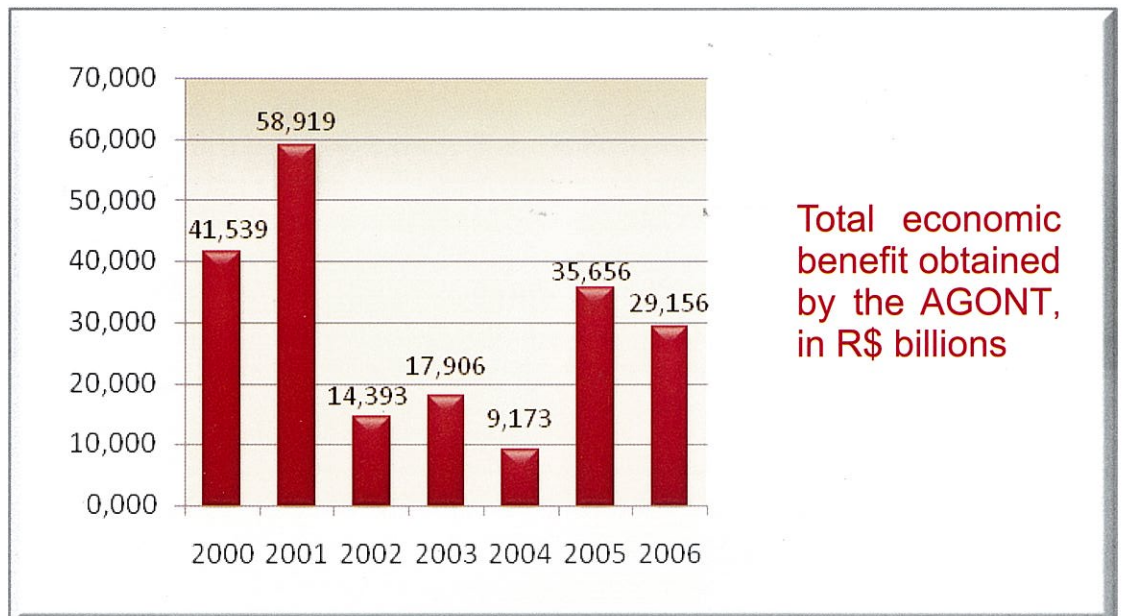
What is the Attorney General Office of the National Treasury?

The Attorney General Office of the National Treasury is the federal body that registers and collects unpaid credits owed the Union. In addition, and among other tasks, it is responsible for the legal defense of the Union in action suits in which fiscal collections and requirements, as well as federal contributions, are concerned, including welfare contributions.

2

How much is the Attorney General Office of the National Treasury worth?

According to AGONT and National Treasury data, the total economic benefit accrued to the union as a consequence of AGONT activities, in 2005 and 2006 alone, is over R\$ 64 billion¹.



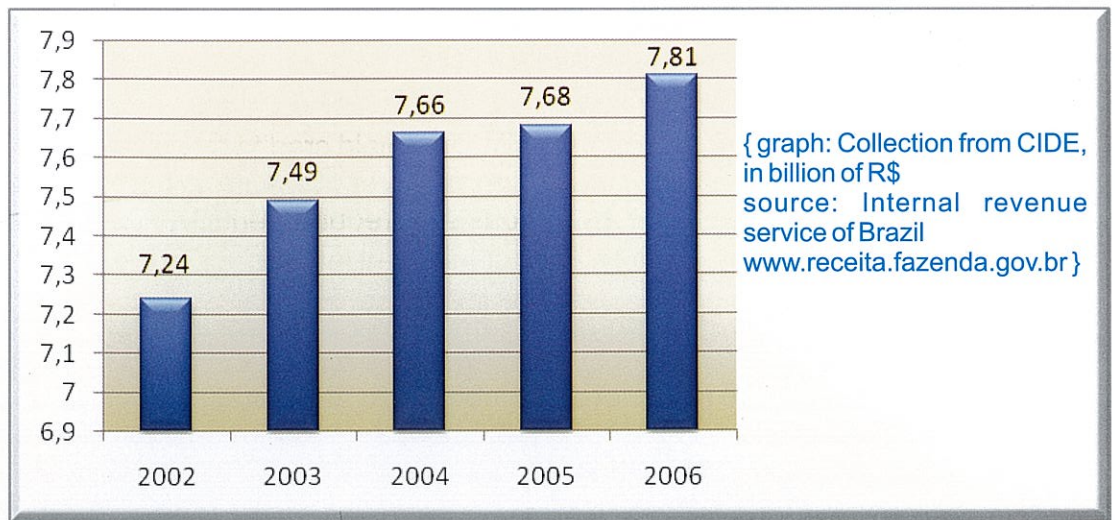
As far as the economic repercussions of the AGONT's activity are concerned, several cases are particularly relevant:

a) The victory of the IPI (Imposto sobre Produtos Industrializados – a federal excise tax on the manufacturing of goods) tax credit: undeniably one of the more emblematic legal victories in the history of the AGONT, the amount saved by the non-payment of the IPI tax credit to exporters, as determined by the Judiciary Branch, will guarantee the considerable amount of R\$200 billion in public funds, over the next 10 years.

b) Collection numbers from CIDE: a direct and decisive consequence of AGONT's maintenance of the CIDE (Contribuição de Intervenção no Domínio Econômico sobre a comercialização de combustíveis – compulsory contributions for the purpose of achieving economic stability, levied on the import and sale of oil, natural gas and derivatives) on the sale of fuels imposed by Law no 10.336/2001, the federal government collected, between 2002 and 2006, over R\$37 billion. These are the partial figures of the collection²:

¹AGONT Management report 2000 to 2006 (www.pgfn.fazenda.gov.br)

²source: Internal revenue service of Brazil (www.receita.fazenda.gov.br)



Considering the results obtained by the AGONT over the last 8 years (2007 data not withstanding, as the financial report for the same year was not published) the economic benefit to the Union was over R\$ 243 billion (in non-corrected amounts).

Comparisons are helpful to grasp the real depth, breadth and importance of these numbers. They amount to³:

- **33 times** the total effective payments made by PAC works in 2007 (7,3 billion)
- **23 times** the total budget planned for the federal government's Bolsa Familia (Family Assistance) program in 2008 (10,3 billion) – enough to extend the program to over 477 million families
- **8 times** the total planned budget for education in 2008 (24,9 billion)
- **4.7 times** the total planned budget for health care in 2008 (50,9 billion)

It is important to note that official data reveals a stock of credits yet to be collected of approximately R\$760 billion⁴, with the AGONT being effectively responsible for the collection of these amounts.

2.1

The Attorney General Office of the National Treasury and the struggle against counterfeit commerce and unfair competition.

Research conducted by the Federation of Commerce of the State of Rio de Janeiro/Ipsos reveals that 42% of Brazilians bought counterfeit products in 2006. In absolute numbers, this percentage indicates that approximately 79 million Brazilians acquired counterfeit merchandise in that period. According to the same research, 93% of respondents stated lower prices as the main reason behind their decisions to purchase such goods. Indeed, the price of a counterfeit good is substantially lower because it does not reflect taxes or social and labor charges, on the one hand, and on the other, because the products are sold under absolutely informal circumstances.

To take the example of the CD and DVD markets – Where the highest rates of counterfeit consumption occur – taxes on the products vary between 36 and 43% of their total price.

Under such circumstances, it is virtually impossible for a formal business to compete on an even playing field with the counterfeit industry.

³ source: Internal revenue service of Brazil: (www.planejamento.gov.br).

⁴ Including welfare credits - source: AGONT management report - 2006

Regardless of the reason behind it, tax evasion invariably harms the working class and honest businessmen, compelled to pay increasingly elevated taxes and contributions. The result of all of this? Higher unemployment rates, more informality, more evasion, and higher tax rates.

Were the government to invest more in its collection agencies, and in the AGONT in particular, thereby improving its collecting mechanisms, certainly this vicious cycle would be interrupted, or at least struck at the nerve.

This, therefore, is yet another relevant role of the AGONT, which imposes collection process norms. By hitting tax evaders with higher levies, it generates more revenue, contributes to the reduction of tax charges, and opens an important front in the struggle against counterfeit merchandise and unfair competition.

3

How much does the Attorney General Office of the National Treasury cost?

According to official data, the AGONT costs, on average, 1,33% of the total amount it generates, that is to say, 1,33% of the economic benefit immediately obtained by the government as a result of the Office's activities. The following table illustrates this comparison⁵:

YEAR	VALUE OF COLLECTIONS	EXPENSES	EARNINGS RELATIVE EXPENSES
1995	2.029.363.740,00	38.083.346,83	1,877%
1996	3.464.385.258,00	44.496.886,06	1,284%
1997	2.335.974.712,00	41.973.340,09	1,797%
1998	3.083.809.401,00	48.747.036,74	1,581%
1999	5.019.299.192,00	55.411.757,45	1,104%
2000	6.255.513.388,00	49.082.857,32	0,785%
2001	5.293.240.331,00	103.787.716,07	1,961%
2002	6.865.964.306,44	62.419.886,81	0,909%
2003	10.013.861.421,40	37.063.477,66	0,370%
2004	8.076.828.106,06	92.858.079,67	1,150%
2005	8.810.445.479,44	126.292.499,72	1,433%
2006	9.617.675.553,59	243.391.183,15	2,531%
TOTAL	70.866.360.888,93	943.608.067,57	1,331%

It is important to note that the calculations take into consideration effective annual collections of the AGONT only. Direct or indirect economic benefits (such as exceptions to legal calculations) resulting from CIDE collections, or amounts not refunded as IPI tax credits, etc, are not, therefore, considered.

Based on collections and economic productivity indicators, the AGONT cost, in 2005 and 2006, a mere 0,57% of the amount collected and guaranteed to the treasury. In other words, in that 2-year period, the AGONT returned to the Union R\$175,32 for every R\$1,00 invested.

The following tables demonstrate AGONT expenses, using as a benchmark total public expenses and the GNP in the same period:

	2005/2006	Relative to GNP %
Total public expenses	2.293.085.839.531	-
AGONT expenses	369.683.682,87	0,016

⁵ source: AGONT Management report 2006 (www.pgfn.fazenda.gov.br);

	2005/2006	Relative to GNP %
GNP	4.260.416.202,299	-
AGONT expenses	369.683.682,87	0,008

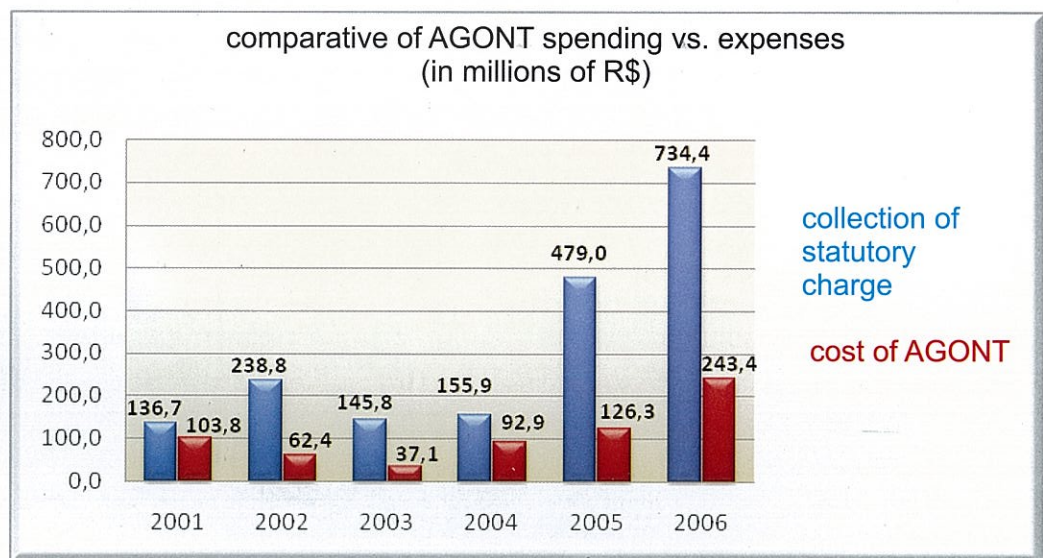
It can be inferred from this analysis that the cost of the AGONT to the Brazilian State is insignificant. In effect, it costs the Administration nothing, since it generates its own resources, in sufficient amounts to cover its own operating costs. This subject will be discussed further along.

4

Attorney General Office of the National Treasury is self sufficient

By acting as collector of the Union's active federal debt and legally in court, the AGONT earns its own revenues, which are the legal charges provided for by Decree Law nº 1.025/69, as well as the legal fees borne by the loser in an judicial dispute (art. 20, CPC). These charges, which are not to be confused with the credit charged, constitute enough extra revenue for the Union to cover both the maintenance and all the refitting of the AGONT. In other words, in addition to constituting a profit for the government, the AGONT is self-sufficient.

The following numbers confirm this statement:



However, in practice, the bulk of the revenue generated from the collection of the statutory charge and legal fees borne by the loser in an judicial dispute, is not applied to the AGONT, but rather, is destined to the National Treasury's Single Account for payments of interest and charges on the public debt. And this, to the detriment of the improvement of the collection system.

5

Attorney General Office of the National Treasury

As is revealed upon observing the benefits and results described in this report, the AGONT, for unjustified reasons, has been facing severe structural and human resources difficulties.

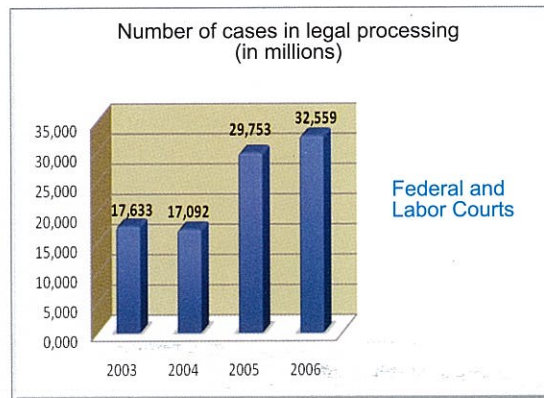
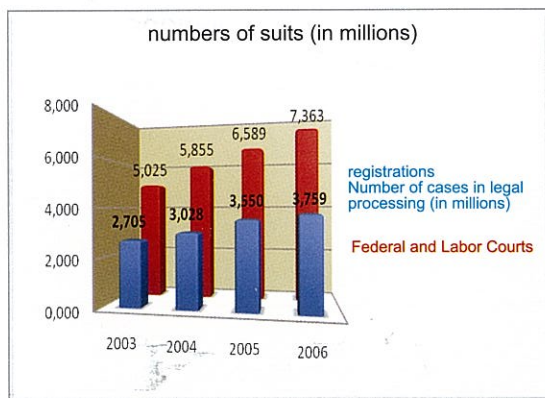
The amplitude of these problems is demonstrated in the following charts.

⁶source: AGONT Management report 2000 to 2006 (www.pgfn.fazenda.gov.br);

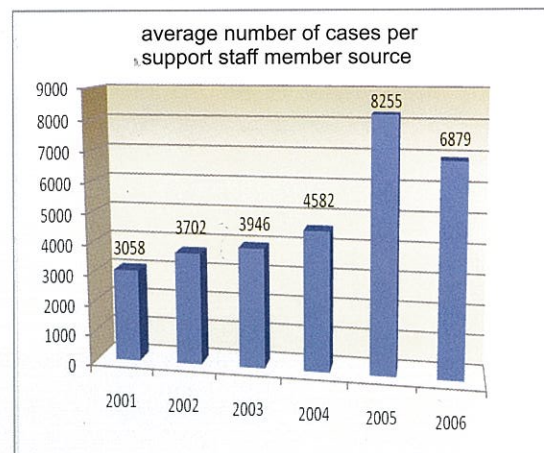
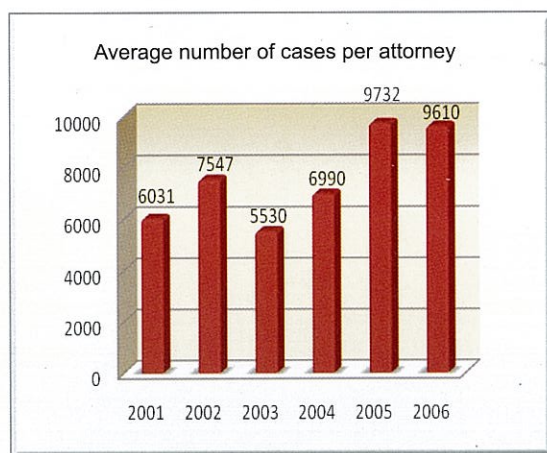
5.1

An increasing volume of work

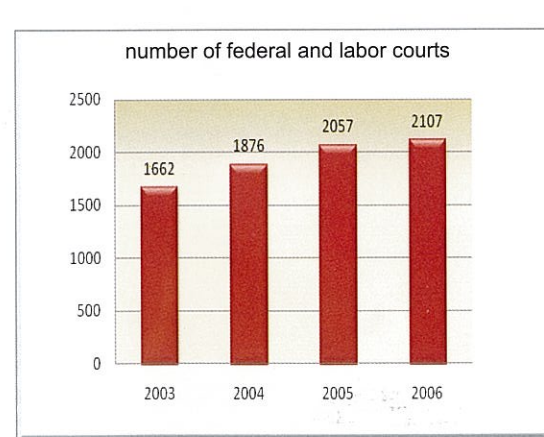
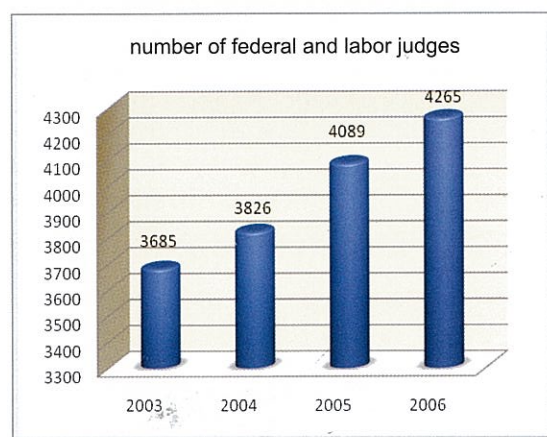
The bulk of the AGONT's legal representation activities occurs in the Federal and Labor Courts. Official data reveals a substantial increase in the number of AGONT debt-collection suits into these bodies in the last years⁷:



Data published in the AGONT's Management Reports from 2001 to 2006 confirms the considerable increase in the average number of suits per Attorney of the National Treasury and per support staff member. Consider the graphs below⁸:



This uninterrupted increase in the number of legal demands has prompted an equivalent response from the Judicial, manifest in the implementation of restructuring and continued amplification policies, as can be observed below⁹:



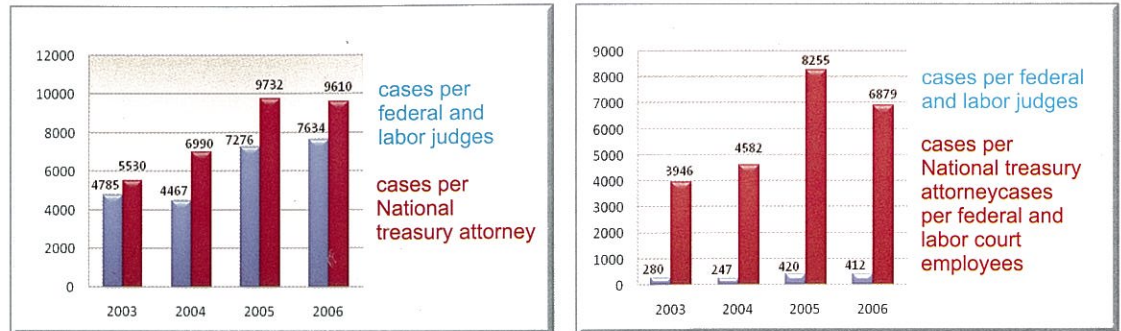
⁷ AGONT Management report 2003 to 2006;

⁸ Data collected from AGONT Management reports 2001 to 2006 (www.pgfn.fazenda.gov.br);

⁹ source: Justice in Numbers, ed. 2003 to 2006. National Justice Council, (www.cnj.gov.br)TST Statistics report, 2003 to 2006, (www.tst.gov.br)

In practice, the bigger and better structured the Judicial, the larger the volume of work it generates. As a result of the Executive Branch's inertia and lack of sensibility, the AGONT does not follow this rhythm of expansion and structuring, and, consequently, finds itself completely choked.

The following graphs confirm the glaring discrepancy between the average number of cases taken on by each member of the Federal and Labor Judicial Branch and by each attorney from the National Treasury, as well as by their respective auxiliary staff members¹⁰:



In comparative terms, one only needs to consider the numbers of the Federal Court to realize how serious and delicate the AGONT's situation is.

a) considering the period between 2003 and 2006 as a benchmark, the average volume of cases handled by a Attorney of the National Treasury was 32,91% higher than that of a member of the Federal and Labor Court.

b) as for the auxiliary staff of the AGONT, their average volume of cases was 1,724.86% higher than that of the auxiliary staff the Federal and Labor Court during the same period.

It is important to note that the aforementioned numbers do not take into account the increase in workload resulting from the creation the Super Revenue Service. It is already widely known that the AGONT has, since april of 2007, taken on the responsibility for registration and collection of pension credits. As a result of Law n° 11.457/2007, as of april 2008, the AGONT will be responsible for the handling of all the administrative and judicial cases relative to pension credits registered at the INSS (welfare department). But what does that mean, practically speaking?

Data from 2004 states that 292,000 tax litigation cases were being processed, while the INSS¹¹ was in charge of 596,832 fiscal enforcement cases. As of april 2008, all of the cases will be handled by the AGONT, thereby causing a substantial increase in workload. These numbers do not include the approximately 1,800,000 cases finalized annually in the Labor Court (resulting in conciliation or judgment, according to TSF data), in which welfare contributions are collected from involved parties.

For these reasons, the average caseload per attorney for 2008 can be estimated at 11 426.

Despite the creation of 1200 new Attorney of the National Treasury positions, in compliance with Law n° 11457/2007, there have been, as of yet, no exams aiming at the provision of these positions. Furthermore, the rising number of cases, coupled with the duplication of the attorney staff, will generate a volume of work that will be unmanageable for the currently insufficient technical support staff.

Should the size of the attorney and technical support staffs not be readjusted immediately to reflect the needs of this new, imminent reality, the work performed by the National Treasury General Attorney's Office will be threatened with inviability.

¹⁰ source: Justice in Numbers, ed. 2003 to 2006. National Justice Council, (www.cnj.gov.br) AGONT Management Reports 2003 to 2006, (www.pgfn.fazenda.gov.br). As far as the attorneys and employees of the AGONT are concerned, the data includes legal and administrative cases

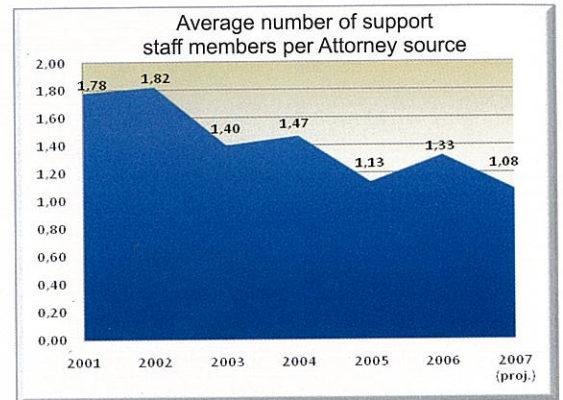
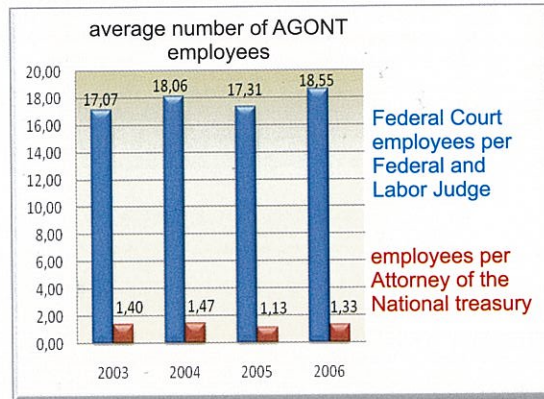
¹¹ source: AGONT Management Report 2004 (www.agu.gov.br).

5.2

Total abandonment of the technical support staff

The technical support staff performs tasks that are fundamental to the execution of the work produced in these units. In the sectional and state attorney's offices, for instance, where the services of the active public debt are housed, the members of this staff are responsible for general protocol, elaboration of information, certificates and official correspondence, receiving and redirecting legal cases, system up-keeping and maintenance, conducting visits and searches necessary to locate debtors and their goods, attending to taxpayers, among other tasks essential to the proper and successful functioning of the AGONT.

As can be noted in the graphs below, there is a considerable discrepancy between the average staff size per attorney in the AGONT, and in the Federal and Labor Courts¹²:



Between 2003 and 2006, while each judge benefited from the support of, on average, over 17 staff members, in the AGONT, where the caseload was 32,91% greater, each attorney was allocated little more than 1 staff member to assist him.

Data also reveals that the number of support staff members per attorney is actually being reduced in the AGONT, thereby going against the trend of growth and amplification of the federal Court. In other words, in the Federal and Labor Courts, each judge has an increasing number of staff members at his disposal, whereas in the AGONT, inexplicably, the opposite is occurring.

Not only does this situation demonstrate the administration's insensitivity and indifference towards its own credits and representative bodies, but should it persist, it will establish a situation of extreme severity that will contribute to the demoralization and destabilization of the staff, inevitably compromising the results of collection efforts and legal defense of the Union.

5.3

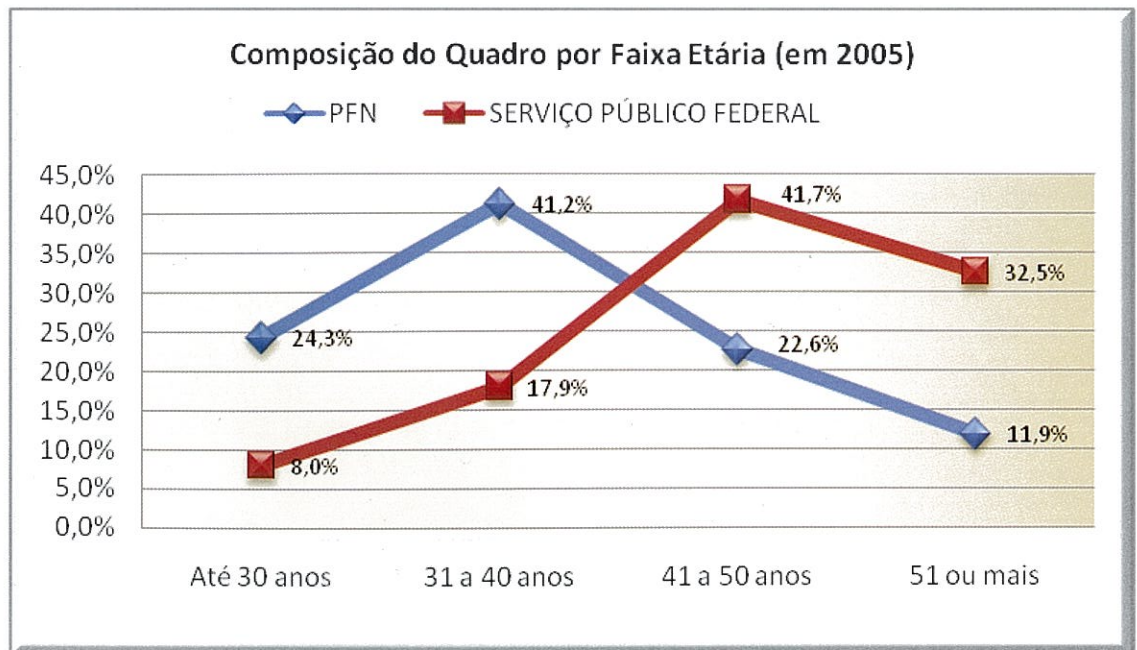
The numbers behind the professional "draining" phenomenon

As a consequence of low salaries and lack of structure, among other factors that discourage permanency and long term career development in the institution, attorneys have been going after more attractive career options, particularly in the private sector, or ones that are more valued and recognized in the public sector (such as magistrate and public ministry)

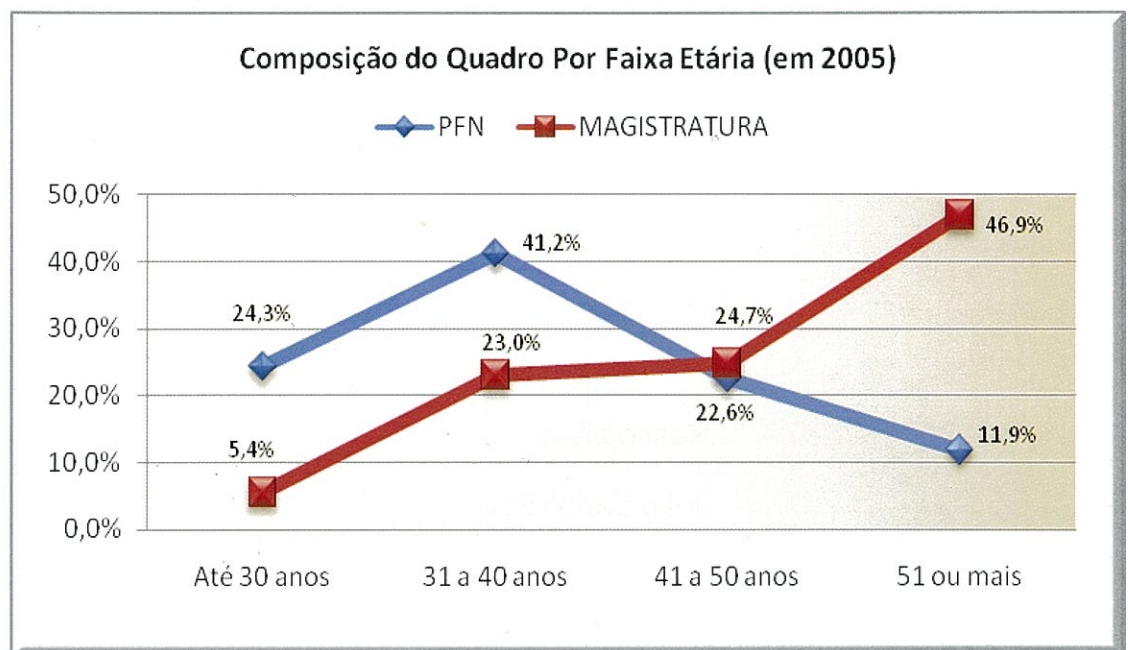
The lack of AGONT¹³ professionals with both institutional longevity and experience is all the more flagrant when other civil servants of the Executive branch are taken into account as benchmarks.

¹² source: AGONT Management report 2001 to 2006, (www.pgfn.fazenda.gov.br) Justice in Numbers, ed. 2003 to 2006. National Justice Council, (www.cnj.gov.br).

¹³ Justice in Numbers, ed. 2003 to 2006. National Justice Council, www.cnj.gov.br:



If compared to the magistrate, the discrepancy is even greater¹⁴:



It is clear that while 71,6% of judges in Brazil are older than 40, only 34,5% of professionals of the century-old National Treasury are within the same age group. As for professionals over 50, while they make up 46,9% of the magistrature, they constitute only 11,9% of the AGONT's staff.

The statistics, therefore, prove that there does in fact exist a situation of professional draining within the AGONT, particularly noteworthy among attorneys who reach the 40 year old mark. This flight is clearly justified by the lack of any sort of policy to stimulate their permanency in the institution.

Under such circumstances, where values are being lost, the performance of the body of control and judicial representation can only suffer.

6

Concluding remarks

Considering the information transcribed in this report, it can be unequivocally observed that the AGONT is an institution of excellence within the structure of the Executive branch of power. The results it has obtained are of strategic importance for the feasibility of government policies. And all of this, without incurring any cost to the treasury.

Aside from the fundamental relevance and obvious viability of the body, the data also points to the existence of severe structural deficiencies, and, consequentially, to the urgent need for the implementation of more effective investment and human resources policies.

Despite its awareness of these problems, and successive demands from professionals, the federal government remains inert. It is easy to see that those who truly lose from this neglecting and devaluing of the AGONT are the Brazilian citizens, who depend on public works and welfare policies, as well as honest taxpayers and members of the business community, who are competing unfairly with evaders.

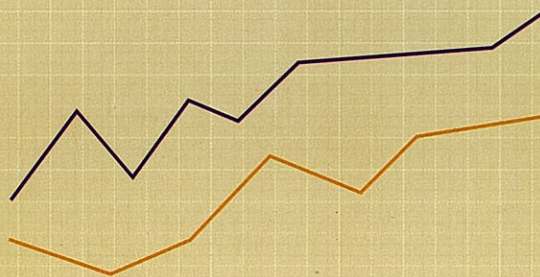
With these reasons in mind, the National Union of Attorneys of the National Treasury, SINPROFAZ, publishes this data and sounds a necessary alarm, soliciting the indispensable support of society, the true recipient and greatest reason for this report, in this important mission of reconstruction of the AGONT.



This report is authored by the Attorney of the National Treasury **Marco Antônio Gadelha**, from the state of Paraíba. SINPROFAZ contributed with suggestions.

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Realização:



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