

CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL, 1988

Brazil Constitution: translated, updated and commented

The following translation includes amendments until Constitutional Amendment 52, enacted on March 8th 2006.

PREAMBLE

We, the representatives of the Brazilian People, convened in the National Constituent Assembly to institute a Democratic State, for the purpose of ensuring the exercise of social and individual rights, liberty, security, well-being, development, equality and justice as supreme values of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, in the internal and international orders, to the peaceful settlement of disputes, promulgate, under the protection of God, this CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL.

TITLE I. FUNDAMENTAL PRINCIPLES

Article 1. The Federative Republic of Brazil, formed by the indissoluble union of the states and municipalities and of the Federal District, is a legal democratic state and is founded on:

- I - sovereignty;
- II - citizenship;
- III - the dignity of the human person;
- IV - the social values of labour and of the free enterprise;
- V - political pluralism.

Sole paragraph - All power emanates from the people, who exercise it by means of elected representatives or directly, as provided by this Constitution.

Article 2. The Legislative, the Executive and the Judicial, independent and harmonious among themselves, are the powers of the Union.

Article 3. The fundamental objectives of the Federative Republic of Brazil are:

- I - to build a free, just and solidary society;
- II - to guarantee national development;
- III - to eradicate poverty and substandard living conditions and to reduce social and regional inequalities;
- IV - to promote the well-being of all, without prejudice as to origin, race, sex, colour, age and any other forms of discrimination.

Article 4. The international relations of the Federative Republic of Brazil are governed by the following principles:

- I - national independence;
- II - prevalence of human rights;
- III - self-determination of the peoples;
- IV - non-intervention;
- V - equality among the States;
- VI - defense of peace;
- VII - peaceful settlement of conflicts;
- VIII - repudiation of terrorism and racism;
- IX - cooperation among peoples for the progress of mankind;
- X - granting of political asylum.

Sole paragraph - The Federative Republic of Brazil shall seek the economic, political, social and

cultural integration of the peoples of Latin America, viewing the formation of a Latin-American community of nations.

TITLE II - FUNDAMENTAL RIGHTS AND GUARANTEES

CHAPTER I - INDIVIDUAL AND COLLECTIVE RIGHTS AND DUTIES

Article 5. All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms:

- I - men and women have equal rights and duties under the terms of this Constitution;
- II - no one shall be obliged to do or refrain from doing something except by virtue of law;
- III - no one shall be submitted to torture or to inhuman or degrading treatment;
- IV - the expression of thought is free, anonymity being forbidden;
- V - the right of reply is ensured, in proportion to the offense, as well as compensation for property or moral damages or for damages to the image;
- VI - freedom of conscience and of belief is inviolable, the free exercise of religious cults being ensured and, under the terms of the law, the protection of places of worship and their rites being guaranteed;
- VII - under the terms of the law, the rendering of religious assistance in civil and military establishments of collective confinement is ensured;
- VIII - no one shall be deprived of any rights by reason of religious belief or philosophical or political conviction, unless he invokes it to exempt himself from a legal obligation required of all and refuses to perform an alternative obligation established by law;
- IX - the expression of intellectual, artistic, scientific, and communications activities is free, independently of censorship or license;
- X - the privacy, private life, honour and image of persons are inviolable, and the right to compensation for property or moral damages resulting from their violation is ensured;
- XI - the home is the inviolable refuge of the individual, and no one may enter therein without the consent of the dweller, except in the events of *flagrante delicto* or disaster, or to give help, or, during the day, by court order;
- XII - the secrecy of correspondence and of telegraphic, data and telephone communications is inviolable, except, in the latter case, by court order, in the cases and in the manner prescribed by law for the purposes of criminal investigation or criminal procedural finding of facts;
- XIII - the practice of any work, trade or profession is free, observing the professional qualifications which the law shall establish;
- XIV - access to information is ensured to everyone and the confidentiality of the source shall be safeguarded, whenever necessary to the professional activity;
- XV - locomotion within the national territory is free in time of peace, and any person may, under the terms of the law, enter it, remain therein or leave it with his assets;
- XVI - all persons may hold peaceful meetings, without weapons, in places open to the public, regardless of authorization, provided that they do not frustrate another meeting previously called for the same place, subject only to prior notice to the competent authority;
- XVII - freedom of association for lawful purposes is fully guaranteed, any paramilitary association being forbidden;
- XVIII - the creation of associations and, under the terms of the law, that of cooperatives is not subject to authorization, and State interference in their operation is forbidden;
- XIX - associations may only be compulsorily dissolved or have their activities suspended by a judicial decision, a final and unappealable decision being required in the former case;
- XX - no one shall be compelled to become associated or to remain associated;
- XXI - when expressly authorized, associations shall have the legitimacy to represent their members either judicially or extrajudicially;
- XXII - the right of property is guaranteed;
- XXIII - property shall fulfill its social function;

XXIV - the law shall establish the procedure for expropriation for public necessity or use, or for social interest, with fair and previous pecuniary compensation, except for the cases provided in this Constitution;

XXV - in case of imminent public danger, the competent authority may make use of private property, provided that, in case of damage, subsequent compensation is ensured to the owner;

XXVI - the small rural property, as defined by law, provided that it is exploited by the family, shall not be subject to attachment for the payment of debts incurred by reason of its productive activities, and the law shall establish the means to finance its development;

XXVII - the exclusive right of use, publication or reproduction of works rests upon their authors and is transmissible to their heirs for the time the law shall establish;

XXVIII - under the terms of the law, the following are ensured:

a) protection of individual participation in collective works and of reproduction of the human image and voice, sports activities included;

b) the right to authors, interpreters and respective unions and associations to monitor the economic exploitation of the works which they create or in which they participate;

XXIX - the law shall ensure the authors of industrial inventions of a temporary privilege for their use, as well as protection of industrial creations, property of trademarks, names of companies and other distinctive signs, viewing the social interest and the technological and economic development of the country;

XXX - the right to inheritance is guaranteed;

XXXI - succession to the estate of foreigners which is located in Brazil shall be regulated by the Brazilian law in favour of the Brazilian spouse or children, whenever the personal law of the deceased is not more favourable to them;

XXXII - the State shall provide, as set forth by law, for the defense of consumers;

XXXIII - all persons have the right to receive, from the public agencies, information of private interest to such persons, or of collective or general interest, which shall be provided within the period established by law, subject to liability, except for the information whose secrecy is essential to the security of society and of the State:

XXXIV - the following are ensured to everyone without any payment of fees: a) the right to petition the Government in defense of rights or against illegal acts or abuse of power;

b) the obtaining of certificates from government offices, for the defense of rights and clarification of situations of personal interest;

XXXV - the law shall not exclude any injury or threat to a right from the consideration of the Judicial Power;

XXXVI - the law shall not injure the vested right, the perfect juridical act and the *res judicata*

XXXVII - there shall be no exceptional tribunal or court:

XXXIX - the institution of the jury is recognized, according to the organization which the law shall establish, and the following are ensured:

a) full defense;

b) secrecy of voting;

c) sovereignty of verdicts;

d) power to judge willful crimes against life;

XL - there is no crime without a previous law to define it, nor a punishment without a previous legal commination;

XLI - penal law shall not be retroactive, except to benefit the defendant;

XLII - the law shall punish any discrimination which may attempt against fundamental rights and liberties;

XLII - the practice of racism is a non-bailable crime, with no limitation, subject to the penalty of confinement, under the terms of the law;

XLIII - the practice of torture, the illicit traffic of narcotics and related drugs, as well as terrorism, and crimes defined as heinous crimes shall be considered by law as non-bailable and not subject to grace or amnesty, and their principals, agents and those who omit themselves while being able to avoid such crimes shall be held liable;

XLIV - the action of armed groups, either civil or military, against the constitutional order and the democratic state is a non-bailable crime, with no limitation;

XLV - no punishment shall go beyond the person of the convict, and the obligation to compensate

for the damage, as well as the decreeing of loss of assets may, under the terms of the law, be extended to the successors and executed against them, up to the limit of the value of the assets transferred;

XLVI - the law shall regulate the individualization of punishment and shall adopt the following, among others:

- a) deprivation or restriction of freedom;
- b) loss of assets;
- c) fine;
- d) alternative rendering of social service;
- e) suspension or deprivation of rights;

XLVII - there shall be no punishment:

- a) of death, save in case of declared war under the terms of article 84, XIX;
- b) of life imprisonment;
- c) of hard labour;
- d) of banishment;
- e) which is cruel;

XLVIII - the sentence shall be served in separate establishments, according to the nature of the offense, the age and the sex of the convict;

XLIX - prisoners are ensured of respect to their physical and moral integrity;

L - female prisoners shall be ensured of adequate conditions to stay with their children during the nursing period;

LI - no Brazilian shall be extradited, except the naturalized ones in the case of a common crime committed before naturalization, or in the case there is sufficient evidence of participation in the illicit traffic of narcotics and related drugs, under the terms of the law;

LII - extradition of a foreigner on the basis of political or ideological crime shall not be granted;

LIII - no one shall undergo legal proceeding or sentencing save by the competent authority;

LIV - no one shall be deprived of freedom or of his assets without the due process of law;

LV - litigants, in judicial or administrative processes, as well as defendants in general, are ensured of the adversary system and of full defense, with the means and resources inherent to it;

LVI - evidence obtained through illicit means are unacceptable in the process;

LVII - no one shall be considered guilty before the issuing of a final and unappealable penal sentence;

LVIII - no one who has undergone civil identification shall be submitted to criminal identification, save in the cases provided by law;

LIX - private prosecution in the cases of crimes subject to public prosecution shall be admitted, whenever the latter is not filed within the period established by law;

LX - the law may only restrict the publicity of procedural acts when the defense of privacy or the social interest require it;

LXI - no one shall be arrested unless in flagrante delicto or by a written and justified order of a competent judicial authority, save in the cases of military transgression or specific military crime, as defined in law;

LXII - the arrest of any person as well as the place where he is being held shall be immediately informed to the competent judge and to the family of the person arrested or to the person indicated by him;

LXIII - the arrested person shall be informed of his rights, among which the right to remain silent, and he shall be ensured of assistance by his family and a lawyer;

LXIV - the arrested person is entitled to identification of those responsible for his arrest or for his police questioning;

LXV - the illegal arrest shall be immediately remitted by the judicial authority;

LXVI - no one shall be taken to prison or held therein, when the law admits release on own recognizance, subject or not to bail;

LXVII - there shall be no civil imprisonment for indebtedness except in the case of a person responsible for voluntary and inexcusable default of alimony obligation and in the case of an unfaithful trustee;

LXVIII - *habeas corpus* shall be granted whenever a person suffers or is in danger of suffering violence or coercion against his freedom of locomotion, on account of illegal actions or abuse of

power;

LXIX - a writ of mandamus shall be issued to protect a clear and perfect right, not covered by *habeas corpus* or *habeas data*, whenever the party responsible for the illegal actions or abuse of power is a public official or an agent of a corporate legal entity exercising duties of the Government;

LXX - a collective writ of mandamus may be filed by:

- a) a political party represented in the National Congress;
- b) a union, a professional association or an association legally constituted and in operation for at least one year, to defend the interests of its members or associates;

LXXI - a writ of injunction shall be granted whenever the absence of a regulatory provision disables the exercise of constitutional rights and liberties, as well as the prerogatives inherent to nationality, sovereignty and citizenship;

LXXII - *habeas data* shall be granted:

- a) to ensure the knowledge of information related to the person of the petitioner, contained in records or databanks of government agencies or of agencies of a public character;
- b) for the correction of data, when the petitioner does not prefer to do so through a confidential process, either judicial or administrative;

LXXIII - any citizen is a legitimate party to file a people's legal action with a view to nullifying an act injurious to the public property or to the property of an entity in which the State participates, to the administrative morality, to the environment and to the historic and cultural heritage, and the author shall, save in the case of proven bad faith, be exempt from judicial costs and from the burden of defeat;

LXXIV - the State shall provide full and free-of-charge legal assistance to all who prove insufficiency of funds;

LXXV - the State shall indemnify a convict for judicial error, as well as a person who remains imprisoned for a period longer than the one established by the sentence;

LXXVI - for all who are acknowledgedly poor, the following is free of charge, under the terms of the law:

- a) civil birth certificate;
- b) death certificate;

LXXVII - *habeas corpus* and *habeas data* proceedings and, under the terms of the law, the acts necessary to the exercise of citizenship are free of charge;

LXVIII - to all, in judicial and administrative proceedings, are assured a reasonable duration of proceedings and the means to guarantee the celerity of proceedings.

Clause LXVII added by CA nr. 45, Dec. 8th 2004.

Paragraph 1. The provisions that define the fundamentals rights and guarantees have immediate application.

Paragraph 2. The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties in which the Federative Republic of Brazil is a party.

Paragraph 3. The international treaties and conventions on Human Rights which are approved, in each House of National Congress, in two rounds, by three fifths of votes of the respective members, will be equivalent to Constitutional Amendments.

Paragraph 4. Brazil shall be submitted to the jurisdiction of International Penal Tribunal to which creation it had manifested agreement.

Paragraphs 3 and 4 added by CA nr. 45, Dec. 8th 2004.

CHAPTER II - SOCIAL RIGHTS

Article 6. Education, health, work, *habitation*, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, are social rights, as set forth by this Constitution.

The word "*habitation*" was included by CA nr. 26, Feb. 146h. 2000.

Article 7. The following are rights of urban and rural workers, among others that aim to improve their social conditions:

I - employment protected against arbitrary dismissal or against dismissal without just cause, in accordance with a supplementary law which shall establish severance-pay, among other rights;

II - unemployment insurance, in the event of involuntary unemployment;

III - severance-pay fund;

IV - nationally unified minimum wage, established by law, capable of satisfying their basic living needs and those of their families with housing, food, education, health, leisure, clothing, hygiene, transportation and social security, with periodical adjustments to maintain its purchasing power, it being forbidden to use it as an index for any purpose;

V - a salary floor in proportion to the extent and complexity of the work;

VI - irreducibility of the wages, except when established in collective agreement or covenant;

VII - guarantee of wages never below the minimum one, for those receiving variable pay;

VIII - year-end one-salary bonus based on the full pay or on the amount of the pension;

IX - payrate for night-shift work higher than that for daytime work;

X - wage protection, as provided by law, with felonious withholding of wages being a crime;

XI - participation in the profits or results, independent of wages, and, exceptionally, participation in the management of the company, as defined by law;

XII - family allowance, to be paid on behalf of the dependents of the low income worker, as defined by law;

XIII - normal working hours not exceeding eight hours per day and forty-four hours per week, with the option of compensating working hours and reducing the length of the workshifts through an agreement or a collective bargaining covenant;

XIV - a workday of six hours for work carried out in continuous shifts, unless otherwise established by collective negotiation;

XV - paid weekly leave, preferably on Sundays;

XVI - rate of pay for overtime at least fifty per cent higher than that of normal work;

XVII - annual vacation with remuneration at least one third higher than the normal salary;

XVIII - maternity leave without loss of job and of salary, for a period of one hundred and twenty days;

XIX - paternity leave, under the terms established by law;

XX - protection of the labour market for women through specific incentives, as provided by law;

XXI - notice of dismissal in proportion to the length of service of at least thirty days, as provided by law;

XXII - reduction of work related risks by means of health, hygiene and safety provisions;

XXIII - additional remuneration for strenuous, unhealthy or dangerous work, as established by law;

XXIV - retirement pension;

XXV - free assistance for children and dependents from birth to six years of age, in day-care centres and pre-school facilities;

XXVI - recognition of collective bargaining agreements and covenants;

XXVII - protection on account of automation, as established by law;

XXVIII - occupational accident insurance, to be paid for by the employer, without excluding the employer's liability for indemnity in the event of malice or fault;

XXIX - legal action with respect to credits arising from employment relationships with a prescription of five years for urban and rural workers, up to the limit of two years after the end of the employment contract;

This clause was changed by CA nr. 28, May 25th 2000. The original text established that the limitation of rural workers was just 'two years counted from the end of the contract'.

XXX - prohibition of any difference in wages, in the performance of duties and in hiring criteria by reason of sex, age, colour or marital status;

XXXI - prohibition of any discrimination with respect to wages and hiring criteria of handicapped workers;

XXXII - prohibition of any distinction between manual, technical and intellectual work or among the respective professionals;

XXXIII - prohibition of night, dangerous or unhealthy work for minors under eighteen years of age, and of any work for minors under fourteen years of age, except as an apprentice;

XXXIV - equal rights for workers with a permanent employment bond and for sporadic workers.

Sole paragraph - The category of domestic servants is ensured of the rights set forth in items IV,

VI, VIII, XV, XVII, XVIII, XIX, XXI and XXIV, as well as of integration in the social security system.

Article 8. Professional or union association is free, with due regard to the following:

I - the law may not require authorization of the State for a union to be founded, except for authorization for registration with the competent agency, it being forbidden to the Government the interference and the intervention in the union;

II - it is forbidden to create more than one union, at any level, representing a professional or economic category, in the same territorial base, which shall be defined by the workers or employers concerned, and which may not cover less than the area of one municipality;

III - it falls to the union to defend the collective or individual rights and interests of the category, including legal or administrative disputes;

IV - the general assembly shall establish the contribution which, in the case of a professional category, shall be discounted from the payroll, to support the confederative system of the respective union representation, regardless of the contribution set forth by law;

V - no one shall be obliged to join or to remain a member of a union;

VI - the collective labor bargainings must be held with the participation of unions;

VII - retired members shall be entitled to vote and be voted on in unions;

VIII - the dismissal of a unionised employee is forbidden from the moment of the registration of his candidacy to a position of union direction or representation and, if elected, even if as a substitute, up to one year after the end of his term in office, unless he commits a serious fault as established by law.

Sole paragraph - The provisions of this article apply to the organization of rural unions and those of fishing communities, with due regard for the conditions established by law.

Article 9. The right to strike is guaranteed, it being the competence of workers to decide on the advisability of exercising it and on the interests to defended thereby.

Paragraph 1. The law shall define the essential services or activities and shall provide with respect to the satisfaction of the community's undelayable needs.

Paragraph 2. The abuses committed shall subject those responsible to penalties of the law.

Article 10. The participation of workers and employers is ensured in collegiate bodies of government agencies in which their professional or so security interests are subject of discussion and resolution.

Article 11. It is ensured, in companies with more than 200 employees, the election of a representative of the employees for the exclusive purpose of furthering direct negotiations with the employers.

CHAPTER III - NATIONALITY

Article 12. The following are Brazilians:

I - by birth:

a) those born in the Federative Republic of Brazil, even if of foreign parents, provided that they are not at the service of their country;

b) those born abroad, of a Brazilian father or a Brazilian mother, provided that either of them is at the service of the Federative Republic of Brazil:

c) those born abroad, of a Brazilian father or a Brazilian mother, provided that they come to reside in the Federative Republic of Brazil and opt for the Brazilian nationality at any time;

Letter 'c' included by CA of Revision nr. 3, June 7th 1994.

II - naturalized:

a) those who, as set forth by law, acquire Brazilian nationality, it being the only requirement for persons originating from Portuguese-speaking countries the residence for one uninterrupted year and good moral repute;

b) foreigners of any nationality, resident in the Federative Republic of Brazil for over fifteen uninterrupted years and without criminal conviction, provided that they apply for the Brazilian nationality.

Paragraph 1. The rights inherent to Brazilians shall be attributed to Portuguese citizens with permanent residence in Brazil, if there is reciprocity in favour of Brazilians, except in the cases stated in this Constitution.

Letter 'b' and Paragraph 1 : CA of Revision nr. 3, June 7th 1994.

Paragraph 2. The law may not establish any distinction between born and naturalized Brazilians, except in the cases stated in this Constitution.

Paragraph 3. The following offices are exclusive for born Brazilians:

- I - those of President and Vice-President of the Republic;
- II - that of President of the Chamber of Deputies;
- III - that of President of the Federal Senate;
- IV - that of Justice of the Supreme Federal Court;
- V - those of the diplomatic career;
- VI - that of officer of the Armed Forces.

VII - Minister of Defense.

Clause VII included by CA nr. 23, September 2nd. 1999.

Paragraph 4. Loss of nationality shall be declared for a Brazilian who:

I - has his naturalization cancelled by court decision on account of an activity harmful to the national interests;

II - acquires another nationality, save in the cases:

- a) of recognition of the original nationality by the foreign law;
- b) of imposition of naturalization, under the foreign rules, to the Brazilian resident in a foreign State, as a condition for permanence in its territory, or for the exercise of civil rights.

Clause II added by CA of Revision nr.3, June 7th 1994.

Article 13. Portuguese is the official language of the Federative Republic of Brazil.

Paragraph 1. The national flag, anthem, coat of arms and seal are the symbols of the Federative Republic of Brazil.

Paragraph 2. The states, the Federal District and the municipalities may have symbols of their own.

CHAPTER IV - POLITICAL RIGHTS

Article 14. The sovereignty of the people shall be exercised by universal suffrage and by the direct and secret voting, with equal value for all, and, according to the law, by means of:

- I - plebiscite;
- II - referendum;
- III - people's initiative.

Paragraph 1. Electoral enrollment and voting are:

- I - mandatory for persons over eighteen years of age;
- II - optional for:
 - a) the illiterate;
 - b) those over seventy years of age;
 - c) those over sixteen and under eighteen years of age.

Paragraph 2. Foreigners cannot register as voters and neither can conscripts during their period of compulsory military service.

Paragraph 3. The conditions for eligibility, according to the law, are:

- I - the Brazilian nationality;
- II - the full exercise of the political rights;
- III - the electoral enrollment;
- IV - the electoral domicile in the electoral district;
- V - the membership in a political party;
- VI - the minimum age of:
 - a) thirty-five years for President and Vice-President of the Republic and Senator;
 - b) thirty years for Governor and Vice-Governor of a state and of the Federal District;
 - c) twenty-one years for Federal Deputy, State or District Deputy, Mayor, Vice-Mayor and justice of the peace;

d) eighteen years for City Councilman.

Paragraph 4. The illiterate and those that cannot be registered as voters are not eligible.

Paragraph 5. The President of the Republic, the State and Federal District Governors, the Mayors and those who have succeeded or replaced them during their terms of office may be reelected for only one subsequent term.

Paragraph 5 : CA nr. 16, June 4th 1997. This was called the Amendment of the Re-election. Before the amendment, Chiefs of the Executive could not run for re-election. It is a fact that ex-President Fernando Henrique Cardoso spent much effort to approve this amendment; this was one of the reasons to explain why the second half of his first term was not as productive as the first half. There were several rumors that some Deputies would have received bribery for voting in favor of this amendment.

Paragraph 6. In order to run for other offices, the President of the Republic, the State and Federal District Governors and the Mayors have to resign from their respective offices at least six months in advance of the election.

Paragraph 7. The spouse and relatives by blood or marriage, up to the second degree or by adoption, of the President of the Republic, of the Governor of a State or Territory or of the Federal District, of a Mayor or of those who have replaced them within the six months preceding the election, are not eligible in the jurisdiction of the incumbent, unless they already hold an elective office and are candidates for re-election.

Paragraph 8. A member of the Armed Forces that can be registered as voter is eligible if the following conditions are met:

I - if he has less than ten years of service, he shall have to take leave from military activities;

II - if he has more than ten years of service, he shall be discharged of military duties by his superiors and, if elected, he shall automatically pass into retirement upon the issuing of the official certificate of electoral victory.

Paragraph 9. In order to protect the administrative probity, morality for the exercise of the office, the previous life of the candidate being considered, and the normality and legitimacy of the elections against the influence of the economic power or of the abuse in the holding of office, position or job in the direct or indirect public administration, a supplementary law shall establish other cases of ineligibility and the periods for such ineligibilities to cease.

Paragraph 9: CA of Revision nr. 4, June 7th 1994.

Paragraph 10. The exercise of an elective mandate may be impugned before the Electoral Courts within a period of fifteen days after the date of the issuing of the official certificate of electoral victory, substantiating the suit with evidence of abuse of economic power, corruption or fraud.

Paragraph 11. The procedure of the suit impugning the office shall be secret, and the plaintiff shall be liable under the law if the suit is reckless or involves manifest bad faith.

Article 15. Disfranchisement of political rights is forbidden, the loss or suspension of which rights shall apply only in the event of:

I - cancellation of naturalization by a final and unappealable judgement;

II - absolute civil incapacity;

III - final and unappealable criminal sentence, for as long as its effects last;

IV - refusal to comply with an obligation imposed upon everyone or to render an alternative service, according to article 5. VIII;

V - administrative dishonesty, according to article 37, paragraph 4.

Article 16. The law that alters the electoral procedure shall come into force the date of its publication, and shall not apply to the elections that take place within one year of it being in force.

Article 16: CA of Revision nr. 4, September 14th 1993.

CHAPTER V - POLITICAL PARTIES

Article 17. The creation, amalgamation, merger and extinction of political parties is free, with due regard for national sovereignty, the democratic regime, the plurality of political parties, the fundamental rights of the individual, and observing the following precepts:

I - national character;

II - prohibition from receiving financial assistance from a foreign entity or government or from

subordination to same:

III - rendering of accounts to the Electoral Courts;

IV - operation in the National Congress in accordance with the law.

Paragraph 1. Political parties are ensured of autonomy to define their internal structure, organization and operation, **and to adopt the criteria of selection and regime of their electoral coalitions, without obligation of vinculation between the candidacies in national, State, Federal District or municipal levels**, and their by-laws shall establish rules of party loyalty and discipline.

Words in purple added by CA 52, March 8th 2006.

Paragraph 2. After acquiring corporate legal status under civil law, political parties shall register their by-laws at the Superior Electoral Court.

Paragraph 3. Political parties are entitled to monies from the party fund and to free-of-charge access to radio and television, as established by law.

Paragraph 4. Political parties are forbidden to use paramilitary organizations.

TITLE III. THE ORGANIZATION OF THE STATE

CHAPTER I. THE POLITICAL AND ADMINISTRATIVE ORGANIZATION

Article 18. The political and administrative organization of the Federative Republic of Brazil comprises the Union, the States, the Federal District and the Municipalities, all of them autonomous, as this Constitution provides.

Paragraph 1 - Brasília is the federal capital.

Paragraph 2 - The federal territories are part of the Union and their establishment, transformation into States or reintegration into the State of origin shall be regulated by a supplementary law.

Paragraph 3 - The States may merge into each other, subdivide or dismember to be annexed to others or to form new states or federal territories, subject to the approval of the population directly concerned, by means of a plebiscite, and of the National Congress, by means of a supplementary law.

Paragraph 4 - **The establishment, merger, fusion and dismemberment of municipalities shall be effected through state law, within the period set forth by supplementary federal law, and shall depend on prior consultation, by means of a plebiscite, of the population of the municipalities concerned, after the publication of Municipal Feasibility Studies, presented and published as set forth by law.**

Paragraph 4: CA nr. 15, September 12th 1996.

Article 19. The Union, the States, the Federal District and the municipalities are forbidden to:

I - establish religious sects or churches, subsidize them, hinder their activities, or maintain relationships of dependence or alliance with them or their representatives, without prejudice to collaboration in the public interest in the manner set forth by law;

II - refuse to honour public documents;

III - create distinctions between Brazilians or preferences favouring some.

CHAPTER II. THE UNION

Article 20. The following are property of the Union:

I - the property which presently belongs to it as well as that which may be attributed to it;

II - the unoccupied lands essential to the defense of the boundaries, the fortifications and military constructions, the federal routes of communication and the preservation of the environment, as defined by law;

III - the lakes, rivers and any watercourses in lands within its domain or that wash more than one State, that serve as boundaries with other countries or that extend into foreign territory or proceed therefrom, as well as bank lands and river beaches;

IV - the river and lake islands in zones bordering with other countries, the sea beaches, the ocean

and off-shore islands, **excluded the islands which are seats of municipalities, excepted those areas of interest to public service and federal environment unity**, and those referred to in article 26, II;
Words in purple added by CA 46, May 5th 2005.

V - the natural resources of the continental shelf and of the exclusive economic zone;

VI - the territorial sea;

VII - tide lands and those added to them;

VIII - the hydraulic energy potentials;

IX - the mineral resources, including those of the subsoil;

X - the natural underground cavities and the archaeological and historic sites;

XI - those lands traditionally occupied by the Indians.

Paragraph 1 - In accordance with the law, the participation in the results of the exploitation of petroleum or natural gas, hydric resources for the purpose of generation of electric power and other mineral resources in the respective territory, continental shelf, territorial sea or exclusive economic zone, financial compensation for the exploitation thereof, is assured to the States, Federal District and the municipalities, as well as to agencies of the administration of the Union.

Paragraph 2 - The strip of land up to a hundred and fifty kilometers in width alongside the terrestrial boundaries, designated as boundary zone, considered essential to the defense of the national territory and its occupation and utilization shall be regulated by law.

Article 21. The Union shall have the power to:

I - maintain relations with foreign states and participate in international organizations;

II - declare war and make peace;

III - ensure national defense;

IV - allow foreign forces, in the cases provided for in a supplementary law, to pass through the national territory or to remain therein temporarily;

V - declare a state of siege, a state of defense and federal intervention;

VI - authorize and control the production and trade of military materiel;

VII - issue currency;

VIII - manage the foreign exchange reserves of the country and control financial operations, especially those of credit, exchange and capitalization, as well as insurance and private security;

IX - prepare and carry out national and regional plans for the ordaining of the territory and for economic and social development;

X - maintain the postal service and the national air mail;

XI - **operate, directly or through authorization, concession or permission, the telecommunications services, as set forth by law, which law shall provide for the organization of the services, the establishment of a regulatory agency and other institutional issues;**

Clause XI added by CA 15, August 15th 1995. The former text was more detailed; the present text remits several matters to the law.

XII - operate, directly or through authorization, concession or permission:

a) **the services of sound broadcasting and of sound and image broadcasting;**

Clause XII added by CA 15, August 15th 1995. Original text included the expression 'and other broadcasting means'.

b) the electric power services and facilities and the energetic exploitation of watercourses, jointly with the states wherein those hydro-energetic potentials are located;

c) air and aerospace navigation and airport infrastructure;

d) railway and waterway services between seaports and national borders or which cross the boundary of a state or territory;

e) interstate and international highway passenger transportation services;

f) sea, river and lake ports;

XIII - organize and maintain the Judicial Power, the Public Prosecution and the Public Legal Defense of the Federal District and territories;

XIV - **organize and maintain the civil police, the military police and the fire brigade of the Federal District, as well as providing financial assistance to the Federal District for the execution of public services, by means of a specific fund;**

Clause XIV amended by CA 19, June 4th 1998.

XV - organize and maintain the official services of statistics, geography, geology and cartography of national scope;

XVI - classify, for indicative purposes, public entertainment and television programs;
 XVII - grant amnesty;
 XVIII - plan and promote permanent defense against public disasters, especially droughts and floods;
 XIX - establish a national system for the management of hydric resources and define criteria for the concession of the right to their use;
 XX - establish directives for urban development, including housing, basic sanitation and urban transportation;
 XXI - establish principles and directives for the national transportation system;
 XXII - **perform the services of maritime, air, and border police;**
Clause XIV amended by CA 19, June 4th 1998.
 XXIII - operate nuclear energy services and facilities of any nature, exercise state monopoly over research, mining, enrichment and reprocessing, industrialization and trade in nuclear ores and their by-products, taking into account the following principles and conditions:
 a) all nuclear activity within the national territory shall only be admitted for peaceful purposes and subject to approval by the National Congress;
 b) under regime of permission, authorization is given for the utilization of radioisotopes in research and for medical, agricultural and industrial use;
Letters b, c, and of this clause were amended by CA 49, February 8th 2006. The CA suppressed the regime of concession from letter b, removed the expression "as well as for other analogous activities" from letter b, added text of letter c, and turned former letter c into letter d.
c) under regime of permission, authorization is given for production, commercialization and utilization of radioisotopes with half-life equal to or shorter than two hours;
 d) civil liability for nuclear damages does not depend on the existence of fault;
 XXIV - organize, maintain and carry out inspection of working conditions;
 XXV - establish the areas and conditions for the exercise of placer mining activities in associative form.

Article 22. The Union has the exclusive power to legislate on: I - civil, commercial, criminal, procedural, electoral, agrarian, maritime, aeronautical, space and labour law;
 II - expropriation;
 III - civil and military requisitioning, in case of imminent danger or in times of war;
 IV - waters, energy, informatics, telecommunications and radio broadcasting;
 V - the postal service;
 VI - the monetary and measures systems, metal certificates and guarantees;
 VII - policies for credit, foreign exchange, insurance and transfer of values;
 VIII - foreign and interstate trade;
 IX - guidelines for the national transportation policy;
 X - the regime of the ports and lake, river, ocean, air and aerospace navigation;
 XI - traffic and transportation;
 XII - beds of ore, mines, other mineral resources and metallurgy;
 XIII - nationality, citizenship and naturalization;
 XIV - Indian populations;
 XV - emigration, immigration, entry, extradition and expulsion of foreigners;
 XVI - the organization of the national employment system and conditions for the practice of professions;
 XVII - the judicial organization of the Public Prosecution and of the Public Legal Defense of the Federal District and of the territories, as well as their administrative organization;
 XVIII - the national statistical, cartographic and geological systems;
 XIX - systems of savings, as well as of obtaining and guaranteeing popular savings;
 XX - consortium and lottery systems;
 XXI - general organization rules, troops, material, guarantees, drafting and mobilization of the military police and military fire brigades;
 XXII - the jurisdiction of the federal police and of the federal highway and railway polices;
 XXIII - welfare;
 XXIV - directives and bases of the national education;

XXV - public registers;

XXVI - nuclear activities of any nature;

XXVII - **general rules for all types of bidding and contracting, with observance of the art. 37, XXI, in the case of the direct public administration, autarchies and foundations of the Union, States, Federal District and municipalities, and of the art. 173, paragraph 1, III, in the case of public companies and public corporations;**

Clause XXVII amended by CA 19, June 4th 1998. The former text made no distinctions between the Administration and the public companies; as consequence, a big company like Petrobrás had to face the same restrictions as a public hospital to sign their contracts.

[Read comments about the **bidding legislation in Brazil**.](#)

XXVIII - territorial defense, aerospace defense, maritime defense, civil defense, and national mobilization;

XXIX - commercial advertising.

Sole paragraph - A supplementary law may authorize the States to legislate upon specific questions related to the matters listed in this article.

Article 23. The Union, the States, the Federal District and the municipalities, in common, have the power:

I - to ensure that the Constitution, the laws and the democratic institutions are respected and that public property is preserved;

III - to provide for health and public assistance, for the protection and safeguard of handicapped persons;

III - to protect the documents, works and other assets of historical, artistic or cultural value, the monuments, the remarkable landscapes and the archaeological sites;

IV - to prevent works of art and other assets of historical, artistic and cultural value from being taken out of the country, destroyed or from being deprived of their original characteristics;

V - to provide the means of access to culture, education and science;

VI - to protect the environment and to fight pollution in any of its forms;

VII - to preserve the forests, fauna and flora;

VIII - to promote agriculture and cattle breeding and organize the supply of foodstuff;

IX - to promote housing construction programs and the improvement of housing and basic sanitation conditions;

X - to fight the causes of poverty and the factors leading to substandard living conditions, promoting the social integration of the unprivileged sectors of the population;

XI - to register, monitor and control the concessions of rights to research and exploit hydric and mineral resources within their territories;

XII - to establish and to implement an educational policy for traffic safety.

Sole paragraph - A supplementary law shall establish rules for the cooperation among the Union and the States, the Federal District and the municipalities aiming at the attainment of balanced development and well-being on a nationwide scope.

Article 24. The Union, the States and the Federal District have the power to legislate concurrently on:

I - tax, financial, penitentiary, economic and urbanistic law;

II - budget;

III - trade boards;

IV - costs of forensic services;

V - production and consumption;

VI - forests, hunting, fishing, fauna, preservation of nature, defense of the soil and natural resources, protection of the environment and control of pollution;

VII - protection of the historic, cultural and artistic heritage, as well as of assets of touristic interest and landscapes of outstanding beauty;

VIII - liability for damages to the environment, to consumers, to assets and rights of artistic, aesthetic, historical, and touristic value, as well as to remarkable landscapes;

IX - education, culture, teaching and sports;

X - establishment, operation and procedures of small claims courts;

XI - judicial procedures;

XII - social security, protection and defense of health;

XIII - legal assistance and public defense;

XIV - protection and social integration of handicapped persons;

XV - protection of childhood and youth;

XVI - organization, guarantees, rights and duties of the civil policies.

Paragraph 1 - Within the scope of concurrent legislation, the competence of the Union shall be limited to the establishment of general rules.

Paragraph 2 - The competence of the Union to legislate upon general rules does not exclude the supplementary competence of the States

Paragraph 3 - If there is no federal law or general rules, the States shall exercise full legislative competence to provide for their peculiarities.

Paragraph 4 - The supervenience of a federal law over general rules suspends the effectiveness of a state law to the extent that the two are contrary to each other.

CHAPTER III. THE FEDERATED STATES

Article 25. The States are organized and governed by the Constitutions and laws they may adopt, in accordance with the principles of this Constitution.

Paragraph 1 - All powers that this Constitution does not prohibit the States from exercising shall be conferred upon them.

Paragraph 2 - *The states shall have the power to operate, directly or by means of concession, the local services of piped gas, as provided for by law, it being forbidden to issue any provisional measure for its regulation.*

Paragraph 2 amended by CA 5, August 15th 1998. The original text determined that the concession should be granted to State companies only. The amendment allowed the privatization of the gas companies.

Paragraph 3 - The States may, by means of a supplementary law, establish metropolitan regions, urban agglomerations and micro-regions, formed by the grouping of adjacent municipalities, in order to integrate the organization, the planning and the operation of public functions of common interest.

Article 26. The property of the States includes:

I - surface or subterranean waters, flowing, emerging or in deposit, with the exception, in this case, of those resulting from work carried out by the Union, as provided by law;

II - the areas, on ocean and coastal islands, which are within their domain, excluding those under the domain of the Union, the municipalities or third parties;

III - the river and lake islands which do not belong to the Union;

IV - the unoccupied lands not included among those belonging to the Union.

Article 27. The number of Deputies in the Legislative Assembly shall correspond to three times the representation of the State in the Chamber of Deputies and, when the number of thirty-six has been reached, it shall be increased by as many members as the number of Federal Deputies exceeding twelve.

Paragraph 1 - The term of office of the State Deputies shall be four years and the provisions of this Constitution shall be applied to them in what refers to the electoral system, inviolability, immunities, remuneration, loss of office, leave of absence, impediments and incorporation into the Armed Forces.

Paragraph 2 - The remuneration of the State Deputies shall be established in each legislative term, for the subsequent one, by the Legislative Assembly. as provided by articles 150, II, 153, III, and 153, paragraph 2, I, *in the proportion of seventy-five percent, at most, of the remuneration established, in legal tender, for the Federal Deputies.*

The Paragraph 2 was originally amended by CA 1, March 31st 1993.

Present text was established by CA 19, June 4th 1998.

Paragraph 3 - The Legislative Assemblies shall have the power to provide upon their internal regulations, police and the administrative services of their Secretariat and to fill in the respective offices.

Paragraph 4 - The law shall provide for people's initiative in the legislative proceedings of the States.

Article 28. The election of the Governor and the Vice-Governor of a State, for a term of office of four years, shall be held on the first Sunday of October, in the first round, and on the last Sunday of October, in the second round, as the case may be, of the year preceding the one in which the term of office of their predecessors ends, and they shall take office on January 1 of the following year, in accordance, otherwise, with the provisions of article 77.

Article 28, caput, amended by CA 16, June 4th 1997. The Amendment changed the dates of election and of taking office.

Paragraph 1 - The Governor who takes another post or function in the direct or indirect public administration shall lose his office, with the exception of the taking of office by virtue of public entrance examination and taking into account the provisions in article 38, I, IV and V.

Paragraph 2 - The remuneration of the Governor, Vice-Governor and the State Secretaries shall be fixed by law of initiative of the Legislative Assembly, in accordance with the provisions of arts. 37, XI, 39, paragraph 4, 150, II, 153, III, and 153, paragraph 2, I.

The entire Paragraph 2 was added by CA 19, June 4th 1998.

CHAPTER IV. THE MUNICIPALITIES

Article 29. Municipalities shall be governed by organic law, voted in two readings, with a minimum interval of ten days between the readings, and approved by two-thirds of the members of the Municipal Chamber, which shall promulgate it, observing the principles established in this Constitution, in the Constitution of the respective state and the following precepts:

I - election of the Mayor, Vice-Mayor and Councilmen for a term of office of four years, by means of direct election held simultaneously throughout the country;

II - election of the Mayor and Vice-Mayor on the first Sunday of October of the year preceding the end of the term of office of those they are to succeed, subject, in the case of municipalities with over two hundred thousand voters, to the provisions set forth in article 77;

Clause II amended by CA 16, June 4th 1997. The Amendment changed the dates of election and of taking office.

III - investiture of the Mayor and Vice-Mayor on January 1 of the year subsequent to the year of the election;

IV - number of councilmen in proportion to the population of the municipalities, in accordance with the following limits:

a) a minimum of nine and a maximum of twenty-one in municipalities with up to one million inhabitants;

b) a minimum of thirty-three and a maximum of forty-one in municipalities with over one million and under five million inhabitants;

c) a minimum of forty-two and a maximum of fifty-five in municipalities with over five million inhabitants;

V - the remuneration of the Mayor, the Vice-Mayor and the Councilmen stipulated by the Municipal Chamber in each legislature for the subsequent one, in accordance with the provisions set forth in articles 37, XI, 150, II, 153, III, and 153, paragraph 2, I;

The entire Paragraph 2 was added by CA 19, June 4th 1998.

VI - the remuneration of the City Councilmen shall be fixed by the respective Councils each term for the next one, with due regard to this Constitution, observed the established by the respective Organic Laws and the following maximum limits:

a) in municipalities with up to 10,000 (ten thousand) inhabitants, the remuneration of the Councilmen will be of up to 20% (twenty percent) of the remuneration of the State Deputies;

b) in municipalities with 10,001 (ten thousand and one) up to 50,000 (fifty thousand) inhabitants, the remuneration of the Councilmen will be of up to 30% (thirty percent) of the remuneration of State Deputies;

c) in municipalities with 50,001 (fifty thousand and one) up to 100,000 (one hundred thousand) inhabitants, the remuneration of the Councilmen will be of up to 40% (fourty percent) of the remuneration of State Deputies;

d) in municipalities with 100,001 (one hundred thousand and one) up to 300,000 (three hundred thousand) inhabitants, the remuneration of the Councilmen will be of up to 50% (fifty percent) of the remuneration of State Deputies;

e) in municipalities with 300,001 (three hundred thousand and one) up to 500,000 (five hundred thousand) inhabitants, the remuneration of the Councilmen will be of up to 60% (sixty percent) of the remuneration of State Deputies;

f) in municipalities with more than 50,00 (five hundred thousand) inhabitants, the remuneration of the Councilmen will be of up to 75% (fifty-five percent) of the remuneration of State Deputies;

Clause VI and all its letters added by CA 25, February 14th 2000. Before this amendment, the remuneration of councilmen had the same limits as all other political agents (President of Republic, Senators, etc).

VII - The total expenditure with the remuneration of the Councilmen shall not exceed the amount of five percent of the revenue of the Municipality;

Clause VII added by CA 1, March 31st 1992.

The addition of two clauses caused modifications in the numeration of the clauses below, without changes in text.

VIII - inviolability of the Councilmen on account of their opinions, words and votes while in office and within the jurisdiction of the municipality;

IX - prohibitions and incompatibilities, while in the exercise of the office of City Councilman, similar, where applicable, to the provisions of this Constitution for the members of the National Congress and of the Constitution of the respective State for the members of the Legislative Assembly;

X - trial of the Mayor before the Court of Justice;

XI - organization of the legislative and supervisory functions of the Municipal Chamber;

XII - cooperation of the representative associations in municipal planning;

XIII - public initiative in the presenting of bills of specific interest to the municipality, the city or the neighborhoods, by means of the manifestation of at least five percent of the electorate;

XIV - loss of the office of mayor, as provided in article 28, paragraph 1.

Article 29-A. The total expenditure of the Legislative Power of municipalities, included the remuneration of Councilmen and excluded the expenditures with the retired, shall not exceed the following percentages of the summation of the tax revenues and the transfers determined by paragraph 5 of article 153 and by articles 158 and 159, which effectively occurred in the previous year:

I - 8% (eight percent) in Municipalities with a population of up to 100,000 (one hundred thousand) inhabitants;

II - 7% (seven percent) in Municipalities with a population from 100,001 (one hundred thousand and one) up to 300,000 (three hundred thousand) inhabitants;

III - 6% (six percent) in Municipalities with a population from 300,001 (three hundred thousand and one) up to 500,000 (five hundred thousand) inhabitants;

III - 5% (five percent) in Municipalities with a population of over 500,000 (five hundred thousand) inhabitants.

Paragraph 1. The Municipal Council shall not spend more than 70% (seventy percent) of their revenue with pay rolls, included the expenses with remuneration of Councilmen.

Paragraph 2. The following shall constitute crimes of liability by the Mayor:

I - remit funds to the Legislative Power which exceed the limits set forth by this article;

II - do not remit funds to the Legislative Power until the 20th (twentieth) day of each month; or

III - remit funds to the Legislative Power in amount shorter than the prescribed by the Budgetary Law.

Paragraph 3. The disrespect of the prescribed by Paragraph 1 of this article shall constitute crime of liability by the President of the Municipal Council.

Article 29-A included by CA nr. 25, Feb. 14th 2000.

Article 30. The municipalities have the power to: I - legislate upon matters of local interest;

II - supplement federal and state legislations where pertinent;

III - institute and collect taxes within their jurisdiction, as well as to apply their revenues, without prejudice to the obligation of rendering accounts and publishing balance sheets within the periods established by law;

IV - create, organize and suppress districts, with due regard for the State legislation;

V - organize and render, directly or by concession or permission, the public services of local interest, including mass-transportation, which is of essential nature;

VI - maintain, with the technical and financial cooperation of the Union and the state, programs of pre-school and elementary school education;

VII - provide, with the technical and financial cooperation of the Union and the state, health services to the population;

VIII - promote, wherever pertinent, adequate territorial ordaining, by means of planning and control of use, apportionment and occupation of the urban soil;

IX - promote the protection of the local historic and cultural heritage, with due regard for federal and state legislation and supervision.

Article 31. Supervision of the municipality shall be exercised by the municipal legislature, through outside control, and by the internal control systems of the municipal executive branch, in the manner called for by law.

Paragraph 1 - Outside control of the Municipal Chamber shall be exercised with the assistance of the state or municipal Court of Accounts, or of the Municipal Councils or Courts of Accounts, where they exist.

Paragraph 2 - The prior report, issued by the competent agency, on the accounts to be rendered annually by the Mayor, shall not prevail only by a decision of two-thirds of the members of the City Council.

Paragraph 3 - The accounts of the municipalities shall remain, for sixty days annually, at the disposal, for examination and consideration, of any taxpayer, who may question their legitimacy, as the law provides.

Paragraph 4 - The creation of municipal courts, councils or agencies of accounts is forbidden.

CHAPTER V - THE FEDERAL DISTRICT AND THE TERRITORIES

SECTION I - THE FEDERAL DISTRICT

Article 32. The Federal District, which may not be divided into municipalities, shall be governed by an organic law, voted in two readings, with a minimum interval of ten days, and approved by two-thirds of the Legislative Chamber, which shall enact it, in accordance with the principles set forth in this Constitution.

Paragraph 1 - The legislative powers reserved to the States and municipalities are attributed to the Federal District.

Paragraph 2 - The election of the Governor and the Vice-Governor, complying with the rules of article 77, and of the District Deputies shall coincide with that of the state Governors and Deputies, for a term of office of the same duration.

Paragraph 3 - The provisions of article 27 apply to the District Deputies and the Legislative Chamber.

Paragraph 4 - A federal law shall provide for the use, by the Government of the Federal District, of the civil and military polices and the military fire brigade.

SECTION II - THE TERRITORIES

Article 33. The law shall provide for the administrative and judicial organization of the territories.

Paragraph 1 - The Territories may be divided into municipalities, to which the provisions of Chapter IV of this Title shall be applied, insofar as pertinent.

Paragraph 2 - The accounts of the Government of the Territory shall be submitted to the National Congress, with the prior opinion of the Court of Accounts of the Union.

Paragraph 3 - In the federal Territories with over a hundred thousand inhabitants, in addition to the Governor, appointed as set forth in this Constitution, there shall be judicial agencies of first and second instances, members of the Public Prosecution and Federal Public Legal Defenders; the law shall provide for the elections to the Territory Chamber and its decision-making powers.

CHAPTER VI - INTERVENTION

Article 34. The Union shall not intervene in the States or in the Federal District, except:

- I - to maintain national integrity;
- II - to repel foreign invasion or that of one unit of the Federation into another;
- III - to put an end to serious jeopardy to public order;
- IV - to guarantee the free exercise of any of the powers of the units of the Federation;
- V - to reorganize the finances of a unit of the Federation that:
 - a) stops the payment of its funded debt for more than two consecutive years, except for reasons of *force majeure*;
 - b) fails to deliver to the municipalities the tax revenues established in this Constitution, within the periods of time set forth by law;
- VI - to provide for the enforcement of federal law, judicial order or decision;
- VII - to ensure compliance with the following constitutional principles:
 - a) republican form, representative system and democratic regime;
 - b) rights of the human person;
 - c) municipal autonomy;
 - d) rendering of accounts of the direct and indirect public administration
 - e) the application of the mandatory minimum of the income resulting from State taxes, including those originating from transfers, in the maintenance and development of education and in public health services.

Letter 'e' : CA nr. 29, September 13th 2000, added the words "and in public health services". Notice that this letter had been added to the original text by CA nr. 14, September 12th 1996.

Article 35. The state shall not intervene in its municipalities, neither the Union in the municipalities located in a federal territory, except when:

- I - the funded debt is not paid for two consecutive years, without reasons of force majeure;
- II - the due accounts are not rendered, in the manner prescribed by law;
- III - the minimum required amount of the municipal revenues has not been applied in the maintenance and development of education and in public health services;

The words "and in public health services" were added by CA nr. 29, September 13th 2000.

IV - the Court of Justice grants a petition to ensure observance of the principles indicated in the state Constitution or to provide for the enforcement of the law, judicial order or decision.

Article 36. The issuance of a decree of intervention shall depend:

- I - in the case of article 34, IV, on a request from the coerced or impeded Legislative or Executive Power or on a requisition from the Supreme Federal Court, if the coercion is exercised against the Judicial Power;
- II - in case of disobedience to a judicial order or decision, on a requisition from the Supreme Federal Court, the Superior Court of Justice or the Superior Electoral Court;
- III - on the granting of a petition from the Attorney-General of the Republic by the Supreme Federal Court, in the case of article 34, VII, and in the case of refusal of enforcement of federal law;

Final words added by CA nr. 45, Dec. 8th 2004.

IV -

Clause IV revoked by CA nr. 45, Dec. 8th 2004. Former text of clause IV established the Superior Tribunal of Justice as competent body to decree intervention in cases of refusal of enforcement of federal law; the CA nr. 45 assigned that competence to the Supreme Court.

Paragraph 1 - The decree of intervention, which shall specify the extent, the period and the conditions of enforcement and which, if pertinent, shall appoint the intervenor, shall be submitted to the National Congress or the State Legislative Assembly for consideration, within twenty-four hours.

Paragraph 2 - If the National Congress or the Legislative Assembly are not in session, a special session shall be called within the same twenty- four hours.

Paragraph 3 - In the case of article 34, VI and VII, or article 35, IV, when the consideration by the National Congress or the Legislative Assembly may be waived, the decree shall be limited to suspending the enforcement of the impugned act, if such measure suffices to restore normality.

Paragraph 4 - Upon cessation of the reasons that caused the intervention, the authorities removed from their offices shall return to them, unless there is some legal impediment.

CHAPTER VII. PUBLIC ADMINISTRATION

SECTION I - GENERAL PROVISIONS

Article 37. The direct or indirect public administration of any of the powers of the Union, the States, the Federal District and the municipalities, as well as their foundations, shall obey the principles of lawfulness, impersonality, morality, publicity, **efficiency** and also the following:

Word "efficiency" included by CA nr. 19, June 4th 1998.

I - public offices, positions and functions are accessible to all Brazilians who meet the requirements established by law, **as well as to foreigners, under the conditions set forth by law;**

Final words included by CA nr. 19, June 4th 1998.

II - investiture in a public office or position depends on previously passing an entrance examination consisting of tests or tests and presentation of academic and professional credentials, **in accordance to the nature and complexity of the office or position, as seth forth by law,** except for appointment to a commission office declared by law as being of free appointment and discharge;

Amendment by CA nr. 19, June 4th 1998.

III - the period of validity of a public entrance examination shall be up to two years, extendable once, for a like period of time;

IV - during the unextendable period established in the public call notice, a person who has passed a public entrance examination of tests, or of tests and presentation of academic and professional credentials, shall be called with priority over newly approved applicants, to take an office or position in the career;

V - trusting functions, to be exercized exclusively by civil servants taking effective offices, and the commission offices, to be held by civil servants of the career in the cases, under the conditions and observing minimum percentages seth forth by law, shall be destined only to attributions of direction, management and assistance;

Clause V: CA nr. 19, June 4th 1998.

VI - the right to free union association is guaranteed to civil servants;

VII - the right to strike shall be exercised in the manner and within the limits defined by an **specific law;**

Word "specific" added by CA nr. 19, June 4th 1998; original text read "supplementary law".

VIII - the law shall reserve a percentage of public offices and positions for handicapped persons and shall define the criteria for their admittance;

IX - the law shall establish the cases of hiring for a limited period of time to meet a temporary need of exceptional public interest;

X - the remuneration of the civil servants and the subside mentioned by paragraph 4 of article 39 shall be determined or altered by specific law, with due regards to the private enterprise in each case, it being assured annual general revision, always on the same date and without distinction of indices;

Clause X: CA nr. 19, June 4th 1998.

XI - the remuneration and the subside of the holders of public offices, functions and positions in the direct administration, autarchies and foundations, of members of all Powers of the Union, States, Federal District and municipalities, of the holders of elective office and of the other political agents as well as the salaries, pensions and any other kind of financial compensation, whether received cumulatively or not, shall not exceed the monthly subside, in legal tender, of the Justices of the Supreme Federal Court, it being the limit, in the case of municipalities, the subside of the Mayor, and in the case of the States, the subside of the Governor in the scope of the Executive Power, the subside of State and Districtal Deputies in the scope of the Legislative Power and the subside of the Justices of the Justice Courts, limited to ninety percent plus twenty five hundredths of the monthly subside, in legal tender, of the Justices of the Supreme Federal Court, in the scope of the Judiciary Power, this limit being also applicable to the case of the members of Public Prosecution, State Attorneys and State Defenders;

Clause XI: CA nr. 41, December 19th 2003. This clause intended to definitively establish a limit to the salaries of all persons who receive payment from the public coffers. Previous attempts failed because of lack of clarity of the legislation; for example, many servants managed to obtain judicial orders (the Judges have always been an interested party in this matter, as they have the highest salaries) to exclude personal advantages from being computed as salaries. This limit is also applicable to the retired; see **article 40, paragraph 11**.

XII - the salaries for offices of the Legislative and Judicial Powers may not be higher than those paid by the Executive Power;

XIII - the linkage or equalization of salaries, for purposes of the remuneration of the personnel in the public services, is forbidden;

The CA nr. 19, June 4th 1998, removed these words, which appeared in the original text: "except for the provisions of the preceding item and of article 39, paragraph 1;" the paragraph 1 of article 39, which was derogated by the same CA nr. 19, read: "Paragraph 1 - The law shall guarantee, to the direct administration employees, equal salaries for offices in the same Power with equal or similar duties or between employees of the Executive, Legislative or Judicial Powers, except for advantages of a personal nature and those corresponding to the type of work or the workplace."

XIV - the pecuniary raises received by a civil servant shall not be computed or accumulated for purposes of granting subsequent raises;

The CA nr. 19, June 4th 1998, removed the words *in fine* of this clause, which used to read "for the same reason or on an identical basis".

XV - the subsidies and salaries of holders of public offices and public positions may not be reduced, except when necessary to comply with the provisions of clauses XI and XIV of this article and of the articles 39, paragraph 4, 150, II, 153, III and 153, paragraph 2, I;

CA nr. 19, June 4th 1998

XVI - remunerated accumulation of public offices is forbidden, except in the cases below, provided there is compatibility of working hours, and with observance of clause XI of this article:

a) of two teaching offices;

b) of one teaching office with another technical or scientific office;

Clause XVI, caput and letters 'a' and 'b': CA nr. 19, June 4th 1998

c) of two offices or positions exclusive of health professionals, with regulated professions;

Letter 'c' : CA nr. 34, Dec. 31st. 2001. The original text mentioned only 'doctors'; the amendment extended the permission of accumulation to other health professionals.

XVII - the prohibition to accumulate extends to positions and functions and includes autarchies, foundations, public companies, mixed- capital companies, **their affiliates, and societies controlled, directly or indirectly, by the the Government**;

CA nr. 19, June 4th 1998

XVIII - the financial administration and its revenue officers shall, within their spheres of authority and jurisdiction, have the right to precedence over the other administrative sectors, as the law provides;

XIX - **only by means of an specific law shall an autarchy be created and shall a public company, a mixed capital company and a foundation have their creation authorized, it being necessary, in the latter case, a complementary law to define the scope of action**;

CA nr. 19, June 4th 1998

XX - the creation of subsidiaries of the entities mentioned in the preceding clause depends on legislative authorization, in each case, as well as the participation by any of them in a private company;

XXI - with the exception of the cases specified in law, public works, services, purchases and disposals shall be contracted by public bidding proceedings that ensure equal conditions to all bidders, with clauses that establish payment obligations, maintaining the effective conditions of the bid, as the law provides, which shall only allow the requirements of technical and economic qualifications indispensable to guarantee the fulfilling of the obligations;

XXII - **the tax administrations of the Union, States, Federal District and municipalities, activities essential to the functioning of the State, exercised by officers in specific careers, shall have priority resources for the execution of their activities and shall have integrated actions, including the sharing of databases and tax information, as provided by law or by convene**.

Clause XXII added by CA nr. 42, Dec. 19th. 2003.

Paragraph 1 - The publicity of the acts, programmes, public works, services and campaigns of Government bodies shall be of educational, informative or social orientation character, and shall

not contain names, symbols or images that characterize personal propaganda of Government authorities or employees.

Paragraph 2 - Non-compliance with the provisions of items II and III shall result in the nullity of the act and punishment of the responsible authority, as the law provides.

Paragraph 3 - Complaints relating to the rendering of public services shall be regulated by law.

Paragraph 4 - Acts of administrative dishonesty shall result in the suspension of political rights, loss of public function, prohibition to transfer personal property and reimbursement to the Public Treasury, in the manner and grading established by law, without prejudice to the applicable criminal action.

Paragraph 5 - The law shall establish the limitations for illicit acts, performed by any agent, whether or not a Government employee, which cause losses to the Public Treasury, without prejudice to the respective claims for reimbursement.

Paragraph 6 - Public legal entities and private legal entities rendering public services shall be liable for damages that any of their agents, acting as such, cause to third parties, ensuring the right of recourse against the liable agent in cases of malice or fault.

Paragraph 7 - The law shall provide for the conditions and restriction imposed to the civil servant or public employee with access to classified information.

Paragraphs 7, 8, 9 and 10 added by CA 19, June 4th 1998.

Paragraph 8 - The management, budgetary and financial autonomy of bodies and entities of direct and indirect administration may be extended by means of a contract, to be firmed between their administrators and the Public Power, with the purpose of establishing performance goals for the body or entity, it being incumbent to the law to provide for:

I - the term of the contract;

II - the controls and criteria for evaluation of the performance, rights, duties and accountabilities of the managers;

III - the remuneration of the personnel.

Paragraph 9 - The provisions of Clause XI shall apply to public companies and mixed capital corporations, and their affiliates, which receive remittances from the Union, States, Federal District or municipalities for payment of personnel or general current expenses.

Paragraph 10 - The simultaneous perception of retiring compensations derived from article 40 or articles 42 and 142 with the remuneration of the public office, employment or position is prohibited, excepted the cases of accumulation provided for by this Constitution, the elective offices and the comission offices declared in law as of free appointment and dismissal.

Paragraph 11 - The monies of indemnificatory nature shall not be considered into the remuneratory limits subject of clause XI of this article.

Paragraphs 11 and 12 added by CA 47, July 5th 2005.

Paragraph 12 - For the purposes of the provisions of clause XI of this article, the States and Federal District shall be allowed to fix, within their jurisdiction, by means of amendments to the respective Constitutions and Organic Law, as sole limit, the monthly subside of the Justices of the respective State Court, limited to ninety percentage points plus twenty-five hundredths of percentage points of the monthly subside of the Justices of the Supreme Federal Court, this paragraph not being applicable to the subsidies of State Deputies, Districtal Deputies and councilmen.

Article 38. The civil servants of the direct administration, autarchies and foundations, when holding an elective office, are subject to the following:

Caput of art. 38 : CA nr. 19, June 4th 1998.

I - in the case of a federal, state or district elective office, he shall leave his office, position or function;

II - if vested with the office of Mayor, he shall take leave from his post, position or function and he may opt for the corresponding remuneration;

III - if vested with the office of City Councilman, if there is compatibility of working hours, he shall receive the benefits of his post, position or function, without prejudice to the remuneration of his elective office and in the case there is no such compatibility, the provisions of the preceding item shall be applied;

IV - in any case requiring leave of absence for the exercise of an elective office, his time of service

shall be counted in full, for all legal effects, except for promotion by merit;
V - for purposes of social security benefits, in the case of leave of absence, the amounts shall be established as if he were in activity.

SECTION II - CIVIL SERVANTS

Article 39. The Union, the States, the Federal District and the municipalities shall institute a council for policy of administration and remuneration of personnel, composed by civil servants appointed by the respective Powers.

Paragraph 1 - The definition of levels of salaries and other components of remuneratory system shall observe:

I - the nature, the degree of responsibility and the complexity of the offices which compose each career;

II - the requisites for investiture;

III - the peculiarities of the offices.

Paragraph 2 - The Union, the States and the Federal District shall maintain schools of government for the formation and improvement of the civil servants, the participation in courses being one of the requisites for promotion in the career, being allowed, for such, the signing of covenants or contracts between the entities of the Federation.

Caput, paragraphs 1 and 2: CA nr. 19, June 4th 1998.

Paragraph 3 - The provisions of article 7, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII, XXIII and XXX shall apply to these employees.

CA nr. 19, June 4th 1998, removed the item VI (irreducibility of salaries) from this paragraph.

The items of this paragraph refer, respectively, to the following rights: minimum salary; guarantee of salary; bonus (13th) salary; increase of salary of night shift; family allowance; limits of shift duration; paid weekly leave; increase of salary of overtime working; annual vacation; maternity leave; paternity leave; protection of labour market for women; reduction of work related risks; prohibition of difference in wages.

Paragraph 4 - The member of a Power, the holder of elective office, the Ministers of State and the Secretaries of the States and municipalities shall be remunerated exclusively by subsidy determined in sole parcel, it being prohibited the addition of any gratification, additional, bonus, premium, representation allowance or any other kind of remuneration, with compliance, in any case, to the provisions of art. 37, X and XI.

Paragraph 5 - Law of the Union, States, Federal District of municipalities may establish a ratio between the highest and the lowest remuneration of civil servants, with compliance, in any case, to the provisions of art. 37, XI.

Paragraph 6 - The Executive, Legislative and Judiciary Powers shall publish annually the values of the subsidies and remunerations of all public offices and positions.

Paragraph 7 - Law of the Union, States, Federal District of municipalities shall discipline the application of budgetary resources derived from savings with current expenses of each body, autarchy and foundation, for application in the development of programs of quality and productivity, training and development, modernization, refurbishment and rationalization of public service, including by means of an additional or bonus for productivity.

Paragraph 8 - The remuneration of civil servants organized in careers may be established in accordance to the provisions of paragraph 4.

Paragraphs 4, 5, 6, 7, and 8 added by CA nr. 19, June 4th 1998.

Article 40. Civil servants holding effective offices of the Union, the States, Federal District and municipalities, including autarchies and foundations, shall have rights to a social security regime, in a solidaire and contributive system, by means of contributions from the respective public entity, the active and retired servants and the pensionists, observing criteria to preserve the financial and long term balances and the dispositions of this article.

Article 40 and paragraphs were radically changed by CA 20, December 15th 1998, and CA 41, December 19th 2003. This article covers the social security system of the civil servants. The deficit of this system is the main cause of deficit in public budgets. Before CA 41, the system was participative, meaning that, regardless of how much the servant had contributed, the benefits were the same; only after CA 41 did the system become contributive, meaning that the benefits would be proportional to the contributions. Notice that CA 20

also made significant amends to [article 201](#) of this Constitution, which regulates the social security of the employees of the private sector.

Paragraph 1. The servants included in the social security system subject of this article shall retire, with pensions calculated according to the provided for in paragraphs 3 and 17:

Paragraph 1 amended by CA 41, December 19th 2003.

I - for permanent disability, with pensions proportional to time of contribution, except in the cases of work accident, professional disease or a serious, contagious or incurable illness, as specified by law;

Clause I amended by CA 41, December 19th 2003.

II - compulsorily, at seventy years of age, with a pension proportional to the period of service;

Clause II amended by CA 20, December 15th 1998.

III - voluntarily, provided that a minimum term of ten years of effective office in public service and five years in the office in which the retirement will take place had been served, with observance of the following conditions:

Clause III amended by CA 20, December 15th 1998.

a) at age of sixty and upon thirty-five years of service, if a man, and at age fifty-five and upon thirty years, if a woman;

Text in purple added by CA 20, December 15th 1998.

b) at age of sixty-five, if man, and sixty, if woman, with pensions proportional to the period of contribution;

Letter b added by CA 20, December 15th 1998. The entire Clause III aimed at delaying the retirement of servants. Minimum ages were introduced, as well as minimum terms in public offices. Also, the CA changed the conditions for retirement of teachers (see paragraph 5 below). Read more at the end of this article.

Paragraph 2. The retirement compensation and the pension, at time of granting, shall not exceed the remuneration of the servant, in the office in which the retirement occurred or which was reference for the granting of the pension.

Text in purple added by CA 20, December 15th 1998.

Paragraph 3. The assessment of the retirement compensation, at time of granting, shall consider the remunerations used as reference to assess the contributions by the servant to the social security regime subject of this article and article 201, as prescribed by law.

Paragraph 3 added by CA 41, December 19th 2003.

Paragraph 4. The adoption of different requirements and criteria for granting of retirement to the participants of the regime subject of this article is prohibited, except in the cases, as prescribed by supplementary law, of servants:

I - handicapped;

II - who exercise activities of risk;

III - whose activities are conducted under special conditions, prejudicial to health or physical integrity.

Paragraph 4 added by CA 20, December 15th 1998 (introduced clause III), and amended by CA 45, July 5th 2005 (introduced clauses I and II).

Paragraph 5. The requirements of age and time of contribution established by paragraph 1, III, a, shall be reduced in five years, in the case of teachers who served exclusively in effective offices with educational functions in infant education and elementary and intermediary teaching.

Paragraph 6. Except in the cases of retirement of offices with permitted accumulation as determined by this Constitution, the granting of more than one retirement in account of the social security regime established by this article is prohibited.

Paragraphs 4, 5 and 6 amended by CA 20, December 15th 1998. Accumulation of offices: see article 37, XVI.

Paragraph 7. The law shall provide for the granting of pension benefits by death, which shall be equal to:

I - the amount of the total compensation of the deceased servant, up until the maximum limit established for the benefits of the general regime of social security mentioned by article 201, plus seventy percent of the amount which exceed this limit, if the servant is retired at time of deceasing; or

II - the amount of the total remuneration of the servant in the office held at time of deceasing, up until the limit established for the benefits of the general regime of social security mentioned by

article 201, plus seventy percent of the amount which exceed this limit, if the servant is retired at time of deceasing.

Paragraph 7 amended by CA 41, December 19th 2003.

Paragraph 8. The readjustment of benefits in order to preserve, in a permanent way, its real value, is mandatory, following criteria determined by law.

Paragraph 8 amended by CA 41, December 19th 2003.

Paragraph 9. The period of contribution to Federal, State or municipal entities shall be considered for retirement effects, and the respective periods of office shall be considered for disponibility effects.

Paragraph 9 amended by CA 20, December 15th 1998.

Paragraph 10. The law shall not establish any means of ficticious time of office.

Paragraph 10 amended by CA 20, December 15th 1998.

Paragraph 11. The limit set forth by art. 37, XI, shall be imposed to the total remuneration of retirement, including those derived from accumulation of public offices or positions, as well as other activities subject to contribution to the general regime of social security, and to the amount resultant from the addition of retirement benefits with the remuneration of office accumulated as permitted by this Constitution, offices declared by law as of free appointment and dismissal, and elective offices.

Paragraph 11 amended by CA 20, December 15th 1998. Article 37, XI, attempts to establish a limit to payments by public coffers. In the past, the lack of clarity allowed double interpretation (particularly by Judges, a party interested in the matter, as their salaries are among the highest in Brazil) which caused that limit to be frequently disobeyed. In an attempt to close these leap holes, all the norms regarding this matter became very detailed. See also **article 37, XI**.

Paragraph 12. In addition to the provisions of this article, the regime of social security of the civil servants holders of effective offices shall respect, when applicable, the requirements and criteria established for the general regime of social security.

Paragraph 12 amended by CA 20, December 15th 1998.

Paragraph 13. The servant holding, exclusively, comissioned offices declared by law as of free appointment and dismissal, as well as those holding other temporary offices or public positions, shall be submitted to the general regime of social security.

Paragraph 13 amended by CA 20, December 15th 1998.

Paragraph 14. The Union, States, Federal District and municipalities, provided that they institute a regime of supplementary social security for their servants holders of effective offices, shall be allowed to establish, for the payment of retirements and pensions granted under the regime subject of this article, the maximum limit set forth for the benefits of the general regime of social security in accordance with article 201.

Paragraph 14 amended by CA 20, December 15th 1998.

Paragraph 15. The regime of supplementary social security mentioned in paragraph 14 shall be instituted by law of initiative of the respective Executive Power, observing, when applicable, the provisions of art. 202 and paragraphs, by means of restricted entities of supplementary social security, of public nature, which shall offer to the respective participants only benefit plans of the kind of defined contribution.

Paragraph 15 amended by CA 41, December 19th 2003. Very controversial. This paragraph, for the first time, instituted the figure of a private social security system for public servants. See also paragraph 18.

Paragraph 16. In the case of servants who entered public service before the date of publication of the act which instituted the regime of supplementary social security, the provisions of paragraphs 14 and 15 shall be applicable only after previous and express concordance of the servant.

Paragraph 16 amended by CA 20, December 15th 1998.

Paragraph 17. All amounts of remuneration considered for the assessment of benefits as described in paragraph 3 shall be readjusted, as prescribed by law.

Paragraph 15 amended by CA 41, December 19th 2003.

Paragraph 18. A contribution to the social security shall be levied on the payments of retirements and pensions granted by the regime subject of this article which exceed the maximum limit established for the payments of the general regime of social security mentioned in art. 201, the percentage of the contribution being equal to that establishe for the servants holding effective offices.

Paragraph 18 amended by CA 41, December 19th 2003. Very controversial. This article determined that retired servants whose payments were above a treshhold should pay contributions to the security system. The

threshold, around R\$ 2,700 or about ten minimum wages, was so high that the vast majority of servants was exempt from the contribution; the higher classes of servants, however, vocally protested against this paragraph and paragraph 15, which they considered to be "the privatization of social security in Brazil".

Paragraph 19. The servant who had met the requirements for voluntary retirement set forth by paragraph 1, II, a, and opt for continuing in office shall receive a bonus equal to the amount of his contribution to the social security system, until he meets the conditions for compulsory retirement set forth by paragraph 1, II.

Paragraph 19 amended by CA 41, December 19th 2003.

Paragraph 20. It is prohibited the existence of more than one regime of social security for servants holders of effective offices, as well as the existence of more than one managing institution for the respective regime in each government level, excepted the provisions of the article 142, paragraph 3, X.

Paragraph 20 amended by CA 41, December 19th 2003.

Original text of this article:

A civil servant shall go into retirement:

I - for permanent disability, receiving full pension if such disability results from a work accident, professional disease or a serious, contagious or incurable illness, as specified by law, and proportional pension in all other cases;

II - compulsorily, at seventy years of age, with a pension proportional to the period of service;

III - voluntarily:

a) upon thirty-five years of service, if a man, and upon thirty years, if a woman, with full pay;

b) upon thirty years of effective exercise in teaching positions, if a man, and upon twenty-five years, if a woman, with full pay;

c) upon thirty years of service, if a man, and upon twenty-five years, if a woman, with pay in proportion to this period;

d) at sixty-five years of age, if a man, and at sixty, if a woman, with pay in proportion to the period of service.

Paragraph 1 - A supplementary law may establish exceptions to the provisions of item III, a and c, in the case of the exercise of activities considered strenuous, unhealthy or dangerous.

Paragraph 2 - The law shall provide for retirement in temporary offices or positions.

Paragraph 3 - The period of federal, state or municipal public service shall be calculated in full for purposes of retirement and placement on paid availability

Paragraph 4 - The retirement pension shall be revised, in the same proportion and on the same date, whenever the remuneration of the servants in activity is changed, and any benefits or advantages subsequently granted to the servants in activity shall also be extended to the retired servants, including those resulting from the transformation or reclassification of the office or function from which they retired, as the law provides.

Paragraph 5 - The benefit of pension for death shall correspond to the full salary or earnings of the deceased employee, up to the limit established in law, complying with the provisions of the preceding paragraph.

Paragraph 6 - The retirement and pension benefits of the federal civil servants shall be financed by resources originating from the Union and from the contributions of the civil servants. under the terms of the law.

Paragraph 21. In case the beneficiary suffers of disabling disease, as provided by law, the contribution provided for by the paragraph 18 of this article shall levy only the portions of payments of retirement and pension which exceed the double of the maximum limit established for the payments of the general regime of social security subject of article 201 of this Constitution.

Paragraph 6 added by CA 47, July 5th 2005.

Article 41. Civil servants employed by virtue of public entrance examinations acquire tenure after **three years** of actual service.

CA nr. 19, June 4th 1998, changed original text from 'two years' to 'three years'.

Paragraph I - A tenured civil servant shall only lose his office:

I - by force of an unappealable judicial decision;

II - by means of an administrative process, in which he is assured ample defense;

III - by means of a periodical proceeding of performance evaluation, according to provisions seth forth by complementary law, ample defense being assured.

Item III added by CA nr. 19, June 4th 1998.

Paragraph 2 - If the dismissal of a tenured civil servant is voided by a judicial decision, he shall be reinstated, and the occupant of the vacancy, **if tenured**, shall be led back to his original office, with

no right to indemnity, taken to another office or placed on paid availability **with remuneration proportional to time in service**.

Paragraph 3 - If the office is declared extinct or unnecessary, a tenured civil servant shall remain on paid availability, **with remuneration proportional to time in service**, until he is adequately placed in another office.

Paragraphs 2 and 3 altered by CA nr. 19, June 4th 1998.

Paragraph 4 - As condition for acquisition of tenure, it is mandatory the special evaluation of performance by a commission created with this finality.

Paragraph 4 added by CA nr. 19, June 4th 1998.

SECTION III - THE MILITARY OF THE STATES, OF THE FEDERAL DISTRICT AND OF THE TERRITORIES

Article 42. The members of the Military Police and of the Military Fire Brigades, institutions whose organization is based on hierarchy and discipline, are military of the States, of the Federal District, and of the Territories.

Paragraph 1. The provisions of article 14, paragraph 8; article 40, paragraph 9; and of article 142, paragraphs 2 and 3 apply to the military of the States, of the Federal District and of the Territories, in addition to other provisions that the law may establish, it being incumbent upon specific state legislation to provide for the matters of article 142, paragraph 3, item X, the ranks of the officers being awarded by the respective State Governors.

Caput and paragraph 1: CA nr. 15, Feb. 5th 1998. The original text had mentions to the Federal military forces, which were suppressed from this article.

Paragraph 2. To the pensionists of the militaries of the States, Federal District and Territories, shall be applied the provisions set forth by specific law of the respective state entity.

Paragraph 2: CA nr. 41, Dec. 19th 2002.

SECTION IV - THE REGIONS

Article 43. For administrative purposes, the Union may co-ordinate its action in one same social and geo-economic complex, seeking to attain its development and to reduce regional inequalities.

Paragraph 1 - A supplementary law shall provide for:

I - the conditions for the integration of developing regions;

II - the composition of the regional agencies which shall carry out, as provided by law, the regional plans included in the national social and economic development plans approved concurrently;

Paragraph 2 - The regional incentives shall include, besides others, as prescribed by law:

I - equality of tariffs, freight rates, insurance and other cost and price items which are within the responsibility of the Government;

II - favoured interest rates for the financing of priority activities;

III - exemptions, reductions or temporary deferment of federal taxes owed by individuals or by legal entities;

IV - priority in the economic and social use of rivers and dammed or dammable water masses in low-income regions subject to periodical droughts.

Paragraph 3 - In the areas referred to in paragraph 2, IV, the Union shall grant incentives to the recovery of arid lands and shall cooperate with small and medium-size rural landowners in the implementing of water sources and small-scale irrigation in their tracts of land.

TITLE IV- THE ORGANIZATION OF THE POWERS

CHAPTER I - THE LEGISLATIVE POWER

SECTION I - THE NATIONAL CONGRESS

Article 44. The Legislative Power is exercised by the National Congress, which is composed of the Chamber of Deputies and the Federal Senate. Sole paragraph - Each legislative term shall have the duration of four years.

Article 45. The Chamber of Deputies is composed of representatives of the people, elected, by the proportional system, in each state, territory and in the Federal District.
Paragraph 1 - The total number of Deputies, as well as the representation of the States and of the Federal District shall be established by a supplementary law, in proportion to the population, and the necessary adjustments shall be made in the year preceding the elections, so that none of those units of the Federation has less than eight or more than seventy Deputies.
Paragraph 2 - Each territory shall elect four Deputies.

Article 46. The Federal Senate is composed of representatives of the states and of the Federal District, elected by a majority vote.
Paragraph 1 - Each state and the Federal District shall elect three Senators for a term of office of eight years.
Paragraph 2 - One-third and two-thirds of the representation of each state and of the Federal District shall be renewed every four years, alternately. Paragraph 3 - Each Senator shall be elected with two substitutes.

Article 47. Except where there is a constitutional provision to the contrary, the decisions of each House and of their committees shall be taken by a majority vote, when the absolute majority of its members is present.

SECTION II - POWERS OF THE NATIONAL CONGRESS

Article 48. The National Congress shall have the power, with the sanction of the President of the Republic, which shall not be required for the matters specified in articles 49, 51 and 52, to provide for all the matters within the competence of the Union and especially on:

- I - system of taxation, collection of taxes and income distribution;
- II - pluriannual plan, budgetary directives, annual budget, credit transactions, public debt and issuance of currency;
- III - establishment and modification of Armed Forces troops;
- IV - national, regional and sectorial plans and programmes of development;
- V - boundaries of the national territory, air and maritime space and property of the Union;
- VI - incorporation, subdivision or dismemberment of areas of territories or states, after consulting with the respective Legislative Assembly;
- VII - temporary transference of the seat of the Federal Government;
- VIII - granting of amnesty;
- IX - administrative and judicial organization of the Public Prosecution and the Public Legal Defense of the Union and of the territories, and judicial organization of the Public Prosecution and the Public Legal Defense of the Federal District;
- X - establishment, transformation and extinction of public offices, positions and functions, with observance of the article 84, VI, b;
Text in purple added by CA 32, September 11th 2001.
- XI - establishment and extinction of Ministries and bodies of public administration;
Clause XI amended by CA 32, September 11th 2001. The original text mentioned, beside creation and extinction, also the re-structuration of the Administration.
- XII - telecommunications and radio broadcasting;
- XIII - financial, foreign exchange and monetary matters, financial institutions and their operations;
- XIV - currency, currency issuance limits, and amount of federal indebtedness.
- XV - fixation of remuneration of the Justices of the Supreme Federal Tribunal, with due regard to articles 39, paragraph 4; 150, II; 153, III; and 153, paragraph 2, I.

Clause XV added by CA 41, December 19th 2003.

Article 49. It is exclusively the competence of the National Congress:

- I - to decide conclusively on international treaties, agreements or international acts which result in charges or commitments that go against the national property;
- II - to authorize the President of the Republic to declare war, to make peace and to permit foreign forces to pass through the national territory or remain therein temporarily, with the exception of the cases provided by a supplementary law;
- III - to authorize the President and the Vice-President of the Republic to leave the country, when such absence exceeds fifteen days;
- IV - to approve a state of defense and federal intervention, authorize a state of siege or suspend any of these measures;
- V - to stop the normative acts of the Executive Power which exceed their regimental authority or the limits of legislative delegation;
- VI - to transfer its seat temporarily;
- VII - to establish identical remuneration for Federal Deputies and Senators, taking into account the provisions of articles 37, XI; 39, paragraph 4; 150, II; 153, III, and 153, paragraph 2, I;
Clause VII amended by CA 19, June 4th 1998. The original text contained the words "in each legislative term, for the subsequent one". The new text included the references to articles 37 and 39.
- VIII - to establish, for each fiscal year, the remuneration of the President and the Vice-President of the Republic and of the Ministers of State, taking into account the provisions of articles 150, II, 153, III, and 153, paragraph 2, I;
Clause VIII amended by CA 19, June 4th 1998. The new text included the references to articles 37 and 39.
- IX - to examine each year the accounts rendered by the President of the Republic and to consider the reports on the execution of Government plans;
- X - to supervise and control directly or through either of its Houses, the acts of the Executive Power, including those of the indirect administration;
- XI - to ensure the preservation of legislative competence in the face of the normative incumbency of the other Powers;
- XII - to consider the acts of concession and renewal of concession of radio and television stations;
- XIII - to choose two-thirds of the members of the Court of Accounts of the Union;
- XIV - to approve initiatives of the Executive Power referring to nuclear activities
- XV - to authorize a referendum and to call a plebiscite;
- XVI - to authorize, in Indian lands, the exploitation and use of hydric resources and the prospecting and mining of mineral resources
- XVII - to give prior approval to the disposal or concession of public lands with an area of over two thousand and five hundred hectares.

Article 50. The Chamber of Deputies and the Federal Senate, or any of their committees, may summon a Minister of State or any chief officers of agencies directly subordinate to the Presidency of the Republic to personally render information on a previously determined matter, and absence without adequate justification shall constitute a crime of malversation.

Text in purple added by CA of Revision 2, June 7th 1994.

Paragraph 1 - The Ministers of State may attend the Federal Senate, the Chamber of Deputies or any of their committees, on their own initiative and by agreement with the respective Directing Board, to report on a matter of relevance to their Ministry.

Paragraph 2 - The Directing Boards of the Chamber of Deputies and of the Federal Senate may forward to the Ministers of State, or any of the persons mentioned in the caption of this article, written requests for information, and refusal or non-compliance, within a period of thirty days, as well as the rendering of false information, shall constitute a crime of malversation.

Text in purple added by CA of Revision 2, June 7th 1994.

SECTION III - THE CHAMBER OF DEPUTIES

Article 51. It is exclusively the competence of the Chamber of Deputies:

- I - to authorize, by two-thirds of its members, legal proceeding to be initiated against the President and the Vice-President of the Republic and the Ministers of State;
 - II - to effect the taking of accounts of the President of the Republic, when they are not presented to the National Congress within sixty days of the opening of the legislative session;
 - III - to draw up its internal regulations;
 - IV - to provide for its organization, functioning, police, creation, transformation or extinction of offices, positions and functions of its services, **and the initiative of law for the establishment of their respective remuneration**, taking into account the guidelines set forth in the law of budgetary directives;
Paragraph 4 amended by CA 19, June 4th 1998. Before this Amendment, the Chamber had autonomy to determine its own salaries, by means of a legislative decree, regardless of approval by the President of the Republic. After the Amendment, the salaries are determined by a law, which require approval by the President of the Republic.
 - V - to elect the members of the Council of the Republic, in the manner prescribed by article 89.
- VII.

SECTION IV - THE FEDERAL SENATE

Article 52. It is exclusively the competence of the Federal Senate:

- I - to effect the legal proceeding and trial of the President and Vice-President of the Republic for crime of malversation, as well as the Ministers of State **and the Commanders of Navy, Army and Air Force** for crimes of the same nature relating to those;
Text in purple added by CA 23, September 2nd 1999.
- II - to effect the legal proceeding and trial of the Justices of the Supreme Federal Court, **the members of the National Council of Justice and of the National Council of Public Prosecution**, the Attorney-General of the Republic and the Advocate-General of the Union for crimes of malversation;
Text in purple added by CA 45, December 8th 2004. That Amendment was called Reform of the Judiciary Power (see articles 92 to 135 of this Constitution); among many other acts, that Amendment created the National Council of Justice and the National Council of the Public Prosecution.
- III - to give prior consent, by secret voting, after public hearing, on the selection of:
 - a) judges, in the cases established in this Constitution;
 - b) Justices of the Court of Accounts of the Union appointed by the President of the Republic;
 - c) Governor of a territory;
 - d) president and directors of the Central Bank;
 - e) Attorney-General of the Republic;
 - f) holders of other offices, as the law may determine;
- IV - to give prior approval, by secret voting, after closed hearing, on the selection of heads of permanent diplomatic missions;
- V - to authorize foreign transactions of a financial nature, of the interest of the Union, the States, the Federal District, the territories and the municipalities;
- VI - to establish, as proposed by the President of the Republic, total limits for the entire amount of the consolidated debt of the Union, the States, the Federal District and the municipalities;
- VII - to provide for the total limits and conditions for foreign and domestic credit transactions of the Union, the States, the Federal District and the municipalities, of their autonomous Government entities and other entities controlled by the Federal Government;
- VIII - to provide for limits and conditions for the concession of a guarantee by the Union in foreign and domestic credit transactions;
- IX - to establish total limits and conditions for the entire amount of the debt of the States, the Federal District and the municipalities;
- X - to stop the application, in full or in part, of a law declared unconstitutional by final decision of the Supreme Federal Court;
- XI - to approve, by absolute majority and by secret voting, the removal from office of the Attorney-General of the Republic before the end of his term of office;
- XII - to draw up its internal regulations;

XIII - to provide for its organization, functioning, police, creation, transformation or extinction of offices, positions or functions of its services and **the initiative of law for establishment of their respective remuneration**, taking into account the guidelines established in the law of budgetary directives;

Clause XIII amended by CA 19, June 4th 1998. Before this Amendment, the Senate had autonomy to determine its own salaries, by means of a legislative decree, regardless of approval by the President of the Republic. After the Amendment, the salaries are determined by a law, which require approval by the President of the Republic.

XIV - to elect the members of the Council of the Republic, as established in article 89, VII.

XV - evaluate periodically the functionality of the National Tax System, its structure and components, and the performance of the tax administrations of the Union, States, Federal District and municipalities.

Item XV included by CA nr. 42, Dec. 19th 2003.

Sole paragraph - In the cases provided for in items I and II, the Chief Justice of the Supreme Federal Court shall act as President and the sentence, which may only be issued by two-thirds of the votes of the Federal Senate, shall be limited to the loss of office with disqualification to hold any public office for a period of eight years, without prejudice to other applicable judicial sanctions.

SECTION V - DEPUTIES AND SENATORS

Article 53. The Deputies and Senators enjoy inviolability, both civil and penal, on account of any of their opinions, words and votes.

Article 53 amended by CA 35, December 20th 2001. The original text read: "The Deputies and Senators enjoy inviolability on account of their opinions, words and votes."

This Amendment changed entirely the article 53 (and only this article), to diminish the immunities of Congressmen. Shortly before the Amendment, a few Deputies used their immunities as shield against crimes; most notorious case was a Deputy from Acre who used to saw their enemies alive.

Paragraph 1 -Deputies and Senators, from the date of issuance of the electoral diploma, will be tried before the Supreme Federal Court.

Paragraph 1 amended by CA 35, December 20th 2001. In Brazil, a diploma is issued to certify that a candidate won an election. President Lula, in some occasions, declared to be proud of having received as his first diploma the Diploma of President of the Republic.

Paragraph 2 - From the date of the issuance of the electoral diploma, the members of the National Congress may not be arrested, except in *flagrante delicto* of an umbailable crime. In such case, the case records shall be remitted within twenty four hour to the respective House which, by vote of the majority of their members, shall decide about the prison.

Text in purple added by CA 35, December 20th 2001. Original text read: "nor may they be criminally prosecuted, without prior authorization by the respective House."

Paragraph 3 - After accepting the indictment against Deputy or Senator, for crimes occurred after the issuance of the diploma, the Supreme Federal Court shall communicate the respective House which, by initiative of a Political Party with representation in the House and by the vote of the majority of its Members, may, until the final decision, suspend the progress of the case.

Paragraph 3 amended by CA 35, December 20th 2001.

Paragraph 4 - The request of suspension shall be examined by the respective House within forty five days, non extendable, counted from the reception by the Directory Board.

Paragraph 5 - The suspension of the case stops the prescription of the crime, while the office lasts.

Paragraph 3 amended by CA 35, December 20th 2001.

Paragraph 6 - The Deputies and Senators shall not have the obligation to render testimony or information received or given by virtue of the exercise of their mandate, nor against persons who rendered them information or received information from them.

Paragraph 7 - Incorporation into the Armed Forces of Deputies and Senators even if they hold military rank and even in time of war shall depend upon theca previous granting of permission by the respective House.

Paragraph 8 - The immunities of Deputies and Senators shall be maintained during a state of siege and may only be suspended by the vote of two-thirds of the members of the respective House, in the case of acts committed outside the premises of Congress, which are not compatible with the implementation of such measure.

Article 54. Deputies and Senators may not:

I - after the issuance of their certificate of electoral victory:

a) sign or maintain a contract with a public legal entity, autonomous Government agency, public company, mixed-capital company or public utility company, unless the contract is in accordance with uniform clauses;

b) accept or hold a paid office, function or position including those from which they may be dismissed *ad nutum* in the entities mentioned in the preceding subitem;

II - after taking office:

a) be the owners, controllers or directors of a company which enjoys benefits arising from a contract with a public legal entity or perform a remunerated position therein;

b) hold an office or function from which they may be dismissed *ad nutum*, in the entities mentioned in item I, a;

c) act as lawyer in a cause in which any of the entities referred to in item I, a, has an interest;

d) be the holders of more than one public elective position or office.

Article 55. A Deputy or Senator shall lose his office:

I - if he violates any of the prohibitions established in the preceding article;

II - if his conduct is declared incompatible with parliamentary decorum;

III - if he fails to appear, in each legislative session, at one-third of the regular sessions of the House to which he belongs, except for a leave of absence or a mission authorized by the House concerned;

IV - if his political rights have been lost or suspended;

V - whenever decreed by the Electoral Courts, in the cases established in this Constitution;

VI - if he is criminally convicted by a final and unappealable sentence.

Paragraph 1 - Abuse of the prerogatives ensured to a Congressman or the gaining of undue advantages, in addition to the cases defined in the internal regulations, is incompatible with parliamentary decorum.

Paragraph 2 - In the cases of items I, II and VI, loss of office shall be declared by the Chamber of Deputies or the Federal Senate, by secret voting and absolute majority, on the initiative of the respective Directing Board or of a political party represented in the National Congress, full defense being ensured.

Paragraph 3 - In the cases set forth in items III to V, the loss shall be declared by the Directing Board of the respective House, *ex officio* or upon the initiative of any of its members, or of a political party represented in the National Congress, full defense being ensured.

Paragraph 4 - The resignation of a Congressman submitted to a legal suit that aims at or may lead to loss of mandate, under the provisions of this article, will have its effects suspended until the final deliberations mentioned in paragraphs 2 and 3.

Paragraph 4 added by CA of Revision 6, June 7th 1994. Notice that, if a Congressman resigns before the legal suit, he retains all his political rights, and is entitled for a new office right in the next election. This method has been used by a few Deputies and Senators who are sure to be condemned by an ethical commission; they resigned and were re-elected afterwards.

Article 56. A Deputy or Senator shall not lose his office:

I - if vested with the office of Minister of State, Governor of a territory, Secretary of a State, of the Federal District, of a territory, of a State capital or head of a temporary diplomatic mission;

III - if on leave of absence from the respective House, by virtue of illness or, without remuneration, to attend to private matters, provided that, in this case, the absence does not exceed one hundred and twenty days per legislative session.

Paragraph 1. The substitute shall be called in cases of vacancy, of investiture in the functions set forth in this article or of leave of absence exceeding one hundred and twenty days.

Paragraph 2 - Upon the occurrence of a vacancy and there being no substitute, if more than fifteen months remain before the end of the term of office, an election shall be held to fill it.

Paragraph 3 - In the event of item I, the Deputy or Senator may opt for the remuneration of the elective office.

SECTION VI - THE SESSIONS

Article 57. The National Congress shall meet each year in the Federal Capital, from February 2nd to July 17th and from August 1st to December 2nd.

Article 57 amended by CA 50, February 14th 2006. This CA extended the period the Parliament should meet. Former text read: "The National Congress shall meet each year in the Federal Capital, from February 15th to June 30th and from August 1st to December 15th."

Paragraph 1 - If sessions scheduled for these dates fall on a Saturday, a Sunday or a holiday, they shall be transferred to the subsequent workday.

Paragraph 2 - The legislative session shall not be interrupted before the approval of the bill of budgetary directives .

Paragraph 3 - In addition to other cases provided for in this Constitution the Chamber of Deputies and the Federal Senate shall meet in a joint session to:

I - inaugurate the legislative session;

II - draw up the common regulations and regulate the creation of services common to both Houses;

III - take the oath of the President and of the Vice-President of the Republic;

IV - acknowledge a veto and resolve thereon.

Paragraph 4 - Each of the Houses shall meet in a preparatory session, beginning February 1 of the first year of the legislative term, for the installation of its members and the election of the respective Directing Boards, for a term of office of two years, the re-election to the same office in the immediately subsequent election being prohibited.

Paragraph 4 amended by CA 50, February 14th 2006. Original text read "Both Houses", meaning that Deputies and Senators should meet jointly; with the new text, the members of each House will meet independently.

Paragraph 5 - The Directing Board of the National Congress shall be presided by the President of the Federal Senate and the remaining offices shall be held, alternately, by the holders of equivalent offices in the Chamber of Deputies and in the Federal Senate.

Paragraph 6 - Special sessions of the National Congress shall be called:

I - by the President of the Federal Senate, in the event of a decree of a state of defense or of federal intervention, of a demand for the authorization to decree a state of siege and the taking of oath and inauguration of the President and the Vice-President of the Republic;

II - by the President of the Republic, by the Presidents of the Chamber of Deputies and of the Federal Senate or by request of the majority of the members of both Houses, in case of urgency or important public interest, in any case with the approval by the absolute majority of each of the Houses of the National Congress.

Words in purple added by CA 50, February 14th 2006.

Paragraph 7 - In a special legislative session, the National Congress shall deliberate only upon the matter for which it was called, excepted the hypothesis of paragraph 8, the payment of indemnization on account of the calling being forbidden.

Text in purple added by CA 32, September 11th 2001, and later altered by CA 50, February 14th 2006.

It used to be the case that, to work in special legislative sessions, Congressmen were paid an 'indemnization' substantially higher than normal salaries; CA 32 limited the indemnization to one normal monthly salary; CA 50 abolished the indemnization altogether (Congressmen receive only normal salaries).

Paragraph 8 - If provisional measures are in force during the period of special legislative session of the National Congress, they shall be automatically included in the voting list.

Paragraph 8 added by CA 32, September 11th 2001.

SECTION VII - THE COMMITTEES

Article 58. The National Congress and both its Houses shall have permanent and temporary committees, established in the manner and with the incumbencies set forth in the respective regulations or in the act from which their creation

Paragraph 1. In the composition of the Directing Boards and of each committee, the proportional representation of the parties or the parliamentary groups which participate in the respective House shall be ensured to the extent possible.

Paragraph 2 - The committees have the power, on account of the matter under their authority.

I - to debate and vote on bills of law which, in accordance with the regulations, are exempt from being submitted to the Plenary Assembly, except in the event of an appeal from one-tenth of the members of the respective House;

II - to hold public audiences with entities of civil society;

III - to summon Ministers of State to render information on matters inherent to their duties;

IV - to receive petitions, claims, statements or complaints from any person against acts or omissions of Government authorities or entities;

V - to request the testimony of any authority or citizen;

VI - to examine construction work programs and national, regional and sectorial development plans and to report thereupon.

Paragraph 3 - Parliamentary inquiry committees, which shall have the powers of investigation inherent to the judicial authorities, in addition to other powers set forth in the regulations of the respective Houses, shall be created by the Chamber of Deputies and by the Federal Senate, jointly or separately, upon the request of one-third of its members, to investigate a given fact and for a certain period of time? and their conclusions shall, if the case may be, be forwarded to the Public Prosecution to determine the civil or criminal liability of the offenders.

Paragraph 4 - During recess there shall be a committee to represent the National Congress, elected by both its Houses in the last regular session of the legislative session, with incumbencies defined in the common regulations, the composition of which shall repeat, to the extent possible, the proportional representation of the political parties.

SECTION VIII - THE LEGISLATIVE PROCESS

SUBSECTION I - GENERAL PROVISION

Article 59. The legislative process comprises the preparation of:

I - amendments to the Constitution;

II - supplementary laws;

III - ordinary laws;

IV - delegated laws;

V - provisional measures;

VI - legislative decrees;

Sole paragraph - A supplementary law shall provide for the preparation, drafting, amendment and consolidation of laws.

SUBSECTION II - AMENDMENTS TO THE CONSTITUTION

Article 60. The Constitution may be amended on the proposal of:

I - at least one-third of the members of the Chamber of Deputies or of the Federal Senate;

II - the President of the Republic;

III - more than one half of the Legislative Assemblies of the units of the Federation, each of them expressing itself by the relative majority of its members.

Paragraph 1 - The Constitution shall not be amended while federal intervention, a state of defense or a state of siege is in force.

Paragraph 2 - The proposal shall be discussed and voted upon in each House of the National Congress, in two readings, and it shall be considered approved if it obtains in both readings, three-fifths of the votes of the respective members.

Paragraph 3 - An amendment to the Constitution shall be promulgated by the Directing Boards of the Chamber of Deputies and the Federal Senate with the respective sequence number.

Paragraph 4 - No proposal of amendment shall be considered which is aimed at abolishing:

I - the federative form of State;

II - the direct, secret, universal and periodic vote;

III - the separation of the Government Powers;

IV - individual rights and guarantees.

Paragraph 5 - The matter dealt with in a proposal of amendment that is rejected or considered impaired shall not be the subject of another proposal in the same legislative session.

SUBSECTION III - THE LAWS

Article 61. The initiative of supplementary and ordinary laws is within the competence of any member or committee of the Chamber of Deputies and the Federal Senate or the National Congress, the President of the Republic, the Supreme Federal Court, the Superior Courts, the Attorney-General of the Republic and the citizens, in the manner and in the cases provided for in this Constitution.

Paragraph 1 - It is the exclusive initiative of the President of the Republic to introduce laws that:

I - determine or modify the number of Armed Forces troops;

II - provide for:

a) creation of public offices, functions or positions in the direct administration and in autonomous Government agencies or increases in their salaries;

b) administrative and judicial organization, tax and budgetary matters, public services and administrative personnel of the territories;

c) **civil servants of the Union and Territories, their legal statute, appointment to offices, tenure and retirement;**

Letter c amended by CA 18, February 5th 1998. The original text contained references to the militaries, which are now referred to in the letter f.

d) organization of the Public Prosecution and of the Public Legal Defense of the Union, as well as general rules for the organization of the Public Prosecution and the Public Legal Defense of the states, the Federal District and the territories;

e) **creation and extinction of the Ministries and public administration agencies, with due regard to the article 84, VI;**

Letter e amended by CA 18, February 5th 1998. The original text read "creation, structuring and duties of the Ministries and public administration agencies;"

f) **military of the Armed Forces, their legal statute, appointment to offices, promotions, tenure, remuneration, retirement, and transfer to the reserve.**

Letter f added by CA 18, February 5th 1998.

Paragraph 2 - The initiative of the people may be exercised by means of the presentation to the Chamber of Deputies of a bill of law subscribed by at least one percent of the national electorate, distributed throughout at least five states, with not less than three-tenths of one percent of the voters in each of them.

Article 62. In important and urgent cases, the President of the Republic may adopt provisional measures with the force of law and shall submit them to the National Congress immediately.

Article 62 entirely changed by CA 32, September 11th 2001. Read comments at the end of the article.

Paragraph 1. No provisional measures should treat about matters:

I - relative to:

a) nationality, citizenship, political rights, political parties and electoral rights;

b) criminal laws, criminal process and civil process; c) organization of Judiciary Power, Public Prosecution, the career and guarantees of their members;

d) pluriannual plans, budgetary directives, annual budgetary law, additional and supplementary credits, except what is mentioned on art. 167, paragraph 3;

II - which refer to levy or retention of assets, popular savings or any other financial assets;

III - reserved to supplementary laws;

IV - already disciplined by a law approved by Congress and awaiting sanction or veto by the President;

Paragraph 2. Provisional measures which institute or increase taxes, except for the cases mentioned on arts. 153, I, II, IV, V and 154, II, will produce effects in the following financial exercise only if converted into law until the last day of the year in which it was issued.

Paragraph 3. Provisional measures, except for those mentioned on articles 11 and 12, will loose efficacy, since back to the issuing date, if not converted into laws within sixty days, extendable, once, according to the disposed on paragraph 7, for the same period of time, being up to the Congress to discipline, by means of a Legislative Decree, the juridic relations resulting of them

Paragraph 4. The period mentioned on paragraph 3 will be counted from the date of publication of the provisional measure, being suspended during the periods of recess of the Congress.

Paragraph 5. The deliberation of each House of Congress about the merit of provisional measures will depend on previous judgement on the meeting of the constitutional pre-conditions of admissibility;

Paragraph 6. If the provisional measure is not appreciated in the 45 days after publication, it will gain urgency regime status, subsequently, in each of the Houses of Congress, being postponed, until the end of its appreciation, all the other legislative deliberations of the House in which it is being examined.

Paragraph 7. The validity of a provisional measure will be extended once, for the same period, if, after sixty days counted from the publication, its appreciation is not concluded on both Houses of Congress.

Paragraph 8. Provisional measures will be voted first by the Chamber of Deputies.

Paragraph 9. It will be up to a Committee composed by Deputies and Senators to examine the provisional measures and to issue an opinion about them, before being voted, in separated sessions, by the plenarium of each House of Congress.

Paragraph 10. Provisional measures which were rejected or had lost efficacy can not be reissued in the same legislative session.

Paragraph 11. If the legislative decree mentioned on paragraph 3 is not edited within sixty days after rejection or decay of provisional measure, the juridic relations constituted and consequential of acts practiced during its validity will remain regulated by them.

Paragraph 12. If the draft of law of conversion changing the original text of provisional measure is approved, the measure will remain in full force until being sanctioned or vetoed by the President.

Article 62 entirely changed by CA 32, September 11th 2001. This article used to have only the caput and one short paragraph; the CA changed the caput and original paragraph, and added eleven paragraphs. However, it became a consensus that the Executive Power had been given excessive powers to use Provisional Measures, and was misusing those powers. It became a common practice, for example, that the President of the Republic issued a provisional measure and, on expiration, re-issued it with exactly the same text; the measure which instituted the Real Plan, for example, was re-issued over eighty months; in practice, the Executive was legislating, without the participation of the Legislative. The CA 32 intended to rectify these problems.

Article 63. An increase in expenditure proposals shall not be admitted: I - in bills of the exclusive initiative of the President of the Republic, except for the provisions of article 166, paragraphs 3 and 4;

III - in bills concerning the organization of the administrative services of the Chamber of Deputies, the Federal Senate, the Federal Courts and the Public Prosecution.

Article 64. The discussion and voting of the bills of law which are the initiative of the President of the Republic, the Supreme Federal Court and of the Superior Courts shall start in the Chamber of Deputies.

Paragraph 1 - The President of the Republic may request urgency in the examination of bills of his own initiative.

Paragraph 2 - If, in the case of the preceding paragraph, the Chamber of Deputies and the Federal Senate fail to act, each one, successively on the proposition, within up to forty-five days, the deliberation upon other subjects shall be suspended, **except for those which have specific Constitutional deadlines**, in order that the voting may be concluded.

Text in purple added by CA 32, September 11th 2001.

Paragraph 3 - Amendments of the Federal Senate shall be examined by the Chamber of Deputies within a period of ten days, in accordance, otherwise, with the provisions of the preceding paragraph.

Paragraph 4 - The periods of time referred to in paragraph 2 shall not be counted while the Congress is in recess and shall not apply to the bills of codes.

Article 65. A bill of law approved by one House shall be reviewed by the other in a single reading of discussing and voting and sent for sanctioning or promulgation, if approved by the reviewing House, or it shall be dismissed, if rejected.

Sole paragraph - If the bill is amended, it shall return to the House where it was proposed.

Article 66. The House in which voting is concluded shall send the bill of law to the President of the Republic, who, if he concurs, shall sanction it.

Paragraph 1 - If the President of the Republic considers the bill of law, wholly or in part, unconstitutional or contrary to public interest, he shall veto it, wholly or in part, within fifteen work days, counted from the date of receipt and he shall, within forty-eight hours, inform the President of the Senate of the reasons of his veto.

Paragraph 2 - A partial veto shall only comprise the full text of an article, paragraph, item or subitem.

Paragraph 3 - After a period of fifteen days, the silence of the President of the Republic shall be considered as sanctioning.

Paragraph 4 - The veto shall be examined in a joint session, within thirty days, counted from the date of receipt, and may only be rejected by the absolute majority of the Deputies and Senators, by secret voting.

Paragraph 5 - If the veto is not upheld, the bill shall be sent to the President of the Republic for promulgation.

Paragraph 6 - If the period established in paragraph 4 elapses without a decision being reached, the veto shall be included in the order of the day of the following session, and all other propositions shall be suspended until its final voting.

Paragraph 6 was changed by CA 32, September 11th 2001. The original text contained the expression: "except for the matters referred to in article 62, sole paragraph."

Paragraph 7 - If, in the cases of paragraphs 3 and 5, the law is not promulgated within forty-eight hours by the President of the Republic, the President of the Senate shall enact it and if the latter fails to do so within the same period, the Vice-President of the Senate shall do so.

Article 67. The matter dealt with in a rejected bill of law may only be the subject of a new bill during the same legislative session, upon proposal of the absolute majority of the members of either House of the National Congress.

Article 68. Delegated laws shall be drawn up by the President of the Republic, who shall request delegation from the National Congress.

Paragraph 1 - There shall be no delegation of acts falling within the exclusive competence of the National Congress, of those within the exclusive competence of the Chamber of Deputies or the Federal Senate, of matters reserved for supplementary laws and of legislation on:

I - the organization of the Judicial Power and of the Public Prosecution, the career and guarantees of their members; II - nationality, citizenship, individual, political and electoral rights, III - pluriannual plans, budgetary directives and budgets.

Paragraph 2 - The delegation to the President of the Republic shall take the form of a resolution of the National Congress, which shall specify its contents and the terms of its exercise.

Paragraph 3 - If the resolution calls for consideration of the bill by the National Congress, the latter shall do so in a single voting, any amendment being forbidden.

Article 69. Supplementary laws shall be approved by absolute majority.

SECTION IX - ACCOUNTING, FINANCIAL AND BUDGETARY CONTROL

Article 70. Control of accounts, finances, budget, operations and property of the Union and of the agencies of the direct and indirect administration, as to lawfulness, legitimacy, economic efficiency, application of subsidies and waiver of revenues, shall be exercised by the National Congress, by means of external control and of the internal control system of each Power.

Sole paragraph - Accounts shall be rendered by any individual or corporation, public or private, which uses, collects, keeps, or manages public monies, assets or values, or those for which the Union is responsible or which, on behalf of the Union, assumes obligations of a pecuniary nature.

Paragraph amended by CA 19, June 4th 1998. Original text made references only to public entities: "Accounts shall be rendered by any individual or public entity which uses, ...". Big corporations like Banco do Brasil or Petrobrás always rendered accounts; the amendment came because of some bodies of private nature which depend solely on funds remitted by the Union, like, for example, SESI (Social Service of the Industry).

Article 71. External control, incumbent on the National Congress, shall be exercised with the aid of the Federal Court of Accounts, which shall:

I - examine the accounts rendered annually by the President of the Republic, by means of a prior opinion which shall be prepared in sixty days counted from receipt;

II - evaluate the accounts of the administrators and other persons responsible for public monies, assets and values of the direct and indirect administration, including foundations and companies instituted and maintained by the Federal Government as well as the accounts of those who have caused a loss, misplacement or other irregularity resulting in losses to the public treasury;

III - examine, for the purpose of registration, the lawfulness of acts of admission of personnel, on any account, in the direct and indirect administration, including the foundations instituted and maintained by the Federal Government, with the exception of the appointments to commission offices, as well as the granting of civil and military retirement and pensions, except for subsequent improvements which do not alter the legal fundaments of the conceding act;

IV - carry out, on its own initiative or on that of the Chamber of Deputies, of the Federal Senate, or of a technical or inquiry committee, inspection and audits of an accounting, financial, budgetary, operational or property nature in the administrative units of the Legislative, Executive and Judicial Powers and other entities referred to in item II;

V - control the national accounts of supranational companies in whose capital stock the Union holds a direct or indirect interest, as set forth in the acts of incorporation;

VI - control the use of any funds transferred by the Union, by means of an agreement, arrangement, adjustment or any other similar instrument, to a state, the Federal District or a municipality;

VII - render the information requested by the National Congress, by either of its Houses or by any of the respective committees concerning accounting, financial, budgetary, operational and property control and the results of audits and inspections made;

VIII - in case of illegal expenses or irregular accounts, apply to the responsible parties the sanctions provided by law, which shall establish, among other comminations, a fine proportional to the damages caused to the public treasury;

IX - determine a period of time for the agency or entity to take the necessary steps for the strict compliance with the law, if an illegality is established; X - if not heeded, stop the execution of the impugned act, notifying the Chamber of Deputies and the Federal Senate of such decision;

XI - present a formal charge to the competent Power on any irregularities or abuses verified.

Paragraph 1 - In the case of a contract, the restraining act shall be adopted directly by the National Congress, which shall immediately request the Executive Power to take the applicable measures.

Paragraph 2 - If the National Congress or the Executive Power, within ninety days, do not take the measures provided for in the preceding paragraph. the Court shall decide on the matter.

Paragraph 3 - Decisions of the Court resulting in the imposition of a debt or fine shall have the effectiveness of an execution instrument.

Paragraph 4 - The Court shall, quarterly and annually, forward to the National Congress a report on its activities.

Article 72. In view of indications of unauthorized expenditure, even if in the form of non-programmed investments or non-approved subsidies, the permanent joint Committee referred to in article 166, paragraph 1, may request the responsible Government authority to render the necessary explanation, within five days.

Paragraph 1 - If the explanations are not rendered or are considered insufficient, the Committee shall request the Court to make a conclusive statement on the matter within thirty days.

Paragraph 2 - If the Court deems the expense to be irregular, the Committee shall, if it considers that the expenditure may cause irreparable damage or serious injury to the public economy, propose to the National Congress that it be suspended.

Article 73. The Court of Accounts of the Union, formed by nine Justices, shall have its seat in the Federal District, its own staff and jurisdiction throughout the national territory, and shall exercise, insofar as pertinent, the incumbencies provided for in article 96.

Paragraph 1. The Justices of the Court of Accounts of the Union shall be appointed from among Brazilians who meet the following requirements:

I - more than thirty-five and less than sixty-five years of age;

II - moral integrity and spotless reputation;

III - notable knowledge of the law, accounting, economics and finances or of public administration;

IV - more than ten years of exercise of office or of actual professional activity which requires the knowledge mentioned in the preceding item.

Paragraph 2 - The Justices of the Court of Accounts of the Union shall be chosen:

I - one-third by the President of the Republic with the approval of the Federal Senate, two of them being alternately chosen from among auditors and members of the Public Prosecution at the Court, as indicated in a triple list by the Court, in accordance with criteria of seniority and merit:

II - two-thirds by the National Congress.

Paragraph 3 - The Justices of the Court of Accounts of the Union shall have the same guarantees, prerogatives, impediments, remuneration and advantages as the Justices of the Superior Court of Justice, **their retirement and pensions being regulated by the norms provided for in article 40.**

Text in purple amended by CA 20, December 15th 1998. Original text read: " and may only retire with the advantages of the office if they have actually held it for more than five years."

Paragraph 4 - The auditor, when substituting for a Justice, shall have the same guarantees and impediments as the incumbent Justice, and, when in exercise of the other duties of the judicature, those of a Judge of a Federal Regional Court.

Article 74. The Legislative, Executive and Judicial Powers shall maintain an integrated system of internal control for the purpose of:

I - evaluating the attainment of the goals established in the pluriannual plan, the implementation of government programmes and of the budgets of the Union:

II - verifying the lawfulness and evaluating the results, as to effectiveness and efficiency, of the budgetary, financial and property management in the agencies and entities of the federal administration, as well as the use of public funds by private legal entities;

III - exercising control over credit transactions, collateral signatures and guarantees, as well as over the rights and assets of the Union;

IV - supporting external control in the exercise of its institutional mission.

Paragraph 1. The persons responsible for internal control shall, upon learning of any irregularity or illegality, inform the Court of Accounts of the Union about it, subject to joint liability.

Paragraph 2 - Any citizen, political party, association or labour union has standing under the law to denounce irregularities or illegalities to the Court of Accounts of the Union.

Article 75. The rules set forth in this section shall apply, where appropriate, to the organization, composition and control of the Court of Accounts of the states and of the Federal District, as well as the Courts and Councils of Accounts of the municipalities.

Sole paragraph - The state Constitutions shall provide for the respective Courts of Accounts, which shall be formed by seven council members.

CHAPTER II - THE EXECUTIVE POWER

SECTION I - THE PRESIDENT AND THE VICE PRESIDENT OF THE REPUBLIC

Article 76. The Executive Power is exercised by the President of the Republic, assisted by the Ministers of State.

Article 77.

The election of the President and Vice-President of the Republic shall take place simultaneously, **on the first Sunday of October, in the first round, and on the last Sunday of October, in the second round, as the case may be, of the year preceding the one in which the current presidential term of office ends.**

[Article 77 amended by CA 16, June 4th 1997. This Amendment instituted the possibility of re-election of the President and, as far as this article is concerned, changed the dates of elections. See **article 14, paragraph 5.**](#)

Paragraph 1. The election of the President of the Republic shall imply the election of the Vice-President registered with him.

Paragraph 2 - The candidate who, being registered by a political party, obtains an absolute majority of votes, not counting blank or void votes, shall be considered elected President.

Paragraph 3 - If no candidate attains an absolute majority in the first voting, another election shall be held within twenty days from the announcement of the results, the competition being between the two candidates with the highest number of votes, and being considered elected the candidate with the majority of valid votes.

Paragraph 4 - Should one of the candidates, before the second round of voting is held, die, withdraw or become legally impaired, the candidate with the highest number of votes among the remaining candidates shall be called.

Paragraph 5 - If in the event of the preceding paragraphs, more than one candidate with an equal number of votes remain in second place, the eldest one shall qualify.

Article 78. The President and the Vice-President of the Republic shall take office in a session of the National Congress, pledging to maintain, defend and carry out the Constitution, obey the laws, promote the general well-being of the Brazilian people, sustain the union, the integrity and the independence of Brazil.

Sole paragraph - In the event that, after ten days from the date scheduled for the inauguration, the President or the Vice-President, except by reason of *force majeure* has not taken office. the office shall be declared vacant.

Article 79. The Vice-President shall replace the President in the event of impediment and shall succeed him in the event of vacancy.

Sole paragraph - In addition to other duties attributed to him by a supplementary law, the Vice-President shall assist the President whenever summoned by him for special missions.

Article 80. In the event of impediment of the President and of the Vice- President or of vacancy of the respective offices, the President of the Chamber of Deputies, the President of the Senate and the Chief Justice of the Supreme Federal Court shall be called successively to exercise the Presidency.

Article 81. In the event of vacancy of the offices of President and Vice-President of the Republic, elections shall be held ninety days after the occurrence of the last vacancy.

Paragraph 1 - If the vacancy occurs during the last two years of the President's term of office, the National Congress shall hold elections for both offices thirty days after the last vacancy. as established by law.

Paragraph 2 - In any of the cases, those elected shall complete the term of office of their predecessors.

Article 82. The term of office of the President of the Republic is four years, and it shall commence on January 1 of the year following the year of his election.

[Article 82 amended by CA 16, June 4th 1997. See **article 14, paragraph 5.**](#)

Article 83. The President and the Vice-President of the Republic may not, without authorization from the National Congress, leave the country for a period of more than fifteen days, subject to loss of office.

SECTION II - DUTIES OF THE PRESIDENT OF THE REPUBLIC

Article 84. The President of the Republic shall have the exclusive power to:

I - appoint and dismiss the Ministers of State;

II - exercise, with the assistance of the Ministers of State, the higher management of the federal administration;

III - start the legislative procedure, in the manner and in the cases set forth in this Constitution;

IV - sanction, promulgate and order the publication of laws, as well as to issue decrees and regulations for the true enforcement thereof;

V - veto bills, wholly or in part;

VI - provide, by means of decree, on:

a) organization and structure of federal administration, in the cases where there is neither increase of expenses nor creation or extinction of public agencies;

b) extinction of offices or positions, when not held.

Clause VI amended by CA 32, September 11th 2001. Original text was: "provide for the organization and operation of the federal administration, as established by law;"

VII - maintain relations with foreign States and to accredit their diplomatic representatives;

VIII - conclude international treaties, conventions and acts, ad referendum of the National Congress;

IX - decree the state of defense and the state of siege;

X - decree and enforce federal intervention;

XI - upon the opening of the legislative session, send a government message and plan to the National Congress, describing the state of the nation and requesting the actions he deems necessary;

XII - grant pardons and reduce sentences, after hearing the entities instituted by law, if necessary;

XIII - exercise the supreme command of the Armed Forces, appoint the commanders of Navy, Army and Air Force, to promote general officers and to appoint them to the offices held exclusively by them;

Clause XIII amended by CA 23, September 2nd 1999. Cosmetic change. This CA created the Minister of Defense, extinguishing the Ministers of Navy, Army and Air Force and creating the respective Commanders. This article was issued to preserve the direct subordination of the Commanders to the President of the Republic, instead of the Minister of Defense (a civilian).

XIV - appoint, after approval by the Senate, the Justices of the Supreme Federal Court and those of the superior courts, the Governors of the territories, the Attorney-General of the Republic, the President and the Directors of the Central Bank and other civil servants, when established by law;

XV - appoint, with due regard for the provisions of article 73, the Justices of the Federal Court of Accounts;

XVI - appoint judges in the events established by this Constitution and the Advocate-General of the Union;

XVII - appoint members of the Council of the Republic, in accordance with article 89, VII;

XVIII - call and preside over the Council of the Republic and the National Defense Council;

XIX - declare war, in the event of foreign aggression, authorized by the National Congress or confirmed by it, whenever it occurs between legislative sessions and, under the same conditions, to decree full or partial national mobilization;

XX - make peace, authorized or confirmed by the National Congress;

XXI - award decorations and honorary distinctions;

XXII - permit, in the cases set forth by supplementary law, foreign forces to pass through the national territory, or to remain temporarily therein;

XXIII - submit to the National Congress the pluriannual plan, the bill of budgetary directives and the budget proposals set forth in this Constitution;

XXIV - render, each year, accounts to the National Congress concerning the previous fiscal year, within sixty days of the opening of the legislative session;

XXV - fill and abolish federal government positions, as set forth by law;

XXVI - issue provisional measures, with force of law, according to article 62;

XXVII - perform other duties set forth in this Constitution.

Sole paragraph - The President of the Republic may delegate the duties mentioned in items VI, XII and XXV, first part, to the Ministers of State, to the Attorney-General of the Republic or to the

Advocate-General of the Union, who shall observe the limitations established in the respective delegations.

SECTION III - LIABILITY OF THE PRESIDENT OF THE REPUBLIC

Article 85. Those acts of the President of the Republic which attempt on the Federal Constitution and especially on the following, are crimes of malversation:

I - the existence of the Union;

II - the free exercise of the Legislative Power, the Judicial Power, the Public Prosecution and the constitutional Powers of the units of the Federation;

III - the exercise of political, individual and social rights;

IV - the internal security of the country;

V - probity in the administration;

VI - the budgetary law;

VII - compliance with the laws and with court decisions.

Sole paragraph. These crimes shall be defined in a special law, which shall establish the rules of procedure and trial.

Article 86. If charges against the President of the Republic are accepted by two-thirds of the Chamber of Deputies, he shall be submitted to trial before the Supreme Federal Court for common criminal offenses or before the Federal Senate for crimes of malversation.

Paragraph 1 - The President shall be suspended from his functions: I - in common criminal offenses, if the accusation or the complaint is received by the Federal Supreme Court;

II - in the event of crimes of malversation, after the proceeding is instituted by the Federal Senate.

Paragraph 2 - If, after a period of one hundred and eighty days, the trial has not been concluded, the suspension of the President shall cease without prejudice to the normal progress of the proceeding.

Paragraph 3 - In the event of common offenses, the President of the Republic shall not be subject to arrest as long as no sentence is rendered.

Paragraph 4 - During his term of office, the President of the Republic may not be held liable to acts outside the performance of his functions.

SECTION IV - THE MINISTERS OF STATE

Article 87. The Ministers of State shall be chosen from among Brazilians over twenty-one years of age and in possession of their political rights. Sole paragraph - The Minister of State, in addition to other duties established in this Constitution and in the law, has the power to:

I - exercise guidance, coordination and supervision of the agencies and entities of the federal administration in the area of his authority and to countersign acts and decrees signed by the President of the Republic;

II - issue instructions for the enforcement of laws, decrees and regulations;

III - submit to the President of the Republic an annual report on his administration of the Ministry;

IV - perform the acts pertinent to the duties assigned or delegated to him by the President of the Republic.

Article 88. The law shall provide for the creation and extingishment of the Ministries and bodies of the public administration.

Article 88 amended by CA 32, September 11th 2001. Original text was "The law shall provide for the creation, structuring and duties of the Ministries."

SECTION V - THE COUNCIL OF THE REPUBLIC AND THE NATIONAL DEFENSE COUNCIL

SUBSECTION I - THE COUNCIL OF THE REPUBLIC

Article 89. The Council of the Republic is a higher body for consultation by the President of the Republic, and its members are:

I - the Vice-President of the Republic;

II - the President of the Chamber of Deputies;

III - the President of the Federal Senate;

IV - the majority and the minority leaders in the Chamber of Deputies;

V - the majority and the minority leaders in the Federal Senate;

VI - the Minister of Justice;

VII - six born Brazilian citizens, with over thirty-five years of age, two of which appointed by the President of the Republic, two elected by the Federal Senate and two elected by the Chamber of Deputies, all with a term of office of three years, the re-appointment being prohibited.

Article 90. The Council of the Republic has the competence to express opinion on: I - federal intervention, state of defense and state of siege;

II - matters relevant to the stability of the democratic institutions.

Paragraph 1. The President of the Republic may call a State Minister to participate in the Council meeting, when the agenda includes a matter related to the respective Ministry.

Paragraph 2 - The organization and operation of the Council of the Republic shall be regulated by law.

SUBSECTION II - THE NATIONAL DEFENSE COUNCIL

Article 91. The National Defense Council is a consultation body of the President of the Republic on matters related to national sovereignty and the defense of the democratic state, and the following participate in it as natural members:

I - the Vice-President of the Republic;

II - the President of the Chamber of Deputies;

III - the President of the Federal Senate;

IV - the Minister of Justice;

V - **the Minister of Defense;**

VI - the Minister of External Relations;

VII - the Minister of Planning.

VIII - **the Commanders of the Navy, Army and Air Force.**

Clauses V and VIII amended by CA 23, September 2nd 1999. This CA created the Ministry of Defense, extinguishing the Ministries of Navy, Army and Air Force and creating the respective Commanders. See article 84, XIII.

Paragraph 1 - It is the competence of the National Defense Council:

I - to express opinion in the event of declaration of war and making of peace, as established in this Constitution;

II - to express opinion on the decreeing of state of defense, state of siege and federal intervention;

III - to propose the criteria and conditions for the use of areas which are indispensable to the security of the national territory and to express opinion on their actual use, especially on the boundary zone and on those related to the preservation and exploitation of natural resources of any kind;

IV - to study, propose and monitor the development of initiatives required to guarantee national independence and the defense of the democratic state.

Paragraph 2 - The organization and the operation of the National Defense Council shall be regulated by law.

TITLE V - THE DEFENSE OF THE STATE AND OF THE DEMOCRATIC INSTITUTIONS

CHAPTER I - THE STATE OF DEFENSE AND THE STATE OF SIEGE

SECTION I - THE STATE OF DEFENSE

Article 136. The President of the Republic may, after hearing the Council of the Republic and the National Defense Council, decree a state of defense to preserve or to promptly re-establish, in specific and restricted locations, the public order or the social peace threatened by serious and imminent institutional instability or affected by major natural calamities.

Paragraph 1 - The decree instituting the state of defense shall determine the period of its duration, shall specify the areas to be encompassed and shall indicate, within the terms and limitations of the law, the coercive measures to be in force from among the following:

I - restrictions to the rights of:

- a) assembly, even if held within associations;
- b) secrecy of correspondence;
- c) secrecy of telegraph and telephone communication.

II - in the event of a public calamity, occupation and temporary use of public property and services, the Union being liable for the resulting damages and Costs

Paragraph 2 - The state of defense shall not exceed thirty days and it may be extended once for an identical period if the reasons that justified its decreeing persist.

Paragraph 3 - During the period in which the state of defense is in force: I - arrest for a crime against the State, determined by the party executing the measure, shall be immediately communicated by such party to the competent judge, who shall remit it if it is illegal, it being the arrested person's choice to request examination of corpus delicti from the police authority;

II - the communication shall be accompanied by a statement by the authority as to the physical and mental state of the arrested person at the time of the filing of the charges;

III - the imprisonment or detention of any person shall not exceed ten days, unless authorized by the Judicial Power;

IV - incommunicability of the arrested person is forbidden.

Paragraph 4 - Upon decreeing a state of defense or extension thereof, the President of the Republic shall, within twenty-four hours, submit the act with the respective justification to the National Congress, which shall decide by absolute majority.

Paragraph 5 - If the National Congress is in recess, it shall be called extraordinarily within five days.

Paragraph 6 - The National Congress shall examine the decree within ten days as from receipt thereof, and shall remain in operation as long as the state of defense is in force.

Paragraph 7 - If the decree is rejected, the state of defense shall cease immediately.

SECTION II - THE STATE OF SIEGE

Article 137. The President of the Republic may, after hearing the Council of the Republic and the National Defense Council request authorization from the National Congress to decree the state of siege in the event of:

I - serious disturbance with nationwide effects or occurrence of facts that evidence the ineffectiveness of a measure taken during the state of defense;

II - declaration of state of war or response to foreign armed aggression.

Sole paragraph - The President of the Republic shall, on requesting authorization to decree the state of siege or to extend it, submit the reasons that determine such request, and the National Congress shall decide by absolute majority.

Article 138. The decree of the state of siege shall specify the period of its duration, the rules required to implement it and the constitutional guarantees that are to be suspended and, after it is published, the President of the Republic shall designate the executor of the specific measures and the areas encompassed.

Paragraph 1 - In the event of article 137, I, the state of siege may not be decreed for more than

thirty days nor may each extension exceed such period; in the event of item II, it may be decreed for the entire period of the war or foreign armed aggression.

Paragraph 2 - If authorization to decree the state of siege is requested during parliamentary recess, the President of the Federal Senate shall immediately summon an extraordinary session of the National Congress to convene within five days in order to examine the act.

Paragraph 3 - The National Congress shall remain in session until the end of the coercive measures.

Article 139. During the period in which the state of siege decreed under article 137, I, is in force, only the following measures may be taken against persons:

I - obligation to remain at a specific place;

II - detention in a building not intended for persons accused of or convicted for common crimes;

III - restrictions regarding the inviolability of correspondence, the secrecy of communications, the rendering of information and the freedom of press, radio broadcasting and television, as established by law;

IV - suspension of freedom of assembly;

V - home search and seizure;

VI - intervention in public utility companies;

VII - requisitioning of property.

Sole paragraph - The broadcasting of speeches made by Congressmen in their Legislative Houses is not included in the restrictions of item III, if authorized by the respective Directing Board.

SECTION III - GENERAL PROVISIONS

Article 140. The Directing Board of the National Congress shall, after hearing the party leaders, designate a Committee comprised of five of its members to monitor and supervise the implementation of the measures concerning the state of defense and the state of siege.

Article 141. Once the state of defense or the state of siege ceases, its effects shall also cease, without prejudice to liability for illicit acts performed by the executors or agents thereof.

Sole paragraph - As soon as the state of defense or the state of siege ceases, the measures applied during the period while it is in force shall be reported by the President of the Republic in a message to the National Congress, with specification and justification of the actions taken, with the listing of the names of those affected and indication of the restrictions applied.

CHAPTER II - THE ARMED FORCES

Article 142. The Armed Forces, comprised of the Navy, the Army and the Air Force, are permanent and regular national institutions, organized on the basis of hierarchy and discipline, under the supreme authority of the President of the Republic, and are intended for the defense of the Country, for the guarantee of the constitutional powers, and, on the initiative of any of these, of law and order.

Paragraph 1 - A supplementary law shall establish the general rules to be adopted in the organization, training and use of the Armed Forces.

Paragraph 2 - Habeas-corpus shall not apply to military disciplinary punishments.

The entire Paragraph 3 was added by CA 18, February 5th 1998. This CA instituted the constitutional regime of the militaries. Before the CA, the references to the militaries were, in most cases, agglutinated with the references to the civil servants.

Paragraph 3 - The members of the Armed Forces are called military, and the following provisions apply to them, in addition to other provisions that the law may establish:

I - the ranks, with the prerogatives, rights and duties inherent to them, are awarded by the President of the Republic and are guaranteed in full to officers in active service, those of the reserve or in retirement, and such officers have exclusive rights to military titles and posts, and together with the other members, to the use of the uniforms of the Armed Forces;

II - a military in active service who takes office in a permanent civil public position or job

shall be transferred to the reserve, under the terms of the law;

III - a military in active service who, under the terms of the law, takes office in a non-elective, temporary civil public position, job or function, even if in the indirect administration, shall be put on leave and, as long as he remains in this situation he may only be promoted by seniority, and his period of service shall be counted only for that promotion and for transfer to the reserve, and after two years, whether continuous or not, away from active service, he shall be transferred to the reserve, under the terms of the law;

IV - the military are forbidden to join unions and to strike;

V - while in actual service, the military are forbidden to belong to political parties;

VI - an officer shall only lose his post and rank if he is judged unworthy of or incompatible with the dignity of officership by decision of a permanent military court, in times of peace, or of a special court, in times of war;

VII - an officer sentenced in a common or military court by means of an unappealable judgment to imprisonment for more than two years shall be submitted to trial as provided in the preceding item;

VIII - the provisions of article 7, items VIII, XII, XVII, XVIII, XIX, and XXV, and of article 37, items XI, XIII, XIV and XV, apply to the military;

IX - the provisions of article 40, paragraphs 4, 5, and 6 apply to the military and their pensioners;

X - the law shall provide for admission to the Armed Forces, age limits, tenure, and other conditions for a military to be retired, the rights, duties, remuneration, prerogatives and other circumstances which are specific to the military, the special characteristics of their activities being taken into account, including those carried out by virtue of international agreements and of war.

Article 143. Military service is compulsory as set forth by law.

Paragraph 1 - It is within the competence of the Armed Forces, according to the law, to assign an alternative service to those who, in times of peace, after being enlisted, claim imperative of conscience, which shall be understood as originating in religious creed and philosophical or political belief, for exemption from essentially military activities.

Paragraph 2 - Women and clergymen are exempt from compulsory military service in times of peace, but are subject to other duties assigned to them by law.

CHAPTER III - PUBLIC SECURITY

Article 144. Public security, the duty of the State and the right and responsibility of all, is exercised to preserve public order and the safety of persons and property, by means of the following agencies:

I - federal police;

II - federal highway police;

III - federal railway police;

IV - civil polices;

V - military polices and military fire brigades.

Paragraph 1 - The federal police, instituted by law as a permanent body, **organized and maintained by the Union and structured into a career, have the following competences:**

Paragraph 1, text in purple added by CA 19, June 4th 1998.

I - to investigate criminal offenses against the political and the social order or to the detriment of property, services and interests of the Union and of its autonomous government entities and public companies, as well as other offenses with interstate or international effects and requiring uniform repression as the law shall establish;

Law 8137, Dec. 27th 1990, defines crimes against the tax and economic order, and establishes that such crimes are competence of the Federal Police. The Law 10446, May 8th 2002, defines the crimes with interstate or international effects and others requiring uniform repression.

II - to prevent and repress the illegal traffic of narcotics and like drugs, as well as smuggling, without prejudice to action by the treasury authorities and other government

agencies in their respective areas of competence;

III - to exercise the functions of maritime, **airport** and border police;

Clause III amended by CA 19, June 6th 1998. Original text read "maritime, air and border police".

IV - to exercise, exclusively, the functions of criminal police of the Union.

Paragraph 2 - The federal highway police are a permanent body structured into a career and intended, according to the law, to patrol ostensibly the federal highways.

Paragraph 3 - The federal railway police are a permanent body, **organized and maintained by the Union** and structured into a career and intended, according to the law, to patrol ostensibly the federal railways.

Paragraph 1, text in purple added by CA 19, June 4th 1998.

Paragraph 4 - It is incumbent upon the civil police, directed by career police commissioners and except for the competence of the Union, to exercise the functions of criminal police and to investigate criminal offenses, with the exception of the military ones.

Paragraph 5 - It is within the competence of the military police the ostensive policing and the maintenance of the public order; it is incumbent upon the military fire brigades, in addition to the duties defined by law, to carry out activities of civil defense.

Paragraph 6 - The military police and military fire brigades, ancillary forces and reserve of the Army, are subject, together with the civil police, to the Governors of the states, of the Federal District and of the territories.

Paragraph 7 - The law shall regulate the organization and operation of the agencies responsible for public security in such a manner as to guarantee the efficiency of their activities.

Paragraph 8 - The municipalities may organize municipal guards to protect their property, services and facilities, as the law shall establish.

Paragraph 9. The remuneration of the policemen serving the bodies mentioned in this article shall be fixed in the way provided for in article 39, paragraph 4.

Paragraph 9 added by CA 19, June 4th 1998.

TITLE VI - TAXATION AND BUDGET

CHAPTER I - THE NATIONAL TAX SYSTEM

SECTION I - GENERAL PRINCIPLES

Article 145. The Union, the states, the Federal District and the municipalities may institute the following tributes:

I - taxes;

II - fees, by virtue of the exercise of police power or for the effective or potential use of specific and divisible public services, rendered to the taxpayer or made available to him;

III - benefit charges, resulting from public works.

Paragraph 1 - Whenever possible, taxes shall have an individual character and shall be graded according to the economic capacity of the taxpayer, and the tax administration may, especially to confer effectiveness upon such objectives, with due respect to individual rights and under the terms of the law, identify the property, the incomes and the economic activities of the taxpayer.

Paragraph 2 - Fees may not have the assessment basis reserved for taxes.

Article 146. A supplementary law shall:

I - provide for conflicts of competence concerning tax matters between the Union, the states, the Federal District and the municipalities;

II - regulate the constitutional limitations on the power to tax;

III - establish general rules concerning tax legislation, especially with regard to:

a) the definition of tributes and their types, as well as, regarding the taxes specified in this

Constitution, the definition of the respective taxable events, assessment bases and taxpayers;
b) tax liability, assessment, credit, limitation and laches;
c) adequate tax treatment for the cooperative acts of cooperative associations;
d) definition of differentiated and favorable treatment for micro enterprises and small size enterprises, including special or simplified regimes in the cases of the tax established by article 155, II, of the contributions established by article 195, I and paragraphs 12 and 13, and of the contribution subject of article 239.

Letter d added by CA 42, December 19th 2003. The CA 42 became known as the Tax Reform.

Sole paragraph. The supplementary law subject of clause III, d, may also institute a regime of centralized collection of taxes and contributions of the Union, States, Federal District and municipalities, with observance of the following:

I - it shall be optional for the taxpayer;

II - different enrollment conditions may be established for each State;

III - the collection shall be unified and centralized and the distribution of the shares of proceeds to the respective federated entities shall be immediate, any retention or conditioning being forbidden;

IV - the collection, the auditing and the execution may be conducted jointly by the federated entities, with adoption of a sole national database of tax payers.

Sole paragraph and respective clauses added by CA 42, December 19th 2003.

Article 146-A. Supplementary law may establish special criteria of taxing, with the purpose of preventing unequities of competition, without prejudice of the competence of the Union, by means of a law, to establish norms with the same objective.

Article 146-A added by CA 42, December 19th 2003.

Article 147. In a federal territory, state taxes are within the competence of the Union and, if the territory is not divided into municipalities, also municipal taxes; municipal taxes are within the competence of the Federal District.

Article 148. The Union may, by means of a supplementary law, institute compulsory loans:

I - to meet extraordinary expenses resulting from public calamity, foreign war or the imminence thereof;

II - in the case of public investment of an urgent nature and relevant national interest, observing the provisions of article 150, III, b.

Sole paragraph - The use of funds deriving from a compulsory loan shall be linked to the expense that justified the institution thereof.

Article 149. The Union shall have the exclusive competence to institute social contributions, contributions of intervention in the economic order and contributions of interest of categories of employees or employers, as an instrument of its activity in the respective areas, observing the provisions of articles 146, III, and 150, I and III, and without prejudice to the provisions of article 195, paragraph 6, as regards the contributions mentioned in the latter article.

Paragraph 1. The States, the Federal District and the municipalities shall institute contribution, paid by their servers, for the funding, in benefit of them, of the social security regime subject of article 40, and the rate shall not be inferior to the rate of the contribution paid by the servants holders of effective offices of the Union.

Former sole paragraph was turned into paragraph 1 by CA 41, December 19th 2003. Original text read:

"Sole paragraph - The states, the Federal District and the municipalities may institute a contribution payable by their employees to fund social security and assistance systems for the benefit of the latter." After the CA, States and municipalities are obliged to collect a social security contribution from their civil servants.

Paragraph 2. The social contributions and the contributions of intervention in the economic order referred to in the caput of this article:

Paragraph 2 added by CA 33, December 11th 2001.

I - shall not be levied on proceeds derived from exportations;

Clause I added by CA 33, December 11th 2001.

II - shall be levied on the importation of foreigner products or services;

Clause II added by CA 42, December 19th 2003.

III - may have rates:

- a) ad valorem, having as assessment bases the turnout, the gross revenue or the amount of the transaction and, in case of importation, the customs value;
- b) specific, having as assessment bases the measure unit adopted.

Clause III added by CA 33, December 11th 2001.

Paragraph 3. The individuals recipients of importation transactions may be equiparated to corporations, in the manner prescribed by law.

Paragraph 4. The law shall define the cases in which the contributions shall be levied only once.

Paragraph 3 and 4 added by CA 39, December 19th 2002.

SECTION II - LIMITATIONS ON THE POWER TO TAX

Article 150. Without prejudice to any other guarantees ensured to the taxpayers, the Union, the states, the Federal District and the municipalities are forbidden to:

I - impose or increase a tribute without a law to establish it;

II - institute unequal treatment. ent for taxpayers who are in an equivalent situation, it being forbidden to establish any distinction by reason of professional occupation or function performed by them, independently of the juridical designation of their incomes, titles or rights;

III - collect tributes:

a) for taxable events that occurred before the law which instituted or increased such tributes came into force;

b) in the same fiscal year in which the law which instituted or increased such tributes was published;

c) before the elapsing of ninety days counted from the date of publication of the law which institute them or raised them, with due regard of the provisions of letter b;

Letter c added by CA 42, December 19th 2003. Before this CA, it was usual to see the governments publishing a special issue of the official gazette on December 31st, only to increase taxes on January 1st. Now, the government must wait ninety days or until the next year, whatever comes later; however, there are exceptions, established by the paragraph 1 of this same article.

IV - use a tribute for the purpose of confiscation;

V - establish limitations on the circulation of persons or goods, by means of interstate or intermunicipal tributes, except for the collection of toll fees for the use of highways maintained by the Government;

VI - institute taxes on:

a) the property, income or services of one another;

b) temples of any denomination;

c) the property, income or services of political parties, including their foundations, of worker unions, of non-profit education and social assistance institutions, observing the requirements of the law;

d) books, newspapers, periodicals and the paper intended for the printing thereof.

Paragraph 1 - The prohibition set forth in item III, b, shall not apply to the taxes provided upon in articles 148, I, 153, I, II, IV and V, and 154, II; and the prohibition established by clause III, c, shall not apply to taxes mentioned in articles 148, I, 153, I, II, III and V, and 154, II, nor to the fixation of assessment bases of taxes mentioned in articles 155, III, and 156, I.

Paragraph 1: text in purple added by CA 42, December 19th 2003.

Paragraph 2 - The prohibition set forth in item VII a, extends to the autonomous government agencies and to the foundations instituted and maintained by the Government, as regards the property, income and services related to their essential purposes or resulting therefrom.

Paragraph 3 - The prohibitions set forth in item VI, a, and in the preceding paragraph do not apply to the property, income and services related to the exploitation of economic activities governed by the regulations which apply to private undertakings, or in which users pay consideration or prices or tariffs. nor exempt a promissory purchaser of real property from the obligation to pay tax thereon.

Paragraph 4 - The prohibitions set forth in item VI, subitems b and c encompass only the property, income and services related to the essential purposes of the entities mentioned therein.

Paragraph 5 - The law shall determine measures for consumers to be informed about taxes levied

on goods and services.

Paragraph 6 - Any subsidy or exemption, reduction of assessment basis, concession of presumed credit, amnesty or remission, related to taxes, fees or contributions, may only be granted by means of a specific federal, state or municipal law, **which provides exclusively for the above-enumerated matters or the corresponding tax, fee or contribution, without prejudice to the provisions of article 155, paragraph 2, item XII, g.**

Paragraph 6. Text in purple appended by CA 3, March 17th 1993. Before this CA, governments used to, e.g., create a new exemption for producers of wheel chairs when issuing a law on behalf of disabled people.

Paragraph 7 - The law may impose upon the taxpayer the burden of the payment of a tax or contribution, whose taxable event will occur later, the immediate and preferential restitution of the amount paid being ensured, in case the presumed taxable event does not occur.

Paragraph 7 added by CA 3, March 17th 1993. The provisions of this paragraph are applied, for example, to the commerce of fuel, beer and tobacco. The producer of beer, when selling to the wholesalers, pays the taxes which should be paid later by the wholesaler, the retailer and the final consumer.

Article 151. It is forbidden for the Union:

I - to institute a tribute which is not uniform throughout the entire national territory or which implies a distinction or preference regarding a state, the Federal District or a municipality to the detriment of another, it being allowed to grant tax incentives for the purpose of promoting the balanced social and economic development of the various regions of the country;

II - to tax income from public debt bonds of the states, of the Federal District and of the municipalities, as well as the remuneration and earnings of the respective public agents, at levels above those established for its own bonds and agents;

III - to institute exemptions from tributes within the powers of the states, of the Federal District or of the municipalities.

Article 152. The states, the Federal District and the municipalities are forbidden to establish a tax difference between goods and services of any nature, by reason of their origin or destination.

SECTION III - FEDERAL TAXES

Article 153. The Union shall have the power to institute taxes on:

I - importation of foreign products;

II - exportation to other countries of national or nationalized products;

III - income and earnings of any nature;

IV - industrialized products;

V - credit, foreign exchange and insurance transactions, or transactions relating to bonds or securities;

VI - rural property;

VII - large fortunes, under the terms of a supplementary law.

Paragraph I - The Executive Power may, observing the conditions and the limits established in law, alter the rates of the taxes enumerated in items I, II, IV and V.

Paragraph 2 - The tax established in item III:

I - shall be based on the criteria of generality, universality and progressives, under the terms of the law;

II -

Clause II revoked by CA 20, December 15th 1998. Original text read: "II - shall not be levied, under the terms and within the limits established in law, on income deriving from retirement and pension paid by the social security system of the Union, of the states, of the Federal District and of the municipalities, to a person over sixty-five years of age, whose total income consists exclusively of work earnings."

Paragraph 3 - The tax established in item IV:

I - shall be selective, based on the essentiality of the product;

II - shall be non-cumulative, and the tax due in each transaction shall be compensated by the amount charged in previous transactions;

III - shall not be levied on industrialized products intended for export.

IV - shall have its impact deducted on the acquisition of productive assets by the taxpayer, in the manner determined by law.

Clause IV added by CA 42, December 19th 2002.

Paragraph 4 - The tax established in clause VI of this article:

I - shall be progressive and have their rates determined in such a manner as to discourage the retention of unproductive real property;

II - shall not be levied on small tracts of land, as defined in law, when explored by a proprietor who owns no other real property;

III - shall be audited and collected by the municipalities which so opt, in the manner prescribed by law, as long as that this option does not imply reduction of taxes or any other means of tax renounce.

Paragraph 4 reworded and amended by CA 42, December 19th 2003. The main modification was the inclusion of the possibility of the municipalities to take over the collection of this tax. The Federal government is the original competent body to collect this tax, but has no resources to do it. The original text read:

"Paragraph 4 - The tax established in item VI shall have its rates determined in such a manner as to discourage the retention of unproductive real property and shall not be levied on small tracts of land, as defined in law, when a proprietor who owns no other real property explores them by himself or with his family."

Paragraph 5 - Gold, when defined in law as a financial asset or an exchange instrument, is subject exclusively to the tax established in item V of the caption of the present article, due on the original transaction; the minimum rate shall be one per cent, and the transference of the amount collected is ensured under the following terms:

I - thirty per cent to the state, the Federal District or the territory, depending on the origin;

II - seventy per cent to the municipality of origin.

Article 154. The Union may institute:

I - by means of a supplementary law, taxes not instituted in the preceding article, provided that they are non-cumulative and not founded on a taxable event or an assessment basis reserved for the taxes specified in this Constitution;

II - in the imminence or in the event of foreign war, extraordinary taxes, encompassed or not by its power to tax, which shall be gradually suppressed when the causes for their institution have ceased.

SECTION IV - STATE AND FEDERAL DISTRICT TAXES

Article 155. The states and the Federal District shall have the competence to **institute taxes on:**

Article 155, text in purple added by CA 3, March 17th 1993. The original text remitted the institution of taxes to a clause, and another clause mentioned the possibility of creation of an additional tax of 5% on the income tax; the amended text revoked the additional tax, and brought the mention to taxes to the caption.

I - transfer by death and donation of any property or rights:

II - transactions relating to the circulation of goods and to the rendering of interstate and intermunicipal transportation services and services of communication, even when such transactions and renderings begin abroad;

III - ownership of automotive vehicles.

CA 3, March 17th 1993, turned the letters a, b, and c of the former clause I into the clauses I, II and III of the caption of article 155.

Because of this CA, there were minor changes in the text of the paragraphs below, to adjust references to clauses and letters.

Paragraph 1 - The tax established in item I:

I - regarding real property and the respective rights, is within the competence of the state where the property is located, or of the Federal District;

II - regarding bonds, titles and credits, is within the competence of the Federal District or of the state where the probate or enrollment is processed, or where the donor is domiciled;

III - a supplementary law shall regulate the competence for the institution of such tax:

a) if the donor is domiciled or residing abroad;

b) if the deceased owned property, was resident or domiciled or had his probate processed abroad;

IV - the Federal Senate shall establish the maximum rates for such tax.

Paragraph 2 - The tax established in item II shall observe the following:

I - it shall be non-cumulative, and the tax due in each transaction concerning the circulation of goods or rendering of services shall be compensated by the amount charged in the previous transactions by the same or by another state or by the Federal District;

II - exemption or non-levy, except as otherwise determined in the law:

a) shall not imply credit for compensation relative to the amount due in the subsequent transactions or renderings of services;

b) shall cause the annulment of the credit for the previous transactions;

III - it may be selective, based on the essentiality of the goods or services;

IV - a resolution of the Federal Senate, on the initiative of the President of the Republic or of one-third of the Senators, approved by the absolute majority of its members, shall establish the rates that apply to interstate and export transactions and rendering of services;

V - the Federal Senate may:

a) establish minimum rates for domestic transactions, by means of a resolution on the initiative of one-third and approved by the absolute majority of its members;

b) establish maximum rates for the same transactions to settle a specific conflict involving the interest of the states, by means of a resolution on the initiative of the absolute majority and approved by two-thirds of its members:

VI - unless otherwise determined by the states and the Federal District, under the terms of the provisions of item XII, g, the domestic rates for transactions concerning the circulation of goods and the rendering of services may not be lower than those established for interstate transactions;

VII - the following shall be adopted for transactions and rendering of goods and services to end-users located in another state:

a) the interstate rate, when it is incumbent upon the recipient to pay that tax;

b) the internal rate, when it is not incumbent upon the recipient to pay that tax;

VIII - in the case of subitem a of the preceding item, the tax corresponding to the difference between the internal and the interstate rate shall be attributed to the state where the recipient is located;

IX - it shall also be levied:

a) on the entry of goods imported from abroad **by an individual or a corporation, even if those are not usual taxpayers of such tax, whatever the finality of the goods**, as well as on services rendered abroad, and the tax shall be attributed to the state where the establishment receiving the goods or services is located;

Clause IX, text in purple added by CA 33, December 11th 2001.

b) on the total value of the transaction, when goods are supplied with services not included in the power to tax of the municipalities;

X - it shall not be levied:

a) on transactions transferring industrialized products abroad, **nor on services rendered to parties located abroad, ensured the maintenance and usage of the amount of such tax paid in previous operations and transactions**;

Clause X, text in purple added by CA 42, December 19th 2002. The CA eliminated the Tax on Industrialized Products (IPI) which was factored into the prices of Brazilian goods, reducing their competitiveness. The former text was more restrictive, reading "a) on transactions transferring industrialized abroad, excluding semi-finished products as defined in a supplementary law;

b) on transactions transferring petroleum, including lubricants liquid and gaseous fuels derived therefrom, and electric energy to other states;

c) on gold, in the cases defined in article 153, paragraph 5.

d) on rendering of communication services in the modes of radio broadcasting of sounds and of sounds and images with open and free reception;

Letter d added by CA 42, December 19th 2003.

XI - its assessment basis shall not include the amount of the tax on industrialized products when the transaction carried out between taxpayers and concerning a product intended for industrialization or sale represents a taxable event for both taxes;

XII - A supplementary law shall:

a) define its taxpayers;

b) provide for tax substitution;

c) regulate the system of tax compensation

d) establish, for purposes of collection of the tax and definition of the responsible establishment,

the location of the transactions concerning the circulation of goods and the rendering of services;
e) exclude from levy of the tax, in exports to other countries, services and other products other than those mentioned in item X, a;
f) provide for the event of maintenance of a credit for services and goods remitted to another state and exported to other countries;
g) regulate the manner in which, through deliberation by the states and the Federal District, tax exemptions, incentives and benefits shall be granted and revoked;
h) to define the fuels and lubricants which shall be levied only once, whatever their finality, in which case the provisions of clause X, B, shall not apply;
i) define the assessment bases, in such a way that it comprises the value of the tax, also in the importation from abroad of goods or services.

Letters h and i added by CA 33, December 11th 2001.

Paragraph 3 - With the exception of the taxes mentioned in item II of the caption of the present article, and article 153, I and II, no other tax may be levied on transactions concerning electric energy, telecommunication services, petroleum by-products, fuels and minerals of the country.

Paragraph 4. In the case of clause XII, h, the following provisions must be observed:

I - in operations with lubricants and fuels derived from petroleum, the tax shall belong to the State where the consumption occurs;

II - in inter State operations, between taxpayers, regarding natural gas and by-products, and lubricants and fuels not included in clause I of this paragraph, the tax shall be split between the States of origin and destination, adopting the same proportionality which applies to the operations with other goods;

III - in inter State operations regarding natural gas and by-products, and lubricants and fuels not included in clause I of this paragraph, when the product is purchased by non-taxpayers, the tax shall belong to the State of origin;

IV - the rates of the tax shall be defined by decision of the States and the Federal District, according to the provisions of paragraph 2, XII, g, and with observance of the following:

a) shall be uniform across all national territory, allowed differences by product;

b) may be specific, per unit of measure adopted, or ad valorem, levied on the amount of the transaction or on the value that the product or a similar would fetch in a free competition market;

c) may be decreased and re-established, the provisions of article 150, III, b not being applicable.

Paragraph 4 added by CA 33, December 11th 2001.

Paragraph 5. The norms necessary to the application of provisions of paragraph 4, including those regarding the assessment and destination of the tax, shall be established by decision of the States and the Federal District, according to the provisions of paragraph 2, XII, g.

Paragraph 5 added by CA 33, December 11th 2001.

Paragraph 6. The tax mentioned in clause III:

I - shall have minimum rates established by the Federal Senate;

II - may have different rates, depending on its nature and utilization.

Paragraph 6 added by CA 42, December 19th 2003. Clause II allows that, for example, an ambulance have a lower tax than an ordinary car.

SECTION V - MUNICIPAL TAXES

Article 156. The municipalities shall have the competence to institute taxes on:

I - urban buildings and urban land property;

II - *inter vivos* transfer, on any account, by onerous acts, of real property, by nature or physical accession, and of real rights to property, except for real security, as well as the assignment of rights to the purchase thereof;

III - services of any nature not included in article 155, II, as defined in a supplementary law.

IV - (revoked)

The CA 3, March 17th 1993, revoked the former clause III, and turned clause IV into the current clause III.

The former clause III read: "III - retail sale of liquid and gaseous fuels, except diesel oil." The supplementary law mentioned by clause III is Supplementary Law 116, July 31st 2003, which regulates the Tax on Services of Any Nature.

Paragraph 1 - Without prejudice of the progressivity based on time mentioned by article 182, paragraph 4, II, the tax of clause I may:

I - be progressive in proportion to the value of the building;

II - have different rates, in accordance with the localization and the use of the building.

Paragraph 1 amended by CA 29, September 13th 2000. Original text read: "The tax set forth in item I may be progressive, under the terms of a municipal law, in order to ensure achievement of the social function of the property."

Paragraph 2 - The tax set forth in item II:

I - shall not be levied on the transfer of goods or rights incorporated into the assets of a corporate body to pay up its capital, nor on the transfer of goods or rights resulting from the merger, incorporation, division or dissolution of corporate bodies, unless, in such cases, the predominant activity of the purchaser is the purchase and sale of such goods or rights, the lease of real property or leasing;

III - is within the competence of the municipality where the property is located.

Paragraph 3 - As regards the tax established in item III of the caption of this article, a supplementary law shall:

Text in purple added by CA 37, June 12th 2002.

I - establish its maximum and minimum rates;

Text in purple added by CA 37, June 12th 2002.

II - exclude exportations of services to other countries from levy of the said tax.

III - regulate the manner and the conditions by which exemptions, incentives and fiscal benefits shall be granted and revoked.

Clause III added by CA 37, June 12th 2002. Check also the article 88 of the Temporary Provisions, which was also amended by this same CA.

SECTION VI - TAX REVENUE SHARING

Article 157. The following shall be assigned to the states and to the Federal District:

I - the proceeds from the collection of the federal tax on income and earnings of any nature, levied at source on income paid on any account by them, by their autonomous government entities and by the foundations they institute and maintain;

II - twenty per cent of the proceeds from the collection of the tax that the Union may institute in the exercise of the powers conferred on it by article 154, I.

Article 158. The following shall be assigned to the municipalities:

I - the proceeds from the collection of the federal tax on income and earnings of any nature, levied at source on income paid on any account by them, by their autonomous government entities and by the foundations they institute and maintain;

II - fifty per cent of the proceeds from the collection of the federal tax on rural property, concerning real property located in the municipalities, or the totality of the proceeds, in case the municipality exercises the option mentioned by article 153, paragraph 4, III;

Clause II, text in purple appended by CA 42, December 19th 2003.

III - fifty per cent of the proceeds from the collection of the state tax on the ownership of automotive vehicles licensed in the municipalities;

IV - twenty-five per cent of the proceeds from the collection of the state tax on transactions regarding the circulation of goods and on rendering of interstate and intermunicipal transportation services and services of communication.

Sole paragraph - The revenue portions assigned to the municipalities, as mentioned in item IV, shall be credited in accordance with the following criteria:

I - at least three-fourths, in proportion to the value added in the transactions regarding the circulation of goods and the rendering of services carried out in the territory of the municipalities;

II - up to one-quarter, in accordance with the provisions of a state law or, in the case of the territories, of a federal law.

Article 159. The Union shall remit:

I - of the proceeds from the collection of taxes on income and earnings of any nature and on industrialized products, forty-seven per cent as follows:

a) twenty-one and a half of one per cent to the Revenue Sharing Fund of the States and of the Federal District;

b) twenty-two and a half of one per cent to the Revenue Sharing Fund of the Municipalities;

c) three per cent, for application in programs to finance the productive sector of the North, Northeast and Centre-West Regions, through their regional financial institutions, in accordance with regional development plans, the semi-arid area of the Northeast being ensured of half of the funds intended for that Region, as provided by law;

II - of the proceeds from the collection of the tax on industrialized products, ten per cent to the states and to the Federal District, in proportion to the value of the respective exportations of industrialized products.

III - of the proceeds from the collection of the contribution of intervention in the economic order established in article 177, paragraph 4, 29% (twenty-nine percent) to the States and the Federal District, distributed as defined by law, with due regards to the destination as provided by the clause II, c, of the mentioned article;

Clause III added by CA 44, June 30th 2004.

Paragraph 1 - For purposes of calculating the amount to be remitted in accordance with the provisions in item I, the portion of the collected tax on income and earnings of any nature assigned to the states, to the Federal District and to the municipalities shall be excluded, as provided by articles 157, I, and 158, I.

Paragraph 2 - No federated unit may be allocated a portion in excess of twenty per cent of the amount referred to in item II, and any excess shall be distributed among the other participants, maintaining, for the latter, the apportionment criterion established therein.

Paragraph 3 - The states shall remit twenty-five per cent of the funds they may receive as provided by item II to the respective municipalities, observing the criteria established in article 158, sole paragraph, I and II.

Paragraph 4. Of the amount determined by clause III which belongs to each State, twenty-five percent shall be remitted to the respective municipalities, in the manner established by the law mentioned in said clause.

Paragraph 4 added by CA 42, December 19th 2003.

Article 160. It is forbidden to withhold or to make any restriction to the remittance and use of the funds assigned in this section to the states, to the Federal District and to the municipalities, including any tax additions and increases.

Sole paragraph - The prohibition mentioned in the present article does not prevent the Union and the States from conditioning the remitting of funds to:

I - the payment of credits, including those owned by the autarchies;

II - the fulfillment of the provisions of article 198, paragraph 2, II and III.

Sole paragraph amended by CA 29, September 13th 2000.

Article 161. A supplementary law shall:

I - define the added value for the purposes provided by article 158, sole paragraph, I;

II - establish rules for the remittance of the funds referred to in article 159, especially the criteria for the sharing of the funds set forth in its item I, seeking to promote social and economic balance among states and among municipalities;

III - provide for the monitoring, by the beneficiaries, of the calculation of the quotas and release of the participations set forth in articles 157, 158 and 159.

Sole paragraph - The Federal Court of Accounts shall calculate the quotas referring to the participation funds mentioned in item II.

Article 162. The Union, the states, the Federal District and the municipalities shall announce, on or before the last day of the month following that of collection, the amounts of each of the tributes collected, the funds received, the tax sums remitted and to be remitted and the numerical expression of the apportionment criteria.

Sole paragraph - The data announced by the Union shall be discriminated by state and by municipality; those of the states, by municipality.

CHAPTER II - PUBLIC FINANCES

SECTION I - GENERAL RULES

Article 163. A supplementary law shall make provisions for: I - public finances;

II - foreign and domestic public debt, including the debt of the autonomous government agencies, foundations and other entities controlled by the Government;

III - granting of guarantees by government entities;

IV - issuance and redemption of public debt bonds;

V - [financial supervision of the direct and indirect public administration](#);

[Clause V amended by CA 40, May 29th 2003. Original text read: "V - supervision of financial institutions;"](#)

VI - foreign exchange transactions carried out by bodies and agencies of the Union, of the states, of the Federal District and of the municipalities;

VII - compatibility of the functions of the official credit institutions of the Union, safeguarding all the characteristics and full operational conditions of those intended for regional development.

Article 164. The competence of the Union to issue currency shall be exercised exclusively by the central bank.

Paragraph 1 - It is forbidden for the central bank to grant, either directly or indirectly, loans to the National Treasury and to any body or agency which is not a financial institution.

Paragraph 2 - The central bank may purchase and sell bonds issued by the National Treasury, for the purpose of regulating the money supply or the interest rate.

Paragraph 3 - The cash assets of the Union shall be deposited at the central bank, those of the states, of the Federal District, of the municipalities and of the bodies or agencies of the Government and of the companies controlled by the same, at official financial institutions, excepting the cases established in law.

SECTION II - BUDGETS

Article 165. Laws of the initiative of the Executive Power shall establish:

I - the pluriannual plan;

II - the budgetary directives;

III - the annual budgets.

Paragraph 1 - The law which institutes the pluriannual plan shall establish, on a regional basis, the directives, objectives and targets of the federal public administration for the capital expenditures and other expenses resulting therefrom and for those regarding continuous programmes.

Paragraph 2 - The law of budgetary directives shall comprise the targets and priorities of the federal public administration, including the capital expenditures for the subsequent fiscal year, shall guide the drawing up of the annual budget law, shall make provisions for alterations in tax legislation and shall establish the investment policy for the official development financing agencies.

Paragraph 3 - The Executive Power shall, within thirty days after the closing of each two-month period, publish a summarized report on budget implementation.

Paragraph 4 - The national, regional and sectorial plans and programmes set forth in this Constitution shall be drawn up in compliance with the pluriannual plan and shall be examined by the National Congress.

Paragraph 5 - The annual budget law shall include:

I - the fiscal budget regarding the Powers of the Union, their funds, bodies and entities of the direct and indirect administration, including foundations instituted and maintained by the Government;

II - the investment budget of companies in which the Union directly or indirectly holds the majority of the voting capital;

III - the social welfare budget, comprising all direct and indirect administration entities or bodies

connected with social security, as well as funds and foundations instituted and maintained by the Government.

Paragraph 6 - The budget bill shall be accompanied by a regionalized statement on the effect on revenues and expenses, deriving from exemptions, amnesties, remissions, subsidies and benefits of a financial, tributary and credit nature.

Paragraph 7 - The functions of the budgets set forth in paragraph 5, I and II, of the present article, compatible with the pluriannual plan, shall include the function of reducing interregional inequalities, according to populational criteria.

Paragraph 8 - The annual budget law shall not contain any provision extraneous to a forecast of revenues and to the establishment of expenses, such prohibition not including authorization to open supplementary credits and to contract credit transactions, even if by advance of revenues, under the terms of the law.

Paragraph 9 - A supplementary law shall:

I - make provisions for the fiscal year, effectiveness, terms, drawing up and organization of the pluriannual plan, of the law of budgetary directives and of the annual budget law;

II - establish rules for the financial and property management of the direct and indirect administration, as well as conditions for the institution and operation of funds.

Article 166. The bills regarding the pluriannual plan, the budgetary directives, the annual budget and the additional credits shall be examined by the two Houses of the National Congress, in accordance with their common regulations.

Paragraph 1 - It is incumbent upon a permanent joint committee of Senators and Deputies to:

I - examine and issue its opinion on the bills referred to in the present article and on the accounts submitted annually by the President of the Republic;

II - examine and issue its opinion on the national, regional and sectorial plans and programmes established in this Constitution, and exercise budgetary monitoring and supervision, without affecting the operation of the other committees of the National Congress and of its Houses, created in accordance with article 58.

Paragraph 2 - Amendments shall be submitted to the joint committee, which shall report on them. and shall be examined, in accordance with the regulations, by the Plenary Session of the two Houses of the National Congress.

Paragraph 3 - Amendments to the bill of the annual budget or to the bills which modify it may only be approved if:

I - they are compatible with the pluriannual plan and with the law of budgetary directives;

II - they specify the necessary funds, allowing only those resulting from the annulment of expenses, and excluding those which apply to:

a) allocations for personnel and their charges;

b) debt servicing;

c) constitutional tax transfers to the states, the municipalities and the Federal District; or

III - they are related:

a) to the correction of errors or omissions; or

b) to the provisions of the text of the bill of law.

Paragraph 4 - Amendments to the bill of budgetary directives may not be approved if they are incompatible with the pluriannual plan.

Paragraph 5 - The President of the Republic may send a message to the National Congress to propose modifications in the bills referred to in the present article as long as the joint committee has not started to vote on the part for which an alteration is being proposed.

Paragraph 6 - The bills of the pluriannual plan law, of the law of budgetary directives and of the annual budget law shall be forwarded by the President of the Republic to the National Congress, under the terms of the supplementary law referred to in article 165, paragraph 9.

Paragraph 7 - The other rules regarding legislative procedure shall apply to the bills mentioned in this article, as long as they are not contrary to the provisions of this section.

Paragraph 8 - Any funds which, as a result of a veto, amendment or rejection of the bill of the annual budget law, have no corresponding expenses, may be allocated, as the case may be, by means of special or supplementary credits, with prior and specific legislative authorization.

Article 167. The following are forbidden:

I - to begin programmes or projects not included in the annual budget law;

II - to incur expenses or to assume direct obligations which exceed the budgetary or additional credits;

III - to carry out credit transactions, which exceed the amount of capital expenses, excepting those authorized by means of supplementary or special credits with a specific purpose and approved by an absolute majority of the Legislative Power;

IV - to bind tax revenues to an agency, fund or expense, excepting the sharing of the proceeds from the collection of the taxes referred to in articles 158 and 159, the allocation of funds for **the public actions and services of health**, for the maintenance and development of education, as determined, **respectively, by articles 198, paragraph 2, 212 and 37, XXII** and the granting of guarantees on credit transactions by advance of revenues, as established in article 165, paragraph 8, as well as in paragraph 4 of the present article;

Clause IV amended by CA 42, December 19th 2003. The CA permitted the binding of funds to health needs, as it did with education.

V - to open a supplementary or special credit without prior legislative authorization and without specification of the corresponding funds;

VI - to reassign, reallocate or transfer funds from one programming category to another or from one agency to another without prior legislative authorization;

VII - to grant or use unlimited credits;

VIII - to use, without specific legislative authorization, funds from the fiscal and social security budgets to supply a necessity or to cover a deficit of companies, foundations and funds, including those mentioned in article 165, paragraph 5;

IX - to institute funds of any nature without prior legislative authorization.

X - the voluntary transfer of funds and the granting of loans, including the cases of proceeds advance, by the Federal and State government and their financial institutions, for payment of expenditures with personal, retired and pensionists of the States, Federal District and municipalities;

Clause X added by CA 19, June 4th 1998.

XI - the utilization of proceeds from the social contributions subject of article 195, I,a, and II, for the realization of expenditures other than the payment of benefits of the general regime of social security established by article 201.

Clause XI added by CA 19, June 4th 1998.

Paragraph 1 - No investment whose execution exceeds one fiscal year may be implemented without prior inclusion in the pluriannual plan, or without a law to authorize such inclusion, subject to crime of malversation.

Paragraph 2 - Special and extraordinary credits shall be effective in the fiscal year in which they are authorized, unless the authorization act is enacted during the last four months of that fiscal year, in which case, reopened within the limits of their balances, such credits shall be incorporated into the budget of the subsequent fiscal year.

Paragraph 3 - The opening of extraordinary credit may only be allowed to meet unforeseeable and urgent expenses, such as those resulting from war, internal commotion or public calamity, observing the provisions in article 62.

Paragraph 4 - It is permitted to bind proper revenues generated by the taxes referred to in articles 155 and 156 and the funds mentioned in articles 157, 158 and 159, I, a and b, and II, to the granting of a guarantee or a counterguarantee to the Union, and to the payment of debts owed to the same.

Paragraph 4 added by CA 3, March 17th 1993.

Article 168. The funds corresponding to the budgetary allocations, including the supplementary and special credits, intended for the bodies of the Legislative and Judicial Powers and for the Public Prosecution **and the Public Legal Defense**, shall be remitted to them on or before the twentieth of each month, **in twelfths**, as provided by the supplementary law referred to in article 165, paragraph 9.

Article 168, text in purple added by CA 45, December 8th 2004.

Article 169. Expenditure with active and pensioned personnel of the Union, the states, the Federal District and the municipalities may not exceed the limits established in a supplementary law.

Article 169 was radically changed by CA 19, June 4th 1998. This CA changed much of the legislation regarding the civil service. This article imposed to States and municipalities the obligation to cut expenditures with salaries, retirement payments and pensions, as necessary to keep the ratio between expenses and revenues within certain limits. The supplementary law mentioned by this article is Supplementary Law 101, May 4th 2000, which became known as **Fiscal Responsibility Law** (Lei de Responsabilidade Fiscal).

Paragraph 1 - The granting of any advantage or increase of remuneration, the creation of offices or alteration of career structures, as well as admission of personnel, on any account, by bodies and entities of the direct or indirect administration, including foundations instituted and maintained by the Government, may only be effected:

I - if there is a prior budgetary allocation sufficient to cover the estimated expenditure with personnel and the increases resulting therefrom;

II - if there is specific authorization in the law of budgetary directives, excepting the public and the mixed-capital companies.

CA 19, June 4th 1998, changed the former Sole paragraph to paragraph 1, without changing text.

Paragraph 2. Elapsed the time set forth by the supplementary law mentioned by this article for compliance with the limits established by said law, the remittance of federal or State funds to the States, Federal District or municipalities which do not comply with the limits shall be immediately suspended.

Paragraph 3. For compliance with the limits established in accordance with this article, during the time determined by the supplementary law mentioned by the caption of this article, the Union, the States, the Federal District and the municipalities shall adopt the following measures:

I - reduction of at least 20% (twenty per cent) of expenditures with commissioned offices and trusting positions;

II - dismissal of non-tenured servants.

Paragraph 4. If the measures adopted in accordance with paragraph 3 do not suffice to assure compliance with the provisions of the supplementary law mentioned by this article, the tenured servants may lose their offices, provided that the justified normative act of each of the Powers specifies the functional activity, the body or administrative unity subject to reduction in personnel.

Paragraph 5. The civil servant who loses office as per paragraph 4 shall be entitled to an indemnization of one monthly remuneration per year in office.

Paragraph 6. The office subject to reduction in accordance of the former paragraphs shall be considered extinct, the creation of office, position or function with equal or similar assignments being forbidden for the next 4 (four) years.

Paragraph 7. Federal law shall provide for the general rules to be obeyed in the effectuation of the provisions of paragraph 4.

Paragraphs 2 to 7 added by CA 19, June 4th 1998. All these paragraphs had the goal of reducing the share of the budget spent with salaries of the civil servants. This problem affected more seriously some States and municipalities; even so, with support on these paragraphs, and to give an example, the Federal Government didn't give any linear raise to the civil servants from 1995 to 2001. Most States followed the example and also didn't grant any raise in salaries. In the smaller municipalities, most servants are still paid minimum salary, which has yearly adjustments. As a whole, most States and municipalities managed to comply with the supplementary law without being obliged to dismiss servants or extinguish offices.

TITLE VII - THE ECONOMIC AND FINANCIAL ORDER

CHAPTER I - THE GENERAL PRINCIPLES OF THE ECONOMIC ACTIVITY

Article 170. The economic order, founded on the appreciation of the value of human work and on free enterprise, is intended to ensure everyone a life with dignity, in accordance with the dictates of social justice, with due regard for the following principles:

I - national sovereignty;
II - private property;
III - the social function of property;
IV - free competition;
V - consumer protection;
VI - environment protection, including by means of different treatments in accordance to the environmental impact of products and services and their respective production and rendering;
Clause XI, text in purple added by CA 42, December 19th 2003.
VII - reduction of regional and social differences;
VIII - pursuit of full employment;
IX - preferential treatment for small enterprises organized under Brazilian laws and having their head-office and management in Brazil.
Clause IX amended by CA 6, August 15th 1998. The original text made reference to "Brazilian enterprises" only.
Sole paragraph - Free exercise of any economic activity is ensured to everyone, regardless of authorization from government agencies, except in the cases set forth by law.

Article 171. (revoked).

This article defined what a "Brazilian enterprise" was, for the purposes of the provisions of article 170, IX, and others.

Article 172. The law shall regulate, based on national interests, the foreign capital investments, shall encourage reinvestments and shall regulate the remittance of profits.

Article 173. With the exception of the cases set forth in this Constitution, the direct exploitation of an economic activity by the State shall only be allowed whenever needed to the imperative necessities of the national security or to a relevant collective interest, as defined by law.

Paragraph 1 - The law shall establish the juridical statute of the public company, the mixed capital company and their subsidiaries which explore economic activity of production or trading of goods or rendering of services, with provisions for:

- I - their social function and the ways of accounting by the State and society;
- II - the compliance with the legislation proper of the private companies, including as regards to civil, commercial, labor and tax rights and duties;
- III - bidding and contracting of buildings, services, purchases and sales, with observance to the principles of public administration;
- IV - the constitution and functioning of their administrative and fiscal councils, with participation of minor stock holders;
- V - the terms, the performance evaluations and the liabilities of the administrators.

Paragraph 1 amended by CA 19, June 4th 1998. Original text read: "Paragraph 1 - The public company, the mixed-capital company and other entities engaged in economic activities are subject to the specific legal system governing private companies, including labour and tax liabilities." The aim of this CA was twofold: to give more freedom to State companies to compete with private companies (before the CA, State companies and the direct public administration were subject to the same bidding and contracting laws; so, to buy a truck, Petrobrás had to face the same bureaucratic bidding as a hospital to buy medicines) and to bring accountability to the administration of the State companies (most directors are still appointed by politicians, and some directors used to be more concerned with political than economic results).

Paragraph 2 - The public companies and the mixed-capital companies may not enjoy fiscal privileges which are not extended to companies of the private sector.

Paragraph 3 - The law shall regulate the relationships of public companies with the State and society.

Paragraph 4 - The law shall repress the abuse of economic power that aims at the domination of markets, the elimination of competition and the arbitrary increase of profits.

Paragraph 5 - The law shall, without prejudice to the individual liability of the managing officers of a legal entity, establish the liability of the latter, subjecting it to punishments compatible with its nature, for acts performed against the economic and financial order and against the citizens' monies.

Article 174. As the normative and regulating agent of the economic activity, the State shall, in the manner set forth by law, perform the functions of control, incentive and planning, the latter being binding for the public sector and indicative for the private sector.

Paragraph 1 - The law shall establish the guidelines and bases for planning of the balanced national development, which shall embody and make compatible the national and regional development plans.

Paragraph 2 - The law shall support and encourage cooperative activity and other forms of association.

Paragraph 3 - The State shall favour the organization of the placer-mining activity in cooperatives, taking into account the protection of the environment and the social-economic furthering of the placer-miners.

Paragraph 4 - The cooperatives referred to in the preceding paragraph shall have priority in obtaining authorization or grant for prospecting and mining of placer resources and deposits in the areas where they are operating and in those established in accordance with article 21, XXV, as set forth by law.

Article 175. It is incumbent upon the Government, as set forth by law, to provide public utility services, either directly or by concession or permission, which will always be through public bidding.

Sole paragraph - The law shall provide for:

I - the operating rules for the public service concession- or permission- holding companies, the special nature of their contract and of the extension thereof, as well as the conditions of forfeiture, control and termination of the concession or permission;

II - the rights of the users;

III - tariff policy;

IV - the obligation of maintaining adequate service.

Article 176. Mineral deposits, under exploitation or not, and other mineral resources and the hydraulic energy potentials form, for the purpose of exploitation or use, a property separate from that of the soil and belong to the Union, the concessionaire being guaranteed the ownership of the mined product.

Paragraph 1 - The prospecting and mining of mineral resources and the utilization of the potentials mentioned in the caption of this article may only take place with authorization or concession by the Union, in the national interest, by Brazilians or by a **company organized under Brazilian laws and having its head-office and management in Brazil**, in the manner set forth by law, which law shall establish specific conditions when such activities are to be conducted in the boundary zone or on Indian lands.

[Paragraph 1 amended by CA 6, August 15th 1995. See article 171.](#)

Paragraph 2 - The owner of the soil is ensured of participation in the results of the mining operation, in the manner and amount as the law shall establish.

Paragraph 3 - Authorization for prospecting shall always be for a set period of time and the authorization and concession set forth in this article may not be assigned or transferred, either in full or in part, without the prior consent of the conceding authority.

Paragraph 4 - Exploitation of a renewable energy potential of small capacity shall not require an authorization or concession.

Article 177. The following are the monopoly of the Union:

I - prospecting and exploitation of deposits of petroleum and natural gas and of other fluid hydrocarbons;

II - refining of domestic or foreign petroleum;

III - import and export of the products and basic by-products resulting from the activities set forth in the preceding items;

IV - ocean transportation of crude petroleum of domestic origin or of basic petroleum by-products produced in the country, as well as pipeline transportation of crude petroleum, its by-products and natural gas of any origin;

V - prospecting, mining, enrichment, reprocessing, industrialization and trading of nuclear mineral

ores and minerals and their by-products.

Paragraph 1 - The Union may contract with state-owned or with private enterprises for the execution of the activities provided for in items I through IV of this article, with due regard for the conditions set forth by law.

Paragraph 1 amended by CA 9, November 9th 1995. Original text read: "Paragraph 1. The monopoly set forth by this article includes the risks and results derived from the activities mentioned, the Union being forbidden of granting or chartering any kind of participation, in cash or valuables, in the exploration of reservoirs of oil or natural gas, excepted the provisions of article 20, paragraph 1." This CA ended the monopoly of Petrobrás. This CA passed in the first year of the first term of President Fernando Henrique Cardoso; the same year, the CA ending the monopoly of the Telecommunication companies passed. Nationalists accused FHC of "selling the assets of Brazilian society".

Paragraph 2 - The law referred to in paragraph I shall provide for:

I - a guarantee of supply of petroleum products in the whole national territory;

II - the conditions of contracting;

III - the structure and duties of the regulatory agency of the monopoly of the Union.

Paragraph 2 added by CA 9, November 9th 1995. The former paragraph 2 was turned into paragraph 3 below.

Paragraph 3 - The law shall provide with respect to the transportation and use of radioactive materials within the national territory.

Paragraph 4. The law which institute the contribution of intervention in the economic order levied on activities of importation or commercialization of petroleum and by-products, natural gas and by-products, and alcohol fuel shall observe the following:

I - the rate of the contribution may:

a) be established in accordance with the product or its use;

b) be decreased and re-established by act of the Executive Power, the provisions of article 150, III, b not being applicable;

II - the proceeds shall be used to:

a) the payment of subsidies to prices or transportation of alcohol fuel, natural gas and by-products and petroleum by-products;

b) the funding of environmental projects related to the gas and petroleum industry;

c) the funding of programmes of infra-structures of transportation.

Paragraph 4 added by CA 33, December 11th 2001.

Article 178. The law shall provide for the regulation of air, water and ground transportation, and it shall, in respect to the regulation of international transportation, comply with the agreements entered into by the Union, with due regard to the principle of reciprocity.

Sole paragraph - In regulating water transportation, the law shall set forth the conditions in which the transportation of goods in coastal and internal navigation will be permitted to foreign vessels.

Article 178 amended by CA 7, August 15th 1998. The original text gave a monopoly to national vessels to make transportations along the Brazilian coast, and determined other privileges to Brazilian ships and respective commanders.

Article 179. The Union, the states, the Federal District and the municipalities shall afford micro-enterprises and small enterprises, as defined by law, differentiated legal treatment, seeking to further them through simplification of their administration, tax, social security and credit obligations or through elimination or reduction thereof by means of law.

Article 180. The Union, the states, the Federal District and the municipalities shall promote and further tourism as a factor of social and economic development.

Article 181. Compliance with request for a document or for information of commercial nature, made by a foreign administrative or judicial authority to an individual or legal entity residing or domiciled in the country shall depend upon authorization from the competent authority.

CHAPTER II - URBAN POLICY

Article 182. The urban development policy carried out by the municipal government, according to general guidelines set forth in the law, is aimed at ordaining the full development of the social functions of the city and ensuring the well-being of its inhabitants.

Paragraph 1 - The master plan, approved by the City Council, which is compulsory for cities of over twenty thousand inhabitants, is the basic tool of the urban development and expansion policy.

Paragraph 2 - Urban property performs its social function when it meets the fundamental requirements for the ordainment of the city as set forth in the master plan.

Paragraph 3 - Expropriation of urban property shall be made against prior and fair compensation in cash.

Paragraph 4 - The municipal government may, by means of a specific law, for an area included in the master plan, demand, according to federal law, that the owner of unbuilt, underused or unused urban soil provide for adequate use thereof, subject, successively, to:

I - compulsory parceling or construction;

II - rates of urban property and land tax that are progressive in time;

III - expropriation with payment in public debt bonds issued with the prior approval of the Federal Senate, redeemable within up to ten years, in equal and successive annual installments, ensuring the real value of the compensation and the legal interest.

Article 183. An individual who possesses an urban area of up to two hundred and fifty square meters, for five years, without interruption or opposition, using it as his or as his family's home, shall acquire domain of it, provided that he does not own any other urban or rural property.

Paragraph 1 - The deed of domain and concession of use shall be granted to the man or woman, or both, regardless of their marital status.

Paragraph 2 - This right shall not be recognized for the same holder more than once.

Paragraph 3 - Public real estate shall not be acquired by prescription.

CHAPTER III - AGRICULTURAL AND LAND POLICY AND AGRARIAN REFORM

Article 184. It is within the power of the Union to expropriate on account of social interest, for purposes of agrarian reform, the rural property which is not performing its social function, against prior and fair compensation in agrarian debt bonds with a clause providing for maintenance of the real value, redeemable within a period of up to twenty years computed as from the second year of issue, and the use of which shall be defined in the law.

Paragraph 1 - Useful and necessary improvements shall be compensated in cash.

Paragraph 2 - The decree declaring the property as being of social interest for agrarian reform purposes empowers the Union to start expropriation action.

Paragraph 3 - It is incumbent upon a supplementary law to establish special summary adversary proceeding for expropriation action.

Paragraph 4 - The budget shall determine each year the total volume of agrarian debt bonds, as well as the total amount of funds to meet the agrarian reform programme in the fiscal year.

Paragraph 5 - The transactions of transfer of property expropriated for agrarian reform purposes are exempt from federal, state and municipal taxes.

Article 185. Expropriation of the following for agrarian reform purposes is not permitted:

I - small and medium-size rural property, as defined by law, provided its owner does not own other property;

II - productive property.

Sole paragraph - The law shall guarantee special treatment for the productive property and shall establish rules for the fulfilment of the requirements regarding its social function.

Article 186. The social function is met when the rural property complies simultaneously with, according to the criteria and standards prescribed by law, the following requirements:

I - rational and adequate use;

II - adequate use of available natural resources and preservation of the environment;

- III - compliance with the provisions that regulate labour relations;
- IV - exploitation that favours the well-being of the owners and labourers.

Article 187. The agricultural policy shall be planned and carried out as established by law, with the effective participation of the production sector, comprising producers and rural workers, as well as the marketing, storage and transportation sectors, with especial consideration for:

- I - the credit and fiscal mechanisms;
- II - prices compatible with production costs and the guarantee of marketing;
- III - research and technology incentives;
- IV - technical assistance and rural extension;
- V - agricultural insurance;
- VI - cooperative activity;
- VII - rural electricity and irrigation systems;
- VIII - housing for the rural workers.

Paragraph 1 - Agricultural planning includes agroindustrial, stock raising, fishing and forestry activities.

Paragraph 2 - Agricultural policy and agrarian reform actions shall be made compatible.

Article 188. The destination given to public and unoccupied lands shall be made compatible with the agricultural policy and the national agrarian reform plan.

Paragraph 1 - The alienation or concession in any way of public lands with an area of more than two thousand and five hundred hectares to an individual or legal entity, even if through an intermediary, shall depend on the prior approval of the National Congress.

Paragraph 2 - Alienations or concessions of public lands for agrarian reform purposes are excluded from the provisions of the preceding paragraph.

Article 189. The beneficiaries of distribution of rural land through agrarian reform shall receive title-deeds or concession of use which may not be transacted for a period of ten years.

Sole paragraph - The title-deed and the concession of use shall be granted to the man or the woman, or to both, irrespective of their marital status, according to the terms and conditions set forth by law.

Article 190. The law shall regulate and limit the acquisition or lease of rural property by a foreign individual or legal entity, and shall establish the cases that shall depend on authorization by the National Congress.

Article 191. The individual who, not being the owner of rural or urban property, holds as his own, for five uninterrupted years, without opposition, an area of land in the rural zone, not exceeding fifty hectares, making it productive with his labour or that of his family, and having his dwelling thereon, shall acquire ownership of the land.

Sole paragraph - The public real estate shall not be acquired by prescription.

CHAPTER IV - THE NATIONAL FINANCIAL SYSTEM

Article 192. The National Financial System, structured to promote the balanced development of the country and to serve the collective interests, in all its component parts, including the cooperatives of credit, shall be regulated by supplementary laws which shall provide, as well, for the participation of foreign capital in the institutions which compose it.

Clauses I, II, III, IV, V, VI, VII and VIII - (Revoked).

Paragraphs 1, 2 and 3 - (Revoked).

Article 192 amended by CA 40, May 29th 2003. Actually, most provisions of this article never came into effect, as all clauses required a supplementary law to regulate them, and this law was never approved. A serious problem was that the caption of the article demanded "a supplementary law", which was interpreted as ONE law; the problem was that such a diversity of matters, each one controversial by itself, could never achieve an agreement in only one law. The most controversial matter was the provision of former paragraph 3, which determined a superior limit of interest rates in 12 percent p.a.; the financial market never respected

such limit. With CA 40, the Brazilian Parliament left all matters up to the supplementary laws.

Original text of the article:" The national financial system, structured to promote the balanced development of the country and to serve the collective interests, shall be regulated by a supplementary law which shall also provide for:

I - authorization for the operation of financial institutions, it being ensured the access of the official and private banks to all the instruments of the banking financial market, such institutions being prohibited from taking part in activities not provided for in the authorization mentioned in this item;

II - authorization and operation of insurance, reinsurance, social security and capitalization companies, as well as of the supervising agency;

III - conditions for the participation of foreign capital in the institutions to which the preceding items refer to, considering especially:

a) the national interests;

b) the international agreements;

c) organization, operation and duties of the central bank and other public and private financial institutions;

d) requirements for the appointment of members of the board of directors of the central bank and other financial institutions, as well as their impediments after leaving office;

IV - creation of a fund or insurance, for the purpose of protecting the citizens' monies, guaranteeing credits, investments and deposits up to a certain amount, it being forbidden the participation of funds of the Union;

V - the restrictive criteria of the transfer of savings from regions with income below the national average to others of greater development;

VI - the operation of credit cooperatives and the requirements for them to obtain operational and structural conditions characteristic of financial institutions.

Paragraph 1 - The authorization referred to in items I and II shall be non- negotiable and non-transferable, it being allowed the transfer of control of the incumbent legal entity, and shall be granted, free of charge, according to the national financial system law, to a legal entity whose directors are technically capable and of spotless reputation and which proves that its economic capacity is compatible with the undertaking.

Paragraph 2 - The financial resources relating to regional programmes and projects under the responsibility of the Union shall be deposited at their regional credit institutions and invested by them.

Paragraph 3 - Real interest rates, including commissions and any other compensation directly or indirectly related to the concession of credit, shall not exceed twelve percent per annum; charges above this limit shall be considered crime of usury, which shall be punished in all of its forms, as the law shall determine."

TITLE VIII - THE SOCIAL ORDER

CHAPTER I - GENERAL PROVISION

Article 193. The social order is based on the primacy of work and aimed at social well-being and justice.

CHAPTER II - SOCIAL WELFARE

SECTION I - GENERAL PROVISIONS

Article 194. Social welfare comprises an integrated whole of actions initiated by the Government and by society, with the purpose of ensuring the rights to health, social security and assistance.

Sole paragraph - It is incumbent upon the Government, as provided by law, to organize social welfare, based on the following objectives:

I - universality of coverage and service;

II - uniformity and equivalence of benefits and services for urban and rural populations;

III - selectivity and distributiveness in the provision of benefits and services;

IV - irreducibility of the value of the benefits;

V - equitable participation in funding;

VI - diversity of the financing basis;

VII - democratic and decentralized character of management, by means of a four-parties

administration, with the participation of workers, employers, retired persons and the Government in the collective bodies.

Clause VII amended by CA 20, December 15th 1998, which included the reference to the Government.

Article 195. Social welfare shall be financed by all of society, either directly or indirectly, as provided by law, with funds coming from the budgets of the Union, the states, the Federal District and the municipalities and from the following welfare contributions:

I - of employers, of companies and of entities equivalent to companies as determined by law, levied on:

- a) the salaries payroll and other incomes derived of work paid or credited, on any account, to an individual who renders service, even if without a labour contract;
- b) revenues or turnover;
- c) profits.

Clause I amended by CA 20, December 15th 1998. The former text didn't cover the large share of informal labour relationships which exist in Brazil; with the new text, even informal workers are supposed to pay welfare contributions. Original text read: "I - of employers, calculated on the payroll, revenues and profits;"

II - of workers and of all other beneficiaries of the social security, the contribution not being levied on retirement payments and pensions granted by the general regime of social security established by article 201;

Clause II amended by CA 20, December 15th 1998. Original text read: "II - of workers".

III - and the revenues of lotteries.

IV - of the importers of goods or services from abroad, or of those equivalent to them, as set forth by law.

Clause IV added by CA 42, December 19th 2003.

Paragraph 1 - The revenues of the states, the Federal District and the municipalities allotted to social welfare shall be included in the respective budgets, not being part of the budget of the Union.

Paragraph 2 - The proposal for the social welfare budget shall be drawn up jointly by the agencies responsible for health, social security and social assistance, in accordance with the goals and priorities established in the law of budgetary directives, ensuring each area of the management of its funds.

Paragraph 3 - A legal entity indebted to the social welfare system, as established in law, may not contract with the Government nor receive benefits or fiscal or credit incentives therefrom.

Paragraph 4 - The law may institute other sources intended to guarantee the maintenance or expansion of social welfare, with due regard to the provisions of article 154, I.

Paragraph 5 - No social welfare benefit or service may be created, increased or extended without a corresponding source of full funding.

Paragraph 6 - The social contributions referred to in this article may only be collected ninety days after the publication of the law which instituted or modified them, the provisions of article 150, III, b, not applying thereto.

Paragraph 7 - Benevolent entities of social assistance which meet the requirements established in law shall be exempt from contribution to social welfare.

Paragraph 8 - Rural producers, sharecroppers and tenant farmers, placer miners and self-employed fishermen, as well as their spouses, who exercise their activities within a household system and without permanent employees shall contribute to social welfare by applying a rate to the proceeds from the sale of their production and shall be entitled to the benefits provided by law.

Paragraph 8 amended by CA 20, December 15th 1998. The CA eliminated the words "the gold diggers" from the text.

Paragraph 9. The welfare contributions established by clause I of this article may have different rates or bases of assessment, on account of the economic activity, the intensive utilization of work force, the size of the company and the structural conditions of the labor market..

Paragraph 9 added by CA 20, December 15th 1998, and amended by CA 47, July 5th 2005, which introduced the words "the size of company and the structural conditions of the labor market".

Paragraph 10. The law shall establish the criteria of transference of funds for the unified health system and welfare activities from the Union to the States, the Federal District and municipalities, with observance of the respective counter parts of funds.

Paragraph 11. The granting of remission or amnesty of welfare contributions subject of clauses I,

a, and II of this article, for debts of amounts superior to those set forth by supplementary law is prohibited.

Paragraphs 10 and 11 added by CA 20, December 15th 1998.

Paragraph 12. The law shall define the sectors of economic activity for which the contributions levied in accordance with clauses I, b and IV of the caption shall be non-cumulative.

Paragraph 13. The provisions of paragraph 12 shall still apply even in case of gradual, total or parcial substitution of the contribution levied as provided by clause I, a, by the contribution levied on revenues or turn over.

Paragraphs 12 and 13 added by CA 42, December 19th 2003.

SECTION II - HEALTH

Article 196. Health is a right of all and a duty of the State and shall be guaranteed by means of social and economic policies aimed at reducing the risk of illness and other hazards and at the universal and equal access to actions and serv ices for its promotion, protection and recovery.

Article 197. Health actions and services are of public importance, and it is incumbent upon the Government to provide, in accordance with the law, for their regulation, supervision and control, and they shall be carried out directly or by third parties and also by individuals or private legal entities.

Article 198. Health actions and public services integrate a regionalized and hierarchical network and constitute a single system, organized according to the following directives:

I - decentralization, with a single management in each sphere of government;

II - full service, priority being given to preventive activities, without prejudice to assistance services;

III - participation of the community.

Paragraph 1. - The unified health system shall be financed, as set forth in article 195, with funds from the social welfare budget of the Union, the states, the Federal District and the municipalities, as well as from other sources.

Paragraph 2. The Union, the States, the Federal District and the municipalities shall invest, annually, a minimum amount in public health activities and services, calculated as percentages of proceeds and revenues, as follows:

I - in the case of the Union, as per the provisions of the supplementary law subject of paragraph 3;

II - in the case of States and Federal District, the proceeds of taxes subject of the article 155 and the revenues subject of articles 157 and 159, I, a, and clause II, discounted the amounts which shall be remitted to the municipalities;

III - in the case of municipalities and Federal District, the proceeds of the taxes subject of article 156 and the revenues subject of articles 158 and 159, I, b and paragraph 3.

Paragraph 3. A supplementary law, which shall be reassessed at least every five years, shall establish:

I - the percentages mentioned by paragraph 2;

II - the criteria by which the following shall be shared: the fundings of the Union bound to health spendings to be remitted to the States, Federal District and municipalities, and the respective State funds to be remitted to the municipalities, with the aim of a progressive reduction of regional unequalities;

III - the norms for accounting, assessment and control of expenditures with health at federal, state, districtal and municipal levels;

IV - the norms for calculation of the amount to be invested by the Union.

Paragraphs 2 and 3 and respective clauses added by CA 29, September 13th 2000.

Paragraph 4 - The local managers of the Unified Health System may admit communitary health agents and endemy combat agents, by means of a public admission process, in accordance with the nature and complexity of the assignments and with specific requirements of performance.

Paragraph 5 - Federal law shall provide for the juridical regime and the regulatory norms of the activities of the communitary health agents and the endemy combat agents.

Paragraph 6 - Besides the cases mentioned by paragraph 1 of article 41 and paragraph 4 of article 169 of the Federal Constitution, the civil servant exercizing functions equivalents to those of the

communitary health agents and endemy combat agents may lose office in case of non meeting of specific requirements, established by law, to its exercise.

Paragraphs 4, 5 and 6 added by CA 51, February 14th 2006.

Article 199. Health assistance is open to private enterprise.

Paragraph 1 - Private institutions may participate in a supplementary manner in the unified health system, in accordance with the directives established by the latter, by means of public law contracts or agreements, preference being given to philanthropic and non-profit entities.

Paragraph 2 - The allocation of public funds to aid or subsidize profit-oriented private institutions is forbidden.

Paragraph 3 - Direct or indirect participation of foreign companies or capital in health assistance in the country is forbidden, except in cases provided by law.

Paragraph 4 - The law shall provide for the conditions and requirements which facilitate the removal of organs, tissues and human substances for the purpose of transplants, research and treatment, as well as the collection, processing and transfusion of blood and its by-products, all kinds of sale being forbidden.

Article 200. It is incumbent upon the unified health system, in addition to other duties, as set forth by the law:

I - to supervise and control proceedings, products and substances of interest to health and to participate in the production of drugs, equipments, immunobiological products, blood products and other inputs;

II - to carry out actions of sanitary and epidemiologic vigilance as well as those relating to the health of workers;

III - to organize the training of personnel in the area of health;

IV - to participate in the definition of the policy and in the implementation of basic sanitation actions;

V - to foster, within its scope of action, scientific and technological development;

VI - to supervise and control foodstuffs, including their nutritional contents, as well as drinks and water for human consumption;

VII - to participate in the supervision and control of the production, transportation, storage and use of psychoactive, toxic and radioactive substances and products;

VIII - to cooperate in the preservation of the environment, including that of the workplace.

SECTION III - SOCIAL SECURITY

Article 201. The social security shall be organized under a general regime, of contributive character and mandatory affiliation, with due regard to criteria which preserve the financial and long term balance, and shall provide for the following:

Article 201 amended by CA 20, December 15th 1998. This CA became known as the Social Security Amendment. Notice that this CA made also significant changes to [article 40](#) of this Constitution, which regulates the social security of the civil servants. See original text at the end of the article.

I - coverage for the events of illness, disability, death and old age;

II - protection to maternity, especially to women while pregnant;

III - protection to workers in situation of involuntary unemployment;

IV - family-salary and reclusion-aid for the dependents of the low-income insurance;

V - pension for death of the insured, man or woman, to the spouse or companion and dependents, complying with the provisions of paragraph 2.

Paragraph 1. The use of different requirements and criteria for the granting of retirement to the beneficiaries of the general regime of social security is prohibited, excepted the cases of activities exercised under special conditions which harm the health or the physical integrity and the cases of handicapped people, as defined in supplementary law.

Paragraph 1 amended by CA 47, July 5th 2005, which added the reference to the handicapped.

Paragraph 2. No benefit which replaces the contribution salary or work earnings of the insured shall have a monthly value lower than the minimum wage.

Paragraph 3. All contribution salaries included in the calculation of the benefit shall be adjusted by

monetary correction.

Paragraph 4. Adjustment of the benefits is ensured, so that its real value is permanently maintained, in accordance with criteria defined by law.

Paragraph 5. People participating of other social security regimes are prohibited from affiliating, in an optional manner, the general regime of social security.

Paragraph 6. The Christmas bonus for the retired and pensioners shall be based on the value of the earnings in the month of December of each year.

Paragraph 7. It is ensured retirement under the general regime of social security, in the manner prescribed by law, with observance of the following:

I - 35 (thirty-five) years of contribution, if man, and 30 (thirty) years of contribution, if women;

II - 65 (sixty-five) years of age, if man, and 60 (sixty) years of age, if woman, these figures being reduced in 5 (five) years for the rural workers of both genders and for those who perform their activities in a regime of familiar economy, including the rural producer, the placer miner and the handicrafted fisherman.

Paragraph 8. The requirements referred to by clause I of the previous paragraph shall be reduced in 5 (five) years, in the case of teachers who worked exclusively in educational functions in infant education and elementary and intermediary teaching.

Paragraph 9. For retirement effects, it is assured the reciprocal accounting of contribution time in the public administration and in the private sector, rural and urban, in which case the several social security regimes shall financially compensate each other, observing criteria set forth by law.

Paragraph 10. The law shall regulate the coverage of risks of labour accidents, which shall be attended concurrently by the general regime of social security and the private sector.

Paragraph 11. The amounts habitually earned by an employee, on any account, shall be incorporated into the salary for purposes of security contribution and the resulting effects on benefits, in the cases and in the manner provided by law.

Article 201, clauses I to V, paragraphs 1 to 12, added by CA 20, December 15th 1998.

Paragraph 12. The law shall provide for a special system of inclusion into the social security of the low income workers and of the housekeepers of low income families, ensuring them access to benefits of amount equal to one minimum salary.

Paragraph 12 added by CA 41, December 19th 2003, and amended by CA 47, July 5th 2005, which added the reference to housekeepers.

Paragraph 13. The special social security inclusion system subject of paragraph 12 of this article shall have friendlier rates and deadlines than those applied to the other beneficiaries of the general regime of social security.

Paragraph 13 added by CA 47, July 5th 2005.

Original text of this article:

The social security plans, upon contribution, shall provide for, in accordance with the law:

I - coverage for the events of illness, disability, death, including those resulting from employment related accidents, old age and confinement;

II - aid for the support of the dependants of the low-income insured;

III - protection to maternity, especially to pregnant women;

IV - protection to workers in a situation of involuntary unemployment;

V - pension for death of the insured, man or woman, to the spouse or companion, and dependants, complying with the provisions of paragraph 5 and of article 202.

Paragraph 1 - Any person may receive social security benefits, upon contributions, as established in the social security plans.

Paragraph 2 - Adjustment of the benefits is ensured, to the end that its real value is permanently maintained, in accordance with criteria defined by law.

Paragraph 3 - All contribution salaries included in the calculation of the benefit shall suffer monetary correction.

Paragraph 4 - The amounts habitually earned by an employee, on any account, shall be incorporated into the salary for purposes of security contribution and the resulting effects on benefits, in the cases and in the manner provided by law.

Paragraph 5 - No benefit which replaces the contribution salary or work earnings of the insured shall have a monthly value lower than the minimum wage.

Paragraph 6 - The Christmas bonus for the retired and pensioners shall be based on the value of the earnings in the month of December of each year.

Paragraph 7 - Social security shall maintain a collective insurance, of a complementary and optional nature,

funded by additional contributions.

Paragraph 8 - Any subsidy or aid from Government to profit-oriented private security entities are forbidden.

Article 202. The regime of private social security, of supplementary nature and organized in an autonomous manner with regards to the general regime of social security, shall be optional, based on the constitution of reserves which guarantee the contracted benefit, and regulated by supplementary law.

Article 202 amended by CA 20, December 15th 1998. The original text of this article established the age required for retirement; these provisions were amended and turned into paragraphs of article 201.

Paragraph 1. The supplementary law subject of this article shall ensure to the participants of benefit plans of private social security entities the full access to information regarding the management of the respective plans.

Paragraph 2. The contributions of the employer, the benefits and the contract conditions established in estatutes, rules and benefit plans of the private social security entities shall not be considered pieces of the labour contract of the participants, and, except for the benefits received, shall not be considered remuneration of the participants, under the terms of law.

Paragraph 3. The remitting of funds to private social security entities by the Union, States, Federal District and municipalities, their autarchies, foundations, public companies, mixed capital companies and other public entities is forbidden, except if in the role of co-payer, in which case, under any circumstances whatsoever, the normal contribution shall not exceed the one of the ensured.

Paragraph 4. Supplementary law shall regulate the relationship amongst the Union, States, Federal District or municipalities, including their autarchies, foundations, mixed capital companies and corporations directly or indirectly controlled, when in the role of co-payers of private social security entities, and their respective private social security closed entities.

Paragraph 5. The supplementary law referred to in the previous paragraph shall be applied, when possible, to private companies permissionary or concessionary of public services, when co-payers of private social security closed entities.

Paragraph 6. The supplementary law referred to in paragraph 4 of this article shall establish the requirements for the appointment of the members of the directory boards of the private social security closed entities and shall regulate the inclusion of participants in the boards and instances of decision in which their interests are subject of discussion and deliberation.

Article 202, paragraphs 1 to 6 amended by CA 20, December 15th 1998.

SECTION IV - SOCIAL ASSISTANCE

Article 203. Social assistance shall be rendered to whomever may need it, regardless of contribution to social welfare and shall have as objectives:

I - the protection of the family, maternity, childhood, adolescence and old age;

II - the assistance to needy children and adolescents;

III - the promotion of the integration into the labour market;

IV - the habilitation and rehabilitation of the handicapped and their integration into community life;

V - the guarantee of a monthly benefit of one minimum wage to the handicapped and to the elderly who prove their incapability of providing for their own support or having it provided for by their families, as set forth by law.

Article 204. Government actions in the area of social assistance shall be implemented with funds from the social welfare budget, as provided for in article 195, in addition to other sources, and organized on the basis of the following directives:

I - political and administrative decentralization, the coordination and the general rules being incumbent upon the federal sphere, and the coordination and implementation of the respective programmes, upon the state and municipal spheres, as well as upon benevolent and social assistance entities;

II - participation of the population, by means of organizations representing them in the formulation of policies and in the control of actions taken at all levels.

Sole paragraph. The States and the Federal District may allocate up to five tenths percent of their

net tax proceedings to programmes of social inclusion and promotion, it being prohibited the use of these funds to pay for:

I - expenses with salaries and social duties;

II - interests of debts;

III - any other current expense not directly linked to the investments or activities supported.

Sole paragraph added by CA 19, December 19th 2003.

CHAPTER III - EDUCATION. CULTURE AND SPORTS

SECTION I - EDUCATION

Article 205. Education, which is the right of all and duty of the State and of the family, shall be promoted and fostered with the cooperation of society, with a view to the full development of the person, his preparation for the exercise of citizenship and his qualification for work.

Article 206. Education shall be provided on the basis of the following principles:

I - equal conditions of access and permanence in school;

II - freedom to learn, teach, research and express thought, art and knowledge;

III - pluralism of pedagogic ideas and conceptions and coexistence of public and private teaching institutions;

IV - free public education in official schools;

V - appreciation of the value of teaching professionals, guaranteeing, in accordance with the law, career plans for public school teachers, with a professional minimum salary and admittance exclusively by means of public entrance examinations consisting of tests and presentation of academic and or professional credentials;

Clause V shortened by CA 19, June 4th 1998. The original text contained the following words, in fine: ", a single legal regime being insured for all the institutions maintained by the Union". After the CA, the teachers could be hired as civil servants or as contracted teacher.

VI - democratic administration of public education, in the manner prescribed by law;

VII - guarantee of standards of quality.

Article 207. The universities shall have didactic, scientific, administrative, financial and property management autonomy and shall comply with the principle of non-dissociation of teaching, research and extension.

Paragraph 1 - The universities are permitted to hire foreign professors, technicians and scientists as provided by law.

Paragraph 2 - The provisions of this article apply to scientific and technological research institutions.

Paragraphs 1 and 2 added by CA 11, April 30th 1996. Before this CA, Brazilian universities were not allowed to hire foreign professors.

Article 208. The duty of the State towards education shall be fulfilled by ensuring the following:

I - mandatory and free elementary education, including the assurance of its free offer to all those who did not have access to it at the proper age;

Text in purple added by CA 14, September 12th 1996.

II - progressive universalization of the free high-school education;

Clause II amended by CA 14, September 12th 1996. Former text read the word "expansion", instead of universalization.

III - specialized schooling for the handicapped, preferably in the regular school system;

IV - assistance to children of zero to six years of age, in day-care centers and pre-schools;

V - access to higher levels of education, research and artistic creation according to individual capacity;

VI - provision of regular night courses adequate to the conditions of the student;

VII - assistance to elementary school students by means of supplementary programmes providing school material, transportation, food and health assistance.

Paragraph 1 - The access to compulsory and free education is a subjective public right.

Paragraph 2 - The competent authority shall be liable for the failure of the Government in providing compulsory education or providing it irregularly.

Paragraph 3 - The Government has the power to take a census of elementary school students, call them for enrollment and ensure that parents or guardians see to their children's attendance to school.

Article 209. Teaching is open to private enterprise, provided that the following conditions are met:

I - compliance with the general rules of national education;

II - authorization and evaluation of quality by the Government.

Article 210. Minimum curricula shall be established for elementary schools in order to ensure a common basic education and respect for national and regional cultural and artistic values.

Paragraph 1 - The teaching of religion is optional and shall be offered during the regular school hours of public elementary schools.

Paragraph 2 - Regular elementary education shall be given in the Portuguese language and Indian communities shall also be ensured the use of their native tongues and their own learning methods.

Article 211. The Union, the states, the Federal District and the municipalities shall cooperate in the organization of their educational systems.

Paragraph 1 - The Union shall organize the federal educational system and that of the Territories, shall finance the federal public educational institutions and shall have, in educational matters, a redistributive and supplementary function, so as to guarantee the equalization of the educational opportunities and a minimum standard of quality of education, through technical and financial assistance to the states, the Federal District and the municipalities.

Paragraph 2 - The municipalities shall act on a priority basis in elementary education and in the education of children.

Paragraph 3 - The states and the Federal District shall act on a priority basis in elementary and secondary education.

Paragraph 4 - In the operation of their educational systems, the states and municipalities shall establish forms of cooperation, so as to guarantee the universalization of the mandatory education.

Paragraph 1 to 4 amended by CA 14, September 12th 1996.

Article 212. The Union shall apply, annually, never less than eighteen percent, and the states, the Federal District, and the municipalities, at least twenty-five percent of the tax revenues, including those resulting from transfers, in the maintenance and development of education.

Paragraph 1 - The share of tax revenues, transferred by the Union to the states, the Federal District and the municipalities, or by the states to the respective municipalities, shall not be considered, for purposes of the calculation provided by this article, as revenues of the government which transfers it.

Paragraph 2 - For purposes of compliance with the caption of this article, the federal, state and municipal educational systems, as well as the funds applied in accordance with article 213 shall be taken into consideration.

Paragraph 3 - In the distribution of public funds, priority shall be given to the providing for the needs of compulsory education, as set forth in the national educational plan.

Paragraph 4 - The supplementary food and health assistance programmes provided by article 208, VII, shall be financed with funds derived from social contributions and other budgetary funds.

Paragraph 5 - The public elementary education shall have, as an additional source of financing, the social contribution for education, collected from companies, as provided by law.

Paragraph 5 added by CA 14, September 12th 1996.

Article 213. Public funds shall be allocated to public schools, and may be channelled to community, religious or philanthropic schools, as defined by law, which:

I - prove that they do not seek profit and that they apply their surplus funds in education;

II - ensure that their assets shall be assigned to another community, religious or philanthropic

schools, or to the Government in case they cease their activities.

Paragraph 1 - The funds provided by this article may be allocated to elementary and secondary school scholarships, as provided by law, for those who prove insufficiency of means, when there are no vacancies or no regular courses are offered in the public school system of the place where the student lives, the Government being placed under the obligation to invest, on a priority basis, in the expansion of the public system of the locality.

Paragraph 2 - Research and extension activities at university level may receive financial support from the Government.

Article 214. The law shall establish the pluriannual national educational plan, with a view to the coordination and development of teaching, at its various levels, and to the integration of the Government actions leading to:

I - eradication of illiteracy;

II - universalization of school assistance;

III - improvement of the quality of education;

IV - professional training;

V - humanistic, scientific and technological advancement of the country.

SECTION II - CULTURE

Article 215. The state shall ensure to all the full exercise of the cultural rights and access to the sources of national culture and shall support and foster the appreciation and diffusion of cultural expressions.

Paragraph 1 - The State shall protect the expressions of popular, Indian and Afro-Brazilian cultures, as well as those of other groups participating in the national civilization process.

Paragraph 2 - The law shall provide for the establishment of commemorative dates of high significance for the various national ethnic segments.

Paragraph 3 - The shall shall establish the National Plan of Culture, with a plurianual duration, aiming at the cultural development of the Country and at the integration of the actions by the Public Power which lead to:

I - defense and valorization of the Brazilian Cultural Heritage;

II - production, promotion and difusion of culture;

III - formation of qualified personnel for the management of Culture in their multiple dimensions;

IV - democratization of access to culture;

V - valorization of ethnical and regional diversity.

Paragraph 3 added by CA 48, August 10th 2005.

Article 216. The Brazilian cultural heritage consists of the assets of a material and immaterial nature, taken individually or as a whole, which bear reference to the identity, action and memory of the various groups that form the Brazilian society, therein included:

I - forms of expression;

II - ways of creating, making and living;

III - scientific, artistic and technological creations;

IV - works, objects, documents, buildings and other spaces intended for artistic and cultural expressions;

V - urban complexes and sites of historical, natural, artistic, archaeological, paleontological, ecological and scientific value.

Paragraph 1 - The Government shall, with the cooperation of the community, promote and protect the Brazilian cultural heritage, by means of inventories, registers, vigilance, monument protection decrees, expropriation and other forms of precaution and preservation.

Paragraph 2 - It is incumbent upon the Government, in accordance with the law, to manage the keeping of the governmental documents and to make them available for consultation to whomever may need to do so.

Paragraph 3 - The law shall establish incentives for the production and knowledge of cultural assets and values.

Paragraph 4 - Damages and threats to the cultural heritage shall be punished in accordance with the law.

Paragraph 5 - All documents and sites bearing historical reminiscence to the ancient communities of runaway slaves are protected as national heritage.

Paragraph 6. The States and the Federal District may allocate up to five tenths percent of their net tax proceedings to a State fund for fomenting culture, it being prohibited the use of these funds to pay for: I - expenses with salaries and social duties; II - interests of debts; III - any other current expense not directly linked to the investments or activities supported.

Paragraph 6 added by CA 19, December 19th 2003.

SECTION III - SPORTS

Article 217. It is the duty of the State to foster the practice of formal and informal sports, as a right of each individual, with due regard for:

I - the autonomy of the directing sports entities and associations, as to their organization and operation;

II - the allocation of public funds with a view to promoting, on a priority basis, educational sports and, in specific cases, high performance sports;

III - differentiated treatment for professional and non-professional sports;

IV - the protection and fostering of sports created in the country.

Paragraph 1 - The Judicial Power shall only accept legal actions related to sports discipline and competitions after the instances of the sports courts, as regulated by law, have been exhausted.

Paragraph 2 - The sports courts shall render final judgement within sixty days, at the most, counted from the date of the filing of the action.

Paragraph 3 - The Government shall encourage leisure, as a form of social promotion.

CHAPTER IV - SCIENCE AND TECHNOLOGY

Article 218. The State shall promote and foster scientific development, research and technological expertise.

Paragraph 1 - Basic scientific research shall receive preferential treatment from the State, with a view to public well-being and the advancement of science.

Paragraph 2 - Technological research shall be directed mainly to the solution of Brazilian problems and to the development of the national and regional productive system.

Paragraph 3 - The State shall support the training of human resources in the areas of science, research and technology and shall offer special work means and conditions to those engaged in such activities.

Paragraph 4 - The law shall support and foster the companies which invest in research, creation of technology appropriate for the country, training and improvement of their human resources and those which adopt remuneration systems that ensure employees a share of the economic earnings resulting from the productivity of their work, apart from the salary.

Paragraph 5 - The states and the Federal District may allocate a share of their budgetary revenues to public entities which foster scientific and technological education and research.

Article 219. The domestic market is part of the national patrimony and shall be supported with a view to permitting cultural and socio-economic development, the well-being of the population and the technological autonomy of the country, as set forth in a federal law.

CHAPTER V - SOCIAL COMMUNICATION

Article 220. The manifestation of thought, the creation, the expression and the information, in any form, process or medium shall not be subject to any restriction, with due regard to the provisions of this constitution.

Paragraph 1 - No law shall contain any provision which may represent a hindrance to full freedom of press in any medium of social communication, with due regard to the provisions of article 5, IV, V, X XIII, and XIV.

Paragraph 2 - Any and all censorship of a political, ideological and artistic nature is forbidden.

Paragraph 3 - It is within the competence of federal laws to:

I - regulate public entertainment and shows, it being incumbent upon the Government to inform on their nature, the age brackets they are not recommended for and places and times unsuitable for their exhibition:

II - establish legal means which afford persons and families the possibilities of defending themselves against radio and television programmes and schedules which go contrary to the provisions of article 221, as well as against publicity of products, practices and services which may be harmful to health or to the environment.

Paragraph 4 - Commercial advertising of tobacco, alcoholic beverages, pesticides, medicines and therapies shall be subject to legal restrictions, in accordance with item II of the preceding paragraph and shall contain, whenever necessary, a warning concerning the damages which may be caused by their use.

Paragraph 5 - Social communication media may not, directly or indirectly, be subject to monopoly or oligopoly.

Paragraph 6 - The publication of a printed social communication medium shall not depend on license from authorities.

Article 221. The production and programming of radio and television stations shall comply with the following principles:

I - preference to educational, artistic, cultural and informative purposes;

II - promotion of national and regional culture and fostering of independent productions aimed at their diffusion;

III - regional differentiation of cultural, artistic and press production, according to percentages established by the law;

IV - respect for the ethical and social values of the person and the family.

Article 222. The ownership of newspapers companies, sound broadcasting companies and sounds and images broadcasting companies is right exclusive of native Brazilians or those naturalized for more than 10 (ten) years, or of corporations constituted in accordance to Brazilian laws and with head office in the country.

Paragraph 1. In any case, at least 70% (seventy percent) of the total capital and of the voting capital of newspapers companies, sound broadcasting companies and sounds and images broadcasting companies shall be owned, directly or indirectly, by native Brazilians or those naturalized for more than 10 (ten) years, who shall exercise the administration of the activities and establish the contents of the programming.

Paragraph 2. The editorial responsibility and the activities of selection and direction of the broadcasted programming are exclusive of native Brazilians or those naturalized for more than 10 (ten) years, in any medium of social communication.

Paragraph 3. The electronic media of social communication, regardless of the technology employed for rendering the service, shall observe the principles established by article 221, as determined by specific law, which shall also guarantee the priority of Brazilian professionals in the execution of national productions.

Paragraph 4. The law shall regulate the participation of foreigner capitals in the companies referred to by paragraph 1.

Paragraph 5. Alterations in the control of companies referred to by paragraph 1 shall be communicated to the National Congress.

Article 222 amended by CA 36, May 28th 2002. Before this CA, foreigner citizens and foreigner capital were forbidden from participating of communication companies. This CA allowed some participation, which attracted some capital, but maintained the restriction that only Brazilians should manage those companies.

Original text of this article:

"Newspapers and sound broadcasting companies, or sound and image broadcasting companies shall be owned exclusively by native Brazilians or those naturalized for more than ten years, who shall be responsible for their management and intellectual orientation.

Paragraph 1 - Legal entities shall not participate in the capital stock of journalistic and radio broadcasting companies, except for political parties and for corporations whose capital is exclusively and nominally owned by Brazilians.

Paragraph 2 - The participation referred to in the preceding paragraph may only take place through non-voting capital and shall not exceed thirty percent of the capital stock."

Article 223. The Executive Power has the authority to grant and renew concession, permission and authorization for radio broadcasting and sound and image broadcasting services with due regard to the principle of the complementary roles of private, public and state systems.

Paragraph 1 - The National Congress shall consider such proposition in the period of time set forth in article 64, paragraphs 2 and 4. counted from the date of receipt of the message.

Paragraph 2 - The non-renewal of the concession or permission shall depend on approval by at least two-fifths of the National Congress. in nominal voting.

Paragraph 3 - The granting or renewal shall only produce legal effects after approval by the National Congress, as set forth in the preceding paragraphs.

Paragraph 4 - Cancellation of a concession or permission prior to its expiring date shall depend on a court decision.

Paragraph 5 - The term for a concession or permission shall be ten years for radio stations and fifteen years for television channels.

Article 224. For the purposes of the provisions of this chapter. the National Congress shall institute, as an auxiliary agency, the Social Communication Council, in the manner prescribed by law.

CHAPTER VI - ENVIRONMENT

Article 225. All have the right to an ecologically balanced environment. which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.

Paragraph 1 - In order to ensure the effectiveness of this right, it is incumbent upon the Government to:

I - preserve and restore the essential ecological processes and provide for the ecological treatment of species and ecosystems;

II - preserve the diversity and integrity of the genetic patrimony of the country and to control entities engaged in research and manipulation of genetic material;

III - define, in all units of the Federation, territorial spaces and their components which are to receive special protection. any alterations and suppressions being allowed only by means of law, and any use which may harm the integrity of the attributes which justify their protection being forbidden;

IV - require, in the manner prescribed by law, for the installation of works and activities which may potentially cause significant degradation of the environment, a prior environmental impact study, which shall be made public;

V - control the production, sale and use of techniques, methods or substances which represent a risk to life, the quality of life and the environment;

VI - promote environment education in all school levels and public awareness of the need to preserve the environment;

VII - protect the fauna and the flora, with prohibition, in the manner prescribed by law, of all practices which represent a risk to their ecological function, cause the extinction of species or subject animals to cruelty.

Paragraph 2 - Those who exploit mineral resources shall be required to restore the degraded environment, in accordance with the technical solutions demanded by the competent public agency, as provided by law.

Paragraph 3 - Procedures and activities considered as harmful to the environment shall subject the infractors, be they individuals or legal entities, to penal and administrative sanctions, without prejudice to the obligation to repair the damages caused.

Paragraph 4 - The Brazilian Amazonian Forest, the Atlantic Forest, the Serra do Mar, the Pantanal Mato-Grossense and the coastal zone are part of the national patrimony, and they shall be used, as provided by law, under conditions which ensure the preservation of the environment, therein included the use of mineral resources.

Paragraph 5 - The unoccupied lands or lands seized by the states through discriminatory actions which are necessary to protect the natural ecosystems are inalienable.

Paragraph 6 - Power plants operated by nuclear reactor shall have their location defined in federal law and may not otherwise be installed.

CHAPTER VII - FAMILY, CHILDREN, ADOLESCENTS AND THE ELDERLY

Article 226. The family, which is the foundation of society, shall enjoy special protection from the State.

Paragraph 1 - Marriage is civil and the marriage ceremony is free of charge.

Paragraph 2 - Religious marriage has civil effects, in accordance with the law.

Paragraph 3 - For purposes of protection by the State, the stable union between a man and a woman is recognized as a family entity, and the law shall facilitate the conversion of such entity into marriage.

Paragraph 4 - The community formed by either parent and their descendants is also considered as a family entity.

Paragraph 5 - The rights and the duties of marital society shall be exercised equally by the man and the woman.

Paragraph 6 - Civil marriage may be dissolved by divorce, after prior legal separation for more than one year in the cases set forth by law, or after two years of proven de facto separation.

Paragraph 7 - Based on the principles of human dignity and responsible parenthood, family planning is a free choice of the couple, it being within the competence of the State to provide educational and scientific resources for the exercise of this right, any coercion by official or private agencies being forbidden.

Paragraph 8 - The State shall ensure assistance to the family in the person of each of its members, creating mechanisms to suppress violence within the family.

Article 227. It is the duty of the family, the society and the State to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.

Paragraph 1 - The State shall promote full health assistance programmes for children and adolescents, the participation of non-governmental entities being allowed, and with due regard to the following precepts:

I - allocation of a percentage of public health care funds to mother and child assistance;

II - creation of preventive and specialized care programmes for the physically, sensorially or mentally handicapped, as well as programmes for the social integration of handicapped adolescents, by means of training for a profession and for community life, and by means of facilitating the access to communal facilities and services, by eliminating prejudices and architectonic obstacles.

Paragraph 2 - The law shall regulate construction standards for public sites and buildings and for the manufacturing of public transportation vehicles, in order to ensure adequate access to the handicapped.

Paragraph 3 - The right to special protection shall include the following aspects:

I - minimum age of fourteen years for admission to work, with due regard to the provisions of article 7, XXXIII;

II - guarantee of social security and labour rights;

III - guarantee of access to school for the adolescent worker;

IV - guarantee of full and formal knowledge of the determination of an offense, equal rights in the procedural relationships and technical defense by a qualified professional, in accordance with the provisions of the specific protection legislation;

V - compliance with the principles of brevity, exceptionality and respect to the peculiar conditions of the developing person, when applying any measures that restrain freedom;

VI - Government fostering, by means of legal assistance, tax incentives and subsidies, as provided by law, of the protection, through guardianship, of orphaned or abandoned children or adolescents;
VII - prevention and specialized assistance programmes for children and adolescents addicted to narcotics or related drugs.

Paragraph 4 - The law shall severely punish abuse, violence and sexual exploitation of children and adolescents.

Paragraph 5 - Adoption shall be assisted by the Government, as provided by law, which shall establish cases and conditions for adoption by foreigners.

Paragraph 6 - Children born inside or outside wedlock or adopted shall have the same rights and qualifications, any discriminatory designation of their filiation being forbidden.

Paragraph 7 - In attending to the rights of children and adolescents, the provisions of article 204 shall be taken into consideration.

Article 228. Minors under eighteen years of age may not be held criminally liable and shall be subject to the rules of the special legislation.

Article 229. It is the duty of parents to assist, raise and educate their under- age children and it is the duty of children of age to help and assist their parents in old-age, need or sickness.

Article 230. It is the duty of the family, society and the State, to assist the elderly, ensuring their participation in the community, defending their dignity and well-being and guaranteeing their right to life.

Paragraph 1 - Assistance programmes for the elderly shall be carried out preferably within their homes.

Paragraph 2 - Those over sixty-five years of age are guaranteed free urban public transportation.

CHAPTER VIII - INDIANS

Article 231. Indians shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property.

Paragraph 1 - Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions.

Paragraph 2 - The lands traditionally occupied by Indians are intended for their permanent possession and they shall have the exclusive usufruct of the riches of the soil, the rivers and the lakes existing therein.

Paragraph 3 - Hydric resources, including energetic potentials, may only be exploited, and mineral riches in Indian land may only be prospected and mined with the authorization of the National Congress, after hearing the communities involved, and the participation in the results of such mining shall be ensured to them, as set forth by law.

Paragraph 4 - The lands referred to in this article are inalienable and indisposable and the rights thereto are not subject to limitation.

Paragraph 5 - The removal of Indian groups from their lands is forbidden. except ad referendum of the National Congress, in case of a catastrophe or an epidemic which represents a risk to their population, or in the interest of the sovereignty of the country, after decision by the National Congress, it being guaranteed that, under any circumstances, the return shall be immediate as soon as the risk ceases.

Paragraph 6 - Acts with a view to occupation, domain and possession of the lands referred to in this article or to the exploitation of the natural riches of the soil, rivers and lakes existing therein, are null and void, producing no legal effects, except in case of relevant public interest of the Union, as provided by a supplementary law and such nullity and voidness shall not create a right to indemnity or to sue the Union, except in what concerns improvements derived from occupation in good faith, in the manner prescribed by law.

Paragraph 7 - The provisions of article 174, paragraphs 3 and 4, shall not apply to Indian lands.

Article 232. The Indians, their communities and organizations have standing under the law to sue to defend their rights and interests, the Public Prosecution intervening in all the procedural acts.

TITLE IX - GENERAL CONSTITUTIONAL PROVISIONS

Article 233. (Revoked)

Article 233 revoked by CA 28, May 25th 2000.

Original text of this article:

"For the purposes of article 7, XXIX, rural employers shall, every five years, present evidence before the Labour Courts that they have fulfilled their labour obligations toward rural employees in the presence of the latter and of their union representative.

Paragraph 1 - Upon evidence that the obligations mentioned in this article have been fulfilled, the employer shall be exempt from any charges deriving from those obligations in the respective period. In case the employee and his representative do not agree with the evidence presented by the employer, it shall be incumbent upon the Labour Courts to resolve the dispute.

Paragraph 2 - The employee shall, in any case, have the right to claim in court the credits to which he believes he is entitled referring to the last five years.

Paragraph 3 - The evidence mentioned in this article may be produced at intervals of less than five years, at the discretion of the employer."

Article 234. It is forbidden for the Union to assume, directly or indirectly, as a result of the creation of a state, burdens related to expenses with inactive personnel and with charges and repayments of internal or foreign debt of the public administration, including those of the indirect administration.

Article 235. During the first ten years after the creation of a state the following basic rules shall be observed:

I - the Legislative Assembly shall be composed of seventeen Deputies if the population of the state is less than six hundred thousand inhabitants, and of twenty-four Deputies if it is equal to or greater than this number, up to one million and five hundred thousand inhabitants;

II - the Government shall have at most ten Secretariats;

III - the Court of Accounts shall have three members, appointed by the elected Governor, among Brazilians of proven good repute and notable knowledge;

IV - the Court of Justice shall have seven Judges;

V - the first Judges shall be appointed by the elected Governor, chosen in the following manner:

a) five of them from among judges with more than thirty-five years of age, in exercise within the area of the new state or of the original one:

b) two of them from among public prosecutors, under the same conditions, and from among attorneys of proven good repute and legal knowledge, with at least ten years of professional practice, complying with the procedures set forth in this Constitution;

VI - in the case of a state which originated from a federal territory, the first five Judges may be chosen from among judges from any part of the country;

VII - in each judicial district the first Judge, the first Public Prosecutor and the first Public Defender shall be appointed by the elected Governor after a public entrance examination of tests and presentation of academic and professional credentials;

VIII - until the promulgation of the state Constitution, the offices of Attorney-General, Advocate-General and Defender-General shall be held by lawyers of notable knowledge, with at least thirty-five years of age, appointed by the elected Governor and removable *ad nutum*;

IX - if the new state results from the transformation of a federal territory the transfer of financial burden from the Union for payment of opting civil servants who belonged to the Federal Administration, shall take place as follows:

a) in the sixth year after its creation, the state shall assume twenty percent of the financial burden for the payment of the civil servants, the remainder continuing as a responsibility of the Union;

b) in the seventh year, thirty percent shall be added to the burden of the state and, in the eighth

year, the remaining fifty percent;

X - the appointments subsequent to the first ones, for the offices mentioned in this article, shall be regulated by the state Constitution;

XI - the budgetary personnel expenses shall not exceed fifty percent of the revenues of the state.

Article 236. Notary and registration services shall be exercised by private entities by Government delegation.

Paragraph 1 - The law shall regulate the activities, discipline the civil and criminal liability of notaries, registrars and their officials and define the supervision of their acts by the Judicial Power.

Paragraph 2 - Federal law shall set forth general rules for the establishment of the fees for the acts performed by notary and registration services.

Paragraph 3 - The entrance in notary and registration activities shall depend on a public entrance examination of tests and presentation of academic and professional credentials, and an office shall not be permitted to remain vacant for more than six months, without the opening of a public examination to fill it, either by appointment or transference.

Article 237. The supervision and control of foreign trade, which are essential to the defense of national financial interests, shall be exercised by the Ministry of Finance.

Article 238. The law shall organize the sale and resale of petroleum-derived fuels, fuel alcohol and other fuels derived from renewable raw-materials. respecting the principles of this Constitution.

Article 239. The revenues from contributions to the Social Integration Program, created by the Supplementary Law number 7 of September 7, 1970, and to the Civil Servants Asset Development Programme, created by the Supplementary Law number 8, of December 3, 1970, shall, from the date of the promulgation of this Constitution, fund the unemployment insurance programme and the bonus referred to in paragraph 3 of this article, in the manner prescribed by law.

Paragraph 1 - At least forty percent of the funds mentioned in the caption of this article shall be allocated to finance economic development programmes, through the National Economic and Social Development Bank, with remuneration criteria which preserve their value.

Paragraph 2 - The accrued assets of the Social Integration Programme and of the Civil Servants Asset Development Programme shall be preserved, maintaining the criteria for withdrawal in the situations provided for in specific laws, with the exception of withdrawal by reason of marriage, it being forbidden the distribution of the revenues referred to in the caption of this article, for deposit in the personal accounts of the participants.

Paragraph 3 - Employees who receive monthly remuneration of up to two minimum wages from employers who contribute to the Social Integration Programme and to the Civil Servants Asset Development Programme shall be ensured the annual payment of one minimum wage, in which value the income of the individual accounts shall be computed, in the case of those who already participated in such programmes before the date of the promulgation of this Constitution.

Paragraph 4 - Funding of the unemployment insurance programme shall receive an additional contribution from companies in which employee turnover exceeds the average turnover rate of the sector, in the manner established by law.

Article 240. The present compulsory contributions calculated on the payroll, made by employers, intended for private social service and professional training entities linked to the labour union system, are excluded from the provisions of article 195.

Article 241. The Union, the States, the Federal District and the municipalities shall regulate by means of law the public consortia and the cooperation convenes among the federated entities, authorizing the associated management of public services, as well as the total or partial transference of charges, services, personnel and assets essential to the continuity of the transferred services.

Article 241 added by CA 19, June 4th 1998. Original text:

"The principle of article 39, paragraph 1, corresponding to the careers regulated in article 13 5 of this Constitution, shall apply to career police officers."

Article 242. The principle of article 206, IV, shall not apply to the official educational institutions created by state or municipal law and in existence on the date of the promulgation of this Constitution, which are not totally or predominantly maintained with Public funds.

Paragraph 1 - The teaching of Brazilian History shall take into account the contribution of the different cultures and ethnic groups to the formation of the Brazilian people.

Paragraph 2 - The Pedro II School, located in the city of Rio de Janeiro, shall be maintained in the federal sphere.

Article 243. Tracts of land in any region of the country where illegal plantations of psychotropic plants are found shall be expropriated immediately and specifically assigned to the settlement of tenant farmers, to the culture of foodstuffs and medicinal products, with no indemnity to the owner and without prejudice to other sanctions set forth by law.

Sole paragraph - Any and all good of economic value seized as a result of illegal traffic or narcotics and similar drugs shall be confiscated and reverted to the benefit of institutions and personnel specialized in the treatment and cure of drug-addicts and in the equipping and funding of supervision, control, prevention and repression of drug traffic crime.

Article 244. The law shall provide for the adaptation of presently existing sites and buildings of public use and of the public transportation vehicles in order to guarantee adequate access to the handicapped, as set forth in article 227, paragraph 2.

Article 245. The law shall provide for the cases and conditions in which the Government shall give assistance to the needy heirs and dependants of victims of willful crimes, without prejudice to the civil responsibility of the perpetrator of the offense.

Article 246. The adoption of any provisional measure for the regulation of any article of the Constitution whose wording had been altered by means of amendment enacted between January 1st of 1995 and the promulgation of this amendment is forbidden.

This article was included by CA 6, August 15th 1995, and altered by CA 7, same date. Then, it was amended again by CA 32, December 11th 2001. All these CAs attempted to impose limits to the overuse of provisional measures; CA 32 amended the articles which regulate provisional measures (see [article 62](#)).

Article 247. The laws mentioned by clause II of paragraph 1 of article 41 and by paragraph 7 of article 169 shall establish criteria and special guarantees for the loss of office by the tenured civil servants who, by force of the assignments of their effective offices, carry out activities exclusive of the State.

Sole paragraph. In cases of insufficient performance, the loss of office shall only take place by means of an administrative proceeding in which the servants are ensured of contradictory and ample defense.

Article 247 added by CA 19, June 4th 1998. Examples of servants who work on activities exclusive of the State: federal police, tax auditors, public account auditors, etc. Notice that judges and prosecutors have their own guarantees, granted by their own specific statutes.

Article 248. The benefits paid, on any account, by the entity in charge of the general regime of social security, even if funded by the National Treasure, and those not subject to the maximum limit established for the benefits granted under this regime shall observe the limits established by the article 37, XI.

Article 248 added by CA 20, December 15th 1998.

Article 249. With the aim of secure funds for payment of retirement compensations and pensions granted to the respective servants and their dependants, in addition to the resources of the respective Treasures, the Union, States, Federal District and municipalities shall be allowed to constitute funds composed by resources derived of contributions and by goods, rights and assets of any nature, by means of a law which shall provide for the nature and administration of such funds.

Article 249 added by CA 20, December 15th 1998.

Article 250. With the aim of secure funds for the payment of benefits granted by the general regime of social security, in addition to the resources of its revenues collection, the Union shall be allowed to constitute fund composed by goods, rights and assets of any nature, by means of a law which shall provide for the nature and administration of such fund.

Article 250 added by CA 20, December 15th 1998.

Below, comments about the most recent Constitutional Amendments, starting from Amendment 45, of December 8th 2004.

All the amendments were already included in the proper paragraphs of the text of the [Constitution](#).

Constitutional Amendment 45, December 8th 2004.

This CA became known as the Reform of Judiciary Power; several articles about the Public Prosecution were also changed/added.

The CA changed articles [5, clause](#)

[LXXVIII, 36, 52, 92, 93, 95, 98, 99, 102, 103, 104, 105, 107, 109, 111, 112, 114, 115, 125, 126, 127, 128, 129, 134](#) and [168](#); also, this CA created articles [103-A, 103-B, 111-A](#) and [130-A](#).

Some comments on the amendments:

- The Brazilian Justice is one of the slowest in the world; there are anecdotal stories of cases lasting more than 50 years. For example, the airport Tom Jobim, [most important in Rio de Janeiro](#), was inaugurated in 1952, but until today the ex-owners are disputing the expropriation in Justice (read other cases in Portuguese [here](#)). Now, by force of the clause LXXVIII of article 5, celerity of Justice, with a reasonable duration of proceedings, is an individual right. However, as with many other Constitutional individual rights (e.g., free legal assistance, decent minimum salary), there is no indication of when/how/by whom the right will be in fact exercised.
- The CA created the National Council of Justice; because the NCoJ was assigned with responsibilities which rested formerly with the other [Brazilian Courts](#), several articles were amended to adapt to the new situation. Also, new rules apply to admission, promotion and training of judges, as well as the administrative, budgetary and financial management of Courts.
- Article 103-A created the binding summary (in Portuguese, *súmula vinculante*). In Brazil, in the name of the independence of the Judiciary, any judge could, in most cases, ignore decisions by the Superior Courts (the only exception was in the cases of Declaratory Acts of Constitutionality, which could not be contradicted); this meant that a significative number of cases would go all the way up to the Superior Courts, only to have the individual decisions by judges revoked. Now, in special circumstances, at discretion of the Justices of the Supreme Federal Court, a binding summary may be issued; once the binding summary is issued, all Judges and the Public Administration must abide to it.
- Article 103-B instituted the external control of the Judiciary Power (much criticized by Judges), by creating the National Council of Justice. In the composition of the NCoJ, there are Justices, Judges, Prosecutors, lawyers and citizens; many Judges protested against this, claiming this was "undue interference in the autonomy of the Judiciary". The NCoJ can not dispute the merit of the decisions, but must hear complaints about conduct of Judges. The NCoJ has powers to evaluate the legality of administrative acts of the Justice; in 2005, the NCoJ determined that employment of relatives is prohibited (read [here](#)).
- Article 111-A changed the composition of the Superior Labour Court; the Labour Justice in Brazil is the one which has been gone through more changes in recent times; one of the reasons for this is that the Labour Justice was created by a [Labour Law](#) which is more than 60 years old.
- Article 130-A created the National Council of Public Prosecution, to exercise the external control of the Public Prosecution.

Constitutional Amendment 47, May 5th 2005.

Changes [article 20, clause IV](#).

The article lists the properties of the Union. Before this CA, all maritime islands belonged to the Union, including, e.g., the islands where the cities of [Florianópolis](#) and [São Luís](#) were constructed. The amendment excluded islands which are seats of municipalities from the list of properties of the Union, unless such islands are of public or environmental interest.

Constitutional Amendment 47, July 5th 2005.

The most important amendments were:

- Changed [article 37](#) (Public Administration).

The clause 11 of this article imposed limits to the salaries which can be paid to civil servants. The amendment 47 added paragraph 12 to the article, which establishes another limit (inferior to the limit defined by clause 11) which may be applied to the States; this sub-limit is equal to 90.25% of the Federal limit.

- Changed [article 195](#), paragraph 9, to allow small sized companies to pay lower social security taxes.

- Amended [article 201](#), to include housekeepers into the social security system. Before the amendment, housekeepers who spent the life working at home reached elderly without any social security assistance; the amendment determines the payment of one minimum wage to housekeepers of low income.

A law must be passed before this amendment is enforced; such law is not in Congress yet.

Constitutional Amendment 48, August 10th 2005.

Added paragraph 3 to [article 215](#), creating the National Plan of Culture and listing their functions.

Constitutional Amendment 49, February 8th 2006.

Changed [article 21, clause XXIII](#).

Brazil is definitely competing (and winning) for the title of most detailed Constitution in the world. Before the amendment, the handling of radioisotopes could be authorized by concession or permission of the Union; after the amendment, only by permission. The difference is that the concession is materialized by a contract, with rights and duties of both parties; in the permission, the authorization is given and may be revoked by the Union at any time (the permissionary has very few rights).

This amendment also included specific normatization regarding isotopes with half-life equal or shorter than two hours.

Constitutional Amendment 50, February 14th 2006.

In 2005, the images of the Government and of the Congress were stained by a huge [corruption scandal](#).

This CA 50 was discussed and passed very quickly, in an attempt to improve the image of Congress.

The CA changed [article 57](#).

- The vacation of members of Congress was shortened. Former text obliged Congress to meet from February 15th to June 30th and from August 1st to December 15th; now, Congress must meet from February 2nd to July 17th and from August 1st to December 2nd.

Still, they have official 75 vacation days. On top of that, they may only suffer some kind of punishment if they don't attend the sessions in which there is voting, and these happen only from Tuesday to Thursday. That means that most Congressmen and Congresswomen fly away from Brasília every Thursday and only return next Tuesday.

- In special circumstances, the Congress may be called to meet during the vacations. In some recent occasions, there were disagreements between Senate and Chamber about the convenience of such callings; to circumvent this problem, an amendment established that only with the agreement of both Houses will the Congress be called during vacations.

During such special calls, the members of the Houses received extra payments; until CA 32, of 2001, they were paid two monthly salaries (on top of normal salary) for each call (this is one of the reasons to explain why there were so many calls from 1996 to 2000). CA 32 determined that the extra payment could be no more than one monthly salary. Now, CA 50 abolished the extra salary

altogether (only normal salary is paid).

This CA didn't change the fact, though, that every member of Parliament (in the Union and most of the States) is paid fifteen salaries: twelve monthly salaries, the 13th salary paid to every worker, and two extra salaries, one in the beginning and one in the end of the year.

Constitutional Amendment 51, February 14th 2006.

Amended [article 198](#).

This CA is all about the community health agents and endemy combat agents. These agents have a peculiarity with distinguish them from other health servants: they are much needed for some time, and then become unnecessary (for example, after an endemy is controlled).

Right before the last elections, in 2002, candidate José Serra, who was then Minister of Health, dismissed several agents who had combated [dengue](#) in Rio de Janeiro. This fact gained the headlines first because dengue would return a few months later, and second because President Lula used the images of several ex-agents suffering unemployment in his campaign.

The CA determined that a special labor regime must be created, regarding specifically the above agents.

Constitutional Amendment 52, March 8th 2006.

This CA amended [article 17](#).

Before this CA, a controversial interpretation of the electoral law by the [Superior Electoral Court](#) determined that if Parties A and B adjusted a coalition for the Presidential elections, Parties A and C could not adjust a coalition for State elections (Parties A and B could repeat the coalition in the States, but were not obliged to).

Some Parties were affected by this. For example, [PMDB](#), the largest Brazilian Party, has affiliates of several ideologies; at federal level, PMDB may want to support leftist PT, but in some States it may be more convenient to joint forces with PFL. This was forbidden, not it is permitted.

However, the Superior Electoral Court determined that this amendment (like any other regarding the elections) can be enforced only one year after its enactment; so, in the 2006 elections, coalitions are still vinculated.