

LAW LIBRARY OF CONGRESS

BRAZIL

LEGAL RESEARCH GUIDE – THE JUDICIAL BRANCH

Executive Summary

This report expands and updates the Brazilian Legal Research Guide available on the website of the Law Library of Congress. The purpose of the Guide is to provide a general understanding of the Brazilian legislative, executive, and judicial branches of the federal government as defined by the Constitution and federal laws.

The report is divided into three parts. The first part discusses the legislative branch, the second part explains the executive branch, and the third updates the existing material on the judicial branch.

Additional material will later be included covering nomenclature, hierarchy, and definition of legal terms in general; legal definitions of terms used in administrative law; administrative responsibility; codification and consolidation of laws; sources of publication; legislation, doctrine, and jurisprudence; civil, criminal, and procedural laws; and official sources of law (e.g., official gazettes; codes, consolidations, and random laws; jurisprudence; and scholars).

The report also includes a list with corresponding links to codes and the most relevant laws currently in force in Brazil, as well as other Internet sources containing legal information, including government websites.

Introduction

Brazil is a civil law country and its legal system, which has its origin in Roman law, was implemented by the Portuguese during the colonization period. The system is based on codes and legislation enacted primarily by the federal legislature power, and by the legislatures from the states and municipalities.

The Judicial Branch

The judicial branch is composed of the Federal Supreme Court (*Supremo Tribunal Federal – STF*); the National Council of Justice (*Conselho Nacional de Justiça – CNJ*); the Superior Tribunal of Justice (*Superior Tribunal de Justiça – STJ*); Federal Justice (*Tribunais Regionais Federais e Juízes Federais*); Labor Justice (*Tribunais e Juízes do Trabalho*); Electoral

Justice (*Tribunais e Juízes do Eleitorais*); Military Justice (*Tribunais e Juízes Militares*); and State Justice (*Tribunais e Juízes dos Estados e do Distrito Federal e Territórios*).¹

Composition

One-fifth of the seats on the Federal Regional Tribunals and the Tribunals of the States, Federal District, and Territories must be occupied by members of the Public Prosecutor's Office with over ten years of service, and by lawyers of notable legal knowledge and unblemished reputation with over ten years of actual professional activity, nominated in a list of six names by the entities that represent the respective groups.² Upon receipt of the nominations, the Tribunal must reduce the list to three names and send it to the executive branch, which, within the next twenty days, must select one of the listed names for appointment.³

Judges' Constitutional Rights and Prohibitions

Judges enjoy the following guarantees:⁴

- I) life tenure, which, for trial judges, is acquired only after two years in office; during this period, loss of office must be determined by the tribunal to which the judge is subject to and, in other cases, by a final and non-appealable judgment of a court;
- II) non-removability from office, except by reason of public interest, under the terms of article 93(VIII) of the Constitution;
- III) irreducibility of fixed compensation, except as provided in articles 37(X), 37(XI), 39(§4), 150(II), 153(III), and 153(§2)(I) of the Constitution.

Judges are forbidden to⁵

- I) hold, even when on leave from office, any other job or position, except as a teacher;
- II) receive, for any account or any pretext, court fees and costs or participation in any lawsuit;
- III) engage in political or political party activities;
- IV) receive, under any title or pretext, assistance or contributions from individuals or public or private entities, except as provided by law;
- V) practice law for three years in a court or tribunal which they have left, starting from the date they left the position by retirement or resignation.

¹ CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL [C.F. 1988], promulgada em 5 de Outubro de 1988, art. 92, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm.

² *Id.* art. 94.

³ *Id.* art. 94 (sole para.).

⁴ *Id.* art. 95.

⁵ *Id.* art. 95 (sole para.).

Exclusive Powers

The Tribunals have exclusive powers to⁶

- a) elect their directive bodies and prepare their internal rules, observing the rules of procedure and procedural guarantees of the parties, and regulating the jurisdiction and operation of the respective jurisdictional and administrative bodies;
- b) organize their secretariats and auxiliary services and those of the courts subordinated to them, taking care to exercise their respective supervisory activities;
- c) fill, in the manner provided for in the Constitution, positions for career judges within their respective jurisdictions;
- d) propose the creation of new trial courts;
- e) fill, through public examinations, or examinations and professional credentials, obeying the provisions of article 169 (sole para.) of the Constitution, the positions necessary for the administration of justice, with the exception of positions of confidence, as defined by law; and
- f) grant leave, vacations, and other absences to their members and to judges and employees immediately subordinated to them.

The Federal Supreme Court, Superior Tribunals, and Tribunals of Justice have exclusive powers to propose to their respective Legislatures, observing the provisions of article 169 of the Constitution,⁷

- a) changes in the number of members of inferior tribunals;
- b) creation and termination of positions and remuneration of their auxiliary services and judges subordinated to them, as well as determination of the fixed compensation of their members and judges, including inferior tribunals, where they exist;
- c) creation or termination of inferior tribunals; and
- d) changes in judicial organization and division.

The Tribunals of Justice have exclusive powers to try judges of the States, Federal District, and Territories, as well as members of the Public Prosecutor's Office, for common crimes and impeachable offenses, with the exception of cases within the jurisdiction of the Electoral Justice.⁸

Article 97 of the Constitution determines that Tribunals may declare public laws or normative acts unconstitutional only by vote of an absolute majority of their members or members of their respective special body.⁹

⁶ *Id.* art. 96(I).

⁷ *Id.* art. 96(II).

⁸ *Id.* art. 96(III).

⁹ *Id.* art. 97.

Creation of Special Courts

The Constitution of October 5, 1988, required the Union¹⁰ in the Federal District and Territories, and the States, to create the following entities and positions:¹¹

- I) special courts, staffed by professional judges, or professional and lay judges, with the power to conciliate, and to try and enter judgment on civil matters of lesser complexity and minor criminal offenses (the proceedings must be oral and very concise; settlement and resolution of appeals by panels of trial judges are permitted in cases provided for by law); and
- II) justices of the peace, consisting of paid citizens elected by direct, universal, and secret ballot, for a term of office of four years, with jurisdiction, in accordance with the law, to perform marriages, verify qualification proceedings *ex officio* or after challenge, and perform conciliatory functions of a non-judicial nature, in addition to other functions provided by law.

As provided for in article 98(§1) of the Constitution, Law No. 9,099 of September 26, 1995¹² and Law No. 10,259 of July 12, 2001¹³ regulate the creation and functioning of special courts in the area of Federal Justice.

Administrative and Financial Autonomy

Costs and fees must be used exclusively to finance services under the care of specific activities of justice,¹⁴ and the Constitution grants the Judiciary administrative and financial autonomy.¹⁵

The Tribunals must prepare their budget proposals within the limits stipulated jointly with the other branches in the law of budgetary directives (*Lei de Diretrizes Orçamentárias*).¹⁶

¹⁰ “União, (a) legal entity of public internal law of the direct administration, endowed with the central power, internal autonomy and sovereignty of the country in the international order, which represents Brazil; (b) Brazilian Federation; (c) Brazilian State.” 4 MARIA HELENA DINIZ, DICIONÁRIO JURÍDICO 794 (São Paulo, SP: Editora Saraiva 2005).

¹¹ *Id.* art. 98.

¹² Lei No. 9.099, de 26 de Setembro de 1995, http://www.planalto.gov.br/ccivil_03/Leis/L9099.htm.

¹³ Lei No. 10.259, de 12 de Julho de 2001, http://www.planalto.gov.br/ccivil_03/Leis/LEIS_2001/L10259.htm.

¹⁴ *Id.* art. 98(§2).

¹⁵ *Id.* art. 99.

¹⁶ *Id.* art. 99(§1). The primary purpose of the law of budgetary directives is to guide the preparation of tax and social security budgets and investments of state companies. The idea is to conform the Annual Budget Law (*Lei Orçamentária Anual – LOA*) with guidelines, goals and objectives of public administration, established in the Multi-Annual Investments Plan (*Plano Plurianual de Investimentos – PPA*). MINISTÉRIO DA FAZENDA, TESOURO NACIONAL, http://www.tesouro.fazenda.gov.br/siafi/atribuicoes_01_02.asp.

Pursuant to article 165(§2) of the Constitution, the law of budgetary directives must contain the targets and priorities of the federal public administration, including the capital expenditures for the following fiscal year; must guide the preparation of the annual budget law; must provide for changes in tax legislation and must establish the investment policies for official developmental financing agencies.

After the Tribunal hears from other interested tribunals, it must submit the proposal¹⁷

- a. at the federal level, by the Presidents of the Federal Supreme Court and Superior Tribunals, with approval of their respective Tribunals;
- b. at the level of the States, Federal District, and Territories, by the Presidents of the Tribunals of Justice, with the approval of their respective Tribunals.

If the bodies referred to in article 99(§2) of the Constitution do not deliver their respective budgetary proposals within the period established by the law of budgetary directives, for the purposes of consolidation of the annual budgetary proposal, the Executive must consider the amounts approved in the budgetary law in effect, adjusting them in accordance with the limits as stipulated in article 99(§1) of the Constitution.¹⁸

If the budgetary proposals referred to in article 99 are delivered in disregard of the limits as stipulated in article 99(§1) of the Constitution, the executive must make the necessary adjustments for the purposes of consolidation of the annual budgetary proposal.¹⁹

During the execution of the budget for the fiscal year, no expenditures or assumption of obligations that exceed the limits established in the law of budgetary directives must be realized by opening supplementary or special credits, except as previously authorized.²⁰

Reform of the Judiciary

On December 30, 2004, the National Congress amended the Constitution, in a so-called reform of the judiciary. The main purpose of the amendment was to improve the judiciary's ability to render decisions in a more expeditious manner.²¹

The major innovations introduced by the amendment were, *inter alia*, the creation of the CNJ (C.F. art. 103-B); the binding legal effect on the entire judiciary of final decisions issued by the STF (C.F. art. 103-A); the need for the presence of an issue of general repercussion on extraordinary appeals (*Recursos Extraordinários*) to the STF (C.F. art. 102(§3)); the constitutional guarantee that assures everyone that judicial and administrative proceedings will end within a reasonable period of time and the means to guarantee that the administrative proceedings will be handled rapidly (C.F. art. 5(LXXVIII)).²²

¹⁷ *Id.* art. 99(§2).

¹⁸ *Id.* art. 99(§3).

¹⁹ *Id.* art. 99(§4).

²⁰ *Id.* art. 99(§5).

²¹ Emenda Constitucional No. 45, de 30 de Dezembro de 2004, http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc45.htm.

²² *Id.*

Levels of the Court System: Brazilian Tribunals and Courts

Federal Supreme Court (*Supremo Tribunal Federal* – STF)

Historical Background²³

Brazil was officially discovered by Portugal on April 22, 1500.²⁴ To make the colonization of the newly discovered territory economically viable, King Dom João III of Portugal began to distribute land in Brazil to the Portuguese nobility.²⁵ Portugal selected a donation system as the legal instrument to convey title to the land, which became known as *Capitanias Hereditárias*²⁶ and constituted the first political and judicial organization of the country.²⁷

Donation System (*Capitanias Hereditárias*)

Under the donation system, the donees (recipients) of the land carried out judicial functions aimed at the settlement of disputes, and were financially responsible for all activities on the land.²⁸ To execute their judicial functions, the donees were obligated to appoint judges and officials, and provide the necessary administrative infrastructure to keep the territory productive and orderly.²⁹ As a consequence, the donees of the land were required to keep pirates away from the Brazilian territory, which was, in fact, the main purpose of colonization.³⁰

General Government

The donation system did not succeed in its colonization mission.³¹ Dom João III then decided to centralize the administration and organization of the colony and, in 1548, Portugal established a general government (*Governo Geral*) in the Brazilian city of Salvador.³²

²³ *Histórico*, SUPREMO TRIBUNAL FEDERAL, <http://www.stf.jus.br/portal/cms/verTexto.asp?servico=sobreStfConhecaStfHistorico> (last updated Sept. 18, 2007).

²⁴ MIGUEL AUGUSTO GONÇALVES DE SOUZA, *O DESCOBRIMENTO E A COLONIZAÇÃO PORTUGUESA NO BRASIL* 139 (Editora Itatiaia, 2000).

²⁵ MARIA BEATRIZ NIZZA DA SILVA, *HISTÓRIA DA COLONIZAÇÃO PORTUGUESA NO BRASIL* 12 (Edições Colibri, 1999).

²⁶ *Id.*

²⁷ *Histórico*, SUPREMO TRIBUNAL FEDERAL, *supra* note 23.

²⁸ MARIA BEATRIZ NIZZA DA SILVA, *supra* note 25, at 12.

²⁹ *Id.*

³⁰ *Id.*

³¹ CLAUDIO VICENTINO, GIANPAOLO DORIGO, *HISTÓRIA DO BRASIL* 76 (Ed. Scipione, 1998).

³² *Id.*

First Appellate Court (*Tribunal de Relação*)

It was not until 1587 that the first appellate court (*Tribunal de Relação*)³³ was created in Brazil, in the city of Salvador.³⁴ However, due to the lack of personnel it only came into actual existence in 1609.³⁵

The Tribunal was dissolved in 1626 and reestablished in 1652.³⁶ In 1751 the Rio de Janeiro Tribunal (*Relação do Rio de Janeiro*)³⁷ came into existence. In 1763, the general government was transferred from the city of Salvador to Rio de Janeiro.³⁸

The Royal Family in Brazil

The general government lasted until 1808, at which point the Portuguese royal family fled from Portugal to Brazil because an invasion in Portugal by forces under the command of French emperor Napoleon Bonaparte was imminent.³⁹

House of Supplication

With the arrival of the Portuguese royal family, it was not feasible to send ordinary grievances and appeals to the House of Supplication of Lisbon (*Casa da Supplicação de Lisboa*).⁴⁰ Prince Regent D. João then decided by decree of May 10, 1808, to convert the appellate court of Rio de Janeiro (*Relação do Rio de Janeiro*) into the House of Supplication of Brazil (*Casa da Supplicação do Brasil*).⁴¹ According to the decree, the House of Supplication of Brazil was considered a Superior Tribunal of Justice where all cases ended and the decisions issued were final.⁴²

With the end of fighting between France and Portugal, King Dom João VI of Portugal raised Brazil to the category of a kingdom united to Portugal and Algarves in 1815, and it was no longer considered a colony of Portugal.⁴³

³³ In Portugal, *Tribunais de Relação* are, in general, appellate courts. Law No. 3 of January 13, 1999, art. 47(1), http://www.pgdlisboa.pt/pgdl/leis/lei_mostra_articulado.php?nid=1&tabela=leis&ficha=1&pagina=1&.

³⁴ *Histórico*, SUPREMO TRIBUNAL FEDERAL, *supra* note 23.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ MARIA BEATRIZ NIZZA DA SILVA, *supra* note 25, at 95.

⁴⁰ *Histórico*, SUPREMO TRIBUNAL FEDERAL, *supra* note 23.

⁴¹ *Id.*

⁴² *Id.*

⁴³ II HELIO VIANNA, *HISTÓRIA DO BRASIL, MONARQUIA E REPÚBLICA* 13, 52 (Edições Melhoramentos, 6th ed. 1967).

The Royal Family's Return to Portugal

In 1820, Dom João VI was forced to return to Portugal, leaving his son, Prince Dom Pedro I, as the acting king of Brazil. In 1821, shortly after the king's return, the pressure started for the immediate return of Prince Dom Pedro I to Portugal and for the status of Brazil to be returned to that of a colony.⁴⁴

Independence of Brazil

In Brazil, both ideas were rejected, and on January 9, 1822, Dom Pedro I decided that “if it was for the good of all and for the nation's general happiness,” he would stay in Brazil, which became known as “*O Dia do Fico*.”⁴⁵ Soon after, on September 7, 1822, Dom Pedro I declared Brazil's independence from Portugal.⁴⁶

Supreme Tribunal of Justice (*Supremo Tribunal de Justiça*)

On October 12, 1822, Dom Pedro I was proclaimed Emperor of Brazil⁴⁷ and on March 25, 1824,⁴⁸ the Emperor enacted the first Brazilian Constitution.⁴⁹ Article 163 of the Constitution of 1824 provided for the creation of a Supreme Tribunal of Justice (*Supremo Tribunal de Justiça*), which occurred with the enactment of a law on September 18, 1828.⁵⁰ The Supreme Tribunal, composed of seventeen judges, was installed on January 9, 1829, and lasted until February 27, 1891.⁵¹

The King's Abdication from the Throne

On April 7, 1831, Dom Pedro I abdicated the throne in favor of his five-year-old son, Dom Pedro de Alcântara (Dom Pedro II).⁵² According to article 123 of the Constitution of 1824, if an emperor abdicated, the Brazilian government had to be ruled by a council composed of three regents elected by the legislature while the principal heir was still a minor.⁵³

⁴⁴ *Id.* at 44, 45, 46.

⁴⁵ *Id.* at 52, 53, 54, 55.

⁴⁶ *Id.* at 59.

⁴⁷ *Id.* at 69.

⁴⁸ *Id.* at 84.

⁴⁹ CONSTITUIÇÃO POLÍTICA DO IMPÉRIO DO BRASIL (de 25 de Março de 1824), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao24.htm.

⁵⁰ *Histórico*, SUPREMO TRIBUNAL FEDERAL, *supra* note 23.

⁵¹ *Id.*

⁵² HELIO VIANNA, *supra* note 43, at 103, 104.

⁵³ Article 121 of the Constitution of 1824 determined that the emperor's minority lasted until eighteen years of age.

The regency period lasted from 1831 until 1840⁵⁴ when the emperor was emancipated.⁵⁵ Dom Pedro II reigned for over fifty-eight years when on November 15, 1889, supported by a group that defended a republican form of government, Marshal Deodoro da Fonseca led a military coup of the Brazilian government.⁵⁶ On the same day, Fonseca signed a manifesto proclaiming a Republic in Brazil and set up a provisional government, which was in charge of ruling Brazil until a new Constitution was created.⁵⁷

Federal Supreme Court (*Supremo Tribunal Federal*)

On June 22, 1890, the provisional government enacted Decree No. 510,⁵⁸ which promulgated a provisional Constitution. Article 54 of Decree No. 510 determined that the judiciary was composed of a Federal Supreme Court (*Supremo Tribunal Federal*) and as many judges and tribunals, distributed throughout the country, as created by Congress. Initially, the Supreme Court was composed of fifteen judges appointed by the President of the Republic from among the thirty oldest federal judges and citizens of remarkable knowledge and reputation eligible for the Senate.⁵⁹

Subsequently, on October 11, 1890, Decree No. 848 was issued to organize the Federal Justice.⁶⁰ Pursuant to article 1, federal justice was to be exercised by a Federal Supreme Court and lower judges called section judges (*Juízes de Seção*). The President of the Republic was responsible for the appointment of federal judges, but for members of the Federal Supreme Court approval from the Senate was required.⁶¹ The composition and method of choice was kept the same as established by Decree No. 510, fifteen members chosen from among section judges or citizens of remarkable knowledge and reputation eligible for the Senate.⁶²

Constitution of 1891

The provisional government lasted from November 15, 1889, until February 24, 1891, the day the new Brazilian Constitution was promulgated.⁶³ The new Constitution incorporated the changes made to Federal Justice through Decrees No. 510 and 848. Article 55 of the Constitution of 1891 determined that the judiciary branch encompassed a Federal Supreme Court

⁵⁴ HELIO VIANNA, *supra* note 43, at 123.

⁵⁵ *Id.* at 127.

⁵⁶ *Id.* at 220, 221.

⁵⁷ *Id.* at 222, 224.

⁵⁸ Decreto No. 510, de 22 de Junho de 1890, website of the Brazilian Federal Senate, <http://www6.senado.gov.br/legislacao/ListaPublicacoes.action?id=91702&tipoDocumento=DEC&tipoTexto=PUB>.

⁵⁹ *Id.* art. 55.

⁶⁰ Decreto No. 848, de 11 de Outubro de 1890, <http://www6.senado.gov.br/legislacao/ListaPublicacoes.action?id=66054&tipoDocumento=DEC&tipoTexto=PUB>.

⁶¹ *Id.* art. 4.

⁶² *Id.* art. 5.

⁶³ HELIO VIANNA, *supra* note 43, at 225.

and as many judges and tribunals, distributed throughout the country, as created by Congress;⁶⁴ and article 56 defined the composition of the members of the Supreme Court; fifteen judges appointed from among citizens of remarkable knowledge and reputation eligible for the Senate, subject to Senate approval. Pursuant to article 1 of Decree No. 1 of February 26, 1890, the installation of the Federal Supreme Court took place on February 28, 1890.⁶⁵

Revolution of 1930

After a revolution in 1930,⁶⁶ Decree No. 19,656 of February 3, 1931, was issued reducing the number of members of the Federal Supreme Court to eleven.⁶⁷

Constitution of 1934

Although not the direct product of a coup d'état, a new Constitution was enacted on July 16, 1934 after a civil revolution seized power and installed a provisional government that later called for a National Constituent Assembly to discuss the new Constitution.⁶⁸ The feature of this new Constitution that affected the Federal Supreme Court was that it changed its name to Supreme Court (*Corte Suprema*),⁶⁹ but maintained the original number of members (eleven).⁷⁰

Constitution of 1937

In 1937, yet another coup d'état occurred⁷¹ and a new Constitution was promulgated.⁷² The name of the highest court was restored to Federal Supreme Court⁷³ and the number of members was left unchanged.⁷⁴

⁶⁴ CONSTITUIÇÃO DA REPÚBLICA DOS ESTADOS UNIDOS DO BRASIL (de 24 de Fevereiro de 1891) art. 55, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao91.htm.

⁶⁵ Decreto No. 1, de 26 de Fevereiro de 1891, <http://www6.senado.gov.br/legislacao/ListaPublicacoes.action?id=64632&tipoDocumento=DEC&tipoTexto=PUB>.

⁶⁶ BORIS FAUSTO, HISTÓRIA DO BRASIL 323, 324 (Edusp: Fundação para o Desenvolvimento da Educação, 1994).

⁶⁷ Decreto No. 19.656, de 3 de Fevereiro de 1931, art. 1, <http://www6.senado.gov.br/legislacao/ListaPublicacoes.action?id=35649&tipoDocumento=DEC&tipoTexto=PUB>.

⁶⁸ *Constituição de 1934*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, <http://www.fgv.br/CPDOC/BUSCA/Busca/BuscaConsultar.aspx> (last visited Feb. 24, 2011).

⁶⁹ CONSTITUIÇÃO DA REPÚBLICA DOS ESTADOS UNIDOS DO BRASIL (de 16 de Julho de 1934) art. 63(a), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao34.htm.

⁷⁰ *Id.* art. 73.

⁷¹ *Constituição de 1937*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, <http://www.fgv.br/CPDOC/BUSCA/Busca/BuscaConsultar.aspx> (last visited Feb. 24, 2011).

⁷² CONSTITUIÇÃO DOS ESTADOS UNIDOS DO BRASIL (de 10 de Novembro de 1937), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao37.htm.

⁷³ *Id.* art. 90.

⁷⁴ *Id.* art. 97.

Constitution of 1946

In 1945, another coup d'état⁷⁵ resulted in another Constitution, promulgated on September 18, 1946.⁷⁶ The new Constitution of 1946 did not make any change to the name⁷⁷ or the composition⁷⁸ of the Court.

Coup d'état of 1964

After a military coup d'état on March 31, 1964,⁷⁹ a military council composed of all the military ministers took charge of the country as its governing body.⁸⁰ Once the military council took power, they issued Institutional Acts.⁸¹ Institutional Act No. 2 of October 27, 1965, amended the Constitution of 1946 and increased the number of members of the Federal Supreme Court to sixteen.⁸²

Constitution of 1967

On January 24, 1967, the military government promulgated a new Constitution.⁸³ The Constitution of 1967 did not change the structure of the judiciary.⁸⁴ However, on December 13, 1968, based on Institutional Act No. 5,⁸⁵ the government compulsorily retired three members of the

⁷⁵ Vargas, *Getúlio*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, <http://www.fgv.br/CPDOC/BUSCA/Busca/BuscaConsultar.aspx> (last visited Feb. 24, 2011).

⁷⁶ CONSTITUIÇÃO DOS ESTADOS UNIDOS DO BRASIL (de 18 de Setembro de 1946), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao46.htm.

⁷⁷ *Id.* art. 94(I).

⁷⁸ *Id.* art. 98.

⁷⁹ BORIS FAUSTO, *A CONCISE HISTORY OF BRAZIL* 280 (Cambridge Univ. Press, 1999).

⁸⁰ *Atos Institucionais*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, <http://www.fgv.br/CPDOC/BUSCA/Busca/BuscaConsultar.aspx> (last visited Jan. 25, 2011).

⁸¹ *Id.* Institutional Acts were dependent upon neither the legal system nor the Constitution. Simply put, in the hierarchy of Brazilian legislation, Institutional Acts were above the Constitution, and could be used to amend it, and their effects and contents were immune to judicial review.

⁸² Ato Institucional No. 2, de 27 de Outubro de 1965, art. 6, http://www6.senado.gov.br/legislacao/ListaNormas.action?numero=2&tipo_norma=AIT&data=19651027&link=s.

⁸³ CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL DE 1967, http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao67.htm.

⁸⁴ *Id.* art. 107.

⁸⁵ Ato Institucional No. 5, de 13 de Dezembro de 1968, art. 6(§1), http://www6.senado.gov.br/legislacao/ListaNormas.action?numero=5&tipo_norma=AIT&data=19681213&link=s.

Federal Supreme Court⁸⁶ and on February 1, 1969, Institutional Act No. 6 amended the Constitution of 1967 and decreased the number of members of the Federal Supreme Court to eleven.⁸⁷

Constitution of 1988

On February 1, 1987, a unicameral assembly, called the National Constituency Assembly, convened at the National Congress⁸⁸ and on October 5, 1988, a new Brazilian Constitution was enacted.⁸⁹ According to the Constitution of 1988, the Federal Supreme Court (*Supremo Tribunal Federal*, STF) is the highest court in Brazil and is entrusted with the responsibility of safeguarding the Constitution⁹⁰ as well as functioning as a court of review.⁹¹

Composition

The STF is composed of eleven Ministers chosen from among citizens over thirty-five and under sixty-five years of age who possess notable juridical learning and a spotless reputation.⁹² Ministers are appointed by the President after the nomination has been approved by an absolute majority of the Federal Senate.⁹³

Supreme Court Ministers

Jurisdiction

The STF also has original jurisdiction to try and decide⁹⁴

- a) direct actions of unconstitutionality (*Ação Direta de Inconstitucionalidade*) of a federal or state law or normative act, or declaratory actions of constitutionality (*Ação Declaratória de Constitucionalidade*) of a federal law or normative act;⁹⁵

⁸⁶ *Histórico*, SUPREMO TRIBUNAL FEDERAL, *supra* note 23.

⁸⁷ Ato Institucional No. 6, de 1 de Fevereiro de 1969, art. 1, http://www6.senado.gov.br/legislacao/ListaNormas.action?numero=6&tipo_norma=AIT&data=19690201&link=s.

⁸⁸ Emenda Constitucional No. 26 de 27 de Novembro de 1985, art. 1, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc26-85.htm.

⁸⁹ C.F. 1988, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm.

⁹⁰ *Id.* art. 102.

⁹¹ *Id.* art. 102(II), 102(III).

⁹² *Id.* art. 101.

⁹³ *Id.* art. 101(§1).

⁹⁴ *Id.* art. 102(I).

⁹⁵ This incumbency somewhat resembles the issuance of advisory opinions, a situation not allowed in the Supreme Court of the United States, which requires the existence of an actual case or controversy to hear a case. U.S. CONST. art. III, § 2, *amended by* U.S. CONST. amend. XI.

A direct action of unconstitutionality is the route by which, without injury to an individual right, there is the establishment of a procedure able to identify whether the rules (laws or federal and state normative acts), are

- b) charges of common criminal offenses against the President of the Republic, the Vice President, members of the National Congress, the Tribunal's own Ministers, and the Attorney General of the Republic (*Procurador Geral da República*);
- c) charges of common criminal offenses and impeachable offenses against Ministers of the Federal Government and the Commanders of the Navy, Army, and Air Force, with the exception of the provisions of article 52(I) of the Constitution, the members of the Superior Tribunals and the Audit Tribunal of the Union (*Tribunal de Contas da União*), and chiefs of permanent diplomatic missions;
- d) habeas corpus⁹⁶ when the constrained party is any of the persons referred to in the preceding subsections; writs of security⁹⁷ (*mandado de segurança*) and habeas data⁹⁸ against acts of the President of the Republic, the Executive Committees of

contrary to the constitutional command, invalidating them. 1 MARIA HELENA DINIZ, DICIONÁRIO JURÍDICO 57, 58 (São Paulo, SP: Editora Saraiva 2005).

A declaratory action of constitutionality aims to obtain a declaration, in thesis, of the constitutionality of a norm because it conforms to the Constitution. *Id.* at 45.

Article 103 of the Constitution provides that the President of the Republic, the Executive Committee of the Federal Senate, the Executive Committee of the Chamber of Deputies, the Executive Committee of a Legislature or the Legislative Chamber of the Federal District, the Governor of a State or the Federal District, the Attorney General of the Republic, the Federal Council of the Brazilian Bar Association, a political party represented in the National Congress, a union confederation, or a national class entity can bring direct actions of unconstitutionality and declaratory actions of constitutionality. Law No. 9,868 of November 10, 1999, provides the procedures for the trial of these types of actions, http://www.planalto.gov.br/ccivil_03/Leis/L9868.htm.

⁹⁶ Article 5(LXVIII) of the Constitution determines that habeas corpus must be granted whenever a person suffers or is threatened with suffering violence or coercion in his freedom of movement through illegality or abuse of power.

Article 647 of the Brazilian Code of Criminal Procedure (Código de Processo Penal, Decreto-Lei No. 3.689, de 3 de Outubro de 1941, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del3689Compilado.htm) determines that habeas corpus must be granted whenever someone suffers or is about to suffer violence or an unlawful coercion in his freedom to come and go, except in cases of disciplinary punishment. Article 648 of the Code lists the situations considered to be illegal coercions.

⁹⁷ A writ of security is the appropriate constitutional remedy to protect a clear legal right of the interested party (individual or corporation) that is being threatened or violated by an act or omission, unlawful or unconstitutional, even if performed by an authority or public official. The writ of security arises from the need to protect the right of the individual against illegal or unconstitutional acts of the government. It has two requirements: (1) the undue application of the law or the Constitution, or its nonapplication by the public authority; and (2) the immediate confirmation of the relationship of the fact with the right. 3 MARIA HELENA DINIZ, DICIONÁRIO JURÍDICO 221, 222 (São Paulo, SP: Editora Saraiva, 2005).

According to article 5(LXIX) of the Constitution, a writ of security (*mandado de segurança*) must be issued to protect a right that is "liquid and certain" (indisputable) that is not protected by habeas corpus or habeas data, when the party responsible for the illegality or abuse of power is a public authority or an agent of a legal entity performing governmental duties. A collective writ of security may be brought by a political party represented in the National Congress or by a union, professional organization or association, legally organized and operative for at least one year, to defend the interests of its members or associates. C.F. 1988 art. 5(LXX).

Writs of security are regulated by Law No. 12,016 of August 7, 2009, available at http://www.planalto.gov.br/ccivil_03/ Ato2007-2010/2009/Lei/L12016.htm#art29.

⁹⁸ Habeas data is granted to ensure the knowledge of information concerning the petitioner, which is contained in the registry or database of governmental entities or entities with a public character; correction of data, when it is preferred not to do so through a confidential, judicial, or administrative process; or annotation in the

- the Chamber of Deputies and the Federal Senate, the Audit Tribunal of the Union, the Attorney General of the Republic, and the Federal Supreme Court itself;
- e) litigation between a foreign State or international organization and the Federal Government (*União*), State, Federal District, or Territory;
 - f) cases and conflicts between the Federal Government and the States, the Federal Government and the Federal District, or between one or another, including their respective entities of indirect administration;
 - g) extradition requests from foreign States;
 - h) [*repealed*]
 - i) habeas corpus, when the constraining party is a Superior Tribunal *or* when the constraining party or the constrained party is an authority or employee whose acts are directly subject to the jurisdiction of the Federal Supreme Court, or in the case of a crime subject to the original jurisdiction of the Federal Supreme Court;
 - j) criminal revisions and rescissory actions filed against the STF's own decisions;
 - l) claims to preserve its jurisdiction and to guarantee the authority of its decisions;
 - m) execution of a judgment in cases within its original jurisdiction, being allowed to delegate the power to perform procedural acts;
 - n) actions in which all members of the judiciary have a direct or indirect interest, and those in which more than half of the members of the tribunal of origin are disqualified or have a direct or indirect interest;
 - o) conflicts of jurisdiction between the Superior Tribunal of Justice and any other tribunals, between Superior Tribunals, or between the latter and any other tribunal;
 - p) requests for provisional remedy⁹⁹ (*medida cautelar*) in direct actions of unconstitutionality;
 - q) writs of injunction¹⁰⁰ (*mandado de injunção*), when the responsibility for the drafting of the regulatory rule is attributed to the President of the Republic,

records of the interested party, challenging or explaining true but justifiable data under pending litigation or otherwise in dispute. 2 MARIA HELENA DINIZ, DICIONÁRIO JURÍDICO 816 (São Paulo, SP: Editora Saraiva 2005).

Habeas data is foreseen in article 5(XIV), (XXXIII), (XXXIV), and (LXXII) of the Federal Constitution and is regulated by Law No. 9,507 of November 12, 1997, *available at* http://www.planalto.gov.br/ccivil_03/Leis/L9507.htm, and Law No. 11,111 of May 5, 2005, *available at* http://www.planalto.gov.br/ccivil_03/ Ato2004-2006/2005/Lei/L11111.htm.

⁹⁹ In constitutional law, provisional remedy is the legal procedure that seeks to stop the efficacy of an unconstitutional rule during the trial of a direct action of unconstitutionality filed by the Attorney General of the Republic. 3 MARIA HELENA DINIZ, *supra* note 97, at 269.

Provisional remedies, in general, are regulated by articles 796 to 812 of the Brazilian Code of Civil Procedure and specific provisional remedies are regulated by articles 813 to 889 of the Code of Civil Procedure. Código de Processo Civil, Lei No. 5.869, de 11 de Janeiro de 1973, http://www.planalto.gov.br/ccivil_03/Leis/L5869.htm.

¹⁰⁰ According to article 5(LXXI) of the Constitution, a writ of injunction must be issued whenever the absence of a regulatory provision makes it not viable the exercise of constitutional rights and liberties and the prerogatives inherent to nationality, sovereignty and citizenship.

A writ of injunction is a legal procedure by which a court order is sought determining the practice or abstention of practicing an act, either by the public administration or a person, for violation of constitutional rights based on the absence of specific regulation. It is therefore a legal remedy against acts of the government or acts of a private person, as long as there is a technical gap; i.e., lack of an essential norm so that another norm may have legal effect. 3 MARIA HELENA DINIZ, *supra* note 97, at 219.

- National Congress, Chamber of Deputies, Federal Senate, Executive Committees of one of these Legislative Chambers, the Audit Tribunal of the Union, one of the Superior Tribunals, or the Federal Supreme Court itself; and
- r) actions against the National Council of Justice and against the National Council of the Public Ministry.

The STF has jurisdiction to decide ordinary appeals¹⁰¹

- I) if denied, habeas corpus, writs of security, habeas data, and writs of injunction decided originally by the Superior Tribunals; and
- II) political crimes.

The STF has jurisdiction to decide extraordinary appeals in cases decided in the sole or last instances, when the appealed decision¹⁰²

- a) is contrary to a provision of the Constitution;
- b) declares a treaty or a federal law unconstitutional;
- c) upholds a law or act of local government challenged as an infringement of the Constitution; or
- d) upholds a local law challenged as contrary to federal law.

An allegation of disobedience of a fundamental precept¹⁰³ (*Arguição de Descumprimento de Preceito Fundamental*) stemming from the Constitution must be heard by the STF, as provided by [law](#).¹⁰⁴

Supreme Court Jurisprudence (*Jurisprudência*¹⁰⁵)

¹⁰¹ C.F. 1988 art. 102(II).

¹⁰² *Id.* art. 102(III).

¹⁰³ Pursuant to article 102(§1) of the Constitution, an allegation of disobedience of a fundamental precept should be regulated by a specific law. To this effect, on December 3, 1999, Law No. 9,882 was enacted to regulate this additional form of control of the constitutionality of government acts. Law No. 9,882 is *available at* http://www.planalto.gov.br/ccivil_03/Leis/L9882.htm.

According to article 1 of Law No. 9,882, the purpose of an allegation of disobedience of a fundamental precept, which must be filed with the Federal Supreme Court, is to prevent or redress damage to a fundamental precept resulting from an act of the government. Such allegation is also applicable when the basis of the constitutional controversy is relevant to federal, state, or municipal law or a normative act, including the ones enacted prior to the Constitution. Law No. 9,882, art. 1(I) (sole para.).

Allegations of disobedience of a fundamental precept may be filed by the same persons and entities that can bring direct actions of unconstitutionality. Law No. 9,882, art. 2(I).

¹⁰⁴ *Id.* art. 102(§1).

¹⁰⁵ *Jurisprudência* is defined as a uniform set of court decisions in a particular area. 3 MARIA HELENA DINIZ, *supra* note 97, at 31.

Supreme Court Decisions ([Acórdãos](#)¹⁰⁶ and [Súmulas](#)¹⁰⁷)**Supreme Court - Ongoing Cases** (*Acompanhamento Processual*)**Stare Decisis**

Although Brazil does not follow the common law doctrine of *stare decisis*,¹⁰⁸ after the amendment of the Brazilian Constitution in 2004,¹⁰⁹ the Supreme Court started issuing binding decisions (*Súmulas Vinculantes*) in special situations.¹¹⁰

Binding Decisions (*Súmulas Vinculantes*)

After repeated decisions on identical constitutional matters, the Federal Supreme Court may, *ex officio* or upon demand, approve by a decision of two-thirds of its members a decision (*súmula*) that upon publication in the official press has binding effects on the other organs of the judiciary and the federal, state, and municipal public administrations, both direct and indirect.¹¹¹ The Federal Supreme Court may also revise or revoke its binding decisions in the manner established by [law](#).¹¹²

¹⁰⁶ Article 163 of the Code of Civil Procedure defines *Acórdão* as the name given to a decision issued by the tribunals. Código de Processo Civil, Lei No. 5.869, de 11 de Janeiro de 1973, http://www.planalto.gov.br/ccivil_03/Leis/L5869.htm.

¹⁰⁷ The Internal Rule of the Federal Supreme Court (*Regimento Interno do Supremo Tribunal Federal*), art. 102, <http://www.stf.jus.br/portal/cms/verTexto.asp?servico=legislacaoRegimentoInterno>, determines that the jurisprudence established by the Court will be summed up in the *Súmula* of the Federal Supreme Court.

The *Súmulas* contain the prevailing jurisprudence of the most important tribunals of the country (STF and Superior Tribunals). They consist of the summarization of a series of judgments that deal with a specific subject matter that has been sufficiently debated and decided in a uniform manner on several occasions. They are not mandatory, except for the binding decisions (*súmulas vinculantes*), but highly persuasive. Once approved, the *Súmulas* guide the decisions of the lower courts on similar issues. Through the *súmulas*, the courts seek uniformity in the interpretation of the law.

¹⁰⁸ “*Stare Decisis* is the doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation.” BLACK’S LAW DICTIONARY 1537 (9th ed. 2009).

¹⁰⁹ On December 30, 2004, Congress amended the Constitution and established that the final decisions issued by an absolute majority of the members of the Federal Supreme Court would have a binding legal effect on the entire judiciary. Emenda Constitucional No. 45, de 30 de Dezembro de 2004, available at http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc45.htm. The so-called *Súmulas Vinculantes* are now regulated by Law No. 11,417 of December 19, 2006, and enable the judiciary to judge in a definitive and final way thousands of cases dealing with the same issue. Lei No. 11.417, de 19 de Dezembro de 2006, available at http://www.planalto.gov.br/ccivil_03/Ato2004-2006/2006/Lei/L11417.htm.

¹¹⁰ C.F. 1988 art. 103-A.

¹¹¹ *Id.*

¹¹² Law No. 11,417 of December 19, 2006 regulates article 103-A of the Constitution regarding the issuance, revision and revocation of binding decisions, http://www.planalto.gov.br/ccivil_03/Ato2004-2006/2006/Lei/L11417.htm.

The objective of a binding decision must be the validity, interpretation, and efficacy of determined norms, as to which there is an actual controversy among judicial bodies or between judicial bodies and the public administration, causing serious legal uncertainty and a corresponding increase in cases concerning identical questions.¹¹³

Without prejudice to what may be established by law, approval, revision, or revocation of a binding decision may be demanded by persons with standing to bring a direct action alleging unconstitutionality.¹¹⁴

An administrative or judicial decision that contradicts the applicable binding decision, or that improperly applies it, may be appealed (*reclamação*) to the Supreme Court. If the Federal Supreme Court accepts the appeal, the administrative act is annulled or the judicial decision is quashed and the Court orders a new judicial decision to be issued, with or without the application of the binding decision, as appropriate.¹¹⁵

Additionally, final decisions on the merits, rendered by the Federal Supreme Court in direct actions of unconstitutionality and declaratory actions of constitutionality, produce an effect against all and a binding effect in relation to other organs of the judicial branch and the direct and indirect public administration at the federal, state, and municipal levels.¹¹⁶

General Repercussion (*Repercussão Geral*)

Constitutional Amendment No. 45 of December 30, 2004, included as a prerequisite for the admission of an extraordinary appeal (*recurso exteordinário*¹¹⁷) the requirement that the constitutional question being raised presents an issue with general repercussions. The requirement was most likely inspired by the writ of certiorari used by the U.S. Supreme Court to review the decisions of the U.S. courts of appeals at its discretion.

Now, in order for the Federal Supreme Court to examine the admissibility of an extraordinary appeal, which may be rejected only by manifestation of two-thirds of its members, the appellant must demonstrate the general repercussions of the constitutional questions argued in the case, as provided by law.¹¹⁸

This matter was further regulated by Law No. 11,418 of December 19, 2006, which amended the Code of Civil Procedure (*Código de Processo Civil*) and added articles 543-A and

¹¹³ C.F. 1988 art. 103-A(§1).

¹¹⁴ *Id.* art. 103-A(§2).

¹¹⁵ *Id.* art. 103-A(§3).

¹¹⁶ *Id.* art. 102(§2).

¹¹⁷ Extraordinary appeal is an appeal filed with the Federal Supreme Court contesting the decision of a lower tribunal (*acórdão*) that contradicts a constitutional norm; declares unconstitutional a federal law or treaty, or considers valid a law or act of a local government contested under the Constitution. Its main purpose is to preserve the constitutional command violated. 4 MARIA HELENA DINIZ, *supra* note 10, at 77.

¹¹⁸ C.F. 1988 art. 102(§3).

543-B to the Code.¹¹⁹ In addition, the Federal Supreme Court amended its Internal Rule (*Regimento Interno do Supremo Tribunal Federal*) to conform the Internal Rule to the new constitutional principle.¹²⁰

According to the Federal Supreme Court, the purpose of the requirement for a constitutional issue of general repercussions is to define the jurisdiction of the Court in trials of extraordinary appeals that have social, political, economic, or legal relevance that transcends the subjective interests of the cause;¹²¹ and, as a practical matter, to standardize the constitutional interpretation without requiring the Court to decide multiple identical cases about the same constitutional issue repeatedly.¹²²

National Council of Justice (*Conselho Nacional de Justiça – CNJ*)

The National Council of Justice was created in 2004 through Constitutional Amendment No. 45 of December 30, 2004.¹²³ It is a judicial agency responsible for the administrative and financial control of the judiciary and the supervision of judges.¹²⁴

Composition

The Council is composed of fifteen members who are more than thirty-five and less than sixty-six years of age, for a term of two years, with one continuation allowed.¹²⁵ The members include

- I) One Minister from the Federal Supreme Court, appointed by the respective Court;
- II) One Minister from the Superior Tribunal of Justice, appointed by the respective Court;
- III) One Minister from the Superior Tribunal of Labor, appointed by the respective Court;
- IV) One Justice from a State Tribunal of Justice, appointed by the Federal Supreme Court;
- V) One state judge, appointed by the Federal Supreme Court;
- VI) One judge from a Federal Regional Tribunal, appointed by the Superior Tribunal of Justice;
- VII) One federal judge, appointed by the Superior Tribunal of Justice;

¹¹⁹ Código de Processo Civil, Lei No. 5.869, de 11 de Janeiro de 1973, http://www.planalto.gov.br/ccivil_03/Leis/L5869compilada.htm.

¹²⁰ Regimento Interno do Supremo Tribunal Federal, Supremo Tribunal Federal, <http://www.stf.jus.br/portal/cms/verTexto.asp?servico=legislacaoRegimentoInterno>.

¹²¹ *Apresentação do Instituto, Finalidades*, SUPREMO TRIBUNAL FEDERAL, <http://www.stf.jus.br/portal/cms/verTexto.asp?servico=jurisprudenciaRepercussaoGeral&pagina=apresentacao> (last updated Aug. 17, 2009).

¹²² *Id.*

¹²³ Emenda Constitucional No. 45, de 30 de Dezembro de 2004, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc45.htm.

¹²⁴ C.F. 1988 art. 103-B(§4).

¹²⁵ *Id.* art. 103-B.

- VIII) One judge from a Regional Labor Tribunal, appointed by the Superior Tribunal of Labor;
- IX) One labor law judge, appointed by the Superior Tribunal of Labor;
- X) One member from the federal Public Prosecutor's Office, appointed by the Attorney General of the Republic;
- XI) One member of the state Public Prosecutor's Office, chosen by the Attorney General of the Republic among the names appointed by the competent bodies of each State institution;
- XII) Two lawyers, appointed by the Federal Council of the Brazilian Bar Association;
- XIII) Two citizens of notable juridical learning and spotless reputation, one appointed by the Chamber of Deputies and the other appointed by the Federal Senate.¹²⁶

Jurisdiction

In addition to the powers conferred upon it by the Statute of the Magistracy (*Lei Orgânica da Magistratura Nacional* – LOMAN),¹²⁷ the Council has responsibility for

- I) preserving the autonomy of the judiciary, enforcing the Statute of the Magistracy, and issuing regulations within the ambit of its jurisdiction, or recommending measures;
- II) enforcing article 37 of the Constitution and hearing, *ex officio* or upon demand, cases involving the legality of administrative acts performed by members or organs of the judiciary, vacating or revising such acts, or setting a period in which to adopt necessary measures for the exact compliance with the law, without prejudice to the jurisdiction of the Audit Tribunal of the Union;
- III) receiving and hearing complaints against members or bodies of the judiciary, including complaints against their auxiliary services, employees, and agencies rendering notarial and registry services that act by delegation of public or official powers, without prejudice to the disciplinary and correctional jurisdiction of the tribunals. The Council may assume jurisdiction over ongoing disciplinary proceedings and determine removal, availability, or retirement with compensation or benefits proportional to the time of service and apply other administrative sanctions, assuring a full right of defense;
- IV) filing complaints (*representar*) with the Public Prosecutor's Office, in case of crimes against the public administration or abuse of authority;
- V) revising, *ex officio* or upon demand, disciplinary proceedings of judges and members of tribunals decided less than one year ago;
- VI) preparing a statistical report each semester on the cases and decisions entered, by unit of the Federation, which have been issued by the different organs of the judiciary; and
- VII) preparing an [annual report](#) that proposes the measures it deems necessary with respect to the situation of the judiciary in the country and the activities of the

¹²⁶ *Id.*

¹²⁷ Lei Orgânica da Magistratura Nacional, Lei Complementar No. 35, de 14 de Março de 1979, http://www.planalto.gov.br/ccivil_03/Leis/LCP/Lcp35.htm.

Council. This report should be part of the message of the President of the Federal Supreme Court sent to the National Congress on the occasion of the opening of the legislative session.¹²⁸

Council's Resolutions

Council's Internal Rule (*Regimento Interno do Conselho Nacional de Justiça*)

Magistracy's Ethical Code (*Código de Ética da Magistratura*)

Judicial Grievance Centers (*Ouvidorias de Justiça*)

The Constitution determines that the Union, including the Federal District and its Territories, must create judicial grievance centers with jurisdiction to receive complaints and denunciations from any interested person against members or bodies of the judiciary, or against their auxiliary services, reporting directly to the National Council of Justice.¹²⁹

Superior Tribunal of Justice (*Superior Tribunal de Justiça – STJ*)

Created by the Constitution of 1988,¹³⁰ the Superior Tribunal of Justice (STJ) is responsible for standardizing the interpretation of federal law in Brazil, following constitutional principles and the guarantee and defense of the rule of law.¹³¹

The STJ is the last instance in the Brazilian legal system for consideration of issues not directly related to the Constitution.¹³² In 2005, as part of the judicial reform implemented through Constitutional Amendment No. 45 of December 30, 2004, STJ also took jurisdiction of the analysis and grant of letters rogatory and of the judgment and confirmation of foreign decisions, which previously were under the jurisdiction of the STF.¹³³

Composition

The STJ is composed of a minimum of thirty-three Ministers,¹³⁴ who must be appointed by the President of the Republic, from Brazilians over thirty-five and under sixty-five years of age, with notable legal knowledge and unblemished reputations, upon approval by an absolute majority of the Federal Senate, with¹³⁵

¹²⁸ C.F. 1988 art. 103-B(§4).

¹²⁹ C.F. 1988 art. 103-B(§7).

¹³⁰ *Id.* art. 92(II).

¹³¹ *Atribuições*, SUPERIOR TRIBUNAL DE JUSTIÇA, http://www.stj.gov.br/portal_stj/publicacao/engine.wsp?tmp.area=293 (last visited June 23, 2011).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ C.F. 1988 art. 104.

¹³⁵ *Id.* art. 104 (sole para.).

- I) one-third coming from judges of the Federal Regional Tribunals and one-third from the justices of the Tribunals of Justice, nominated in a list of three names prepared by the Tribunal itself;
- II) one-third, in equal parts, from lawyers and members of the Federal, State, Federal District, and Territories Public Prosecutor's Office, selected alternately, as set out in article 94 of the Constitution.

STJ Ministers

Jurisdiction

The STJ has original jurisdiction to hear and decide¹³⁶

- a) cases involving common crimes committed by the Governors of the States and Federal District and common crimes and impeachable offenses (*crimes de responsabilidade*) committed by justices of the Tribunals of Justice of the States and Federal District, members of Audit Tribunals of the States and Federal District, members of the Federal Regional Tribunals, Electoral Regional Tribunals and Labor Tribunals, members of the Councils or Audit Tribunals of the Municipalities, and members of the Public Prosecutor's Office of the Union acting before tribunals;
- b) writs of security and habeas data against acts of a Minister, Commanders of the Navy, Army, and Air Force, or the Tribunal itself;
- c) writs of habeas corpus, when the constraining party or the constrained party is any person mentioned in article 105(I)(a), or when the constraining party is a tribunal subject to its jurisdiction; a Minister; or a Commander of the Navy, Army, or Air Force, with the exception of the jurisdiction of the Electoral Tribunals;
- d) jurisdictional conflicts between any tribunals, except as provided in article 102(I)(o) of the Constitution, as well as between a tribunal and judges not subordinated to it, and between judges subordinated to different tribunals;
- e) criminal revisions and rescissory actions from its own decisions;
- f) claims to preserve its jurisdiction and guarantee the authority of its decisions;
- g) conflicts of authority between administrative and judicial federal authorities, or between judicial authorities of one State and administrative authorities of another State or the Federal District, or between those of the latter and those of the Union;
- h) writs of injunction when the responsibility for the preparation of the regulatory rule is charged to a federal agency, entity, or authority of direct or indirect administration, with the exception of cases falling under the jurisdiction of the Federal Supreme Court and the organs of Military Justice, Electoral Justice, Labor Justice, and Federal Justice;
- i) confirmation of foreign decisions and analysis, and grants of letters rogatory.¹³⁷

¹³⁶ *Id.* art. 105(I).

¹³⁷ Although Constitutional Amendment No. 45 of December 30, 2004, transferred jurisdiction over the confirmation of foreign decisions and the analysis and grant of letters rogatory from the Federal Supreme Court to the Superior Tribunal of Justice, C.F. 1988 art. 105(I)(i), article 483 of the Code of Civil Procedure has yet to be

The STJ has jurisdiction to decide, on ordinary appeals,¹³⁸

- a) denials of habeas corpus decided in the sole or last instance by the Federal Regional Tribunals or by the tribunals of the States, Federal District, and Territories;
- b) denials of writs of security decided originally by the Federal Regional Tribunals or by tribunals of the States, Federal District, and Territories;
- c) cases in which the parties on one side are a foreign State or an international organization, and on the other side are a municipality or a person resident or domiciled in the country.

The STJ has jurisdiction to decide, on special appeal, cases decided, in the sole or last instance, by the Federal Regional Tribunals or by tribunals of the States, Federal District, and Territories, when the appealed decision¹³⁹

- a) is contrary to a treaty or federal law, or denies their effectiveness;
- b) upholds an act of a local government challenged as contrary to federal law; or
- c) interprets federal law differently from another tribunal.

The following entities must operate together with the Superior Tribunal of Justice:¹⁴⁰

- I) the National School for Formation and Improvement of Judges (*Escola Nacional de Formação e Aperfeiçoamento de Magistrados*), with responsibility, *inter alia*, for regulating official courses for entry into and promotion in the career;
- II) the Council of Federal Justice (*Conselho da Justiça Federal*), with responsibility for exercising, as provided by law, administrative and budgetary supervision of the Federal Justice in the trial and appellate levels, as the central body in the system, with disciplinary powers, whose decisions have binding effects.

STJ's Internal Rule (*Regimento Interno do Superior Tribunal de Justiça*)

STJ's Jurisprudence (*Acórdãos* and *Súmulas*)

amended to reflect this change.

¹³⁸ *Id.* art. 105(II).

¹³⁹ *Id.* art. 105(III).

¹⁴⁰ *Id.* art. 105 (sole para.).

Federal Justice

Historical Background¹⁴¹

The first Brazilian Constitution was enacted on March 25, 1824,¹⁴² by the Brazilian emperor, Dom Pedro I, imposing a constitutional monarchy on the country that lasted for almost sixty-seven years. On November 15, 1889, the emperor was overthrown and a republican form of government was proclaimed.

The federal justice was first created on October 11, 1890, with the enactment of Decree No. 848.¹⁴³ It consisted of a Federal Supreme Court and lower judges, called section judges (*Juízes de Seção*).¹⁴⁴ To reflect this new form of government, on February 24, 1891, a new Constitution was promulgated.¹⁴⁵

The Constitution of 1891 determined that the judiciary consisted of a Federal Supreme Court and as many judges and federal tribunals, distributed throughout the country, as created by Congress.¹⁴⁶ In practice, the new Constitution kept the initial structure of the federal justice as established by Decree No. 848, but increased the jurisdiction of the Federal Supreme Court¹⁴⁷ and created the federal tribunals.¹⁴⁸

With the enactment of a new Constitution¹⁴⁹ on July 16, 1934,¹⁵⁰ the federal justice was kept unchanged and the composition of the judiciary was further defined,¹⁵¹ which consisted of a

¹⁴¹ *Institucional: História da Justiça Federal*, JUSTIÇA FEDERAL, SEÇÃO JUDICIÁRIA DO PARANÁ, <http://www.jfpr.gov.br/institucional/jfpr/historia.php> (last visited June 23, 2011).

¹⁴² CONSTITUIÇÃO POLÍTICA DO IMPÉRIO DO BRASIL (de 25 de Março de 1824), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao24.htm.

¹⁴³ Decreto No. 848, de 11 de Outubro de 1890, http://www.planalto.gov.br/ccivil_03/decreto/1851-1899/D848impressao.htm.

¹⁴⁴ *Id.* art. 1.

¹⁴⁵ CONSTITUIÇÃO DA REPÚBLICA DOS ESTADOS UNIDOS DO BRASIL (de 24 de Fevereiro de 1891) art. 1, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao91.htm.

¹⁴⁶ *Id.* art. 55.

¹⁴⁷ *Id.* art. 59(I)(a).

¹⁴⁸ *Id.* art. 55.

¹⁴⁹ CONSTITUIÇÃO DA REPÚBLICA DOS ESTADOS UNIDOS DO BRASIL (de 16 de Julho de 1934), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao34.htm.

¹⁵⁰ Although not the direct product of a coup d'état, the Constitution of 1934 was born after a civil revolution seized power and installed a provisional government that later called for a National Constituent Assembly to discuss a new Constitution. *Constituição de 1934*, *supra* note 68.

¹⁵¹ *Id.* art. 63.

Supreme Court,¹⁵² federal judges and federal tribunals,¹⁵³ military judges and military tribunals,¹⁵⁴ and electoral judges and electoral tribunals.¹⁵⁵

In 1937, following a coup d'état and the enactment of a new Constitution,¹⁵⁶ the federal justice was extinguished and only the state justice was recognized to try matters that the federal government was party to, with the possibility of an ordinary appeal to the Federal Supreme Court. The judiciary came to exist as a Federal Supreme Court and the judges and tribunals of the states, Federal District, and territories.¹⁵⁷

Another coup d'état in 1945 resulted in another Constitution, promulgated on September 18, 1946,¹⁵⁸ which recreated the federal justice, but only as an appellate body. The judiciary's composition was defined as the Federal Supreme Court, Federal Court of Appeals (*Tribunal Federal de Recursos*), military judges and military tribunals, electoral judges and electoral tribunals, and labor judges and labor tribunals.¹⁵⁹

A military coup d'état in 1964 installed a military council, composed of all the military ministers, to run the country. Once the military council took power, they started issuing Institutional Acts.¹⁶⁰

Institutional Act No. 2 of October 27, 1965, amended the Constitution of 1946 and recreated the trial federal courts.¹⁶¹ The amended article 94 of the Constitution included the federal judges in the composition of the judiciary.¹⁶² The jurisdiction of the federal trial court was defined in an amendment to article 105, which included a section detailing it.¹⁶³

¹⁵² *Id.* art. 63(a).

¹⁵³ *Id.* art. 63(b).

¹⁵⁴ *Id.* art. 63(c).

¹⁵⁵ *Id.* art. 63(d).

¹⁵⁶ CONSTITUIÇÃO DOS ESTADOS UNIDOS DO BRASIL (de 10 de Novembro de 1937), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao37.htm.

¹⁵⁷ *Id.* art. 90.

¹⁵⁸ CONSTITUIÇÃO DOS ESTADOS UNIDOS DO BRASIL (de 18 de Setembro de 1946), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao46.htm.

¹⁵⁹ *Id.* art. 94.

¹⁶⁰ *Atos Institucionais*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, <http://www.fgv.br/CPDOC/BUSCA/Busca/BuscaConsultar.aspx> (last visited Jan. 25, 2011).

¹⁶¹ Ato Institucional No. 2, de 27 de Outubro de 1965, art. 6, http://www6.senado.gov.br/legislacao/ListaNormas.action?numero=2&tipo_norma=AIT&data=19651027&link=s.

¹⁶² *Id.*

¹⁶³ *Id.*

On May 30, 1966, Law No. 5,010¹⁶⁴ was issued to regulate the federal trial courts¹⁶⁵ and create the Federal Justice Council (*Conselho da Justiça Federal*),¹⁶⁶ giving it jurisdiction to deal with disciplinary issues of judges and officials and other administrative matters.¹⁶⁷

On January 24, 1967, the military government promulgated a new Constitution.¹⁶⁸ The Constitution of 1967 did not change the structure of the judiciary,¹⁶⁹ but included a trial tier to the federal justice system by adding federal judges along with the existing appellate body, the Federal Court of Appeals.¹⁷⁰

On February 1, 1987, a unicameral assembly, called the National Constituency Assembly, convened at the National Congress¹⁷¹ and, on October 5, 1988, a new Brazilian Constitution was enacted.¹⁷² The Constitution of 1988 restructured the federal justice system, with the creation of the Superior Tribunal of Justice and five Federal Regional Tribunals.

According to the Constitution of 1988, the judiciary is composed of the Federal Supreme Court; the National Council of Justice (*Conselho Nacional de Justiça – CNJ*); the Superior Tribunal of Justice (*Superior Tribunal de Justiça – STJ*); the Federal Justice (*Tribunais Regionais Federais e Juízes Federais*); Labor Justice (*Tribunais e Juízes do Trabalho*); Electoral Justice (*Tribunais e Juízes do Eleitorais*); Military Justice (*Tribunais e Juízes Militares*); and State Justice (*Tribunais e Juízes dos Estados e do Distrito Federal e Territórios*).¹⁷³

Federal Regional Tribunals (*Tribunais Regionais Federais - TRF*)

The Federal Regional Tribunals were created by the Constitution of 1988,¹⁷⁴ which established that five Tribunals should be installed within six months from the promulgation of the Constitution, with their jurisdiction and place of sitting to be determined by the Federal Court of Appeals (*Tribunal Federal de Recursos*), taking into account the number of cases and their geographical location.¹⁷⁵ The Federal Court of Appeals exercised the jurisdiction attributed to

¹⁶⁴ Lei No. 5.010 de 30 de Maio de 1966, http://www.planalto.gov.br/ccivil_03/Leis/L5010.htm.

¹⁶⁵ *Id.* art. 1.

¹⁶⁶ *Id.* art. 4.

¹⁶⁷ *Id.* art. 6.

¹⁶⁸ CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL DE 1967, http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao67.htm.

¹⁶⁹ *Id.* art. 107.

¹⁷⁰ *Id.* art. 107(II).

¹⁷¹ Emenda Constitucional No. 26 de 27 de Novembro de 1985, art. 1, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc26-85.htm.

¹⁷² C.F. 1988, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm.

¹⁷³ *Id.* art. 92.

¹⁷⁴ Ato das Disposições Constitucionais Transitórias art. 27(§6), http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm#adct.

¹⁷⁵ *Id.*

the Federal Regional Tribunals throughout the national territory until the Federal Regional Tribunals were installed,¹⁷⁶ when it then ceased to exist.

Composition

The Federal Regional Tribunals are composed of a minimum of seven judges appointed by the President of the Republic from among Brazilians over thirty and less than sixty-five years of age,¹⁷⁷

- I) one-fifth of whom must be attorneys with more than ten years of professional experience and members of the Federal Prosecutor's Office (*Ministério Público Federal*) with more than ten years in the position; and
- II) four-fifths of whom must be federal judges with more than five years in the position.

Jurisdiction

Federal Regional Tribunals have original jurisdiction to hear¹⁷⁸

- a) cases against federal judges, including military judges and labor law judges, whenever they are involved in common crimes and crimes of responsibility; and cases against members of the Public Prosecutor's Office (*Ministério Público da União*) except for the jurisdiction of the Electoral Justice;
- b) criminal reviews and annulment actions of federal court decisions;
- c) writs of mandamus and habeas data against an act of the Federal Regional Tribunal or federal judge;
- d) habeas corpus claims, when the constraining authority is a federal judge; and
- e) conflicts of jurisdiction between federal judges subordinated to the Federal Regional Tribunal.

Federal Regional Tribunals act as courts of review in cases decided by federal judges and in cases decided by state judges exercising federal authority in the area of their jurisdiction.¹⁷⁹

Special Federal Courts (Civil and Criminal)

On July 12, 2001, Law No. 10,259 created the Special Federal Courts (*Juizados Especiais Cívies e Criminais no âmbito da Justiça Federal*) for the purpose of simplifying and reducing procedural steps and the number of appeals filed with the Federal Regional Tribunals and, as a direct consequence, offer a more responsive justice.¹⁸⁰ The special federal courts can

¹⁷⁶ *Id.* art. 27(§7).

¹⁷⁷ C.F. 1988 art. 107.

¹⁷⁸ *Id.* art. 108(I).

¹⁷⁹ *Id.* art. 108(II).

¹⁸⁰ *Juizados Especiais Federais, O que são?*, JUSTIÇA FEDERAL, SEÇÃO JUDICIÁRIA DO PARANÁ, <http://www.jfpr.gov.br/institucional/jef.php> (last visited June 23, 2011).

hear cases that fall within the jurisdiction of the federal judiciary. In civil matters, the value of the cause cannot exceed sixty minimum salary wages (paid monthly).¹⁸¹ In criminal matters, only actions with “minor offensive potential” are accepted.¹⁸²

Itinerant Justice (*Justiça Itinerante*)

After the amendment of the Brazilian Constitution in 2004, the Federal Regional Tribunals were charged with setting up itinerant courts, which must hold hearings and other jurisdictional functions within the territorial limits of their respective jurisdictions, using public and community facilities.¹⁸³ In addition, the Tribunals were authorized to function in a decentralized fashion, constituting regional chambers, in order to assure full access to justice at all phases of judicial proceedings.¹⁸⁴

Federal Regional Tribunals and Regions

The Federal Regional Tribunals, established by the Constitution of 1988 through the Transitional Constitutional Provisions Act, with their headquarters and jurisdiction set forth in Resolution No. 1 of October 6, 1988, issued by the Federal Court of Appeals in compliance with the provisions of article 27(§6) of the Act,¹⁸⁵ are numbered from one to five and divided by Region.

The Tribunals must have the following initial composition: eighteen judges in the 1st and 3rd Regions, fourteen in the 2nd and 4th Regions, and ten judges in the 5th Region.¹⁸⁶

The [Federal Regional Tribunal, 1st Region](#), covers the judicial sections of Acre, Amapá, Amazonas, Bahia, Distrito Federal, Goiás, Maranhão, Mato Grosso, Minas Gerais, Pará, Piauí, Rondônia, Roraima, and Tocantins.

Justices (*Desembargadores*)

Internal Rule (*Regimento Interno*)

Jurisprudence (*Jurisprudência*)

¹⁸¹ Lei No. 10.259, de 12 de Julho de 2001, art. 2, http://www.planalto.gov.br/ccivil/leis/LEIS_2001/L10259.htm.

¹⁸² *Id.* art. 3.

According to article 61 of Law No. 9,099 of September 26, 1995, minor criminal offenses are misdemeanors or crimes for which the law provides that the maximum penalty may not exceed two years, whether combined with a fine or not. Lei No. 9.099, de 26 de Setembro de 1995, <http://www.planalto.gov.br/ccivil/leis/L9099.htm>.

¹⁸³ *Id.* art. 107(§2).

¹⁸⁴ *Id.* art. 107(§3).

¹⁸⁵ Lei No. 7.727, de 9 de Janeiro de 1989, art. 1, http://www.planalto.gov.br/ccivil_03/Leis/L7727.htm.

¹⁸⁶ *Id.* art. 2.

Decisions ([Acórdãos](#) and [Súmulas](#))

The [Federal Regional Tribunal, 2nd Region](#), covers the judicial sections of Rio de Janeiro and Espírito Santo.

[Justices](#)

[Internal Rule](#)

[Jurisprudence](#)

Decisions ([Acórdãos](#) and [Súmulas](#))

The [Federal Regional Tribunal, 3rd Region](#), covers the judicial sections of São Paulo and Mato Grosso do Sul.

[Justices](#)

[Internal Rule](#)

[Jurisprudence](#)

Decisions ([Acórdãos](#) and [Súmulas](#))

The [Federal Regional Tribunal, 4th Region](#), covers the judicial sections of Rio Grande do Sul, Paraná, and Santa Catarina.

[Justices](#)

[Internal Rule](#)

[Jurisprudence](#)

Decisions ([Acórdãos](#) and [Súmulas](#))

The [Federal Regional Tribunal, 5th Region](#), covers the judicial sections of Alagoas, Ceará, Paraíba, Pernambuco, Rio Grande do Norte, and Sergipe.

[Justices](#)

[Internal Rule](#)

[Jurisprudence](#)

Decisions ([Acórdãos](#) and [Súmulas](#))

Federal Courts (*Juízes Federais*)

Federal courts have jurisdiction to try cases in which the Federal Government, its agencies, foundations, and federal public companies are listed as plaintiffs or defendants and in all other matters listed under article 109 of the Constitution. The trial courts of the federal justice are regulated by [Law No. 5,010 of May 30, 1966](#).¹⁸⁷

Composition

Each state, as well as the Federal District, must constitute a judicial section, which must sit in the respective capital, with trial courts located as established by law.¹⁸⁸ In the federal territories, the same jurisdiction and powers granted to federal judges must be attributed to the judges of the local courts, as provided by law.¹⁸⁹

The administration of the federal trial courts in the states, Federal District, and territories belongs to the federal judges and substitute federal judges, with the collaboration of the subsidiary bodies as established by law.¹⁹⁰

Judicial Regions (*Regiões Judiciárias*)

Each state and territory, and the Federal District, constitutes a Judicial Section, with its headquarters located in its respective capital.¹⁹¹ The territory of Fernando de Noronha belongs to the Judicial Section of the state of Pernambuco.¹⁹²

For the purposes of Law No. 5,010, the states, the Federal District, and the territories are grouped under the following judicial regions:

- 1st (Center-West):** Distrito Federal, Goiás, Mato Grosso, Minas Gerais, and Rondônia
- 2nd (North):** Acre, Amazonas, Maranhão, Pará, Amapá, and Roraima
- 3rd (Northeast):** Alagoas, Ceará, Paraíba, Pernambuco, Piauí, Rio Grande do Norte, Sergipe, and Fernando de Noronha
- 4th (East):** Bahia, Espírito Santo, and Rio de Janeiro
- 5th (South):** Paraná, Rio Grande do Sul, Santa Catarina, and São Paulo¹⁹³

¹⁸⁷ PORTAL DA JUSTIÇA FEDERAL, <http://www.jf.jus.br/cjf>.

¹⁸⁸ C.F. 1988 art. 110.

¹⁸⁹ *Id.* art. 110 (sole para.).

¹⁹⁰ Lei No. 5.010, de 30 de Maio de 1966, art. 1, http://www.planalto.gov.br/ccivil_03/Leis/L5010.htm.

¹⁹¹ *Id.* art. 3.

¹⁹² *Id.* art. 3 (sole para.).

¹⁹³ *Id.* art. 2.

Jurisdiction

Federal judges have the power to hear and decide

- I) cases in which the Union, a federal agency (*autarquia*), or a federal public company has an interest as a plaintiff, defendant, or third party, except cases involving bankruptcy or work-related accidents, or cases subject to Electoral Justice and Labor Justice;
- II) cases between a foreign state or international organization and a municipality or person domiciled or resident in Brazil;
- III) cases based on a treaty or a contract of the Union with a foreign state or international organization;
- IV) political crimes and criminal offenses detrimental to property, services, or interests of the Union or its agencies or public companies, excluding minor offenses (*contravenção penal*)¹⁹⁴ and cases within the jurisdiction of Military Justice and Electoral Justice;
- V) crimes covered in international treaties or conventions, when their commission has begun in Brazil and their results take place or would have taken place abroad, or reciprocally;
- V-A) cases related to human rights referred to in article 109(§5) of the Constitution;
- VI) crimes against the organization of labor and, in cases determined by law, against the financial system and the economic and financial order;
- VII) habeas corpus claims, in criminal matters subject to their jurisdiction or when the constraint stems from an authority whose acts are not directly subject to another jurisdiction;
- VIII) writs of security and habeas data against an act of a federal authority, except for those cases subject to the jurisdiction of the federal tribunals;
- IX) crimes committed aboard ships or aircraft, except for those subject to the jurisdiction of Military Justice;
- X) crimes of an alien's irregular entry or stay, execution of letters rogatory after *exequatur*,¹⁹⁵ enforcement of foreign court decisions after approval, and cases relating to nationality, including the respective option for Brazilian nationality and naturalization; and
- XI) disputes over indigenous rights.¹⁹⁶

In addition, cases in which the Union is the plaintiff must be brought in the judicial section where the defendant is domiciled.¹⁹⁷ Cases against the Union may be brought in the

¹⁹⁴ *Contravenção penal* is defined as a voluntary action or omission that is considered an offense less serious than a crime and punished with a lighter punishment (simple imprisonment or a fine, or both alternatively and cumulatively), 1 MARIA HELENA DINIZ, *supra* note 95, at 1056. Decree-Law No. 3,688 of October 3, 1941, defines the situations, actions and omissions that are characterized as misdemeanors (*contravenções penais*) and establishes their punishments, <http://www.planalto.gov.br/ccivil/Decreto-Lei/De13688.htm>.

¹⁹⁵ *Exequatur* is defined as a legal process necessary to obtain authorization to enforce foreign judgments in Brazil, 2 MARIA HELENA DINIZ, *supra* note 98, at 541.

¹⁹⁶ C.F. 1988 art. 109.

¹⁹⁷ *Id.* art. 109(§1).

judicial section of the plaintiff's domicile, where the act or fact causing the complaint occurred, or where the cause of the complaint is situated or in the Federal District.¹⁹⁸ Cases in which the parties are a social security institution and its beneficiary, but no federal judge sits in the district, must be tried and decided in the state court of the domicile of the insured or the beneficiary; the law may also allow other cases to be tried and decided in state courts.¹⁹⁹

An appeal must always be to the Federal Regional Tribunal in the jurisdictional area of the trial court.²⁰⁰ In cases of grave violations of human rights, for purposes of assuring compliance with obligations stemming from international human rights treaties to which Brazil is a party, the Attorney General of the Republic may request before the Superior Tribunal of Justice, at any phase of the proceedings, removal to a Federal Court.²⁰¹

Council of Federal Justice (*Conselho da Justiça Federal*),

The Council of Federal Justice was created on May 30, 1966, by Law No. 5,010.²⁰² The Council's jurisdiction was later regulated by Law No. 7,746 of March 30, 1989.²⁰³ On October 14, 1992, Law No. 8,472²⁰⁴ was enacted to this effect and revoked the articles of Law No. 7,746 pertaining to the composition, administration, and jurisdiction of the Council.

The Constitution of 1988 determined that the Council of Federal Justice must operate together with the Superior Tribunal of Justice with the responsibility of exercising, as provided by law, administrative and budgetary supervision of the Federal Justice at the trial and appellate levels.²⁰⁵

After the amendment of the Brazilian Constitution in 2004,²⁰⁶ the Council was raised to the status of the central body in the system and acquired disciplinary powers, and its decisions started having binding effects.²⁰⁷ Law No. 11,798²⁰⁸ was enacted on October 29, 2008, to address the new duties imposed on the Council by the Constitutional Amendment.

¹⁹⁸ *Id.* art. 109(§2).

¹⁹⁹ *Id.* art. 109(§3).

²⁰⁰ *Id.* art. 109(§4).

²⁰¹ *Id.* art. 109(§5).

²⁰² *Institucional: História da Justiça Federal*, *supra* note 141.

²⁰³ Lei No. 7.746, de 30 de Março de 1989, http://www.planalto.gov.br/ccivil_03/Leis/L7746.htm.

²⁰⁴ Lei No. 8.472, de 14 de Outubro de 1992, http://www.planalto.gov.br/ccivil_03/LEIS/L8472_impresao.htm.

²⁰⁵ C.F. 1988 art. 105 (sole para.) (II).

²⁰⁶ Emenda Constitucional No. 45, de 30 de Dezembro de 2004, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc45.htm.

²⁰⁷ C.F. 1988 art. 105 (sole para.) (II).

²⁰⁸ Lei No. 11,798, de 29 de Outubro de 2008, http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2008/Lei/L11798.htm.

Composition

The Council is composed of the President and Vice President of the Superior Tribunal of Justice; three Ministers elected from among the members of the Superior Tribunal of Justice, together with their alternates; and the Presidents of the Federal Regional Tribunals, who will be replaced in their absence or incapacity by the respective Vice Presidents.²⁰⁹

Members

Council's Resolutions

Council's Internal Rules (*Regimento Interno do Conselho da Justiça Federal*)

Labor Justice (*Tribunais e Juízes do Trabalho*)

Historical Background²¹⁰

Labor Justice (*Justiça do Trabalho*) was initially foreseen in the Constitution of 1934 and was not considered part of the judiciary branch.²¹¹ The new Constitution of 1937²¹² established that Labor Justice, which was administrative in nature, was to be regulated by law. The provisions of the Constitution of 1937 relating to the competence, recruitment, and powers of civil courts did not apply.²¹³

On May 2, 1939, Decree-Law No. 1,237²¹⁴ was issued to regulate Labor Justice. Pursuant to Decree No. 1,237, conflicts arising from relations between employers and employees covered by social laws were to be settled by Labor Justice,²¹⁵ and the administration of Labor Justice was to be exercised by

- a) the Boards of Conciliation and Judgment (*Juntas da Conciliação e Julgamento*) and Judges (*Juízes de Direito*),
- b) the Regional Councils of Labor (*Conselhos Regionais do Trabalho*),
- c) the National Labor Council (*Conselho Nacional do Trabalho*) in its entirety or through its Chamber of Labor Justice (*Câmara de Justiça do Trabalho*).²¹⁶

²⁰⁹ *Id.* art. 2.

²¹⁰ ATRIBUIÇÕES DO TST, BREVE HISTÓRICO, Portal do Tribunal Superior do Trabalho, <http://www.tst.gov.br/>.

²¹¹ CONSTITUIÇÃO DA REPÚBLICA DOS ESTADOS UNIDOS DO BRASIL (de 16 de Julho de 1934) art. 122, http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao34.htm.

²¹² CONSTITUIÇÃO DOS ESTADOS UNIDOS DO BRASIL (de 10 de Novembro de 1937), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao37.htm.

²¹³ *Id.* art. 139.

²¹⁴ Decreto-Lei No. 1.237, de 2 de Maio de 1939, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/1937-1946/Del1237.htm.

²¹⁵ *Id.* art. 1.

²¹⁶ *Id.* art. 2.

The Boards of Conciliation and Judgment acted as trial courts,²¹⁷ while the Regional Councils of Labor acted as courts of appeal,²¹⁸ and the National Labor Council acted as the superior court of labor justice.²¹⁹

On May 1, 1943, Decree-Law No. 5,452²²⁰ approved the Consolidation of Labor Laws (*Consolidação das Leis do Trabalho, CLT*), which systematically put together all labor laws in force at the time²²¹ and determined the rules that regulated the individual and collective work relationships provided therein.²²²

The Constitution of 1946 incorporated labor justice into the judicial branch²²³ and defined its composition²²⁴ and jurisdiction.²²⁵

Pursuant to article 122 of the Constitution of 1946, Labor Justice was composed of the

- I) Superior Labor Tribunal (*Tribunal Superior do Trabalho*),
- II) Regional Labor Tribunals (*Tribunais Regionais do Trabalho*), and
- III) Boards or Judges of Conciliation and Judgment (*Juntas ou Juízes de Conciliação e Julgamento*).

The Constitutions of 1967 and 1988 did not change the structure of Labor Justice. However, the Constitution of 1988 determined that there would be at least one Regional Labor Tribunal in each State and in the Federal District.²²⁶

On December 9, 1999, Constitutional Amendment No. 24²²⁷ extinguished the class-member representatives (*Juízes Classistas*)²²⁸ who participated in the Boards of Conciliation and

²¹⁷ *Id.* arts. 24, 25, 26, 27.

²¹⁸ *Id.* art. 28.

²¹⁹ *Id.* art. 17.

²²⁰ Decreto-Lei No. 5.452, de 1 de Maio de 1943, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del5452.htm.

²²¹ EDUARDO GABRIEL SAAD, CONSOLIDAÇÃO DAS LEIS DO TRABALHO COMENTADA, 17 (43rd. Ed., Editora LTR, 2010).

²²² Decreto-Lei No. 5.452, art. 1.

²²³ CONSTITUIÇÃO DOS ESTADOS UNIDOS DO BRASIL art. 94(V) (de 18 de Setembro de 1946), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao46.htm.

Pursuant to article 94 of the Constitution of 1946, the judicial branch was composed of the Federal Supreme Court (art. 94(I)), Federal Court of Appeals (art. 94(II)), Military Justice (art. 94(III)), Electoral Justice (art. 94(IV)), and Labor Justice (art. 94(V)).

²²⁴ *Id.* art. 122.

²²⁵ *Id.* art. 123.

²²⁶ C.F. 1988 art. 112 (before Constitutional Amendments 24 and 45).

²²⁷ Emenda Constitucional No. 24, de 9 de Dezembro de 1999, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc24.htm#art111iii.

Judgment and changed the name of the Boards to Labor Law Courts (*Varas do Trabalho*).²²⁹ On November 21, 2003, Law No. 10,770 created 269 new Labor Law Courts.²³⁰

The aspects of the reform of the judiciary made on December 30, 2004, through Constitutional Amendment No. 45²³¹ that affected Labor Justice included an expansion of its jurisdiction to decide cases involving working relations in addition to the employment relations issues foreseen by the CLT;²³² the creation of the Superior Council of Labor Justice (*Conselho Superior da Justiça do Trabalho*) and the National School for the Formation and Improvement of Labor Judges (*Escola Nacional de Formação e Aperfeiçoamento de Magistrados do Trabalho*);²³³ and the Superior Labor Tribunal's reversion to twenty-seven Ministers, which was the original number of members of the tribunal until the extinction of the class-member representatives (*Juízes Classistas*) in 1999.²³⁴

Composition

The Constitution of 1988 determined that Labor Justice consists of²³⁵

- I) the Superior Labor Tribunal,
- II) Regional Labor Tribunals, and
- III) Labor Law Courts.

Jurisdiction

Labor Justice has the power to hear and decide

- I) actions arising from labor relations, including foreign public law entities and those of direct and indirect public administration of the Union, States, Federal District, and Municipalities;
- II) actions involving the exercise of the right to strike;
- III) actions concerning union representation, between unions, between unions and workers, and between unions and employers;
- IV) writs of security, habeas corpus, and habeas data, when the challenged act involves matters subject to its jurisdiction;

²²⁸ *Juízes Classistas* were layman judges who represented employees and employers before the labor justice. 3 MARIA HELENA DINIZ, *supra* note 97, at 59.

²²⁹ Emenda Constitucional No. 24, de 9 de Dezembro de 1999, art. 1.

²³⁰ Lei No. 10.770, de 21 de Novembro de 2003, http://www.planalto.gov.br/ccivil_03/Leis/2003/L10.770.htm.

²³¹ Emenda Constitucional No. 45, de 30 de Dezembro de 2004, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc45.htm.

²³² ATRIBUIÇÕES DO TST, Portal do Tribunal Superior do Trabalho, <http://www.tst.gov.br/>.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ C.F. 1988 art. 111.

- V) jurisdictional conflicts among bodies with labor jurisdiction, except for the provision of article 102(I)(o) of the Constitution;
- VI) indemnification actions for moral or patrimonial damages arising from labor relations;
- VII) actions relating to administrative penalties imposed upon employers by supervisory bodies of labor relations;
- VIII) *ex officio* execution of the social contributions provided for in article 195(I)(a) and 195(II) of the Constitution and any legal increments stemming from its decisions;
- IX) other controversies derived from labor relations, as provided by law.²³⁶

If collective bargaining negotiations are unsuccessful, the parties may appoint arbitrators.²³⁷ If one party refuses collective bargaining or arbitration, the parties, by common accord, may file an economic collective labor dispute, which may be decided by Labor Justice, respecting the minimum legal provisions for protection of labor, as well as those provisions previously agreed upon.²³⁸

In case of a strike in an essential activity with the possibility of damage to the public interest, the Public Prosecutor's Office of Labor must file a collective labor dispute, which Labor Justice has jurisdiction to decide.²³⁹

Superior Labor Tribunal (*Tribunal Superior do Trabalho*, TST)

The main function of the TST is to standardize labor law jurisprudence.²⁴⁰ Its headquarters is located in Brasília-DF and it has jurisdiction throughout the national territory.²⁴¹

Composition

The Superior Labor Tribunal must be composed of twenty-seven Ministers, chosen among Brazilians between thirty-five and sixty-five years of age, appointed by the President of the Republic, after approval by an absolute majority of the Federal Senate, with²⁴²

- I) one-fifth from lawyers with more than ten years of effective professional activity, and members of the Public Prosecutor's Office of Labor (*Ministério Público do Trabalho*) with more than ten years of effective service, observing the provisions of article 94 of the Constitution;
- II) four-fifths from career judges of the Regional Labor Tribunals, appointed by the Superior Tribunal itself.

²³⁶ *Id.* art. 114.

²³⁷ *Id.* art. 114(§1).

²³⁸ *Id.* art. 114(§2).

²³⁹ *Id.* art. 114(§3).

²⁴⁰ *Estrutura do TST*, TRIBUNAL SUPERIOR DO TRABALHO, <http://www.tst.gov.br/ASCS/estrutur2.html> (last visited July 1, 2011).

²⁴¹ *Id.*

²⁴² C.F. 1988 art. 111-A.

The following must function together with the Superior Labor Tribunal:²⁴³

- I) the National School for the Formation and Improvement of Labor Judges, which, among other functions, must be responsible for regulating official courses for entry and promotion in the career;
- II) the Superior Council of Labor Justice, as the central body in the system whose decisions have binding effects, with responsibility for exercising, as provided by law, administrative, budgetary, financial, and patrimonial supervision of Labor Justice at the trial and appellate levels.

TST's Ministers

Jurisdiction

The jurisdiction of the Superior Labor Tribunal is regulated by article 702 of the CLT and Law No. 7,701 of December 21, 1988.²⁴⁴ Pursuant to article 4 of Law No. 7,701, the full Court of the Superior Labor Tribunal has jurisdiction to

- a) declare the constitutionality or unconstitutionality of a law or normative act of the government;
- b) approve summaries of the prevailing jurisprudence on individual bargaining (*dissídios individuais*²⁴⁵);
- c) decide the incidents of uniformity of jurisprudence on individual bargaining;
- d) approve precedents of law prevailing in collective bargaining (*dissídios coletivos*²⁴⁶);
- e) approve tables of costs and fees, according to the law, and
- f) prepare the internal rules of the Tribunal and perform administrative duties as specified by law or the Constitution.

²⁴³ *Id.* art. 111-A(§2).

²⁴⁴ Lei No. 7.701, de 21 de Dezembro de 1988, http://www.planalto.gov.br/ccivil_03/Leis/L7701.htm.

²⁴⁵ *Dissídio* is a collective or individual labor relations controversy subject to discussion at the Labor Justice. 2 MARIA HELENA DINIZ, *supra* note 98, at 232. *Dissídio individual* is when the labor dispute occurs between an employer and an employee individually. It is a labor complaint (*reclamação trabalhista*). *Id.*

²⁴⁶ *Dissídio coletivo* is form of judicial settlement of a collective labor conflict. It is the name used by the constitutional legislator when discussing arbitration to say that, whenever there is a refusal to participate in negotiation or arbitration, the unions may file for collective bargaining proceedings, to which the Labor Justice may establish rules and conditions respecting agreements and minimum legal provisions to protect work. The Constitution, therefore, makes clear the distinction between arbitration and judicial settlement, i.e., the parties may establish collective norms through direct negotiation, arbitration, or collective bargaining. 2 MARIA HELENA DINIZ, *supra* note 98, at 232.

The chambers (*Turmas*²⁴⁷) of the Superior Labor Tribunal have jurisdiction to

- a) decide appeals (*recursos de revista*²⁴⁸) against decisions issued by the Regional Labor Tribunals, in cases provided by law;
- b) issue final decisions in appeals (*agravos de instrumento*²⁴⁹) against orders (*despachos*²⁵⁰) issued by the President of a Regional Labor Tribunal that deny an appeal (*recurso de revista*), explaining in what circumstances the appeal may be filed, if granted;
- c) issue final decisions in appeals (*agravos regimentais*²⁵¹); and
- d) decide appeals (*embargos de declaração*²⁵²) filed against the Tribunal's decisions (*acordãos*).²⁵³

The TST's Internal Rule (*Regimento Interno do Tribunal Superior do Trabalho*)

The TST's Decisions (Acórdãos and Súmulas)

Regional Labor Tribunals (*Tribunais Regionais do Trabalho, TRT*)

The Regional Labor Tribunals may decide ordinary appeals of decisions issued by Labor Law Courts (*Varas do Trabalho*), hear and decide collective bargaining agreements of categories subject to its jurisdiction (unions or workers organized at the regional level), rescissory actions against its decisions or decisions issued by the Labor Law Courts, and writs of security against acts of its judges.²⁵⁴

Composition

²⁴⁷ *Turmas* are groups of judges organized according to the internal rules of the tribunals and the judicial organization law; Chambers in which a tribunal is subdivided. 4 MARIA HELENA DINIZ, *supra* note 10, at 782.

²⁴⁸ *Recurso de revista* is the legal remedy that may be brought to the Superior Labor Tribunal against decisions of appellate courts. 4 MARIA HELENA DINIZ, *supra* note 10, at 76.

²⁴⁹ In Labor Procedural Law, *agravo de instrumento* is the appeal filed against order of the president of a Regional Tribunal of Labor that denies the appellate jurisdiction of the court or of an extraordinary appeal. 1 MARIA HELENA DINIZ, *supra* note 95, at 75.

²⁵⁰ In Civil Procedure Law, *despacho* is a legal order issued by a judge, which decides an issue in the process. 2 MARIA HELENA DINIZ, *supra* note 98, at 122.

²⁵¹ In Labor Procedural Law, *agravo regimental* is an appeal filed against a *despacho*. 1 MARIA HELENA DINIZ, *supra* note 95, at 175.

²⁵² In Civil Procedure Law, *embargo de declaração* is an appeal filed within five days asking the judge or the tribunal that issued the decision or *acórdão* clarification or correction of any vagueness or contradiction contained in the decision; or omission of an issue that should have been addressed in the decision or *acórdão* by the judge or tribunal and was not. 2 MARIA HELENA DINIZ, *supra* note 98, at 341.

²⁵³ Lei No. 7.701, art. 5.

²⁵⁴ ESTRUTURA DO TST, Portal do Tribunal Superior do Trabalho, <http://www.tst.gov.br/ASCS/estrutur2.html>.

The Regional Labor Tribunals must be composed of a minimum of seven judges recruited, when possible, from the respective Region and appointed by the President of the Republic from Brazilians between thirty and sixty-five years of age, with²⁵⁵

- I) one-fifth from lawyers with more than ten years of effective professional activity, and members of the Public Prosecutor's Office of Labor with more than ten years of effective service, observing the provision in article 94 of the Constitution;
- II) four-fifths through the promotion of labor judges, alternately by seniority and merit.

The Regional Labor Tribunals must install an itinerant justice to hold hearings and other jurisdictional functions within the territorial limits of their respective jurisdictions, using public and community facilities.²⁵⁶ The Tribunals may function in a decentralized manner, constituting regional Chambers to assure full jurisdictional access to justice at all phases of the proceedings.²⁵⁷

Jurisdiction of Regional Labor Tribunals by Region

In addition to the powers to hear and decide cases under article 114 of the Constitution, articles 674 *et seq.* of the Consolidation of Labor Laws also lists the jurisdiction of the Regional Labor Tribunals.

Pursuant to article 670 of the Consolidation of Labor Laws, the Regional Labor Tribunals are divided into twenty-four Regions, as follows:

- 1st Region** (Rio de Janeiro), fifty-four judges
- 2nd Region** (São Paulo), ninety-four judges
- 3rd Region** (Minas Gerais), thirty-six judges
- 4th Region** (Rio Grande do Sul), thirty-six judges
- 5th Region** (Bahia), twenty-nine judges
- 6th Region** (Pernambuco), eighteen judges
- 7th Region** (Ceará), eight judges
- 8th Region** (Pará), twenty-three judges
- 9th Region** (Paraná), twenty-eight judges
- 10th Region** (Distrito Federal/Tocantins), seventeen judges
- 11th Region** (Amazonas), eight judges
- 12th Region** (Santa Catarina), eighteen judges
- 13th Region** (Paraíba), eight judges
- 14th Region** (Rondônia), eight judges
- 15th Region** (Campinas/SP), thirty-six judges
- 16th Region** (Maranhão), eight judges
- 17th Region** (Espírito Santo), eight judges

²⁵⁵ C.F. 1988 art. 115.

²⁵⁶ *Id.* art. 115(§1).

²⁵⁷ *Id.* art. 115(§2).

- 18th Region** (Goiás), eight judges
19th Region (Alagoas), eight judges
20th Region (Sergipe), eight judges
21st Region (Rio Grande do Norte), eight judges
22nd Region (Piauí), eight judges
23rd Region (Mato Grosso), eight judges
24th Region (Mato Grosso do Sul), eight judges²⁵⁸

Labor Law Courts (*Varas do Trabalho*)

Labor Law Courts only hear cases involving individual bargaining (*dissídios individuais*), which come to the court in the form of a labor complaint (*reclamação trabalhista*).²⁵⁹ The court's jurisdiction is local and usually covers one or a few municipalities.²⁶⁰ Its jurisdiction is determined by the location where the employee provides services to the employer, even if he or she has been hired elsewhere or abroad. The court is composed of a principal judge and a substitute judge.²⁶¹ In counties where there is no Labor Law Court, its jurisdiction may be assigned to the state judge.²⁶²

Superior Council of Labor Justice (*Conselho Superior da Justiça do Trabalho, CSJT*)

The Superior Council of Labor Justice was created by Constitutional Amendment No. 45 of August 12, 2004.²⁶³ The Superior Council of Labor Justice must function together with the Superior Labor Tribunal with responsibility for exercising, as provided by law, administrative, budgetary, financial, and patrimonial supervision of Labor Justice in the trial and appellate levels, as the central body in the system, whose decisions have binding effects.²⁶⁴

Members

CSJT's Internal Rule

Decisions

Electoral Justice (*Tribunais e Juízes Eleitorais*)

Historical Background

²⁵⁸ ESTRUTURA DO TST, Portal do Tribunal Superior do Trabalho, <http://www.tst.gov.br/ASCS/estrutur2.html>.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ INSTITUCIONAL, COMPETÊNCIA, Portal do Conselho Superior da Justiça do Trabalho, <http://www.csjt.gov.br/institucional/competencia.html>.

²⁶⁴ C.F. 1988 art. 111-A(§2)(II).

Brazil had been making use of an electoral system since shortly after it was discovered by Portugal.²⁶⁵ Around 1530, when the first Brazilian cities and villages, called “republics” by Portugal, were being founded and local governments (*Conselhos Municipais*) were being formed to legislate on local matters and to distribute justice, the system used was the one that had been established in the most important law in existence in Portugal: the Kingdom Ordination (*Ordenação do Reino*). This law established the legal basis for both the monarchy (Portugal) and the Brazilian republics (cities and villages).²⁶⁶

The Brazilian republics held local elections for positions and roles in the administration, but not for specific agencies, which did not exist at that time. The Electoral Code contained in the Kingdom Ordination established the procedures for these elections, as well as the number of positions and roles to be filled in each republic according to its population, the voting method, and who could be elected.²⁶⁷

The first national election held in Brazil occurred in 1821, after King Dom João VI, who had been forced to return to Portugal in the previous year to address the demands of revolutionary forces advocating reforms, issued a decree on March 7, 1821, from Portugal calling for general elections for the Portuguese people, including the people in Brazil and Algarves. The purpose of this election was to vote for the deputies who were going to write and approve the first Constitution of the Portuguese monarchy.²⁶⁸

The necessary instructions for electing the deputies were issued along with the decree that called for the general elections and followed the model defined in the Spanish Constitution of 1812.²⁶⁹ It established a four-fold system, which operated as follows:

- First, all the people, including those who were illiterate, had to choose a certain number of persons called *compromissário*;
- The *compromissário* would then choose the constituents of the parish (*eleitores de paróquia*);
- The constituents of the parish would then choose the constituents of the district (*eleitores de comarca*); and
- The constituents of the district would then choose the deputies.²⁷⁰

There were no political parties at that time. The land in Brazil was divided into provinces, which were in turn divided into districts, which were further divided into parishes.²⁷¹

²⁶⁵ MANOEL RODRIGUES FERREIRA, A EVOLUÇÃO DO SISTEMA ELEITORAL BRASILEIRO 18 (Brasília, DF: Tribunal Superior Eleitoral, Secretaria de Documentação e Informação, 2d ed. 2005).

²⁶⁶ *Id.* at 25–27.

²⁶⁷ *Id.* at 28.

²⁶⁸ *Id.* at 51, 52.

²⁶⁹ *Id.* at 52.

²⁷⁰ *Id.*

²⁷¹ *Id.* at 53.

The number of positions available for *compromissários*, constituents of the parish, constituents of the district, and deputies followed a mathematical formula established in the decree that was directly related to the number of residences or families existing in each Region.²⁷² In the end, seventy-two deputies were elected in Brazil to the Courts of Lisbon (*Cortes de Lisboa*).²⁷³

The first electoral law enacted in Brazil was issued by the acting King Dom Pedro I on June 19, 1822. It contained instructions for the election of the deputies of the Brazilian provinces that were going to take part in a General Constituent and Legislative Assembly, previously called for by a decree issued on June 3, 1822.²⁷⁴

The electoral law did not follow the Spanish model, and it established an indirect, two-fold system, which still did not include any political parties. The people would first choose their constituents, and those constituents would then elect the deputies. There were no legislative assemblies in the provinces, and the election was held for the sole purpose of electing deputies for the General Constituent and Legislative Assembly.²⁷⁵

On September 7, 1822, Dom Pedro I declared Brazil's independence from Portugal.²⁷⁶ Thereafter, elections for the General Constituent and Legislative Assembly occurred and on May 3, 1823, the Constituent Assembly was installed.²⁷⁷ On November 13, 1823, Dom Pedro I dissolved the Constituent Assembly and soon after a new Constituent Assembly was called but then revoked.²⁷⁸

On March 25, 1824, Dom Pedro I enacted the first Brazilian Constitution²⁷⁹ and on March 26, 1824, pursuant to articles 71 and 72 of the recently enacted Constitution, which recognized the right of citizens to participate in the administration of the provinces and created the local Legislative Assemblies (*Conselho Geral da Província*), a decree was issued calling for general elections for the Legislative Assemblies of the provinces.²⁸⁰ The decree was very similar to the one issued on June 3, 1822,²⁸¹ and it became the new Brazilian electoral law.²⁸²

²⁷² *Id.*

²⁷³ *Id.* at 56.

²⁷⁴ *Id.* at 73.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 87.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.* at 95.

²⁸¹ *Id.*

²⁸² *Id.*

As the Constitution also established that a separate law would regulate the elections for the municipal chambers,²⁸³ on October 1, 1828, the second Brazilian electoral law was enacted to regulate the elections for council members (*Vereadores*) of the municipalities. This new electoral law introduced two innovations: the mandatory advance registration of all constituents and direct elections for council members.²⁸⁴

Development of the Electoral System

In an effort to improve the electoral process and prevent the many problems (mainly corruption) that had occurred during the previous elections, on May 4, 1842, the government issued Decree No. 157,²⁸⁵ which unified the general elections and the provincial elections under one new electoral law.

The decree provided that there would be previous registration of the constituents; created an enlistment board, designed to organize the elections, which had to prepare a list of the active citizens able to vote; created a second list with those who could be constituents of the parish; and prohibited voting by proxy.²⁸⁶

Despite the efforts to improve the electoral process, the Brazilian electoral system still needed more improvement, and on August 19, 1846, the emperor signed a new Brazilian general electoral law (Decree No. 387), which, for the first time, had been prepared and fully discussed by the deputies and ultimately revoked all previous electoral laws.²⁸⁷

The new law maintained the indirect electoral system. The people still had to vote for the constituents, who would then choose senators, deputies, and members of the local legislative assemblies.²⁸⁸ The new law also provided instructions for the elections of the municipal authorities—justices of the peace and council members.²⁸⁹

New Changes in the Electoral Law

Although the 1846 electoral law was intended to simplify the election process and make the elections more ethical, concerns arose about its methods.²⁹⁰ The general public, as well as the politicians, raised many questions regarding the pros and cons of an indirect voting system, including the representation of majority and minority groups and the fact that political parties,

²⁸³ Constituição Política do Império do Brazil (de 25 de Março de 1824), arts. 167, 168, 169, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao24.htm.

²⁸⁴ MANOEL RODRIGUES FERREIRA, *supra* note 265, at 114, 115.

²⁸⁵ *Id.* at 122, 123, 127.

²⁸⁶ *Id.* at 128, 129.

²⁸⁷ *Id.* at 139.

²⁸⁸ *Id.* at 140.

²⁸⁹ *Id.*

²⁹⁰ *Id.* at 149, 150.

although in existence at the time, were not regulated and for that reason advance registration of candidates should not be required.²⁹¹

On September 19, 1855, the emperor signed a decree (*Lei dos Círculos*) prepared by the General Legislative Assembly thoroughly revising the then-current electoral law.²⁹² The most significant change introduced by this decree was that it divided the provinces into as many electoral districts as the number of their deputies to the General Assembly,²⁹³ which implied that only one deputy would be elected from each electoral district.²⁹⁴

The idea of only one deputy per electoral district proved unsuccessful and on August 19, 1860, a new decree altered dispositions of the general electoral law of 1846 (Decree No. 387) and revoked the decree of September 19, 1855.²⁹⁵ The decree of 1860 determined that the provinces of the Empire would be divided into electoral districts composed of three deputies each.²⁹⁶

New Electoral Law

Fraud and corruption, which continued to occur during the electoral process, coupled with indirect elections and voter restrictions, were among the many topics that dominated the discussions regarding the electoral system.²⁹⁷ Hence, on October 20, 1875, after being voted on and approved by the deputies at the General Assembly, the emperor sanctioned Decree No. 2,675 (*Lei do Terço*), reforming the electoral law without revoking it (Decree No. 387 of August 19, 1846).²⁹⁸

Subsequently, on January 12, 1876, the government enacted Decree No. 6,097, with instructions that regulated Decree No. 2,675.²⁹⁹ The new decree also combined the electoral law contained in the decree of 1846 with that of the decree of 1875 and also with some other random laws, making this collection of laws a more harmonious group of electoral laws.³⁰⁰

The decree of October 20, 1875, introduced the Parish Qualification Boards (*Juntas Paroquiais de Qualificação*),³⁰¹ created the Constituent ID (*Título de Eleitor*),³⁰² and for the first

²⁹¹ *Id.* at 150.

²⁹² *Id.* at 155.

²⁹³ *Id.*

²⁹⁴ *Id.* at 156, 157, 158.

²⁹⁵ *Id.* at 159.

²⁹⁶ *Id.*

²⁹⁷ *Id.* at 187, 209.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.* at 188.

³⁰² *Id.* at 196.

time conferred on the judicial system the responsibility for the clarification of doubts about the electoral process and the enforcement of electoral laws, as well as the resolution of any pleas related to the elections.³⁰³

The Parish Qualification Boards were in charge of registering the constituents of the parish (*eleitores de paróquia*) who were qualified to vote,³⁰⁴ and also had to prepare lists with the constituents' information, which included the name, age, civil status, profession, literacy status, affiliation, domicile, and annual income.³⁰⁵

The purpose of the lists were to produce a Constituent ID (*Título de Eleitor*)³⁰⁶ that was given to persons previously identified as qualified to vote as constituents of the parish.³⁰⁷

The new electoral law of 1875 still did not establish direct elections.³⁰⁸ Therefore, the efforts for reform continued and in 1878 the emperor agreed to end indirect elections and create direct elections.³⁰⁹ On January 9, 1881, after its approval by the General Assembly, the emperor sanctioned Decree No. 3,029 (*Lei Saraiva*), which replaced all previous electoral laws³¹⁰ and was later regulated by Decree No. 8,213 of August 13, 1881.³¹¹

Lei Saraiva ended the system of indirect elections and established the direct election of deputies and senators of the General Assembly and members of the legislative assemblies of the provinces, as well as any other government post subject to election.³¹²

Other modifications produced by the decree included the elimination of the Qualification Boards and the transfer of their responsibility for the enlistment of constituents to the municipal judges.³¹³ Illiterate persons continued to be allowed to vote as long as they could prove they had an income, a requirement applicable to everyone.³¹⁴

The decree also established the requirements necessary for the eligibility of a citizen to serve in the national, provincial, or municipal legislatures³¹⁵ and included a chapter establishing

³⁰³ *Id.* at 199.

³⁰⁴ *Id.* at 188.

³⁰⁵ *Id.*

³⁰⁶ *Id.* at 196.

³⁰⁷ *Id.* at 188.

³⁰⁸ *Id.* at 221.

³⁰⁹ *Id.*

³¹⁰ *Id.* at 229.

³¹¹ *Id.* at 231.

³¹² *Id.*

³¹³ *Id.* at 230.

³¹⁴ *Id.*

³¹⁵ *Id.*

electoral crimes and their respective punishments.³¹⁶ Yet, no previous registration of the political parties or the candidates was required.³¹⁷

The last law issued during the imperial period occurred on October 14, 1887, when Decree No. 3,029 was amended to change the election process of members of the provincial legislative assemblies and council members of the municipal chambers.³¹⁸

Universal Vote

On November 19, 1889, Marshal Deodoro da Fonseca, who controlled the provisional government that took power after the proclamation of the republic, issued Decree No. 6 extinguishing all previous electoral privileges in the empire.³¹⁹ The Decree provided that all Brazilian citizens who retained use of their civil and political rights and who knew how to write and read were considered constituents and had the right to vote.³²⁰

First Electoral Law of the Republic

Decree No. 200-A of February 8, 1890, the first electoral law issued by the newly installed republic, regulated the right to vote.³²¹ Pursuant to article 4 of Decree No. 200-A, all citizens born in Brazil who enjoyed all civil and political rights and knew how to read and write had the right to vote.³²² Article 5 prohibited persons who were under twenty-one years old from voting unless they were married, military officials, graduated from college, or members of the clergy.³²³

Constituent Congress

On June 22, 1890, the government issued Decree No. 510, which called for elections to occur on September 15, 1890, to elect deputies to the future Constituent Congress, which would be inaugurated on November 15, 1890.³²⁴ The decree established that the primary function of the future Congress was to discuss and vote on the draft of a republican Constitution being prepared by the government.³²⁵

³¹⁶ *Id.* at 231.

³¹⁷ *Id.*

³¹⁸ *Id.* at 249.

³¹⁹ *Id.* at 255.

³²⁰ *Id.*

³²¹ *Id.* at 261.

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.* at 267.

³²⁵ *Id.*

On June 23, 1890, another decree (Decree No. 511) was issued.³²⁶ This decree regulated the electoral process and established that once the deputies and senators were elected to the Constituent Congress, they would then vote for the President and Vice President of the newly established republic.³²⁷

The Constitution of 1891

On November 15, 1890, the Constituent Congress was inaugurated, and on February 24, 1891, the first republican Constitution of Brazil was promulgated.³²⁸ It established a republican, federative,³²⁹ and presidential form of government³³⁰ under which, according to article 47 of the Constitution, the President and Vice President were to be elected by direct vote of the nation and by an absolute majority of the votes. The National Congress was in charge of regulating the conditions and procedures of election for federal office.³³¹

Law No. 35 was the first electoral law issued during the republican period and was prepared by Congress and sanctioned by the President on January 25, 1892.³³² Law No. 35 determined who could vote according to constitutional principles,³³³ repeated the eligibility conditions for federal offices (federal deputies and senators) as established in the Constitution,³³⁴ and defined the election procedures for senator and federal deputy.³³⁵ On November 15, 1904, Law No. 1,269 revoked Law No. 35 of January 25, 1892, and all other random electoral laws.³³⁶

Law No. 1,269 addressed mandatory voter registration of constituents,³³⁷ the election date and the number of federal deputies and senators for each state,³³⁸ the election date for President and Vice President of the republic,³³⁹ the election process and the process for counting the votes,³⁴⁰ and the minimum age for eligibility to vote. For the first time it also established a unified voter registration with the issuance of only one Constituent ID card for federal, state, and

³²⁶ *Id.* at 268.

³²⁷ *Id.* at 269.

³²⁸ *Id.* at 275.

³²⁹ CONSTITUIÇÃO DA REPÚBLICA DOS ESTADOS UNIDOS DO BRASIL (de 24 de Fevereiro de 1891) art. 1, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao91.htm.

³³⁰ *Id.* art. 41.

³³¹ *Id.* art. 34(22).

³³² MANOEL RODRIGUES FERREIRA, *supra* note 265, at 281.

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.* at 282, 283.

³³⁶ *Id.* at 309.

³³⁷ *Id.*

³³⁸ *Id.* at 310.

³³⁹ *Id.*

³⁴⁰ *Id.* at 310, 311.

municipal elections,³⁴¹ which contradicted the Constitution of 1891 and subsequent electoral law that allowed states and municipalities to regulate their own elections.³⁴² The requirement was later ruled unconstitutional by the Federal Supreme Court, but several states adopted a unified registration process.³⁴³

Since the beginning of the Republic, the electoral laws in Brazil enabled all sorts of fraud.³⁴⁴ In an effort to curb fraudulent practices, Law No. 3,139 was enacted on August 2, 1916, entrusting the judiciary with responsibility for voter registration.³⁴⁵

The Revolution of 1930 and the First Electoral Code

In 1930, general dissatisfaction with the political regime had reached its highest level and the ruling class did not want to allow the people to have more effective participation in the political process.³⁴⁶ On October 3, 1930, a movement with the sole purpose of overthrowing the government began.³⁴⁷ On October 24, 1930, under the civilian leadership of Getúlio Vargas, the movement became victorious and on November 3, 1930, Vargas took over as interim president of a provisional government.

Reform of the electoral system was one of the principles that guided the revolution³⁴⁸ and one of the first acts of the provisional government was the creation of a commission to reform the electoral law, whose work resulted in the first electoral code of Brazil,³⁴⁹ Decree No. 21,076 of February 24, 1932.

The Code introduced the secret ballot, women's suffrage, and the proportional representation system in two simultaneous shifts. For the first time, the election law made reference to political parties.³⁵⁰ The code also provided for the use of voting machines, which were not introduced until the 1990s.³⁵¹

³⁴¹ *Id.* at 311, 312.

³⁴² *Id.*

³⁴³ *Id.* at 312.

³⁴⁴ *Id.* at 317.

³⁴⁵ *Id.*

³⁴⁶ *Revolução de 30*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, <http://www.fgv.br/CPDOC/BUSCA/Busca/BuscaConsultar.aspx> (last visited Mar. 22, 2011).

³⁴⁷ *Id.*

³⁴⁸ *História das Eleições no Brasil, A Nova República*, TRIBUNAL SUPERIOR ELEITORAL, http://www.tse.gov.br/hotSites/biblioteca/historia_das_eleicoes/capitulos/nova_republica/nova.htm (last visited July 1, 2011).

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

Creation of the Electoral Justice

The Electoral Code of 1932 created Electoral Justice, which became responsible for all the electoral processes, such as enlisting, organizing polling stations, counting votes, and recognizing and proclaiming the elected candidates, and also for regulating federal, state, and municipal elections nationwide.³⁵²

Constitution of 1934

The Constitution of 1934 incorporated Electoral Justice into the judiciary.³⁵³ Article 82 of the Constitution of 1934 determined that Electoral Justice was composed of a Superior Electoral Tribunal with its headquarters located in the capital of the Republic; a Regional Electoral Tribunal in each state, in the Acre Territory, and in the Federal District; and single judges with the powers designated by law in addition to special boards established in article 83(§3) of the Constitution.³⁵⁴ Article 83 defined the jurisdiction of Electoral Justice.³⁵⁵

The highly criticized Electoral Code of 1932 was replaced in 1935 by a new Code (*Lei No. 48, de 4 de Maio de 1935*) without substantially changing the achievements obtained so far.³⁵⁶

Constitution of 1937

In 1937, another coup d'état³⁵⁷ gave birth to a new Constitution,³⁵⁸ which extinguished Electoral Justice and the political parties, suspended free elections, and established an indirect election for the President, with a term of six years.³⁵⁹

Constitution of 1946

In an effort to control the political situation, the Constitution of 1937 was amended,³⁶⁰ and general elections for the President and the governors of the states as well as for the National Parliament and Legislative Assemblies were called.³⁶¹ In addition, a new electoral law was

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ CONSTITUIÇÃO DA REPÚBLICA DOS ESTADOS UNIDOS DO BRASIL (de 16 de Julho de 1934), art. 82, http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao34.htm.

³⁵⁵ *Id.*

³⁵⁶ TRIBUNAL SUPERIOR ELEITORAL, *supra* note 348.

³⁵⁷ *Constituição de 1937*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, <http://www.fgv.br/CPDOC/BUSCA/Busca/BuscaConsultar.aspx> (last visited Mar. 22, 2011).

³⁵⁸ CONSTITUIÇÃO DOS ESTADOS UNIDOS DO BRASIL (de 10 de Novembro de 1937), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao37.htm.

³⁵⁹ TRIBUNAL SUPERIOR ELEITORAL, *supra* note 348.

³⁶⁰ *Id.*

³⁶¹ *Id.*

issued (Decree-Law No. 7,586 of May 28, 1945), which restored Electoral Justice and regulated nationwide voter registration and elections.³⁶² Despite these efforts, on October 29, 1945, another coup d'état³⁶³ resulted in another Constitution promulgated on September 18, 1946.³⁶⁴

The Constitution of 1946 restored Electoral Justice to the judiciary branch, which was now composed of a Superior Electoral Tribunal, Regional Electoral Tribunals, Electoral Boards and Electoral Judges.³⁶⁵

In 1955, Law No. 2,250 established the use of a single voting list that placed the constituents at the same polling location; stopped, among other frauds, the use of false or illegally obtained copies of constituent cards; and adopted the use of a single ballot.³⁶⁶

Coup d'État of 1964³⁶⁷

On March 31, 1964, a military coup d'état deposed President João Goulart and the president of the Chamber of Deputies became interim head of the government, as provided for in the Constitution in case of an impediment. However, a military council composed of all the military ministers took control of the government and was, in fact, in charge of the country as its governing body. Once the military council took power, they began issuing Institutional Acts. During the military dictatorship period, a total of 17 Institutional Acts and 104 Supplemental Acts were issued by the government, granting the military a highly centralized administration.

The Institutional Acts

On April 9, 1964, the military council, representing the Supreme Command of the Revolution, issued the first Institutional Act (AI-1). It gave the military the power to cancel the mandates of federal deputies; suspend the political rights of any citizen for ten years; and dismiss, exclude, or retire any public servant considered to be against the regime.

As an immediate result of the issuance of AI-1, the mandates of forty-one deputies were canceled, twenty-nine union leaders had their political rights suspended,

³⁶² *Id.*

³⁶³ Vargas, *Getúlio*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, <http://www.fgv.br/CPDOC/BUSCA/Busca/BuscaConsultar.aspx> (last visited Mar. 22, 2011).

³⁶⁴ CONSTITUIÇÃO DOS ESTADOS UNIDOS DO BRASIL (de 18 de Setembro de 1946), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao46.htm.

³⁶⁵ *Id.* art. 109.

³⁶⁶ TRIBUNAL SUPERIOR ELEITORAL, *supra* note 348.

³⁶⁷ Except as otherwise noted (*see* footnote 368, *infra*), the indented material below reflects excerpts that the author translated and summarized from *Atos Institucionais*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, <http://www.fgv.br/CPDOC/BUSCA/Busca/BuscaConsultar.aspx> (in Portuguese; last visited Aug. 12, 2011). To access this material online, click “Login” on the right-hand side of the page and register with the site. After registering, enter the term *Atos Institucionais* in the field *BUSCA*, and select *Verbetes* on the drop-down menu (*Acervos*), then click *Buscar*. A new page will appear with a list of related materials. Click on *Atos Institucionais*.

and many military officers were expelled from service.

AI-1 also stated that an indirect election would occur within two days of the issuance of the act to choose the new Brazilian President and Vice President. The Supreme Command of the Revolution chose General Humberto de Alencar Castelo Branco as the new Brazilian President and Federal Deputy José Maria Alkmin as Vice President; these choices were ratified by the National Congress. The ratifying act established that the validity of AI-1, as well as the presidential mandate, would last until January 31, 1966.

On April 15, 1964, President Castelo Branco took office, and on July 17, 1964, anticipating that the necessary measures to restructure the political and economic policies were not going to be in place until January 31, 1966, as determined by AI-1, the National Congress extended the presidential mandate until March 15, 1967, postponing the presidential elections until October 3, 1966.

On October 27, 1965, the second Institutional Act (AI-2) was issued. AI-2 removed the ability of the people to elect their President by establishing indirect presidential elections; extinguished all political parties; increased the number of Ministers of the Federal Supreme Court (STF) from eleven to sixteen, a strategic move made to guarantee the government's majority at the STF; granted the president the ability to establish a state of siege for 180 days without prior consultation with the National Congress; ordered federal intervention in the states; announced a recess of the National Congress; dismissed civil servants and military personnel deemed incompatible with the revolution; and claimed the ability to issue decree-laws and supplemental acts on issues of national security without submitting them to a legislative process.

On November 20, 1965, following the instructions of AI-2, a Supplemental Act (*Ato Complementar No. 4 de 20 de Novembro de 1965*) was issued regulating the procedures necessary to reorganize the political parties. In accordance with the Supplemental Act, only two political parties could be created: the government party, *Aliança Renovadora Nacional* (ARENA) and one other political party called the *Movimento Democrático Brasileiro* (MDB).

To guarantee the continuation of the political system implemented in 1964, Branco issued Institutional Act No. 3 (AI-3) on February 5, 1966, putting an end to direct elections for governors of states and mayors of cities, and setting up a new electoral calendar. AI-3 established that the governors would be elected by the majority of the members of the state legislative assemblies and that the mayors would be appointed by the governors. The new electoral calendar determined that the National Congress would elect the President on October 3, 1966, and that on November 15, 1966, direct elections would be held to elect federal deputies and senators. On the established date, the National Congress elected Marshal Artur da Costa e Silva President and Federal Deputy Pedro Aleixo as Vice President of Brazil.

While issuing the Institutional Acts, the government had been simultaneously working on a draft of a new Constitution that included all the provisions established by the Institutional Acts, Supplemental Acts, and decree-laws issued since 1964. The publication of the constitutional draft caused many protests, both from the opposition party and the government party, which led the government to issue, on December 7, 1966, Institutional Act No. 4 (AI-4). This new Act called the National Congress into

an extraordinary session, beginning on December 12, 1966, and ending on January 24, 1967, to discuss, vote on, and promulgate a new Constitution.

Constitution of 1967

On January 24, 1967, a new Constitution was promulgated without considering the great majority of the amendments that had been proposed by the deputies. On March 15, 1967, the new President, Costa e Silva, assumed office, and the new Constitution came into force.

In early 1968, strong opposition to the regime continued. The opposition came primarily from the political class that had objected to the regime from the beginning, as well as the students, who were supported by the middle class and the church. Several public demonstrations opposing the government were severely repressed by the police. On April 5, 1968, in response to the demonstrations, the Minister of Justice, after meeting with the military ministers, issued Government Directive No. 177 (*Portaria No. 177*) prohibiting public displays, political meetings, assemblies, and public demonstrations.

In July 1968, the first labor strike during the military dictatorship occurred in the industrial city of Osasco, which is located in the state of São Paulo. The military regime reacted by claiming that a revolutionary war was in progress and that the communists had joined forces with the opponents of the government. In August 1968, the government shut down the Federal University of Minas Gerais and the police invaded the University of Brasília. These government actions caused an immediate reaction in the National Congress, as deputies protested the measures. On December 13, 1968, to address and remedy the situation, the government issued Institutional Act No. 5 (AI-5), the most drastic of all the Institutional Acts.

AI-5 authorized the President to announce a recess of the National Congress and other legislative bodies, intervene in the states and municipalities without observing the limitations established in the Constitution, cancel mandates, suspend the political rights of any citizen for ten years, seize the property of all persons who had purportedly illicitly enriched themselves, and suspend the rule of habeas corpus.

On the same day, Supplemental Act No. 38³⁶⁸ was issued, putting the National Congress on recess for an undetermined period of time.

Institutional Acts continued to be issued throughout the military dictatorship. AI-6 reduced from sixteen to eleven the number of STF Ministers by cancelling the appointments of three of the Ministers and forcing two others to retire. Crimes against national security would be judged by Military Tribunals, thereby reducing the STF's jurisdiction. AI-7 canceled the electoral calendar and suspended all elections in the country. AI-8 delegated to the executive power over the states, the federal district, and municipalities with more than 200,000 people, including the ability to implement, by decree, administrative reforms for these entities. AI-9 determined that for the purpose of the agrarian reform, the President of the Republic could delegate his decisions on expropriation of rural areas of social interest, and it also granted the President the exclusive right to determine priority zones.

³⁶⁸ Ato Complementar No. 38, de 13 de Dezembro de 1968, http://www.planalto.gov.br/ccivil_03/ACP/ACP-38-68.htm.

In the meantime, politicians were losing their mandates, professors were being compulsorily retired, citizens were being deprived of their political rights, and more and more people were being arrested. By May of 1969, the National Congress had lost four senators and ninety-five federal deputies, and the MDB political party had lost 40 percent of its representatives.

AI-10 resolved that the suspension of political rights, or the cancellation of mandates, whether federal, state, or municipal, based on AI-1, AI-2, AI-5 or AI-6, also came with the concomitant loss of all duties or assignments in the direct or indirect administration of, teaching and research institutions, as well as in any organization deemed to be of national interest. AI-10 also authorized the president to extend these sanctions to people who had been punished before the passage of AI-5.

Institutional Act No. 11 established a new electoral calendar. It called for elections for mayors, vice-mayors, and council members (*Vereadores*) on November 15, 1969, and put an end to all the previously existing mandates.

In August 1969, President Costa e Silva fell ill and, after a meeting of the high command of the armed forces, AI-12 was issued. According to AI-12, from that moment on, and for as long as the President was ill, the Brazilian presidency would be exercised by a military council (*Junta Militar*) composed of all the military ministers. However, article 79 of the Constitution of 1967 had already established that the Vice President was to take over the presidency in cases of impediment. As a justification, the military council explained through a pronouncement on national television that Vice President Pedro Aleixo could not take over the presidency due to the serious internal situation of the country.

The kidnapping on September 4, 1969, of United States Ambassador Charles Burke Elbrick by a clandestine political group that demanded, as a condition of his release, the freedom of fifteen political prisoners and the publication of a manifesto declaring their repudiation of the military dictatorship was the impetus for the issuance of AI-13 and AI-14. AI-13 allowed the banishment from Brazil of all persons that presented any danger to national security, while AI-14 amended article 150 of the Constitution and permitted the application of the death penalty or imprisonment for life in cases of external war, revolutionary war, and subversive war. AI-15 established municipal elections on November 15, 1970, for the municipalities under federal intervention.

On September 16, 1969, the military council issued an official note communicating the removal of President Costa e Silva and announcing that a council composed of three generals would establish presidential succession.

On October 7, 1969, the press secretariat of the Brazilian presidency announced that General Emílio Garrastazu Médici had been appointed as the successor of the ailing President, and Admiral Augusto Hamann Rademaker Grünewald had been appointed Vice President, although Pedro Aleixo was still the official Vice President of Brazil.

On October 16, 1969, AI-16 was issued, declaring the presidency and vice presidency vacant, which dismissed the Vice President. AI-16 also scheduled indirect presidential elections for October 25, 1969, when Congress would choose the new President and Vice President, who were to remain in office until March 15, 1974. In

addition, it extended, until March 31, 1970, the mandates of the chairs of the Chamber of Deputies and Federal Senate.

In an effort to contain the resistance to Médici's name within the military, on October 14, 1969, AI-17 was issued. AI-17 authorized the military council to retire any military personnel who had attempted or could attempt any move against the cohesion of the military government.

On October 15, 1969, Supplemental Acts (*Ato Complementar*) 72 and 73 were issued. One reopened Congress and the other called the members of Congress to be in Brasília (Brazil's capital) on October 22, 1969, for the presidential elections. As expected, on October 25, 1969, General Emílio Garrastazu Médici was elected President and Admiral Augusto Hamann Rademaker Grünewald became Vice President of Brazil.

Constitutional Amendment No. 1 and the Constitution of 1969

Although a new Constitution was not promulgated in 1969, after the military council issued Constitutional Amendment No. 1 on October 17, 1969, which incorporated several provisions of Institutional Act No. 5 into the Constitution of 1967, and that Constitutional Amendment became known as the Constitution of 1969.³⁶⁹

As a consequence, article 182 of the amended Constitution established that AI-5 was still in force, which granted the President, *inter alia*, the power to shut down the Brazilian Congress, Legislative Assemblies, and Municipal Chambers;³⁷⁰ suspend the political rights of any citizen for ten years; and cancel federal, state, or municipal elective mandates.³⁷¹

The invalidity of the Constitution of 1967 can be illustrated by the fact that Constitutional Amendment No. 1 was prepared by the military council instead of the Congress or the President as established in article 50, and that the revised Constitution approved and excluded from judicial review

- all acts of the Supreme Command of the Revolution of March 31, 1964;³⁷²
- all government acts based on the Institutional Acts, the Supplemental Acts, and the Acts of the Military Ministers and their effects while they temporarily occupied the Brazilian Presidency based on AI-12 of August 31, 1969;³⁷³ and
- all resolutions that were made based on the Institutional Acts by the legislative assemblies and municipal chambers that canceled the elective mandates of the governors, deputies, mayors, and council members.³⁷⁴

³⁶⁹ *Atos Institucionais*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, *supra* note 367.

³⁷⁰ Ato Institucional No. 5, de 13 de Dezembro de 1968, art. 2, http://www.planalto.gov.br/ccivil_03/AIT/ait-05-68.htm.

³⁷¹ *Id.* art. 4.

³⁷² Emenda Constitucional No. 1, de 17 de Outubro de 1969, art. 181, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc01-69.htm.

³⁷³ *Id.*

Ineligibility Law

In accordance with Constitutional Amendment No. 1 of October 17, 1969, the government issued Supplemental Law No. 5 on April 29, 1970, which defined the circumstances that made a person ineligible for an elective position.³⁷⁵

Electoral Code

During the military dictatorship, an Electoral Code was enacted through Law No. 4.737 of July 15, 1965,³⁷⁶ which is still in force today. Although article 240 *et seq.* of the Code authorized partisan propaganda, Law No. 6,339 of July 1, 1976, amended Law No. 4,737 and restricted such practices, and also prohibited political debates in the media.³⁷⁷

Constitutional Amendments

On April 14, 1977, Constitutional Amendment No. 8³⁷⁸ created the requirement that one-third of the senators be indirectly elected by an electoral body controlled by the military that bypassed the electoral process, and who became known as the “bionic senators.”³⁷⁹

All Institutional Acts and Supplemental Acts that had been imposed by the military were revoked by Constitutional Amendment No. 11 of October 13, 1978,³⁸⁰ which also modified the requirements for the creation of political parties.³⁸¹

Amnesty Law

On March 15, 1979, the last military president, General João Baptista Figueiredo, took

³⁷⁴ *Id.*

³⁷⁵ Lei Complementar No. 5, de 29 de Abril de 1970, website of the Chamber of Deputies, <http://www2.camara.gov.br/legin/fed/leicom/1970-1979/leicomplementar-5-29-abril-1970-365189-publicacaooriginal-1-pl.html>.

³⁷⁶ Lei No. 4.737, de 15 de Julho de 1965, https://www.planalto.gov.br/ccivil_03/leis/14737.htm.

³⁷⁷ Lei No. 6.339, de 1 de Julho de 1976, http://www.planalto.gov.br/ccivil_03/Leis/1970-1979/L6339.htm#art250.

³⁷⁸ Emenda Constitucional No. 8, de 14 de Abril de 1977, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc08-77.htm#artu.

³⁷⁹ *História da Eleições no Brasil*, Presidência da República, <http://www.brasil.gov.br/sobre/cidadania/eleicoes-2010/historia> (last visited July 1, 2011).

³⁸⁰ Emenda Constitucional No. 11, de 13 de Outubro de 1978, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc11-78.htm#art1.

³⁸¹ *Institucional, A Justiça Eleitoral no Brasil, História da Justiça Eleitoral, História das Eleições no Brasil, O Regime Militar (1964–1985)*, TRIBUNAL SUPERIOR ELEITORAL, http://www.tse.jus.br/internet/biblioteca/historia_das_eleicoes/capitulos/regime_militar/regime.htm.

office reaffirming his commitment to make Brazil a democracy.³⁸² Shortly after his inauguration, an Amnesty Law was passed granting amnesty to all citizens who, during the period from September 2, 1961, to August 15, 1979, committed political crimes, crimes associated with political crimes, or electoral crimes; those who had had their political rights suspended and the civil servants of the public administration, direct and indirect; members of foundations associated with the government; employees of the Legislative and Judiciary; and members of the Military and union directors and representatives, who had been punished based on the Institutional and Supplemental Acts.³⁸³

In the same year, Law No. 6,767 of December 20, 1979, eliminated the restriction that allowed for the existence of only two political parties and reintroduced the multiparty system to Brazil.³⁸⁴ This new law stimulated the appearance of many political parties. The former ARENA became PDS (*Partido Democrático Social*); MDB became PMDB (*Partido do Movimento Democrático Brasileiro*); PTB (*Partido Trabalhista Brasileiro*) re-emerged; and the workers' party, PT (*Partido dos Trabalhadores*), led by Luiz Inácio Lula da Silva, was founded, as were PDT (*Partido Democrático Trabalhista*), headed by Leonel Brizola, and PP (*Partido Popular*), created by Senator Tancredo Neves with other dissidents from the former MDB.³⁸⁵

Direct Elections of Governors

On September 9, 1980, the government issued Constitutional Amendment No. 14, which extended for two more years the mandates of mayors and councilmen who had been elected in 1976 for a four-year mandate;³⁸⁶ and on November 19, 1980, Constitutional Amendment No. 15 was issued, which allowed Brazilians to vote directly for governors of their states. The requirement of indirect election of one-third of the senators was eliminated.³⁸⁷

Limited Right to Vote

Before the elections of 1982, the government was able to pass Supplemental Law No. 41 of December 22, 1981,³⁸⁸ which created the state of Rondônia and limited the ability of the constituents to vote. According to the law, a constituent had to vote for candidates for governor,

³⁸² *Figueiredo, João Batista*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, <http://www.fgv.br/CPDOC/BUSCA/Busca/BuscaConsultar.aspx> (last visited Mar. 23, 2011).

³⁸³ Lei No. 6.683 de 28 de Agosto de 1979, art. 1, http://www.planalto.gov.br/ccivil_03/Leis/L6683.htm.

³⁸⁴ Lei No. 6.767, de 20 de Dezembro de 1979, website of the Chamber of Deputies, <http://www2.camara.gov.br/legin/fed/lei/1970-1979/lei-6767-20-dezembro-1979-357280-publicacaooriginal-1-pl.html>.

³⁸⁵ *Figueiredo, João Batista*, *supra* note 382.

³⁸⁶ Emenda Constitucional No. 14, de 9 de Setembro de 1980, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc14-80.htm.

³⁸⁷ Emenda Constitucional No. 15, de 19 de Novembro de 1980, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc15-80.htm.

³⁸⁸ Lei Complementar No. 41, de 22 de Dezembro de 1981, website of the Chamber of Deputies, <http://www2.camara.gov.br/legin/fed/leicom/1980-1987/leicomplementar-41-22-dezembro-1981-363034-publicacaooriginal-1-pl.html>.

senator, federal deputy, state deputy, mayor, and councilman who belonged to the same political party.³⁸⁹ If, by any chance, the constituent voted for a candidate who belonged to a different political party, the vote was annulled.³⁹⁰ The law also prohibited the alliance of political parties.³⁹¹

Electronic Processing and Voting

In 1982, the limitation on the right to vote was extinguished³⁹² and Law No. 6,996 of June 7, 1982, permitted the Regional Electoral Tribunals to use electronic data processing for electoral services in states where it was authorized by the Superior Electoral Tribunal.³⁹³

Law No. 7,444 of December 20, 1985, determined that voter registration should be conducted by electronic data processing³⁹⁴ nationwide and that each electoral section should revise, verify, and update the records of all registered voters, which would constitute the official electoral electronic records.³⁹⁵

In 1986, 69.3 million voters throughout the national territory were re-registered under the supervision and guidance of the Superior Electoral Tribunal,³⁹⁶ and article 18 of Law No 9,100 of September 29, 1995, determined that the Superior Electoral Tribunal could authorize the Regional Electoral Courts to use an electronic system of voting and counting in one or more sections.³⁹⁷

Ineligibility Law Amended

Supplemental Law No. 42 of February 1, 1982,³⁹⁸ amended the previously enacted Ineligibility Law of 1970,³⁹⁹ making ineligible all persons who had been punished by the Institutional Acts as well as those affected by Decree-Law No. 477 of February 26, 1969, which

³⁸⁹ *Figueiredo, João Batista, supra* note 382.

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² TRIBUNAL SUPERIOR ELEITORAL, *supra* note 348.

³⁹³ Lei No. 6.996, de 7 de Junho de 1982, art. 1, http://www.planalto.gov.br/ccivil_03/Leis/1980-1988/L6996.htm.

³⁹⁴ Lei No. 7.444, de 20 de Dezembro de 1985, art. 1, http://www.planalto.gov.br/ccivil_03/Leis/1980-1988/L7444.htm.

³⁹⁵ *Id.* art. 2.

³⁹⁶ TRIBUNAL SUPERIOR ELEITORAL, *supra* note 348.

³⁹⁷ Lei No. 9.100, de 29 de Setembro de 1995, art. 18, http://www.planalto.gov.br/ccivil_03/Leis/L9100.htm.

³⁹⁸ Lei Complementar No. 42, de 1 de Fevereiro de 1982, website of the Chamber of Deputies, <http://www2.camara.gov.br/legin/fed/leicom/1980-1987/leicomplementar-42-1-fevereiro-1982-363623-publicacaooriginal-1-pl.html>.

³⁹⁹ Lei Complementar No. 5, de 29 de Abril de 1970, website of the Chamber of Deputies, <http://www2.camara.gov.br/legin/fed/leicom/1970-1979/leicomplementar-5-29-abril-1970-365189-publicacaooriginal-1-pl.html>.

defined disciplinary infractions committed by teachers, students, staff, or employees of public or private educational institutions, and included other measures.⁴⁰⁰

Indirect Elections for President

In April 1983, Federal Deputy Dante de Oliveira submitted to the Chamber of Deputies a proposal for a Constitutional Amendment that established direct elections for the presidency.⁴⁰¹ The vote on the amendment took place on April 25, 1984.⁴⁰² There were 298 votes in favor of the amendment, 65 against, and 3 abstentions; 112 members of Congress who belonged to the government's political party were ordered to leave Congress and not vote.⁴⁰³ The amendment failed to pass because the vote was twenty-two votes shy of the minimum needed for its approval at the Chamber of Deputies, an absolute requirement before it could be sent to the Senate.⁴⁰⁴

Once the attempt to amend the Constitution was defeated in Congress, the campaign for the presidential succession began immediately.⁴⁰⁵ On January 15, 1985, after more than twenty years of military dictatorship, a civilian, Tancredo Neves, was indirectly elected President of Brazil.⁴⁰⁶

Neves, however, never took office.⁴⁰⁷ On the eve of inauguration day, a sudden illness took him to the hospital, and after many surgeries, he died on April 21, 1985.⁴⁰⁸ After temporarily assuming the presidency while Neves was ill, Vice President José Sarney was officially declared President of Brazil on April 22, 1985.⁴⁰⁹

Direct Elections

On May 15, 1985, Constitutional Amendment No. 25 established direct elections for federal deputies, senators, mayors, and vice-mayors for the municipalities deemed to be of national security interest; re-established the right to vote directly for President and Vice President; and permitted illiterates to vote.⁴¹⁰

⁴⁰⁰ Decreto-Lei No. 477, de 26 de Fevereiro de 1969, website of the Chamber of Deputies, <http://www2.camara.gov.br/legin/fed/declei/1960-1969/decreto-lei-477-26-fevereiro-1969-367006-publicacaooriginal-1-pe.html>.

⁴⁰¹ *Figueiredo, João Batista*, *supra* note 382.

⁴⁰² *Id.*

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ *Sarney, José*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, <http://www.fgv.br/CPDOC/BUSCA/Busca/BuscaConsultar.aspx> (last visited Mar. 24, 2011).

⁴¹⁰ Emenda Constitucional No. 25 de 15 de Maio de 1985, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc25-85.htm.

The National Constituent Assembly

A historical event occurred on November 27, 1985, with the issuance of Constitutional Amendment No. 26 calling for a National Constituent Assembly to discuss and vote on a new Constitution.⁴¹¹

The Amendment also granted amnesty to all civil public servants and military personnel who had been punished by legal acts (*Atos de Exceção, Institucionais ou Complementares*)⁴¹² during the period between September 2, 1961, and August 15, 1979,⁴¹³ as well as to those who practiced political crimes, directors and representatives of unions and student groups, and any government employee dismissed for political reasons.⁴¹⁴ On February 1, 1987, a unicameral assembly, called the National Constituency Assembly, convened at the National Congress.⁴¹⁵

The Constitution of 1988

On October 5, 1988, a new Brazilian Constitution was enacted. It provided, *inter alia*, that a plebiscite would decide the form of government (republic or constitutional monarchy) and the government system (parliamentary or presidential);⁴¹⁶ established direct elections for the President,⁴¹⁷ governors,⁴¹⁸ and mayors,⁴¹⁹ and required a five-year presidential term.⁴²⁰

Article 2 of the Constitution stated that the three powers of the government—legislative, executive, and judicial—are independent and harmonious. Article 62 replaced the decree-law form of executive branch legislation with the provisional measure. Article 142 restricted the powers of the armed forces (*Forças Armadas*).⁴²¹

The Constitution of 1988 also maintained an optional vote for illiterate citizens⁴²² and minors between sixteen and eighteen years of age,⁴²³ dedicated a specific chapter enumerating

⁴¹¹ Emenda Constitucional No. 26, de 27 de Novembro de 1985, art. 1, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc26-85.htm.

⁴¹² *Id.* art. 4.

⁴¹³ *Id.* art. 4(§2).

⁴¹⁴ *Id.* art. 4(§1).

⁴¹⁵ *Id.* art. 1.

⁴¹⁶ C.F. 1988, Ato das Disposições Constitucionais Transitórias, art. 2, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm.

⁴¹⁷ C.F. 1988 art. 77.

⁴¹⁸ *Id.* art. 28.

⁴¹⁹ *Id.* art. 29(I).

⁴²⁰ *Id.* art. 82.

⁴²¹ *Id.* art. 142.

⁴²² *Id.* art. 14(§1)(II)(a).

⁴²³ *Id.* art. 14(§1)(II)(c).

the individual and collective duties and rights of a citizen in Brazil,⁴²⁴ and expanded the amnesty of 1985 granted to all people affected by legal acts (*Atos de Exceção, Institucionais ou Complementares*) due to political motivations during the period between September 18, 1946, and October 5, 1988.⁴²⁵

The Plebiscite of 1993

The date previously established in the Constitution for the plebiscite was September 7, 1993.⁴²⁶ However, on August 25, 1992, a constitutional amendment was enacted changing the date to April 21, 1993,⁴²⁷ and on February 4, 1993, Law No. 8,624⁴²⁸ was enacted to regulate the plebiscite. The result of the voting was that the population chose to continue with a republican form of government, along with a presidential system.⁴²⁹

Electoral Laws

As established in article 14(§9) of the Constitution of 1988, which determined that a supplemental law should establish other cases of ineligibility, Supplemental Law No. 64 was enacted on May 18, 1990.⁴³⁰ It defines, *inter alia*, who is ineligible to vote,⁴³¹ Electoral Justice's jurisdiction in ineligibility cases,⁴³² and procedural issues.⁴³³

Constitutional Amendment No. 4 of September 4, 1993, amended article 16 to provide that the law that changes electoral procedures must come into force on the date of its publication, and does not apply to the elections that take place within one year from its effective date.⁴³⁴

⁴²⁴ *Id.* art. 5.

⁴²⁵ C.F. 1988, Ato das Disposições Constitucionais Transitórias art. 8, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm.

⁴²⁶ *Id.* art. 2.

⁴²⁷ Emenda Constitucional No. 2 de 25 de Agosto de 1992, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc02.htm.

⁴²⁸ Lei No. 8.624 de 4 de Fevereiro de 1993, website of the Brazilian Presidency, available at <http://www.planalto.gov.br/CCIVIL/Leis/L8624.htm>.

⁴²⁹ *Plebiscito*, FUNDAÇÃO GETÚLIO VARGAS, CENTRO DE PESQUISA E DOCUMENTAÇÃO DE HISTÓRIA CONTEMPORÂNEA DO BRASIL, <http://www.fgv.br/CPDOC/BUSCA/Busca/BuscaConsultar.aspx> (last visited Mar. 25, 2011).

⁴³⁰ Lei Complementar No. 64, de 18 de Maio de 1990, http://www.planalto.gov.br/ccivil_03/Leis/LCP/Lcp64.htm.

⁴³¹ *Id.* art. 1.

⁴³² *Id.* art. 2.

⁴³³ *Id.* art. 3 *et seq.*

⁴³⁴ Emenda Constitucional No. 4, de 14 de Setembro de 1993, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc04.htm.

Presidential Term and Re-Election

A significant change in the Brazilian Constitution involving the political process occurred on June 7, 1994, when Constitutional Revision Amendment No. 5 altered the presidential term to four years⁴³⁵ and again, three years later, when Constitutional Amendment No. 16 of June 4, 1997, allowed for the re-election of the President, governors, and mayors for one subsequent term.⁴³⁶

Election Rules

On September 30, 1997, Law No. 9,504 was enacted to establish election rules.⁴³⁷ It provided that the elections for President and Vice President, Governor and Lieutenant Governor of the State and the Federal District, Mayor and Deputy Mayor, Senator, Federal Deputy, State Deputy, District Deputy, and Councilman must occur on the first Sunday in October of the respective year.⁴³⁸

Simultaneous elections must occur for⁴³⁹

- I) President and Vice President, Governor and Lieutenant Governor of the State and the Federal District, Senator, Federal Deputy, State Deputy, and District Deputy; and
- II) Mayor and Deputy Mayor and Councilman.

The candidate for President or Governor who obtains an absolute majority of votes, not counting blank or voided ballots, is considered elected.⁴⁴⁰

If no candidate attains an absolute majority on the first ballot, a run-off election must occur on the last Sunday in October for the two candidates that received the most votes, and the one who receives the most valid votes is considered elected.⁴⁴¹

If, before the second round, a candidate dies, withdraws, or develops a legal impediment, the remaining candidate with the highest vote will take the vacant position,⁴⁴² and if there is a tie between the remaining candidates, the oldest will be qualified.⁴⁴³ The election of the President

⁴³⁵ Emenda Constitucional de Revisão No. 5 de 7 de Junho de 1994, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/ECR/ecr5.htm.

⁴³⁶ Emenda Constitucional No. 16 de 4 de Junho de 1997, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc16.htm.

⁴³⁷ Lei No. 9.504, de 30 de Setembro de 1997, http://www.planalto.gov.br/ccivil_03/Leis/L9504.htm.

⁴³⁸ *Id.* art. 1.

⁴³⁹ *Id.* art. 1 (sole para.).

⁴⁴⁰ *Id.* art. 2.

⁴⁴¹ *Id.* art. 2(§1).

⁴⁴² *Id.* art. 2(§2).

⁴⁴³ *Id.* art. 2(§3).

implies the election of the Vice President registered with him, and the same applies to the election of Governor.⁴⁴⁴

The mayoral candidate who receives the most votes, not counting blank or voided ballots, is considered to be elected mayor.⁴⁴⁵ The election of the mayor implies the election of the deputy mayor registered with him or her.⁴⁴⁶ In municipalities with more than 200,000 voters, the election rules established in paragraphs 1, 2, and 3 of article 2 of Law No. 9,504 are applicable.⁴⁴⁷

A political party that, up to one year before the election, has registered its bylaws (*estatuto*) with the Superior Electoral Tribunal as provided by law, and has, up to the date of its Convention, a governing body constituted in the district according to the respective statute, may participate in elections.⁴⁴⁸

Article 107 of Law No. 9,504 revoked several articles of Laws No. 4,737 of July 15, 1965 (*Código Eleitoral*); 9,096 of September 19, 1995; 9,100 of September 29, 1995; and article 7(§2) of Decree-Law No. 201 of February 27, 1967.

Clean Record Law

On June 4, 2010, Supplemental Law No. 64 was amended by Supplemental Law No. 135. The amendment, which became known as the Clean Record Law (*Lei da Ficha Limpa*), included cases of ineligibility to run for office, for the purpose of protecting administrative integrity and morality in the exercise of an elective mandate.⁴⁴⁹

Composition of Electoral Justice Under the Constitution of 1988

The Constitution of 1988 determines that Electoral Justice consists of

- I) Superior Electoral Tribunal;
- II) Regional Electoral Tribunals;
- III) Electoral Law Courts (*Juízes Eleitorais*); [and]
- IV) Electoral Boards (*Juntas Eleitorais*).⁴⁵⁰

⁴⁴⁴ *Id.* art. 2(§4).

⁴⁴⁵ *Id.* art. 3.

⁴⁴⁶ *Id.* art. 3(§1).

⁴⁴⁷ *Id.* art. 3(§2).

⁴⁴⁸ *Id.* art. 4.

⁴⁴⁹ Lei Complementar No. 135, de 4 de Junho de 2010, http://www.planalto.gov.br/ccivil_03/LEIS/LCP/Lcp135.htm.

⁴⁵⁰ C.F. 1988 art. 118.

Superior Electoral Tribunal (*Tribunal Superior Eleitoral* – TSE)

The Superior Electoral Tribunal was created by Decree No. 21,076 of February 24, 1932.⁴⁵¹ Five years later, the Constitution of 1937 extinguished Electoral Justice and assigned to the federal government (Union) the exclusive power to legislate on electoral matters.⁴⁵² Electoral Justice was restored on May 28, 1945, with the enactment of Decree-Law No. 7,586.⁴⁵³

According to TSE, its mission is to ensure effective means to guarantee to the society the full manifestation of society's will by facilitating the right to vote and be voted for.⁴⁵⁴ TSE envisions itself to be a reference point in the management of electoral processes that allow the expression of popular will and contribute to the strengthening of democracy.⁴⁵⁵

Composition

The TSE must be composed of at least seven members who are chosen⁴⁵⁶

- I) through election, by secret ballot, with:
 - a) three judges from among the Ministers of the Federal Supreme Court;
 - b) two judges from among the Ministers of the Superior Tribunal of Justice; and
- II) by appointment of the President of the Republic, two judges from among six lawyers of notable legal knowledge and good moral character nominated by the Federal Supreme Court.

The TSE must elect its President and Vice President from the Ministers of the Federal Supreme Court, and an Electoral Inspector General (*Corregedor Eleitoral*) from the Ministers of the Superior Tribunal of Justice.⁴⁵⁷

Except for a justified reason, judges of the electoral tribunals must serve for at least two years and never for more than two consecutive two-year periods, and their alternates must be chosen at the same time and through the same procedure, in equal numbers for each category.⁴⁵⁸

⁴⁵¹ Decreto No. 21.076, de 24 de Fevereiro de 1932, website of the Federal Senate, <http://www6.senado.gov.br/legislacao/ListaPublicacoes.action?id=33626>.

⁴⁵² CONSTITUIÇÃO DOS ESTADOS UNIDOS DO BRASIL (de 10 de Novembro de 1937) art. 16(XXIII), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao37.htm.

⁴⁵³ Decreto-Lei No. 7.586, de 28 de Maio de 1945, website of the Chamber of Deputies, art. 6, <http://www2.camara.gov.br/legin/fed/declei/1940-1949/decreto-lei-7586-28-maio-1945-417387-publicacaooriginal-1-pe.html>. See also INSTITUCIONAL, O TSE, HISTÓRIA DO TSE, Portal do Tribunal Superior Eleitoral, http://www.tse.gov.br/internet/institucional/o_tse.htm.

⁴⁵⁴ *Missão e Visão*, JUSTIÇA ELEITORAL (Mar. 22, 2010), <http://www.justicaeleitoral.gov.br/institucional/o-tse/missao-visao-de-futuro-e-valores>.

⁴⁵⁵ *Id.*

⁴⁵⁶ C.F. 1988 art. 119.

⁴⁵⁷ *Id.* art. 119 (sole para.).

Current Members

Jurisdiction

According to the Electoral Code, the TSE has original jurisdiction to try and decide⁴⁵⁹

- a) the registration and cancellation of political party registries and their national directories and candidates for the presidency and vice presidency of the Republic;
- b) conflicts of jurisdiction between Regional Tribunals and electoral judges of different States;
- c) a suspicion of or impediment to its members, the Attorney General, or the staff of its Secretariat;
- d) electoral crimes and common crimes related to them that are committed by their own judges or the judges of the Regional Tribunals;
- e) suspensions under Federal Senate Resolution No. 132 of 1984;⁴⁶⁰
- f) claims relating to obligations imposed by law on political parties regarding their accounts and the determination of the origin of their resources;
- g) challenges to the calculation of the overall result, the proclamation of elected officials, or the issuance of a diploma in the election of President and Vice President;
- h) requests made for a change in venue of cases not decided by the Regional Tribunals within thirty days of the conclusion to the reporting judge (*relator*) made by a political party, candidate, Public Prosecutor's Office, or party with a legitimate interest;
- i) complaints against their own judges who, within thirty days of the conclusion of a case issued to them, have not decided the case; [and]
- j) rescission actions in cases of ineligibility, as long as the action was filed within 120 days of a non-appealable decision, allowing the exercise of an elective mandate until a final decision is issued.

The TSE has jurisdiction to decide appeals against the decisions of the Regional Tribunals pursuant to article 276 of Law No. 4,737 of July 15, 1965, including administrative matters.⁴⁶¹ The decisions issued by the TSE are final except with respect to those under article 281 of Law No. 4,737 of July 15, 1965.⁴⁶² Article 281 states that the decisions of the TSE are final, except those declaring invalid any law or act contrary to the Constitution and those denying habeas corpus or a writ of security, which may be appealed to the Supreme Court through an ordinary appeal (*recurso ordinário*) within three days.⁴⁶³

⁴⁵⁸ *Id.* art. 121(§2).

⁴⁵⁹ Lei No. 4.737, de 15 de Julho de 1965, art. 22(I), https://www.planalto.gov.br/ccivil_03/leis/14737.htm.

⁴⁶⁰ Resolução No. 132, de 1984 do Senado Federal, https://www.planalto.gov.br/ccivil_03/Congresso/RSE/ResSF132-1984.htm.

⁴⁶¹ Lei No. 4.737, de 15 de Julho de 1965, art. 22(II).

⁴⁶² *Id.* art. 22(II)(sole para.).

⁴⁶³ *Id.* art. 281. *See also* C.F. 1988 art. 121(§3).

The TSE also has original jurisdiction to⁴⁶⁴

- I) prepare its internal rule;
- II) organize its secretariat and Electoral Inspector General, proposing to Congress the creation or elimination of administrative positions and fixing their salaries, and providing them according to the law;
- III) grant its members leave and vacation, and remove the effective exercise of their functions;
- IV) approve the removal of the effective exercise of the functions of judges of the Regional Electoral Tribunals;
- V) propose the creation of Regional Electoral Tribunals in any of the Territories;
- VI) propose to the Legislature an increase in the number of judges of any Electoral Tribunal, indicating the method of increase;
- VII) set dates for the election of President and Vice President of the Republic, senators, and federal deputies, if not set by law;
- VIII) approve the division of States in electoral districts or the creation of new electoral districts;
- IX) issue instructions as it deems appropriate to implement the Electoral Code;
- X) set the per diem amount to be paid to the Electoral Inspector General, the Regional Electoral Inspector Generals, and assistants in external judicial proceedings;
- XI) send to the President of the Republic a list with three names organized by the Justice Tribunals according to article 25 of Law No. 4,737 of July 15, 1965;
- XII) respond on electoral matters, to theoretical questions posed by an authority having federal jurisdiction, or a national organ of a political party;
- XIII) authorize the counting of votes by the recipient tables in the States in which this step has been requested by the respective Regional Tribunal;
- XIV) request the necessary federal force to comply with the law, their own decisions or decisions of the Regional Tribunals requesting them, and to guarantee the voting and counting process;
- XV) organize and publicize the rulings (*súmulas*) of its jurisprudence;
- XVI) request employees of the federal government (Union) and the Federal District when the occasional accumulation of service of its Secretariat requires it;
- XVII) publish an electoral bulletin; [and]
- XVIII) take any other action it deems appropriate to implement electoral laws.

TSE's Internal Rule (*Regimento Interno do Tribunal Superior Eleitoral*)

Decisions (*Súmulas* and *Acórdãos*)

Regional Electoral Tribunals (*Tribunais Regionais Eleitorais* – TRE)

The Regional Electoral Tribunals compose the appellate level of Electoral Justice and must exist in each capital of every state and in the Federal District.⁴⁶⁵

⁴⁶⁴ *Id.* art. 23.

⁴⁶⁵ C.F. 1988 art. 120.

Composition

The Regional Electoral Tribunals must be formed⁴⁶⁶

- I) through election, by secret ballot:
 - a) of two judges from the justices of the Tribunals of Justice;
 - b) of two judges from the state courts, chosen by the Tribunal of Justice;
- II) by one judge of the Federal Regional Tribunal that sits in the Capital of the State or Federal District, or in the absence thereof, by a federal judge chosen in any case by the respective Federal Regional Tribunal;
- III) by two judges appointed by the President of the Republic from among six lawyers of notable legal knowledge and good moral character, nominated by the Tribunal of Justice.

The Regional Electoral Tribunal must elect its President and Vice President from among the justices of the Tribunal of Justice.⁴⁶⁷

Decisions of the Regional Electoral Tribunals may only be appealed when⁴⁶⁸

- I) they contravene an express provision of the Constitution or law;
- II) a divergence exists in the interpretation of a law between two or more electoral courts;
- III) they deal with ineligibility or issuance of diplomas in federal or state elections;
- IV) they annul diplomas or decree the loss of federal or state mandates; [or]
- V) they deny habeas corpus, writ of security, habeas data, or writ of injunction.

Jurisdiction:

According to the Electoral Code, the TREs have original jurisdiction to try and decide⁴⁶⁹

- a) the registration and cancellation of registration of the directories of state and local political parties as well as of candidates for Governor, Lieutenant Governor, and members of Congress and the Legislative Assemblies;
- b) conflicts of jurisdiction between electoral judges within the respective state;
- c) the suspicion or impediment to its members, to the Regional Solicitor, and to the staff of its Secretariat as well as electoral judges and clerks;
- d) electoral crimes committed by electoral judges;
- e) writs of habeas corpus or mandamus in electoral matters, against acts of officials who are responding for crimes of responsibility [[see Law No. 1,079 of April 10,](#)

⁴⁶⁶ *Id.* art. 120(§1).

⁴⁶⁷ *Id.* art. 120(§2).

⁴⁶⁸ *Id.* art. 121(§4).

⁴⁶⁹ Lei No. 4.737, de 15 de Julho de 1965, art. 29(I).

[1950](#)] before the Tribunals of Justice and, on appeal, the writs of habeas corpus that have been denied or granted by electoral judges, or habeas corpus when there is danger of violence before the court with appropriate jurisdiction can decide;

- f) claims relating to obligations imposed by law on political parties, as to the accounting and verification of the origin of their resources; [and]
- g) requests made for a change in venue of cases not decided by the electoral judges within thirty days of conclusion, made by a political party, candidate, Public Prosecutor's Office, or party with a legitimate interest, without detriment to the appropriate sanctions caused by the excessive delay.

The TREs have jurisdiction to decide on appeal⁴⁷⁰

- a) acts and decisions issued by electoral judges and electoral boards; and
- b) decisions issued by electoral judges granting or denying writs of habeas corpus or mandamus.

The decisions issued by the Regional Electoral Tribunals are final, except for cases determined under article 276 of Law No. 4,737 of July 15, 1965.⁴⁷¹

The TREs also have original jurisdiction to⁴⁷²

- I) prepare their internal rule;
- II) organize their secretariat and Electoral Inspector General, provide their positions according to the law, and propose to Congress, through the Superior Electoral Tribunal, the creation or elimination of positions and their salaries;
- III) grant their members and electoral judges leave and vacation as well as remove the effective exercise of their functions, submitting this decision to the approval of the Superior Electoral Tribunal;
- IV) set dates for the election of Governor and Lieutenant Governor, state deputies, mayors, vice mayors, councilmen, and squires when not determined by the Constitution or the law;
- V) create electoral boards and designate their headquarters and jurisdiction;
- VI) indicate to the Superior Electoral Tribunal the electoral precincts or electoral sections in which the counting of votes should be made by the receiving desk;
- VII) verify, based on the partial results sent by the electoral boards, the final results of the elections for Governor and Lieutenant Governor, and members of Congress; send their respective diplomas; and send to the Superior Electoral Tribunal a copy of the minutes of proceedings;
- VIII) respond on electoral matters to theoretical questions posed by a public authority or a political party;
- IX) divide their district into precincts, submitting this division, as well as the creation of new precincts, to the approval of the Superior Electoral Tribunal;

⁴⁷⁰ *Id.* art. 29(II).

⁴⁷¹ *Id.* art. 29(II) (sole para.).

⁴⁷² *Id.* art. 30.

- X) approve the appointment of the registrar, who must respond to the electoral office during the two-year period;
- XI) [revoked by Law No. 8,868 of April 4, 1994];
- XII) request the necessary police force to enforce its decisions; request authorization from the Superior Electoral Tribunal for the use of the federal police;
- XIII) authorize, in the Federal District and in the state capitals, their president and, in the interior, their electoral judges, to ask for federal, state, or municipal employees to assist the electoral registrars when the occasional accumulation of work so requires;
- XIV) request federal employees, and also in the Federal District and in each State or Territory, employees of the respective administrative support staff in case of the occasional accumulation of work of their Secretariats;
- XV) apply disciplinary penalties of warning and suspension of up to thirty days to the electoral judges;
- XVI) comply with and enforce the decisions and instructions of the Superior Electoral Tribunal;
- XVII) determine, in urgent cases, measures for the enforcement of the law in their respective district;
- XVIII) organize the file of the voters in the state;
- XIX) remove partial maps of verification, and determine the use of only bulletins and totaling maps, as long as a smaller number of candidates in proportional elections justify the removal, observing the following norms:
 - a) any candidate or political party may ask the Regional Tribunal to remove the requirement of partial maps of verification;
 - b) the decision of the Regional Tribunal may be appealed to the Superior Electoral Tribunal within three days, by any political party or candidate, which will decide [the matter] in five days;
 - c) the removal of partial maps of verification will only be permitted up to six months before the election;
 - d) bulletins and verification maps will be printed by the Regional Tribunals, after approved by the Superior Electoral Tribunal;
 - e) the Regional Tribunal must listen to the political parties' suggestions for the preparation of templates for the bulletins and verification maps so that they meet local peculiarities, sending the approved templates together with suggestions or objections raised by the political parties, for the Superior Electoral Tribunal's decision.

In the event that there is no Regional Tribunal in a Territory, the respective electoral jurisdiction must be determined by the Superior Electoral Tribunal.⁴⁷³

The members of the tribunals, the state court judges, and the members of the electoral boards, while exercising their functions and to the extent applicable to them, enjoy full guarantees and cannot be removed from office.⁴⁷⁴

⁴⁷³ *Id.* art. 31.

⁴⁷⁴ C.F. 1988 art. 121(§1).

Military Justice (Tribunais e Juízes Militares)

Military Justice specializes in the application of the law to a special category of the federal military—the Navy, Army, and Air Force. It tries and decides only military crimes defined by law. It is not a court of exception (*tribunal de exceção*), because it has been working without interruption for 200 years. Its judges are appointed according to permanent legal norms and it is not subordinated to any other power.⁴⁷⁵

The Military Justice consists of⁴⁷⁶

- I) the Superior Military Tribunal;
- II) the Military Tribunals and Military Judges created by law.

Superior Military Tribunal (*Superior Tribunal Militar* – STM)

The Superior Military Tribunal was created on April 1, 1808,⁴⁷⁷ by Prince Regent Dom João VI, and was initially called the Supreme Military and Justice Council (*Conselho Supremo Militar e de Justiça*).⁴⁷⁸

With the proclamation of the Republic on November 15, 1889,⁴⁷⁹ and the enactment of a new Constitution on November 24, 1891, Military Justice was granted a special court in case of military offenses.⁴⁸⁰ Article 77(§1) determined that this court should be composed of a Superior Military Tribunal⁴⁸¹ and that its organization and powers would be regulated by law.⁴⁸²

In 1893, Legislative Decree No. 149 of July 1893⁴⁸³ was enacted and established the new court as the Supreme Military Tribunal (*Supremo Tribunal Militar*).⁴⁸⁴

⁴⁷⁵ *O Papel da Justiça Militar*, SUPERIOR TRIBUNAL MILITAR, <http://www.stm.jus.br/institucional/historico/index>.

A court of exception is a special court created to hear and decide specific cases expressly foreseen in the law, including political cases. 4 MARIA HELENA DINIZ, *supra* note 10, at 760.

⁴⁷⁶ C.F. 1988 art. 122.

⁴⁷⁷ Alvará de 1 de Abril de 1808, http://www.planalto.gov.br/ccivil_03/revista/Rev_22/alvara_1.4.htm.

⁴⁷⁸ *O Superior Tribunal Militar*, SUPERIOR TRIBUNAL MILITAR, <http://www.stm.jus.br/institucional/index>.

⁴⁷⁹ HELIO VIANNA, *supra* note 43, at 220.

⁴⁸⁰ CONSTITUIÇÃO DA REPÚBLICA DOS ESTADOS UNIDOS DO BRASIL (de 24 de Fevereiro de 1891) art. 77, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao_91.htm.

⁴⁸¹ *Id.* art. 77(§1).

⁴⁸² *Id.* art. 77(§2).

⁴⁸³ Decreto Legislativo, No. 149, de 18 de Julho de 1893, http://www.camara.gov.br/internet/infdoc/novoconteudo/legislacao/republica/Leis1893-Legislativo/L1893b_03.pdf.

⁴⁸⁴ *O Superior Tribunal Militar*, *supra* note 478.

The Constitution of 1934 incorporated Military Justice into the judiciary branch of the government.⁴⁸⁵ The subsequent Constitutions of 1937,⁴⁸⁶ 1946,⁴⁸⁷ 1967,⁴⁸⁸ and 1988⁴⁸⁹ did not change the structure of Military Justice, keeping it as part of the judiciary branch.

Composition

The Superior Military Tribunal is composed of fifteen Ministers with life tenure, appointed by the President of the Republic after their nomination has been approved by the Federal Senate. Three are chosen from among Generals of the Navy, four from among Generals of the Army, and three from among Generals of the Air Force. All must be in active service and be at the highest rank in their careers; and five must be chosen from among civilians.⁴⁹⁰ The civilian Ministers must be chosen by the President of the Republic from among Brazilians who are older than thirty-five years old, with⁴⁹¹

- I) three from among those lawyers of notable legal knowledge and unblemished conduct, with more than ten years of actual professional activity; and
- II) two, by equal choice, from audit judges and members of the Public Prosecutor's Office of Military Justice (*Ministério Público da Justiça Militar*).

STM Members

As established by article 124 (sole para.) of the Constitution, which determined that the law should provide for the organization, operation, and jurisdiction of Military Justice, on September 4, 1992, Law No. 8,457⁴⁹² was enacted to organize Military Justice and its auxiliary services. Pursuant to article 1 of Law No. 8,457, the military system is composed of the following:

- I) Superior Military Tribunal;
- II) Auditing Inspection Office (*Auditoria de Correição*);
- III) Councils of Justice; and
- IV) Auditing Judges (*Juízes-Auditores*) and Alternate Auditing Judges (*Juízes-Auditores Substitutos*).

⁴⁸⁵ CONSTITUIÇÃO DA REPÚBLICA DOS ESTADOS UNIDOS DO BRASIL (de 16 de Julho de 1934) art. 63(c), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao34.htm.

⁴⁸⁶ CONSTITUIÇÃO DOS ESTADOS UNIDOS DO BRASIL (de 10 de Novembro de 1937) art. 90(c), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao37.htm.

⁴⁸⁷ CONSTITUIÇÃO DOS ESTADOS UNIDOS DO BRASIL (de 18 de Setembro de 1946) art. 94(III), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao46.htm.

⁴⁸⁸ CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL DE 1967 art. 107(III), http://www.planalto.gov.br/ccivil_03/Constituicao/Constitui%C3%A7ao67.htm.

⁴⁸⁹ C.F. 1988 art. 92(VI).

⁴⁹⁰ *Id.* art. 123.

⁴⁹¹ *Id.* art. 123 (sole para.).

⁴⁹² Lei No. 8.457, de 4 de Setembro de 1992, http://www.planalto.gov.br/ccivil_03/Leis/L8457.htm.

For administration purposes during peacetime, the national territory is divided into twelve Military Legal Districts (*Circunscrições Judiciárias Militares*).⁴⁹³ For each Military Legal District there is a corresponding Auditing Office (*Auditoria*),⁴⁹⁴ with the exception of the first, which has four offices;⁴⁹⁵ the third, with three offices;⁴⁹⁶ and the second and eleventh, with two offices each.⁴⁹⁷

Military Legal Districts (*Auditorias das Circunscrições Judiciárias*)

Jurisdiction

Military Justice has jurisdiction to try and decide military crimes defined by law.⁴⁹⁸ Decree-Law No. 1,001 of October 21, 1969, defines, *inter alia*, military crimes (*Código Penal Militar*),⁴⁹⁹ and Decree-Law No. 1,002 of October 21, 1969 (*Código de Processo Penal Militar*) establishes, among other things, military criminal procedures.⁵⁰⁰

Article 6 of Law No. 8,457 of September 4, 1992, defines the jurisdiction of the Superior Military Tribunal and article 7 determines that the Tribunal's Internal Rule must regulate the proceedings and the trial of the cases, which must comply with the Constitution, the Military Code of Criminal Procedures, and Law No. 8,457.

On September 27, 1999, Law No. 9,839⁵⁰¹ amended Law No. 9,099 of September 26, 1995,⁵⁰² which created the special courts in the area of Federal Justice, determining that Law No. 9,099 did not apply to Military Justice.

Auditing Inspection Office (*Auditoria de Correição*)

The Auditing Inspection Office is in charge of the legal and administrative inspection and guidance of Military Justice and is composed of an Auditing Inspection Judge (*Juiz-Auditor Corregedor*), a Chief Secretary (*Diretor de Secretaria*), and support staff as provided by law.⁵⁰³

⁴⁹³ *Id.* art. 2.

⁴⁹⁴ *Id.* art. 11.

⁴⁹⁵ *Id.* art. 11(a).

⁴⁹⁶ *Id.* art. 11(b).

⁴⁹⁷ *Id.* art. 11(c).

⁴⁹⁸ C.F. 1988 art. 124.

⁴⁹⁹ Decreto-Lei No. 1.001, de 21 de Outubro de 1969, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del1001.htm.

⁵⁰⁰ Decreto-Lei No. 1.002, de 21 de Outubro de 1969, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del1002.htm.

⁵⁰¹ Lei No. 9.839, de 27 de Setembro de 1999, http://www.planalto.gov.br/ccivil_03/Leis/L9839.htm.

⁵⁰² Lei No. 9.099, de 26 de Setembro de 1995, http://www.planalto.gov.br/ccivil_03/Leis/L9099.htm.

⁵⁰³ Lei No. 8.457, *supra* note 492, art. 13.

The Audit Inspection Office is exercised by the Audit Inspection Judge, which has jurisdiction in all national territory⁵⁰⁴ as set forth in article 14 of Law No. 8,457.

Auditing Office

Each Auditing Office is composed of an Auditing Judge, an Alternate Auditing Judge, a Chief Secretary, two Appraisal Bailiffs (*Oficiais de Justiça Avaliadores*), and supporting staff as provided by law.⁵⁰⁵ The jurisdiction of the Auditing Judge is defined in article 30 of Law No. 8,457.

Councils of Justice (*Conselhos de Justiça*)

There are two types of Councils of Justice, including the

- a) Special Council of Justice (*Conselho Especial de Justiça*), composed of the Auditing Judge and four military judges under the presidency of a general officer or senior officer of a rank higher than that of other judges, or of greater seniority in case of equality; [and]
- b) Permanent Council of Justice (*Conselho Permanente de Justiça*), composed of the Auditing Judge; a superior officer, who must be the president; and three officers of the rank of captain-lieutenant or captain.⁵⁰⁶

The Special and the Permanent Councils must operate in the headquarters of the Auditing Offices, except in special cases for relevant reasons of public policy or interest of justice and for the time needed, upon decision of the Superior Military Tribunal.⁵⁰⁷ The jurisdiction of the Councils is established by article 27 of Law No. 8,457.

The provisions of the Statute of the Magistracy, Law No. 8,457 of September 4, 1992, and, alternatively, the Single Legal Regime for Public Civil Servants of the Union (*Regime Jurídico Único dos Servidores Públicos Civis da União*)⁵⁰⁸ are applicable to the Ministers of the Superior Military Tribunal, the Auditing Judges, and the Alternate Auditing Judges.⁵⁰⁹

STM's Internal Rule (*Regimento Interno do Superior Tribunal Militar*)

Military Statute (*Estatuto dos Militares*)

Jurisprudence

⁵⁰⁴ *Id.* art. 12.

⁵⁰⁵ *Id.* art. 15.

⁵⁰⁶ *Id.* art. 16.

⁵⁰⁷ *Id.* art. 17.

⁵⁰⁸ Lei N° 8.112, de 11 de Dezembro de 1990, http://www.planalto.gov.br/ccivil_03/Leis/L8112cons.htm.

⁵⁰⁹ *Id.* art. 32.

Resolutions

State Justice (*Tribunais e Juízes dos Estados*)

The states must organize their judicial systems in observance of the principles established in the Federal Constitution.⁵¹⁰ The jurisdiction of the courts must be defined in the State Constitution, and the law of judicial organization must be proposed by the Tribunal of Justice.⁵¹¹

Decentralization

After the amendment of the Brazilian Constitution in 2004⁵¹² the Tribunals of Justice were authorized to function in a decentralized fashion, constituting regional chambers, in order to assure full access to justice at all phases of judicial proceedings.⁵¹³

Itinerant Justice

In addition, the Tribunals were charged with the task of setting up itinerant courts, which must hold hearings and other jurisdictional functions within the territorial limits of their respective jurisdictions, using public and community facilities.⁵¹⁴

Constitution of the State of Rio de Janeiro

This report uses the Constitution of the State of Rio de Janeiro to illustrate the organization of the Brazilian states, including a brief description of the legislative and executive branches of the government as well as the judicial branch as determined by articles 125 and 126 of the Federal Constitution.

Upon the promulgation of the Brazilian Constitution on October 5, 1988, it was determined that each State Legislative Assembly with constituent powers should draft its Constitution within one year of the promulgation of the Federal Constitution, obeying the principles of the Federal Constitution.⁵¹⁵

Following the Constitutional mandate, on October 5, 1989, the Constitution of the State of Rio de Janeiro was promulgated.⁵¹⁶ Article 7 determines that the legislative, executive, and judicial branches are the independent and harmonious powers of the state.

⁵¹⁰ C.F. 1988 art. 125.

⁵¹¹ *Id.* art. 125(§1).

⁵¹² Emenda Constitucional No. 45, de 30 de Dezembro de 2004, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc45.htm.

⁵¹³ C.F. 1988 art. 125(§6).

⁵¹⁴ *Id.* art. 125(§7).

⁵¹⁵ C.F. 1988, Ato das Disposições Constitucionais Transitórias, art. 11, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm.

⁵¹⁶ CONSTITUIÇÃO DO ESTADO DO RIO DE JANEIRO, Assembléia Legislativa do Estado do Rio de Janeiro, <http://alerjln1.alerj.rj.gov.br/constest.nsf/PageConsEst?OpenPage>.

Legislative Power

The legislative power is exercised by the Legislative Assembly composed of deputies who represent the people, elected by Brazilian citizens who are older than twenty-one years of age and in the exercise of their political rights, by direct and secret ballot, as provided by federal law.⁵¹⁷ The number of deputies to the Legislative Assembly corresponds to three times the representation in the Chamber of Deputies and, when the number of deputies reaches thirty-six, it is increased by as many federal deputies as there are in excess of twelve.⁵¹⁸ Each term will last four years, beginning with the inauguration of the elected deputies.⁵¹⁹

Executive Power

The executive power is exercised by the Governor, assisted by the Secretaries of State.⁵²⁰ The Governor and Lieutenant Governor of the State must be elected at the same time, ninety days before the expiration of the term of their predecessors.⁵²¹ The election of the Governor of the State implies the election of the Lieutenant Governor registered with him.⁵²² The election of the Governor of the State is by universal suffrage and by direct and secret ballot.⁵²³ The Governor's term of office is four years and the State Constitution of Rio de Janeiro provides that he or she is not eligible for reelection for the subsequent period. The term starts on January 1 of the year following his or her election.⁵²⁴ However, on June 4, 1997, the Federal Constitution was amended⁵²⁵ to allow for the reelection of the president, governors, and mayors for one subsequent term.

Judicial Power

The judiciary consists of the

- I) Justice Tribunal (*Tribunal de Justiça*);
- II) Court Judges (*Juízes de Direito*);
- III) Jury Tribunal (*Tribunal do Júri*);
- IV) Military Justice Councils (*Conselhos da Justiça Militar*); [and]

⁵¹⁷ *Id.* art. 94.

⁵¹⁸ *Id.* art. 94 (sole para.).

⁵¹⁹ *Id.* art. 95.

⁵²⁰ *Id.* art. 135.

⁵²¹ *Id.* art. 136.

⁵²² *Id.* art. 136(§1).

⁵²³ *Id.* art. 136(§2).

⁵²⁴ *Id.* art. 136(§3).

⁵²⁵ Emenda Constitucional No. 16 de 4 de Junho de 1997, http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc16.htm.

V) Special Courts and their Appellate Bodies (*Juizados Especiais e suas Turmas Recursais*).⁵²⁶

Each district (*comarca*⁵²⁷) must have a Jury Tribunal, presided over by a Court Judge and composed of jurors according to the law of criminal procedure (*Código de Processo Penal*).^{528,529} The Justices of Peace (*Juízes de Paz*),⁵³⁰ without judicial function, must participate in the administration of justice.⁵³¹

The jurisdiction of the Justice Tribunal is found in articles 158, 159, 161, and 162, while its composition is defined in article 160 of the Constitution of the State of Rio de Janeiro. The jurisdiction of the Court Judges is listed in articles 164 and 165, and the creation and jurisdiction of the Military Justice Councils is determined by article 166 while Special Courts and Justices of the Peace are regulated by articles 167 and 168 of the state Constitution.

State Constitutions

State Tribunals

[Acre](#)

[Alagoas](#)

[Amapá](#)

[Amazonas](#)

[Bahia](#)

[Ceará](#)

[Distrito Federal](#)

[Espírito Santo](#)

[Goiás](#)

[Maranhão](#)

[Mato Grosso](#)

[Mato Grosso do Sul](#)

[Minas Gerais](#)

[Pará](#)

[Paraíba](#)

⁵²⁶ CONSTITUIÇÃO DO ESTADO DO RIO DE JANEIRO, *supra* note 516, art. 151.

⁵²⁷ In Civil Procedure Law, *comarca* is defined as each of the territorial divisions that sets the limits to the judge's jurisdiction. 1 MARIA HELENA DINIZ, *supra* note 95, at 781.

⁵²⁸ See articles 432 to 446 of the Brazilian Code of Criminal Procedure (*Código de Processo Penal*, Decreto-Lei No. 3.689, de 3 de Outubro de 1941, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del3689Compilado.htm) for selection method and jurors' duties.

⁵²⁹ CONSTITUIÇÃO DO ESTADO DO RIO DE JANEIRO, *supra* note 516, art. 151(§1).

⁵³⁰ Article 98(II) of the Federal Constitution defines Justices of the Peace as paid citizens elected by direct, universal and secret ballot, for a term of office of four years, with jurisdiction, in accordance with the law, to perform marriages, verify qualification proceedings *ex officio* or after challenge, and perform conciliatory functions of non-judicial nature, in addition to other functions provided by law.

⁵³¹ CONSTITUIÇÃO DO ESTADO DO RIO DE JANEIRO, *supra* note 516, art. 151(§2).

[Paraná](#)

[Pernambuco](#)

[Piauí](#)

[Rio de Janeiro](#)

[Rio Grande do Norte](#)

[Rio Grande do Sul](#)

[Rondônia](#)

[Roraima](#)

[Santa Catarina](#)

[São Paulo](#)

[Sergipe](#)

[Tocantins](#)

Prepared by Eduardo Soares
Senior Foreign Law Specialist
July 2011