

# 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: (CA No. 45, 2004)

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, and anonymity is 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 event 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, and a final and unappealable decision is required in the first 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 observe 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;

XXXVIII – 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;

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

XL – penal law shall not be retroactive, except to benefit the defendant;

XLI – 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 – 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 data banks 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 compensate 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;

LXXVIII – a reasonable length of proceedings and the means to guarantee their expeditious consideration are ensured to everyone, both in the judicial and administrative spheres.

Paragraph 1. The provisions defining fundamental rights and guarantees are immediately applicable.

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. International human rights treaties and conventions which are approved in each House of the National Congress, in two rounds of voting, by three fifths of the votes of the respective members shall be equivalent to constitutional amendments.<sup>1</sup>

---

<sup>1</sup> See International Acts equivalent to Constitutional Amendments.



Paragraph 4. Brazil accepts the jurisdiction of an International Criminal Court to whose creation it has expressed its adhesion.

## CHAPTER II

### Social Rights

**Article 6.** Education, health, food, work, housing, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute are social rights, as set forth by this Constitution. (CA No. 26, 2000; CA No. 64, 2010)

**Article 7.** The following are rights of urban and rural workers, among others that aim to improve their social conditions: (CA No. 20, 1998; CA No. 28, 2000; CA No. 53, 2006)

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 monthly 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 paid to each dependent of low-income workers, under the terms of the 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 workday 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 bargaining;

- 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 – advance notice of dismissal in proportion to the length of service, of at least thirty days, as provided by law;
- XXII – reduction of employment related risks by means of health, hygiene and safety rules;
- XXIII – additional remuneration for strenuous, unhealthy or dangerous work, as established by law;
- XXIV – retirement pension;
- XXV – free assistance for children and dependents of up to five 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 limitation of five years for urban and rural workers, up to the limit of two years after the end of the employment contract;
- a) (revoked);
- b) (revoked);
- 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 sixteen years of age, except as an apprentice, for minors above fourteen years of age;
- 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 regard for 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, which base 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 required to join or to remain a member of a union;

VI – the collective labour 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 the workers to decide on the advisability of exercising it and on the interests to be 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 the penalties of the law.

**Article 10.** The participation of workers and employers is ensured in the collegiate bodies of government agencies in which their professional or social 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: (RCA No. 3, 1994; CA No. 23, 1999; CA No. 54, 2007)

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, to a Brazilian father or a Brazilian mother, provided that they are registered with a competent Brazilian authority, or come to reside in the Federative Republic of Brazil, and opt for the Brazilian nationality at any time after reaching majority;

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.

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 – that of Minister of Defense.

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.

**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: (RCA No. 4, 1993; CA No. 16, 1997)

- 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 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, the 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 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 on the date of its publication, and shall not apply to the elections that take place within one year of it being in force. (CA No. 4, 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: (CA No. 52, 2006)

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 selection criteria and the composition of their electoral coalitions, without being required to follow the same party alliances at the national, state, Federal District, or municipal levels, and their by-laws shall establish rules of party loyalty and discipline.

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. (CA No. 15, 1996)

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.

**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: (CA No. 46, 2005)

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; sea beaches; ocean and off-shore islands, excluding those which are the seat of Municipalities, with the exception of areas assigned to public services and to federal environmental units, and those referred to in article 26, II;

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 pre-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, or financial compensation for the exploitation thereof, is assured to the states, the Federal District and the municipalities, as well as to agencies of the direct 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, is 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: (CA No. 8, 995; CA No. 19, 1998; CA No. 49, 2006)

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 matériel;

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;

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

- a) the services of sound broadcasting and of sound and image broadcasting;
- b) the electric power services and facilities and the energetic exploitation of watercourses, jointly with the states wherein those hydroenergetic 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 plainclothes police, the uniformed police force, and the uniformed fire brigade of the Federal District, as well as to provide financial support to the Federal District for the carrying out of public services by means of a specific fund;

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

XVI – classify, for indicative purposes, public entertainment and radio 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, airport, and border police;

XXIII – operate nuclear energy services and facilities of any nature and 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 a permission, authorization is granted for the sale and use of radioisotopes in research and for medical, agricultural, and industrial purposes;
- c) under a permission, authorization is granted for the production, sale, and use of radioisotopes with a half-life lower 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: (CA No. 19, 1998)

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, matériel, 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 military polices;

XXIII – social security;

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 for governmental entities, associate government agencies, and foundations of the Union, the States, the Federal District, and the Municipalities, in accordance with article 37, XXI, and for public enterprises and joint stock companies, under the terms of article 173, paragraph 1, III;

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: (CA No. 53, 2006)

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

II – 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 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.* Supplementary laws shall establish rules for the cooperation between the Federal Government 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 polices.

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 on 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.

### **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. (CA No. 5, 1995)

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 3. The states may, by means of a supplementary law, establish metropolitan regions, urban agglomerations and microregions, 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. (CA No. 19, 1998)

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 compensation of State Deputies shall be established by an act of the State Legislative Assembly, in the proportion of seventy-five percent, at most, of the compensation established, in legal tender, for Federal Deputies, as provided by articles 39, paragraph 4; 57, paragraph 7; 150, II; 153, III; and 153, paragraph 2, I.

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 the people's initiative in the state legislative process.

**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. (CA No. 16, 1997; CA No. 19, 1998)

Paragraph 1. The Governor who takes another post or function in governmental entities or entities owned by the Government shall lose his office, with the exception of the taking of office by virtue of a public sector entrance examination, and with due regard for the provisions in article 38, I, IV, and V.

Paragraph 2. The compensation of the Governor, the Vice-Governor, and of the State Cabinet Members shall be established by an act of the State Legislative Assembly, as provided by articles 37, XI, 39, paragraph 4, 150, II, 153, III, and 153, paragraph 2, I.

## **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: (CA No. 1, 1992; CA No. 16, 1997; CA No. 19, 1998; CA No. 25, 2000; CA No. 58, 2009)

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;

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

IV – the following limits shall apply to the composition of Municipal Chambers:

- a) 9 (nine) councilmen, in Municipalities with up to 15,000 (fifteen thousand) inhabitants;
- b) 11 (eleven) councilmen, in Municipalities with over 15,000 (fifteen thousand) inhabitants and with up to 30,000 (thirty thousand) inhabitants;
- c) 13 (thirteen) councilmen, in Municipalities with over 30,000 (thirty thousand) inhabitants and with up to 50,000 (fifty thousand) inhabitants;
- d) 15 (fifteen) councilmen, in Municipalities with over 50,000 (fifty thousand) inhabitants and with up to 80,000 (eighty thousand) inhabitants;

- e) 17 (seventeen) councilmen, in Municipalities with over 80,000 (eighty thousand) inhabitants and with up to 120,000 (one hundred and twenty thousand) inhabitants;
- f) 19 (nineteen) councilmen, in Municipalities with over 120,000 (one hundred and twenty thousand) inhabitants and with up to 160,000 (one hundred and sixty thousand) inhabitants;
- g) 21 (twenty-one) councilmen, in Municipalities with over 160,000 (one hundred and sixty thousand) inhabitants and with up to 300,000 (three hundred thousand) inhabitants;
- h) 23 (twenty-three) councilmen, in Municipalities with over 300,000 (three hundred thousand) inhabitants and with up to 450,000 (four hundred and fifty thousand) inhabitants;
- i) 25 (twenty-five) councilmen, in Municipalities with over 450,000 (four hundred and fifty thousand) inhabitants and with up to 600,000 (six hundred thousand) inhabitants;
- j) 27 (twenty-seven) councilmen, in Municipalities with over 600,000 (six hundred thousand) inhabitants and with up to 750,000 (seven hundred thousand) inhabitants;
- k) 29 (twenty-nine) councilmen, in Municipalities with over 750,000 (seven hundred thousand) inhabitants and with up to 900,000 (nine hundred thousand) inhabitants;
- l) 31 (thirty-one) councilmen, in Municipalities with over 900,000 (nine hundred thousand) inhabitants and with up to 1,050,000 (one million and fifty thousand) inhabitants;
- m) 33 (thirty-three) councilmen, in Municipalities with over 1,050,000 (one million and fifty thousand) inhabitants and with up to 1,200,000 (one million and two hundred thousand) inhabitants;
- n) 35 (thirty-five) councilmen, in Municipalities with over 1,200,000 (one million and two hundred thousand) inhabitants and with up to 1,350,000 (one million three hundred and fifty thousand) inhabitants;
- o) 37 (thirty-seven) councilmen, in Municipalities with 1,350,000 (one million three hundred and fifty thousand) inhabitants and with up to 1,500,000 (one million five hundred thousand) inhabitants;
- p) 39 (thirty-nine) councilmen, in Municipalities with over 1,500,000 (one million five hundred thousand) inhabitants and with up to 1,800,000 (one million eight hundred thousand) inhabitants;
- q) 41 (forty-one) councilmen, in Municipalities with over 1,800,000 (one million eight hundred thousand) inhabitants and with up to 2,400,000 (two million four hundred thousand) inhabitants;
- r) 43 (forty-three) councilmen, in Municipalities with over 2,400,000 (two million four hundred thousand) inhabitants and with up to 3,000,000 (three million) inhabitants;



- s) 45 (forty-five) councilmen, in Municipalities with over 3,000,000 (three million) inhabitants and with up to 4,000,000 (four million) inhabitants;
- t) 47 (forty-seven) councilmen, in Municipalities with over 4,000,000 (four million) inhabitants and with up to 5,000,000 (five million) inhabitants;
- u) 49 (forty-nine) councilmen, in Municipalities with over 5,000,000 (five million) inhabitants and with up to 6,000,000 (six million) inhabitants;
- v) 51 (fifty-one) councilmen, in Municipalities with over 6,000,000 (six million) inhabitants and with up to 7,000,000 (seven million) inhabitants;
- w) 53 (fifty-three) councilmen, in Municipalities with over 7,000,000 (seven million) inhabitants and with up to 8,000,000 (eight million) inhabitants; and
- x) 55 (fifty-five) councilmen, in Municipalities with over 8,000,000 (eight million) inhabitants;

V – compensation of the Mayor, the Vice-Mayor, and the Local Cabinet Members established by an act of the Town Council, as provided by articles 37, XI, 39, paragraph 4, 150, II, 153, III, and 153, paragraph 2, I;

VI – the compensation of Local Councilmen shall be stipulated by their respective Town Councils in each legislative term for the subsequent one, with due regard for the provisions of this Constitution, in accordance with the criteria set forth in the respective Organic Law and the following maximum limits:

- a) In Municipalities having up to ten thousand inhabitants, the compensation of Local Councilmen shall correspond, at the most, to twenty percent of the compensation of State Deputies;
- b) in Municipalities having between ten thousand and fifty thousand inhabitants, the compensation of Local Councilmen shall correspond, at the most, to thirty percent of the compensation of State Deputies;
- c) in Municipalities having between fifty thousand and one hundred thousand inhabitants, the compensation of Local Councilmen shall correspond, at the most, to forty percent of the compensation of State Deputies;
- d) in Municipalities having between one hundred thousand and one hundred thousand and three hundred thousand inhabitants, the compensation of Local Councilmen shall correspond, at the most, to fifty percent of the compensation of State Deputies;
- e) in Municipalities having between three hundred thousand and one hundred thousand and five hundred thousand inhabitants, the compensation of Local Councilmen shall correspond, at the most, to sixty percent of the compensation of State Deputies;
- f) in Municipalities having over five hundred thousand inhabitants, the compensation of Local Councilmen shall correspond, at the most, to seventy-five percent of the compensation of State Deputies;

VII – the total expenditure with the remuneration of the City Councilmen may not exceed the amount of five percent of the revenue of the Municipality;

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, sole paragraph.<sup>2</sup>

**Article 29-A.** The total expenditures of the Municipal Legislative Branch, including the compensation of Local Councilmen and excluding outlays on retired personnel, may not exceed the following percentages, related to the total amount, effectively realized in the prior year, of tax revenues and the transfers set forth in paragraph 5 of article 153, and in articles 158 and 159: (CA No. 25, 2000; CA No. 58, 2009)

I – 7% (seven percent) in the case of Municipalities having up to 100,000 (one hundred thousand) inhabitants;

II – 6% (six percent) in the case of Municipalities having between 100,000 (one hundred thousand) and 300,000 (three hundred thousand) inhabitants;

III – 5% (five percent) in the case of Municipalities having between 300,001 (three hundred thousand and one) inhabitants and 500,000 (five hundred thousand) inhabitants;

IV – 4.5% (four and five tenths per cent) in the case of Municipalities having between 500,001 (five hundred thousand and one) and 3,000,000 (three million) inhabitants;

V – 4% (four percent) in the case of Municipalities having between 3,000,001 (three million and one) and 8,000,000 (eight million) inhabitants;

VI – 3.5% (three and five tenths per cent) in the case of Municipalities having over 8,000,001 (eight million and one) inhabitants.

Paragraph 1. The Town Council shall not spend more than seventy percent of its allocation on the payroll, including expenses on the compensation of its member councilmen.

---

<sup>2</sup> Should read as “paragraph 1”, by virtue of the provisions of Article 2 of CA no. 19/1998.

Paragraph 2. The following acts of the Municipal Mayor are crimes of malversation:

- I – to effect a remittance in excess of the limits stipulated in this article;
- II – not to effect a remittance before the twentieth day of each month;
- III – to effect a remittance below the proportion stipulated in the Budgetary Law.

Paragraph 3. It shall be a crime of malversation for the President of the Town Council to disobey paragraph 1 of this article.

**Article 30.** The municipalities have the power to: (CA No. 53, 2006)

- 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 Federal Government and the state, programs of infant 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 Audit Court, or of the Municipal Audit Councils or Courts, 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 Federal Audit Court.

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: (CA No. 14, 1996; CA No. 29, 2000)

- 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 minimum required amount of the revenues resulting from state taxes, including revenues originating from transfers, to the maintenance and development of education and to health actions and public services.

**Article 35.** The state shall not intervene in its municipalities, neither the Union in the municipalities located in a federal territory, except when: (CA No. 29, 2000)

- 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 to the maintenance and development of education and to health actions and public services;
- 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: (CA No. 45, 2004)

- I – 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, in the case of article 34, IV;
- 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 to enforce a federal law;

IV – (Revoked).

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 governmental entities and entities owned by the Government in any of the powers of the Union, the states, the Federal District and the Municipalities shall obey the principles of lawfulness, impersonality, morality, publicity, and efficiency, and also the following: (CA No. 19, 1998; CA No. 20, 1998; CA No. 41, 2003; CA No. 42, 2003; CA No. 47, 2005)

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 terms of the law;

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, according to the nature and the complexity of the office or position, as provided by law, except for appointment to a commission office declared by law as being of free appointment and discharge;

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 – positions of trust, exercised exclusively by public employees holding an effective post, and commission offices, to be exercised by career employees in the cases, under the conditions and within the minimum percentages established in law, are reserved exclusively for the duties of directors, chiefs of staff, and assistants;

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 a specific 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 Government employees and the compensation referred to in paragraph 4 of article 39 may only be established or altered by means of a specific law, with due regard for the exclusive capacity to introduce a law in each case, an annual general review being ensured, always on the same date and without distinction between the indices;

XI – the remuneration and the compensation of the holders of public offices, functions, and positions in governmental entities, associate government agencies, and foundations; of the members of any of the Powers of the Union, of the States, the Federal District, and the Municipalities; of the holders of elective offices, and of any other political agent, as well as the pay, pension, or other type of remuneration, earned on a cumulative basis or not, including advantages of a personal nature or of any other nature, may not be higher than the monthly compensation, in legal tender, of the Justices of the Supreme Federal Court, and the following limits shall be applied: in Municipalities, the compensation of the Mayor; in the States and in the Federal District, the monthly compensation of the Governor in the sphere of the Executive Branch, the compensation of State and Federal District Deputies in the sphere of the Legislative Branch, and the compensation of the Judges of the State Court of Justice, limited to ninety and twenty-five hundredths percent of the monthly compensation, in legal tender, of the Justices of the Supreme Federal Court in the sphere of the Judicial Branch, this limit being applicable to the members of the Office of the Public Interest Attorney, to Prosecutors, and to Public Legal Defenders;

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

XIII – the linkage or equalization of any type of pay for purposes of the remuneration of the personnel in the public services is forbidden;

XIV – the pecuniary raises received by a government employee shall not be computed or accumulated for purposes of granting subsequent raises;

XV – the compensation and the salaries of holders of public offices and positions may not be reduced, except for the provisions of items XI and XIV of this article and of articles 39, paragraph 4, 150, II, 153, III, and 153, paragraph 2, I;

XVI – remunerated accumulation of public offices is forbidden, except, when there is compatibility of working hours, and with due regard, in any instance, for the provision of item XI:

- a) of two teaching positions;
- b) of one teaching position with another technical or scientific position;
- c) of two positions or jobs which are exclusive for health professionals, with regulated professions;

XVII – the prohibition to accumulate extends to positions and functions and includes associate government agencies, foundations, public enterprises, joint stock companies, their subsidiary companies, and companies controlled either directly or indirectly by the Government;

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 – the creation of an associate Government agency and the establishment of a public enterprise, a joint stock company, and a foundation may only take place by means of a specific law, and, in the latter case, a supplementary law shall specify the areas of operation;

XX – the creation of subsidiaries of the agencies mentioned in the preceding item 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, of the States, the Federal District, and the Municipalities, whose activities are essential for the operation of the State and are exercised by employees of specific careers, shall have priority funds for the implementation of their activities and shall work in an integrated manner, including the sharing of tax rolls and fiscal information, under the terms of the law or of a covenant.

Paragraph 1. The publicity of the acts, programmes, public works, services and campaigns of Government agencies 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. The law shall regulate the forms of participation of users in governmental entities and in entities owned by the Government, especially as regards:

I – claims relating to the rendering of public services in general, the provision of user services being ensured, as well as periodical assessment, both external and internal, of the quality of services;

II – the access of users to administrative records and to information about Government initiatives, with due regard for article 5, items X and XXXIII;



III – the rules of a complaint against negligence or abuse in the exercise of an office, position or function in government services.

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 establish the requirements and restrictions regarding the holder of an office or position, in governmental entities and entities owned by the government, which provides access to inside information.

Paragraph 8. The managerial, budgetary and financial autonomy of governmental agencies and entities, as well as of entities owned by the Government, may be extended by means of a contract, to be entered into by their administrators and the Government, with a view to the establishment of performance goals for the agency or entity, and the law shall provide for:

I – the term of the contract;

II – the controls and criteria for the appraisal of performance, rights, duties, and liability of managing officers;

III – the remuneration of the employees.

Paragraph 9. The provision of item XI applies to the public enterprises and to joint stock companies and their subsidiary companies which receive funds from the Union, the States, the Federal District, or the Municipalities for the payment of personnel expenditures or of general expenses.

Paragraph 10. Receiving retirement pensions arising from article 40 or from articles 42 and 142, while at the same time receiving the remuneration of a public office, position or function is forbidden, with the exception of offices that may be accumulated under the terms of this Constitution, elective offices, and commission offices declared by law as being of free appointment and discharge.

Paragraph 11. The compensatory amounts set forth in law shall not be computed for the purposes of the remuneration limits referred to in item XI of the head paragraph of this article.

Paragraph 12. For the purposes provided by item XI of the head paragraph of this article, the States and the Federal District may stipulate, within their own sphere, by means of an amendment to their respective Constitutions and Organic Law, as a single limit, the monthly compensation of the Judges of the respective State Court of Justice, limited to ninety and twenty-five hundredths percent of the monthly compensation

of the Justices of the Supreme Federal Court, and the provision of this paragraph shall not be applied to the compensation of State and Federal District Deputies and of City Councilmen.

**Article 38.** The following provisions are applicable to public employees holding elective offices in a governmental entity, an associate government agency, and a foundation: (CA No. 19, 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

### Government Employees (CA No. 18, 1998)

**Article 39.** The Union, the States, the Federal District and the Municipalities shall institute a board of administration policy and personnel remuneration policy, composed of public employees appointed by the respective Branches. (CA No. 19, 1998)

Paragraph 1. The stipulation of pay levels and of other components of the remuneration system shall comply with:

I – the nature, the level of responsibility, and the complexity of the posts of each career;

II – the requirements for investiture;

III – the specific characteristics of each post.

Paragraph 2. The Union, the States, and the Federal District shall establish government schools for the education and further development of public employees, and participation in such courses shall be one of the requirements for promotion in the career, the signing of agreements or contracts among federated units being therefore allowed.

Paragraph 3. The provisions of article 7, IV, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII, and XXX shall apply to employees holding public offices, and the law may stipulate differentiated requirements for admission when the nature of the office so demands.

Paragraph 4. A member of one of the Branches, the holder of an elective office, the Ministers of State, and the members of State and Local Cabinets shall be remunerated exclusively by means of a compensation consisting of one sole item, the addition of any extra benefit, additional pay, bonus, award, representation allowance, or other type of remuneration being forbidden, with due regard, in any of the cases, for the provisions of article 37, X and XI.

Paragraph 5. The legislation of the Union, the States, the Federal District, and the Municipalities may establish the proportion between the highest and the lowest remuneration of public employees, with due regard, in any of the cases, for the provision of article 37, XI.

Paragraph 6. The Executive, Legislative and Judicial Branches shall publish the amounts of the compensation and of the remuneration of public offices and positions each year.

Paragraph 7. The legislation of the Union, the States, the Federal District, and the Municipalities shall regulate the utilization of the budgetary funds deriving from savings in current expenditures in each agency, associate government agency and foundation, to be used in the development of programs of quality and productivity, training and development, modernization, re-equipping and rationalization of public services, including as additional pay or productivity award.

Paragraph 8. The remuneration of public employees organized in a career may be established under the terms of paragraph 4.

**Article 40.** Employees holding effective posts in the Union, the States, the Federal District, and the Municipalities, therein included their associate government agencies and foundations, are ensured of a social security scheme on a contributory and solidary basis, with contributions from the respective public entity, from the current employees, retired personnel, and pensioners, with due regard for criteria that preserve financial and actuarial balance and for the provisions of this article. (CA No. 20, 1998; CA No. 41, 2003; CA No. 47, 2005)

Paragraph 1. The employees covered by the social security scheme set forth in this article shall go into retirement, their pensions being calculated according to the amounts stipulated under the terms of paragraphs 3 and 17:

I – for permanent disability, with a pension in proportion to the period of contribution, except when such disability results from a work-related injury, a professional disease, or a serious, contagious, or incurable illness, under the terms of the law;

II – compulsorily, at seventy years of age, with a pension in proportion to the period of contribution;

III – voluntarily, upon completing at least ten years of effective exercise in public administration and five years in the effective post from which retirement is going to take place, with due regard for the following conditions:

- a) sixty years of age and thirty-five of contribution, if a man, and fifty-five years of age and thirty of contribution, if a woman;
- b) sixty-five years of age, if a man, and sixty, if a woman, with pay in proportion to the period of contribution.

Paragraph 2. At the time they are granted, retirement pensions and other pensions may not exceed the remuneration of the respective employee in the effective post from which he retired or which was taken as a parameter for the granting of the pension.

Paragraph 3. The calculation of the retirement pension, at the time retirement is granted, shall take into account the remunerations used as basis for the contributions of the employee to the social security schemes mentioned in this article and in article 201, under the terms of the law.

Paragraph 4. The adoption of differentiated requirements and criteria for the granting of retirement to those covered by the scheme set forth in this article is forbidden, with the exception of the cases, as defined by supplementary laws, of employees:

I – with disabilities;

II – engaged in hazardous activities;

III – engaged in activities carried out under special conditions which are harmful to health or to physical wholeness.

Paragraph 5. The requirements concerning age and period of contribution will be reduced by five years, as regards the provision of paragraph 1, item III, letter *a*, for teachers who document exclusively a period of effective exercise of teaching functions in children education and in elementary and secondary education.

Paragraph 6. With the exception of the cases of retirement from posts that can be accumulated under the terms of this Constitution, receiving more than one retirement pension charged to the social security scheme set forth in this article is forbidden.

Paragraph 7. The law shall provide for the granting of the benefit of a death pension, which will be equal to:

I – the total amount of the retirement pension of the deceased employee, up to the maximum limit established for the benefits of the general social security scheme referred to in article 201, increased by seventy percent of the amount in excess of this limit, if the employee had already retired on the date of his death; or

II – the total amount of the remuneration of the employee in the effective post he was holding on the date of his death, up to the maximum limit established for the benefits of the general social security scheme referred to in article 201, increased by seventy percent of the amount in excess of this limit, if the employee was in active service on the date of his death.

Paragraph 8. Readjustment of the benefits is ensured, to the end that their real value is permanently maintained, in accordance with criteria established by law.

Paragraph 9. The period of contribution in a federal, state, or municipal post shall be computed for the purpose of retirement, and the corresponding period of service shall be computed for the purpose of placement on paid availability.

Paragraph 10. The law may not establish any method of computation of fictitious periods of contribution.

Paragraph 11. The limit set forth in article 37, XI, applies to the total amount of the retirement pension and other pensions, including those resulting from the accumulation of public posts or positions, as well as from other activities which must contribute to

the general social security scheme, and to the amount resulting from the addition of pensions and the remuneration of a post which may be accumulated under the terms of this Constitution, a commission office declared by law as being of free appointment and discharge, and an elective office.

Paragraph 12. In addition to the provisions of this article, the social security scheme of government employees who hold effective posts shall comply, whenever appropriate, with the requirements and criteria stipulated for the general social security scheme.

Paragraph 13. The general social security scheme applies to employees who hold exclusively commission offices declared by law as being of free appointment and discharge, as well as other temporary posts or public positions.

Paragraph 14. The Union, the States, the Federal District, and the Municipalities, provided that they establish a complementary social security scheme for their respective employees who hold effective posts, may stipulate, for the amount of retirement pensions and other pensions to be granted by the scheme referred to in this article, the maximum limit set forth for the benefits of the general social security scheme referred to in article 201.

Paragraph 15. The complementary social security scheme referred to in paragraph 14 shall be instituted by an act of the respective Executive Power, with due regard for the provisions of article 202 and its paragraphs, insofar as pertinent, through closed private pension plan companies, of a public nature, which will offer to their respective participants benefit plans exclusively in the defined contribution mode.

Paragraph 16. The provisions of paragraphs 14 and 15 may be applied to an employee who has entered public administration on or before the date of publication of the act which instituted the corresponding complementary social security scheme only if such employee has previously expressed such option.

Paragraph 17. All remuneration amounts taken into account in the calculation of the benefit set forth in paragraph 3 shall be duly updated, under the terms of the law.

Paragraph 18. A contribution shall be levied on retirement pensions and other pensions granted by the scheme referred to in this article if such pensions exceed the maximum limit established for the benefits of the general social security scheme mentioned in article 201, at a percentage equal to the one established for employees holding effective posts.

Paragraph 19. Employees referred to in this article who have fulfilled the requirements for voluntary retirement stipulated in paragraph 1, III, *a*, and who choose to remain working shall be entitled to a continuous activity bonus equivalent to the amount of their social security contribution until such date as they fulfill the requirements for compulsory retirement set forth in paragraph 1, II.

Paragraph 20. The establishment of more than one special social security scheme for employees holding effective posts, and of more than one unit to manage the respective scheme in each state is forbidden, except for the provision of article 142, paragraph 3, X.

Paragraph 21. The contribution set forth in paragraph 18 of this article shall be levied only on the portions of retirement pensions and other pensions which exceed an amount equal to twice the maximum limit established for the benefits of the general

social security scheme mentioned in article 201 of this Constitution, if the beneficiaries, under the terms of the law, suffer from incapacitating diseases.

**Article 41.** Servants who, by virtue of public entrance examinations, are appointed to effective posts, acquire tenure after three years of actual service. (CA No. 19, 1998)

Paragraph 1. A tenured public employee shall only lose his office:

I – by virtue of a final and unappealable judicial decision;

II – by means of an administrative proceeding, in which he is assured of ample defense;

III – by means of a procedure of periodical appraisal of performance, under the terms of a supplementary law, ample defense being assured.

Paragraph 2. If the dismissal of a tenured public employee is voided by a judicial decision, he shall be reinstated, and the occupant of the vacancy, when tenured, shall be led back to his original office, with no right to indemnity, taken to another office or placed on paid availability with a remuneration proportional to his length of employment.

Paragraph 3. If the office is declared extinct or unnecessary, a tenured public employee shall remain on availability, with a remuneration proportional to his length of employment, until he is adequately placed in another office.

Paragraph 4. As a requirement to acquire tenure, a special appraisal of performance by a committee created for this purpose is mandatory.

### SECTION III

The Military of the States, of the Federal District  
and of the Territories (CA No. 18, 1998)

**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. (CA No. 18, 1998; CA No. 20, 1998; CA No. 41, 2003)

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.

Paragraph 2. The provisions that may be established by a specific act of the respective state shall apply to the pensioners of the military of the States, of the Federal District, and of the Territories.

### SECTION IV

The Regions

**Article 43.** For administrative purposes, the Union may coordinate its action in one same social and geoeconomic 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: (CA No. 19, 1998; CA No. 32, 2001; CA No. 41, 2003)



- 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 – creation, change, and abolishment of public offices, positions and functions, with due regard for article 84, VI, b;
- XI – creation and abolishment of Ministries and Government bodies;
- 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 – stipulation of the compensation for the Justices of the Supreme Federal Court, with due regard for articles 39, paragraph 4; 150, II; 153, III; and 153, paragraph 2, I.

**Article 49.** It is exclusively the competence of the National Congress: (CA No. 19, 1998)

- I – to decide conclusively on international treaties, agreements or 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 compensation 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;

VIII – to establish the compensation of the President and the Vice-President of the Republic and of the Ministers of State, taking into account the provisions of articles 37, XI, 39, paragraph 4, 150, II, 153, III, and 153, paragraph 2, I;

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 Federal Audit Court;

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 this absence without adequate justification shall constitute a crime of malversation: (RCA No. 2, 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 head paragraph 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.

### SECTION III

#### The Chamber of Deputies

**Article 51.** It is exclusively the competence of the Chamber of Deputies: (CA No. 19, 1998)

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, change or abolishment of offices, positions and functions of its services, and the introduction of a law for the establishment of their respective remuneration, taking into account the guidelines set forth in the law of budgetary directives;

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: (CA No. 19, 1998; CA No. 23, 1999; CA No. 42, 2003; CA No. 45, 2004)

I – to effect the legal proceeding and trial of the President and Vice-President of the Republic for crime of malversation, and the Ministers of State and the Commanders of the Navy, the Army, and the Air Force for crimes of the same nature relating to those;

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 the Public Prosecution, the Attorney-General of the Republic, and the Advocate-General of the Union for crimes of malversation;

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 Federal Audit Court 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, change or abolishment of offices, positions and functions of its services, and the introduction of a law for the establishment of their respective remuneration, taking into account the guidelines set forth in the law of budgetary directives;

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

XV – to carry out a regular assessment of the functionality of the National Tax System, as regards its structure and components, as well as the performance of the tax administrations of the Union, of the States, the Federal District, and the Municipalities.

*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.** Deputies and Senators enjoy civil and criminal inviolability on account of any of their opinions, words and votes. (CA No. 35, 2001)

Paragraph 1. Deputies and Senators, from the date of issuance of the certificate of election victory, shall be tried by the Supreme Federal Court.

Paragraph 2. From the date of issuance of the certificate of election victory, the members of the National Congress may not be arrested, except in *flagrante delicto* of a non-bailable offense. In such case, the case records shall be sent within twenty-four hours to the respective House, which, by the vote of the majority of its members, shall decide on the arrest.

Paragraph 3. Upon receiving an accusation against a Senator or Deputy, for an offense committed after the issuance of the certificate of election victory, the Supreme

Federal Court shall inform the respective House, which, by the initiative of a political party therein represented and by the vote of the majority of those House members, may, until such time as a final decision is issued, stay consideration of the action.

Paragraph 4. The request for stay shall be examined by the respective House within the unextendable period of forty-five days as from its receipt by the Directing Board.

Paragraph 5. The stay of proceedings shall suspend the limitation for the duration of the term of office.

Paragraph 6. Deputies and Senators shall not be compelled to render testimony on information received or given by virtue of the exercise of their mandate, nor on 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 the prior 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: (RCA No. 6, 1994)

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.

**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;

II – 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 2 to July 17 and from August 1 to December 22. (CA No. 32, 2001; CA No. 50, 2006)

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. Both 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 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 the event of urgency or important public interest, approval by the absolute majority of each House of the National Congress being required in all cases referred to in this item.

Paragraph 7. In a special legislative session, the National Congress shall deliberate only upon the matter for which it was called, exception being made for the event mentioned in paragraph 8 of this article, the payment of a compensatory amount by virtue of the special session being forbidden.

Paragraph 8. If there are provisional measures in effect on the date a special session of the National Congress is called, they shall be automatically included in the agenda of the session.

## **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 resulted.

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;

VII – resolutions.

*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 its 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. (CA No. 18, 1998; CA No. 32, 2001)

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) government employees of the Union and Territories, their legal statute, appointment to offices, tenure and retirement;
- 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 abolishment of Ministries and Government bodies, with due regard for the provision of article 84, VI;
- f) military of the Armed Forces, their legal statute, appointment to offices, promotions, tenure, remuneration, retirement, and transfer to the reserve.

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. (CA No. 32, 2001)

Paragraph 1. The issuance of provisional measures is forbidden when the matter involved:

I – deals with:

- a) nationality, citizenship, political rights, political parties, and election law;
- b) criminal law, criminal procedural law, and civil procedural law;
- c) organization of the Judicial Branch and of the Public Prosecution, the career and guarantees of their members;
- d) pluriannual plans, budgetary directives, budgets, and additional and supplementary credits, with the exception of the provision mentioned in article 167, paragraph 3;

II – aims at the detention or seizure of goods, people's savings, or any other financial asset;

III – is reserved for a supplementary law;

IV – has already been regulated by a bill of law passed by the National Congress which is awaiting sanction or veto by the President of the Republic.

Paragraph 2. A provisional measure to institute or increase taxes, with the exception of the taxes mentioned in articles 153, I, II, IV, V, and 154, II, shall only produce effects in the subsequent financial year if it has been converted into law before or on the last day of the financial year in which it was issued.

Paragraph 3. With the exception of the provisions mentioned in paragraphs 11 and 12, provisional measures shall lose effectiveness from the day of their issuance if they are not converted into law within a period of sixty days, which may be extended once for an identical period of time under the terms of paragraph 7, and the National Congress shall issue a legislative decree to regulate the legal relations arising therefrom.

Paragraph 4. The period mentioned in paragraph 3 shall be counted from the date of publication of the provisional measure and shall be interrupted while the National Congress is in recess.

Paragraph 5. Deliberation by each House of the National Congress upon the merits of provisional measures shall depend on prior determination of their compliance with the constitutional requirements.

Paragraph 6. If a provisional measure is not examined within forty-five days as of its date of publication, it shall subsequently be forwarded to urgent consideration in each House of the National Congress, and the deliberation of all other legislative matters shall be suspended in the House where it is under consideration, until such time as voting is concluded.

Paragraph 7. If the voting of a provisional measure is not concluded in both Houses of the National Congress within the period of sixty days as of its date of publication, its period of effectiveness may be extended once for an identical period of time.

Paragraph 8. The voting of provisional measures shall start in the House of Deputies.

Paragraph 9. It is incumbent upon the joint committee of Deputies and Senators to examine provisional measures and issue an opinion thereon, before they are submitted to floor action in each House of the National Congress in a separate session.

Paragraph 10. It is forbidden to reissue a provisional measure in the same legislative session in which it was rejected or lost its effectiveness due to lapse of time.

Paragraph 11. If the legislative decree mentioned in paragraph 3 is not issued within sixty days as of the date the provisional measure was rejected or lost its effectiveness, the legal relations constituted and arising from acts performed during its period of effectiveness shall still be regulated by such provisional measure.

Paragraph 12. Should a bill of law be passed that alters the original text of a provisional measure, the latter will remain effective in full until such date as the bill is sanctioned or vetoed.

**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;

II – 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. (CA No. 32, 2001)

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

Paragraph 2. If, in the event of paragraph 1, the Chamber of Deputies and the Federal Senate fail to act, each one, successively, on the proposition, within the period of forty-five days, deliberation on all other legislative matters shall be suspended in the respective House, save those which must be considered within a stipulated constitutional period, in order that the voting may be concluded.

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. (CA No. 32, 2001)

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 of time established in paragraph 4 elapses without a decision being reached, the veto shall be included in the order of the day of the subsequent session, and all other propositions shall be suspended until its final voting.

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. (CA No. 19, 1998)

*Sole paragraph.* Accounts shall be rendered by any individual or corporation, public or private, which uses, collects, keeps, manages, or administers 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.

**Article 71.** External control, incumbent on the National Congress, shall be exercised with the aid of the Federal Audit Court, 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 fundamentals 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 Federal Audit Court, 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. (CA No. 20, 1998)

Paragraph 1. The Justices of the Federal Audit Court 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 Federal Audit Court 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 Federal Audit Court shall have the same guarantees, prerogatives, impediments, remuneration, and advantages as the Justices of the Superior Court of Justice, their retirement pensions and other pensions being ruled by the provisions of article 40.

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 Federal Audit Court 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 Federal Audit Court.

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

*Sole paragraph.* The state Constitutions shall provide for the respective Audit Courts, 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. (CA No. 16, 1997)

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. (CA No. 16, 1997)

**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: (CA No. 23, 1999; CA No. 32, 2001)

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 for the following, by means of a decree:

a) organization and operation of federal government services, whenever no augmentation of expenditures or creation or abolishment of government bodies is involved;

b) abolishment of public positions or posts, if vacant;

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, to appoint the Commanders of the Navy, the Army, and the Air Force, to promote general officers and to appoint them to the offices held exclusively by them;

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 Audit Court;

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 abolishment of Ministries and government bodies. (CA No. 32, 2001)

## 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: (CA No. 23, 1999)

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, the Army, and the Air Force.

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.

## **CHAPTER III** The Judicial Power

### **SECTION I** General Provisions

**Article 92.** The following are the bodies of the Judicial Power: (CA No. 45, 2004)

I – the Supreme Federal Court;

I-A – the National Council of Justice;

II – the Superior Court of Justice;

III – the Federal Regional Courts and the Federal Judges;

IV – the Labour Courts and Judges;

V – the Electoral Courts and Judges;

VI – the Military Courts and Judges;

VII – the Courts and Judges of the states, of the Federal District and of the territories.

Paragraph 1. The Supreme Federal Court, the National Council of Justice, and the Superior Courts have their seat in the Federal Capital.

Paragraph 2. The Supreme Federal Court and the Superior Courts have their jurisdiction over the entire Brazilian territory.

**Article 93.** A supplementary law, proposed by the Supreme Federal Court, shall provide for the Statute of the Judicature, observing the following principles: (CA No. 19, 1998; CA No. 20, 1998; CA No. 45, 2004)

I – admission into the career, with the initial post of substitute judge, by means of a civil service entrance examination of tests and presentation of academic and professional credentials, with the participation of the Brazilian Bar Association in all phases, at least three years of legal practice being required of holders of a B.A. in law, and obeying the order of classification for appointments;

II – promotion from level to level, based on seniority and merit, alternately, observing the following rules:

- a) the promotion of a judge who has appeared in a merit list for three consecutive times or for five alternate times is mandatory;
- b) merit promotion requires two years in office in the respective level and that the judge should appear in the top fifth part of the seniority list of such level, unless no one satisfying such requirements is willing to accept the vacant post;

- c) appraisal of merit according to performance and to the objective criteria of productivity and promptness in the exercise of the jurisdictional function and according to attendance and achievement in official or recognized improvement courses;
- d) in determining seniority, the court may only reject the judge with the longest service by the justified vote of two-thirds of its members, according to a specific procedure, full defense being ensured, the voting being repeated until the selection is concluded;
- e) promotion shall not be granted to a judge who unjustifiably withholds case records beyond the legal deadline, and he may not return them to the court archives without providing the necessary disposition thereof or decision thereon;

III – access to the courts of second instance shall obey seniority and merit, alternately, as determined at the last or single level;

IV – provision of official courses for preparation, improvement, and promotion of judges, while the participation in an official course or in a course recognized by a national school for the education and further development of judges shall constitute a mandatory stage of the tenure acquisition process;

V – the compensation of the Justices of the Superior Courts shall correspond to ninety-five percent of the monthly compensation stipulated for the Justices of the Supreme Federal Court, and the compensation of the other judges shall be stipulated by law and distributed, at the federal and state levels, according to the respective categories of the national judiciary structure, and the difference between categories may not be higher than ten per cent or lower than five per cent, nor higher than ninety-five per cent of the monthly compensation of the Justices of the Superior Courts, with due regard, in any of the cases, for the provisions of articles 37, XI, and 39, paragraph 4;

VI – the retirement of judges as well as the granting of pensions for their dependents shall comply with the provisions of article 40;

VII – a permanent judge shall reside in the respective judicial district, except when otherwise authorized by the court;

VIII – the acts of removal, of placement on paid availability, and of retirement of a judge, for public interest, shall be based on a decision by the vote of the absolute majority of the respective court or of the National Council of Justice, full defense being ensured;

VIII-A – the removal upon request or the exchange of judges of same-level judicial districts shall obey, insofar as pertinent, the provisions of subitems *a*, *b*, *c*, and *e* of item II;

IX – all judgements of the bodies of the Judicial Power shall be public, and all decisions shall be justified, under penalty of nullity, but the law may limit attendance, in given acts, to the interested parties and to their lawyers, or only to the latter, whenever preservation of the right to privacy of the party interested in confidentiality will not harm the right of the public interest to information;

X – administrative decisions of courts shall be supported by a recital and shall be made in open session, and disciplinary decisions shall be taken by the vote of the absolute majority of their members;

XI – in courts with more than twenty-five judges, a special body may be constituted, with a minimum of eleven and a maximum of twenty-five members, to exercise delegated administrative and jurisdictional duties which are under the powers of the full court, half of the positions being filled according to seniority and the other half through election by the full court;

XII – courts will operate continuously, without interruption, collective vacation being forbidden for first instance judges and courts of second instance, and there must be judges on duty at all times on days in which courts are closed;

XIII – the number of judges in each court shall be proportional to the effective judicial demand and to the respective population;

XIV – court employees will receive delegation to carry out administrative acts and acts aimed at the mere disposition of matters, without a decisional nature;

XV – proceedings will be assigned immediately upon filing, at all levels of jurisdiction.

**Article 94.** One-fifth of the seats of the Federal Regional Courts, of the Courts of the States, and of the Federal District and the Territories shall be occupied by members of the Public Prosecution, with over ten years of office, and by lawyers of notable juridical learning and spotless reputation, with over ten years of effective professional activity, nominated in a list of six names by the entities representing the respective classes.

*Sole paragraph.* Upon receiving the nominations, the court shall organize a list of three names and shall send it to the Executive Power, which shall, within the subsequent twenty days, select one of the listed names for appointment.

**Article 95.** Judges enjoy the following guarantees: (CA No. 19, 1998; CA No. 45, 2004)

I – life tenure, which, at first instance, shall only be acquired after two years in office, loss of office being dependent, during this period, on deliberation of the court to which the judge is subject, and, in other cases, on a final and unappealable judicial decision;

II – irremovability, save for reason of public interest, under the terms of article 93, VIII;

III – irreducibility of compensation, except for the provisions of articles 37, X and XI, 39, paragraph 4, 150, II, 153, III, and 153, paragraph 2, I.

*Sole paragraph.* Judges are forbidden to:

I – hold, even when on paid availability, another office or position, except for a teaching position;

II – receive, on any account or for any reason, court costs or participation in a lawsuit;



III – engage in political or party activities;

IV – receive, on any account or for any reason, financial aid or contribution from individuals, and from public or private institutions, save for the exceptions set forth in law;

V – practice law in the court or tribunal on which they served as judges, for a period of three years following their retirement or discharge.

**Article 96.** It is of the exclusive competence of: (CA No. 41, 2003)

I – the courts:

- a) to elect their directive bodies and to draw up their internal regulations, in compliance with the rules of proceedings and the procedural guarantees of the parties, and regulating the competence and the operation of the respective jurisdictional and administrative bodies;
- b) to organize their secretariats and auxiliary services, as well as those of the tribunals connected with them, guaranteeing the exercise of the respective inspection activities;
- c) to fill, under the terms of this Constitution, offices of career judges within their respective jurisdiction;
- d) to propose the creation of new courts of first instance;
- e) to fill, by means of a civil service entrance examination of tests, or of tests and presentation of academic and professional credentials, according to the provisions of article 169, sole paragraph<sup>3</sup>, the offices required for the administration of justice, except for the positions of trust as defined in law;
- f) to grant leave, vacations and other absences to their members and to the judges and employees who are immediately subordinated to them;

II – the Supreme Federal Court, the Superior Courts and the Courts of Justice, to propose to the respective Legislative Power, with due regard for the provisions of article 169:

- a) alteration in the number of members of the lower courts;
- b) creation and abolishment of offices and the remuneration of the auxiliary services and of the courts connected with them, as well as the establishment of the compensation for their members and for the judges, including those of the lower courts, if existing;
- c) creation or abolishment of lower courts;
- d) alteration of the judicial organization and division;

III – the Courts of Justice, to try judges of the states, of the Federal District and of the Territories, as well as members of the Public Prosecution, for common crimes and crimes of malversation, except in those cases within the competency of the Electoral Courts.

<sup>3</sup> Should read as “paragraph 1”, by virtue of the provisions of CA no. 19/1998.

**Article 97.** The courts may declare a law or a normative act of the Government unconstitutional only by the vote of the absolute majority of their members or of the members of the respective special body.

**Article 98.** The Union, in the Federal District and in the territories, and the states shall create: (CA No. 22, 1999; CA No. 45, 2004)

I – special courts, filled by togated judges, or by togated and lay judges, with powers for conciliation, judgement and execution of civil suits of lesser complexity and criminal offenses of lower offensive potential, by oral and summary proceedings, allowing, in the cases established in law, the settlement and judgement of appeals by panels of judges of first instance;

II – remunerated justice of peace, formed by citizens elected by direct, universal and secret vote, with a term of office of four years and competence to, under the terms of the law, perform marriages, examine qualification proceedings, *ex officio* or in view of the presentation of a challenge, and exercise conciliatory functions, of a non-jurisdictional nature, besides others established by law.

Paragraph 1. Federal legislation shall provide for the establishment of special courts within Federal Justice.

Paragraph 2. Judicial costs and fees shall be assigned exclusively to fund services related to activities which are specific of Justice.

**Article 99.** The Judicial Power is ensured of administrative and financial autonomy. (CA No. 45, 2004)

Paragraph 1. The courts shall prepare their budget proposals, within the limits stipulated jointly with the other Powers in the law of budgetary directives.

Paragraph 2. The proposal shall, after hearing the other interested courts, be forwarded:

I – at the federal level, by the presidents of the Supreme Federal Court and of the Superior Courts, with the approval of the respective courts;

II – at the level of the states and of the Federal District and the territories, by the presidents of the Courts of Justice, with the approval of the respective courts.

Paragraph 3. If the government bodies referred to in paragraph 2 do not forward their respective budget proposals within the time period stipulated in the law of budgetary directives, the Executive Power shall, with a view to engrossing the annual budget proposal, take into account the figures approved in the current budgetary law, such figures adjusted in accordance with the limits stipulated under the terms of paragraph 1 of this article.

Paragraph 4. If the budget proposals referred to in this article and thus forwarded do not obey the limits stipulated under paragraph 1, the Executive Power shall effect the necessary adjustments with a view to engrossing the annual budget proposal.

Paragraph 5. In the implementation of the budget of a specific fiscal year, no expenses may be incurred and no obligations may be assumed that exceed the limits

stipulated in the law of budgetary directives, except when previously authorized, by opening supplementary or special credits.

**Article 100.** Payments owed by the federal, state, Federal District, or municipal treasuries, by virtue of a court decision, shall be made exclusively in chronological order of submission of court orders and charged to the respective credits, it being forbidden to designate cases or persons in the budgetary appropriations and in the additional credits opened for such purpose. (CA No. 20, 1998; CA No. 30, 2000; CA No. 37, 2002; CA No. 62, 2009)

Paragraph 1. Support-related debts include those arising from wages, salaries, pay, pensions, and their supplementations, social security benefits and compensation for death and disability, such compensation being based on civil liability, by virtue of a final and unappealable judicial decision, and shall be paid before any other debts, except those referred to in Paragraph 2 of this article.

Paragraph 2. Support-related debts owed to persons aged 60 (sixty) or over on the date the respective court order is issued, or to persons with serious diseases, as defined by law, shall be paid before any other debts, up to an amount equivalent to three times the amount stipulated by law for the purposes of Paragraph 3 of this article, parceling for such end being permitted, whereas the remaining amount shall be paid according to the chronological order of submission of respective court order.

Paragraph 3. The provision contained in the head paragraph of this article, regarding the issuance of court orders, does not apply to obligations defined by law as small amounts, which must be paid by the treasuries herein referred to by virtue of a final and unappealable court decision.

Paragraph 4. For the purposes of the provision of Paragraph 3, different amounts may be stipulated for the federating units through their own legislation and according to their various economic capabilities, whereas the minimum amount shall be equal to the amount of the highest benefit paid by the general Social Security scheme.

Paragraph 5. It is mandatory for the budgets of the federating units to include the funds required for payment of debts arising from final and unappealable judicial decisions, stated in court orders submitted until or on July 1, and payment shall be made before the close of the subsequent fiscal year, on which date their amounts shall be adjusted for inflation.

Paragraph 6. The budgetary allocations and the credits opened shall be assigned to the Judicial Power, it being within the competence of the Presiding Judge of the Court which rendered the decision of execution to determine full payment and to authorize – upon petition of a creditor and exclusively in the event that his right of precedence is not respected or that the amount necessary to satisfy the debt has not been set aside – attachment of the respective amount.

Paragraph 7. The Presiding Judge of the appropriate Court who, by means of an act or omission, delays or attempts to frustrate the regular payment of a court-ordered debt shall be liable to crime of malversation and shall also appear before the National Council of Justice.

Paragraph 8. The issuance of a court order as a supplementation to or in addition to an amount already paid, as well as the parceling, apportionment, or reduction of

the amount under execution – so that the provision of Paragraph 3 may be applied to a portion of the total amount – are forbidden.

Paragraph 9. At the time a court order is issued, irrespective of the relevant regulation, there shall be deducted from such court order, for the purpose of a set-off, an amount corresponding to clear legal debts, either registered or not under debts in execution and attributed to the original creditor by the Treasury in debt, including future accruing installments of parcelings, save for those whose execution has been stayed by virtue of administrative or judicial challenge.

Paragraph 10. Before a court order is issued, the relevant court shall request that the Treasury in debt must provide, within 30 (thirty) days, otherwise subject to loss of the right to offset, information on the debts which meet the conditions stipulated in Paragraph 9, for the purposes set forth in said Paragraph.

Paragraph 11. In accordance with legislation of the federating unit in debt, a creditor may employ court order credits to purchase public property belonging to the respective federating unit.

Paragraph 12. As from the date Constitutional Amendment no. 62 is enacted, the amounts stated in court orders, after such court orders are issued up until effective payment, irrespective of their nature, shall be adjusted according to the official rate applied to savings accounts, whereas, for the purpose of compensation of delay in the payment, simple interest will be applied at the same percentage of interest applied to savings accounts, the employment of compensatory interest being excluded.

Paragraph 13. Creditors may assign their court order credits, in whole or in part, to third parties, irrespective of consent by the debtor, and the provisions of Paragraphs 2 and 3 shall not be applied to the assignee.

Paragraph 14. Assignment of court order credits shall only produce effects after communication to the court of origin and to the federating unit in debt by filing a relevant petition.

Paragraph 15. Without prejudice to the provisions of this article, a supplementary law to this Federal Constitution may establish a special regime for the payment of court-ordered debts owed by States, the Federal District, and Municipalities, providing for earmarked net current revenues and for payment term and methods.

Paragraph 16. The Federal Government may, at its own discretion and under the terms of relevant law, take on debts resulting from court orders issued against a State, the Federal District, or a Municipality, and refinance them directly.

## SECTION II

### The Supreme Federal Court

**Article 101.** The Supreme Federal Court is composed of eleven Justices, chosen from among citizens over thirty-five and under sixty-five years of age, of notable juridical learning and spotless reputation.

*Sole paragraph.* The Justices of the Supreme Federal Court shall be appointed by the President of the Republic, after their nomination has been approved by the absolute majority of the Federal Senate.