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## The Role of the Judicial Branch in Managing the Brazilian Government's Economic Policy

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### 1 - INTRODUCTION

The proposal of this work is to analyze if the Brazilian Constitutional Court - the Supreme Federal Court (STF) – in its decision or non-decision on important Brazilian economic issues and/or federal Executive economic policy, gives priority to the need of respecting the Constitution or the need to preserve economic and social order.

Considering that a wide study of the court's decisions throughout history would be incompatible with the dimension of this paper, it proposes to analyze the Supreme Court's decisions on four actions submitted for consideration from 1990 to 1998. Three of the actions contested the constitutionality of federal acts and rulings of an economic nature and which may interest federal military and civil servants. The other action refuted the rule that impeded the use of private financial assets in the beginning of the term of the former-president of the Republic, Fernando Collor, in 1990 – a measure that was well-known as the freezing of the *cruzados novos* (name of the Brazilian currency in that phase).

The joining of the actions which interest public servants with the action about the currency's freezing was due to: (i) the need to identify a pattern of conduct, regularities in the court's behavior, in the measure that the analysis of only one case could be "sui generis" and not representative; and (ii) the fact that the public sector has long been blamed for the fiscal crisis of the State, but particularly in this period, by the government, the media, some politicians and society, in general.

The problem to be investigated suggests some inquiries: 1st) what is the real influence of those court's decisions on the Brazilian economy: in the success of economic plans, in the national currency stability, and in the State's investments capacity? And 2<sup>nd</sup>) what were the economic consequences of those decisions (or non-decisions) for the federal government?

From the Federal Constitution of 1988 on, the STF's power was strengthened, and society seized the opportunity to use this alternative political channel to push for its demands, placing the Brazil's maximum organ of the Judiciary in the center of important national events. The Constitution maintained the competence of the STF to declare, in thesis, the unconstitutionality of laws and federal normative acts, already foreseen in the Constitution of 1967, but it extended to other actors, besides the Attorney-General of the Republic, the capacity to interpose Direct Actions of Unconstitutionality, that have implications besides the parts that proposed the case.

The access of society to the judicial system was facilitated and democratized after the new Constitution. Today, there are different types of writs and the population can appeal more easily to the Judiciary in an attempt to protect rights that were being violated by the government.

In his masterpiece *L'esprit des Lois*, Montesquieu developed the classic theory on the separation of powers, launching the revolutionary distinction between politics and the law, from the end of the XVIII century on, as desired by the bourgeoisie State. One important feature of this theory was the neutrality of the Judicial branch to guarantee equity among the population and the universality of the rules. Political influences could only be accepted in the Executive or Legislative branches.

However, in the XX century, we have seen the beginning of the welfare state, which broke this rigid distinction between State and society. The Executive and Legislative powers suffered an enormous expansion, in the measure that they became responsible for the realization of the social

citizenship, and not only to support the juridical aspects of the State. Then, the functions of the Judiciary were also changed. Judges had to base their decisions on the law, but judging according to the desired goals of the society, supporting the political projects of the governments (Ferraz, 1994).

According to Offe (1984), the proposal of the Welfare State was to cover the risks which workers and their families were exposed in the capitalist system. The idea was established in the United States and Western Europe after World War II. But, nowadays, these governments are criticized because they can not solve all labor and capitalist problems via welfare institutions.

O'Connor (1973:150) argued that: "welfare and military spending are determined by the needs of monopoly capital and the relations of production in the monopoly sector. Surplus productive capacity (or surplus capital) creates political pressures for aggressive foreign economic expansion. And surplus labor power (or the surplus population) also builds up political pressures for the growth of the welfare system". He continued saying that this labor force became deeply dependent from the State: "like workers in the monopoly industries, the surplus labor force requires more and more state-financed social services and benefits" (*id.*: 162).

Because of these new government's tasks, a lot of agencies were created to deal with education, habitation, health, social security and transport issues, for instance. In consequence, the unproductive public sector became a burden for the private sector, decreasing investments, increasing taxes and bringing inflation (Offe, 1984).

As Cappelletti pointed out, the appearance of the typical welfare state rules have also brought the expansion of the jurisdictional function in the world, because the governments have increased their distributive roles, dealing more and more with collective rights. Therefore, the Judiciary branch expansion represents the necessary counterbalance in the checks and balances of a democratic system, as well as the political branches of a modern State expanded too.

Today, with regard to many countries, there is a discussion about the level of freedom in the magistrate interpretative capacity. When he judges, he makes choices, and, because of that, is sometimes seen as a lawmaker. For Cappelletti, this creative interpretative capacity is much higher when the judges have to decide on constitutional issues.

Actually, the interference of the Judiciary in the policy making process is a reality in all of the western world. Stone (1994: 445) emphasized that: "constitutional judges are enabled or required by jurisdiction to intervene in policymaking process. Politicians have the power to refer legislation to the constitutional court for a ruling on its constitutionality immediately on its adoption by parliament". He thinks that due to the constitutional court capacity to proceed an abstract review or political review, the Judiciary can change the legislative politics. And when the opposition politicians submit an output to the constitutional court appreciation they can change the quality and the content of the legislative debate.

On March 15<sup>th</sup>, 1990, when President Fernando Collor began his term, he signed a series of provisional measures (MP's) with the force of law, which were introduced in the Brazilian juridical universe from the Constitution of '88 on (article 62). The MP consists in the adoption of a "law" by the President of the Republic, that has immediate effectiveness, but needs to be ratified or not by the National Congress.

The MP's issued by Fernando Collor sought mainly to combat inflation, that was 84.32% in March. Among the polemic measures, it was MP no. 168, of 15.03.90 (later on approved by the Congress as the Law no. 8.024, of 12.04.90), that established the interdiction of the currency in the values above 50,000 *cruzados novos* from bank accounts and savings of the population for 18 months (it was the same value as approximately US\$ 1,300.00). The balances would receive interest rates of 6% a year and monetary adjustments. They would be returned to the population in twelve monthly installments, starting from the end of the 18<sup>th</sup> month confiscation.

This MP impeded the use by the owners of approximately 2/3rds of all the Brazilian financial assets. The citizens had the property of the money but they had lost the right to use it or move it. The objective of this MP was to reduce the amount of currency in the domestic market, and, as a consequence, to brake inflation by monetary starvation.

The Brazilian Constitution assures the right to property (article 5<sup>th</sup>, item XXII) and the right to the development of property (several items of the article 5<sup>th</sup>, mainly the item LIV). The society was perplexed with the government's disrespect. A lot of cases were petitioned by some people in the Judiciary, in the expectation of recovering their blocked money, but the government appealed for a judgement that decided in favor of the money's liberalization. In each case, the Supreme Court's position should be expected about the subject matter. The economists knew that the liberalization of the financial assets use, after the attempt to block them, would generate hyperinflation in a few days. The maintenance of the effects of the MP by the STF was a warranty of "economic" peace, although by means of an unconstitutional law, and it did not guarantee a permanent economic stability. What would the Supreme Court decide?

Brazilian history has already registered many cases of disrespect to Supreme Court decisions by the Executive branch. The political and economic situation of the nation was complex and a court's decision in favor of liberalization of blocked financial assets could not be accepted by the President of the Republic. The financial system, foreseeing economic chaos, could also opt for the disobedience of the STF's judgement in this way. In fact, there was the possibility of a serious constitutional crisis in the country.

By the way, this paper is divided into four chapters:

1st) introduction – in this chapter the research issue to be investigated and the questions to be answered are submitted;

2nd) history – containing a brief report of Brazil's economics and politics from 1950 to 1998;

3rd) results – where the discussion about the impact of the Supreme Court's decisions is made via an analysis of the actions selected for this work; and

4th) conclusion - when the questions proposed in the introductory section are answered and the data pertaining to the 2<sup>nd</sup> and 3<sup>rd</sup> chapters are co-related.

Two more sections are presented at the end of this study: bibliographical references and appendix – the latter containing a series of tables used in the research.

## 2 – BRAZIL'S POLITICS AND ECONOMICS IN THE SECOND HALF OF THE CENTURY XX

### 2.1 - FROM 1950 TO 1990

In 1950, postwar Brazil was not a very industrialized country but an exporter of primary products with serious social unbalances and among its own regions.

The population was 52 million with a GDP of US\$ 37,3 billion, meaning an annual per capita income of US\$ 717,50. It was concentrated on the coastal strip and worked mainly in agriculture. The industrial sector was in the Southeast area, basically in the State of São Paulo and, on a smaller scale, in Rio de Janeiro. The capital of the country was the city of Rio de Janeiro, placed inside an area on the State with the same name - this area was called Distrito Federal.

In 1950 the country would elect Getúlio Vargas as the president of the Republic. He had governed Brazil between 1930 and 1945 as dictator. Getúlio was a very popular politician despite his dictatorial government, his severe appearance and the fact that he was not used to demonstrate personal gestures of sympathy. His popularity would be affected in 1954, would reborn with his death and it would last a long time in the Brazilian politics.

The new president found the country with few exchange reserves, since the former-president Marshal Eurico Gaspar Dutra had allowed that the reserves accumulated during the period of the World War II were wasted in imports of consumer goods, generating constant exchange deficits in his government.

Getúlio Vargas assumed the government with a populist and nationalist speech, promising industrialization that privileged the primary industries, such as steel, energy, etc. In a certain way, he made the speech of the end of his period as dictator, when he negotiated with the United States the construction of the first steel plant in Brazil – a public company: Companhia Siderúrgica Nacional (CSN), in the city of Volta Redonda/RJ.

The beginning of the fifties was marked by the campaign, "The petroleum is ours", in which nationalist soldiers, students, politicians and leftist intellectuals argued that activities linked to the exploration of petroleum in the country should be an exclusive right of the Union. The campaign was victorious on 3.10.1953, with Law no. 2.004, establishing the monopoly of the Union in that sector and creating a public company to execute the new tasks: the Petróleo Brasileiro S/A - PETROBRÁS.

During Getúlio Vargas' government, between 31.1.1951 and 24.8.1954, inflation did not go very high by Brazilian standards, but it was always growing, and there was reasonable economic growth. Except for the creation of the PETROBRÁS, there was not any other significant change in the structure of the Brazilian economy. In August of 1954, after financial and political scandals and pressures of the right-wing military, Getúlio committed suicide. In the period from his death to the beginning of the new president's term, in January of 1956, there were coups and counterattacks. In the economy, there was a reduction of public expenses, a fall in inflation, and a surprising growth, considering the political instability of that moment - in 17 months, the nation had three presidents: Café Filho, Carlos Luz and Nereu Ramos.

**TABLE 1**

#### MAIN ECONOMIC INDICATORS IN THE PERIOD

YEAR	% OF REAL GDP'S EVOLUTION <sup>1</sup>	INFLATION IN %/YEAR <sup>2</sup>	POPULATION IN MILLION <sup>3</sup>
1950	6.8	12.41	51,9
1951	4.9	12.35	53,5
1952	7.3	12.70	55,1
1953	4.7	20.55	56,7
1954	7.8	25.84	58,4
1955	8.8	12.15	60,2

1 SOURCE: BANCO CENTRAL DO BRASIL.

2 SOURCE: FUNDAÇÃO GETÚLIO VARGAS – FOR THE APPROACH OF THE MENSURATION OF THE GENERAL INDEX OF PRICES – INTERNAL AVAILABILITY (IGP-DI).

3 SOURCE: INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA.

On January 31, 1956, Juscelino Kubitschek took over the Presidency promising to develop and industrialize the country. His slogan was "50 years in 5". The economic policy in this phase was more dynamic. The industrialization occurred mainly through the substitution of imports for national production. This government finished in 1961 and the installation process and the modernization of the national industry had been increased with prominence to the installation of automobiles plants. In addition there was the construction of new highways and the new capital of the country, Brasília, in the center area of Brazil.

After the first year of a certain lack of control in the public budget, JK tried to implement austere fiscal policies in 1957. However, the construction of Brasília, the highways and other public expenses provoked a constant rise in fiscal deficits and, in consequence, increased inflation rates. President JK did not get to finance those deficits with external resources. At the end of his government, that presented an average rate of GDP's evolution of 8.12%, Brazil had really been modernized, had become more urban, more industrial and less agricultural, favoring still the displacement of the population to the Center-west, but the economic, social and regional inequalities continued to exist.

**TABLE 2**

#### MAIN ECONOMIC INDICATORS IN THE PERIOD

YEAR	% OF REAL GDP'S EVOLUTION	INFLATION IN %/YEAR	POPULATION IN MILLION
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YEAR	% OF REAL GDP'S EVOLUTION <sup>1</sup>	INFLATION IN %/YEAR <sup>2</sup>	POPULATION IN MILLION <sup>3</sup>
1956	2.9	24.54	62,0
1957	7.7	6.96	63,8
1958	10.8	24.40	65,7
1959	9.8	39.42	67,7
1960	9.4	30.46	69,7
1961	8.6	47.79	71,8

1 SOURCE: BANCO CENTRAL DO BRASIL.

2 SOURCE: FUNDAÇÃO GETÚLIO VARGAS – FOR THE APPROACH OF THE MENSURATION OF THE GENERAL INDEX OF PRICES – INTERNAL AVAILABILITY (IGP-DI).

3 SOURCE: INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA.

Juscelino was a charismatic politician, but when he left the government his popularity was dropping, and this situation would only change after the military coup in 1964. Therefore, he did not get to choose his successor, an event that contributed to the beginning of the political instability in the country that would endure until 1985.

In January of 1961, Jânio Quadros assumed the Presidency, but he resigned in August of the same year. His brief mandate did not cause major changes in the Brazilian economy and it would be remembered more by ridiculous measures regarding social behavior, such as the attempt to prohibit bikinis at the beaches, cock fighting and *lança-perfume* (a kind of soft drug) than for accomplishments of economic policies. With his resignation, the control of the government went to the vice-president João Goulart. After an attempt of military coup, there was a constitutional amendment transforming the system of government from presidential to parliamentary. After a plebiscite and Constitutional Amendment no. 6, of 23.01.63, the presidential system was restored.

João Goulart's government suffered much political turmoil. João Goulart was, in fact, a populist and believed that the State should protect the workers against capital exploration, but he did not clearly define the economic policies that he would adopt. However, the most widely spread version, even abroad, was that he was a socialist with communist sympathies. As a political heir of Getúlio, João Goulart faced and lost against the same forces that caused his mentor to commit suicide. Some historians believe that the Getúlio's gesture delayed the military regime for ten years.

This mandate was political and economically troubled. The productive classes became unhappy with the president and his proposals, especially with the "Base Reforms" (which were a set of ideas to promote political and social pacts and they have been discussed in a passionate and irrational way by society). In a certain way, that moment was full of political passions, even for the economists. The theoreticians of the fiscal and monetary approaches said they were modern, but they were considered "sold to imperialism". The others who defended structural changes said they were nationalists and socialists, but they were seen as "communists".

On April 1<sup>st</sup>, 1964, a military coup removed João Goulart from the Presidency of the Republic. This began the military governments' era that will extend up to 15.3.85. In the Jânio/João Goulart period, from January 1961 to March 1964, the development process suffered a get back and the inflation rates were growing. The average annual GDP's evolution was 5.3% in this period and significant changes did not happen in the Brazilian economic structure in comparison to the situation left by Juscelino.

We opted for leaving the year 1961 in the previous series, considering that this year marked the end of JK's government (by January), the passage of Jânio Quadros in the presidency (from 31.1.61 to 24.8.61) and the beginning of João Goulart's government in the parliamentary system (month of September), and we can not clearly relate an economic policy with a ruler, at most we can speak of the end of the JK era. In a similar way, the year 1964 was not placed in the next series since João Goulart's government was brought down on April 1<sup>st</sup>.

TABLE 3  
MAIN ECONOMIC INDICATORS IN THE PERIOD

YEAR	% OF REAL GDP'S EVOLUTION <sup>1</sup>	INFLATION IN %/YEAR <sup>2</sup>	POPULATION IN MILLION <sup>3</sup>
1962	6.6	51.65	73,8
1963	0.6	79.87	76,0

1 SOURCE: BANCO CENTRAL DO BRASIL.

2 SOURCE: FUNDAÇÃO GETÚLIO VARGAS – FOR THE APPROACH OF THE MENSURATION OF THE GENERAL INDEX OF PRICES – INTERNAL AVAILABILITY (IGP-DI).

3 SOURCE: INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA.

With the beginning of the military regime in 1964, the leaders made a clear choice for fiscal equilibrium instead of investment policies (or not to get into debt). Marshal Castello Branco, the first president of the Republic of this cycle, was chosen by the National Congress for a one-year temporary mandate, but it was extended to 1967. This government did not show any economic development policy. To the contrary, the two important actors in this period, Roberto Campos and Otávio Bulhões, were determined to promote the public budget equilibrium.

The main long-term accomplishments of Castello Branco's government were: (a) the creation of the Statute of the Earth – an agrarian reform proposal that never became reality (in spite of been very well structured); b) the edition of the Decree-law no. 200, of 25.2.67, that indeed promoted the modernization of the Federal Public Administration. But if one hand these new rules transformed the Public Administration in a positive way, on the other they weakened the control and planning capacity of the government's agencies (the ministries). They also brought about the nationalism industrial virus, stimulating the creation of many public companies supported by the State, such as during the Garrastazu Médici (1969 to 1974) and Ernesto Geisel's governments (1974 to 1979); and c) the creation of the Financial System for Habitation, in order to stimulate savings and generate investments in the habitational sector; and to motivate savings, the government has also index-linked these savings. However, in a few years, the economic adjustments using the inflation rates were extended to the whole economy, creating decades of sustained inflation.

Castelo Branco's succession was the first test of the military leaders, in terms of continuity and composition of the several "political" groups in the Armed Forces. Marshal Costa e Silva was elected by the Congress, but he was not the preferred candidate of Castelo Branco.

TABLE 4  
MAIN ECONOMIC INDICATORS IN THE PERIOD

YEAR	% OF REAL GDP'S EVOLUTION <sup>1</sup>	INFLATION IN %/YEAR <sup>2</sup>	POPULATION IN MILLION <sup>3</sup>
1964	3.4	92.11	78,1
1965	2.4	34.25	80,4
1966	6.7	39.12	82,7

1 SOURCE: BANCO CENTRAL DO BRASIL.

2 SOURCE: FUNDAÇÃO GETÚLIO VARGAS – FOR THE APPROACH OF THE MENSURATION OF THE GENERAL INDEX OF PRICES – INTERNAL AVAILABILITY (IGP-DI).

3 SOURCE: INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA.

General Costa e Silva took over the post on 15.3.67. Integrating into his government team was Delfim Neto in the Ministry of Finance and Mário Andreazza in the Ministry of Transports, indicating that the new president wanted something more than just to maintain in order the public finances.

In fact, the planning of an economic development policy in the military cycle began in this period. During two and a half years, the Costa e Silva government did not implement great projects or radical changes in the Brazilian economic structure, but this period was the beginning of an economic policy with a strong presence of the State in the economy, with a vision of the State as an entrepreneur, responsible for grand infrastructure projects, and a defined and protectionist industrial policy.

In August of 1969, a cerebral hemorrhage removed Costa e Silva from the political scene. There were new disputes in the military, and, on 31.10.69, the new president of the Republic, General Garrastazu Médici, was chosen.

This government had been firm in reducing inflation, which was still high, and had showed a good performance regarding the GDP's evolution – the average rate was 7.8% in this period.

TABLE 5  
MAIN ECONOMIC INDICATORS IN THE PERIOD

YEAR	% OF REAL GDP'S EVOLUTION <sup>1</sup>	INFLATION IN %/YEAR <sup>2</sup>	POPULATION IN MILLION <sup>3</sup>
1967	4.2	25.00	85,1
1968	9.8	25.45	87,6
1969	9.5	19.33	90,1

1 SOURCE: BANCO CENTRAL DO BRASIL.

2 SOURCE: FUNDAÇÃO GETÚLIO VARGAS – FOR THE APPROACH OF THE MENSURATION OF THE GENERAL INDEX OF PRICES – INTERNAL AVAILABILITY (IGP-DI).

3 SOURCE: INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA.

President Médici decided to maintain part of the previous government's team, for instance, Delfim and Andreazza, and signaled a direction of continuity in the management of the economy. In order to reinforce the long term planning and to centralize the government's decisions and to promote a strong State presence, Reis Velloso was appointed to head the Ministry of Planning.

The government of Médici (from 31.10.69 to 15.3.74) can be remembered for the violence that the State treated its opponents, for the tortures that it carried out, and finally, for the complete disrespect of human rights. This government tried incursions in the populism area, with the campaign "Brazil, love it or leave it" (the Brazilian version of the US campaign related to the Vietnam War).

From the economic politics point of view, the government was marked by investments in infrastructure, the growth of the external debt, centralized planning, protectionist policies for national industry, beginning of the model of partnership among State + National Private Capitals + Foreign Capitals (the "tripod"), and the continued fight against inflation. The GDP grew to a spectacular average rate of 11.9% a year. This was the period of the "economic miracle" but it also intensified the national income concentration. Minister Delfim said that was necessary to grow the cake before sharing it.

The successor of Médici, General Ernesto Geisel, was chosen by the military leaders and by the Congress. This change of Generals did not create much turmoil. Geisel was respected in the Armed Forces and he was the brother of the previous government's Minister of the Army.

TABLE 6  
MAIN ECONOMIC INDICATORS IN THE PERIOD

YEAR	% OF REAL GDP'S EVOLUTION <sup>1</sup>	INFLATION IN %/YEAR <sup>2</sup>	POPULATION IN MILLION <sup>3</sup>
1970	10.4	19.28	95,8
1971	11.3	19.49	98,2
1972	11.9	15.70	100,6
1973	14.0	15.59	103,1

1 SOURCE: BANCO CENTRAL DO BRASIL.

2 SOURCE: FUNDAÇÃO GETÚLIO VARGAS – FOR THE APPROACH OF THE MENSURATION OF THE GENERAL INDEX OF PRICES – INTERNAL AVAILABILITY (IGP-DI).

3 SOURCE: INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA.

Geisel's government (from 15.3.74 to 15.3.79) favored the beginning of the political liberalization or, as it was said, of the "political distention". Geisel's personality was fundamental in this process: he was a religious man (Lutheran) and austere. He liked obedience and respect to the position that he was occupying. Then, it was not strange that he promised to democratize the country, although in a slow way, and he really made an effort to implement it.

Delfim Neto left the Ministry of Finance after difficulties in his relationship with Geisel and was replaced by Mário Henrique Simonsen. He was an economist that did not diverge much from the former minister, but gave more emphasis to the need for fiscal equilibrium, since he was a follower of the monetary theory preached by Milton Friedman. He continued the policies of great investments in infrastructure (the mentioned "tripod"), and the planning for the long term was commanded by Reis Velloso. This government began the construction of nuclear power plants after the agreement between Brazil and Germany, and Geisel, who had been president of PETROBRÁS, would be influential in the petrochemical sector by the end of his life.

The term of President Geisel was characterized by a sharp rise in inflation rates and for a reduction of the economic growth rates - annual average of 6,7% (high rate for the current patterns). The first petroleum shock was felt severely in Brazil in '74 and '75; and the dependence on imports was very big, as well as its relative weight in the Brazilian external trade. Although the country continued its modernization slowly, this process was reaching its end.

The presidential succession had a lot of turmoil again. The Minister of Army, General Sílvio Frota, who was from the more radical military group and for the continuation of the dictatorship, thought he had the right to the office. Geisel preferred to support the boss of the intelligence service, General João Batista Figueiredo, who was less political and for the democratization of the country. For the first time in the military cycle, these divergences were public and were published by the media, reporting accusations by both sides, but Geisel won.

TABLE 7

MAIN ECONOMIC INDICATORS IN THE PERIOD

YEAR	% OF REAL GDP'S EVOLUTION <sup>1</sup>	INFLATION IN %/YEAR <sup>2</sup>	POPULATION IN MILLION <sup>3</sup>
1974	8.2	34.53	105,5
1975	5.2	29.34	108,0
1976	10.3	46.26	110,6
1977	4.9	38.83	113,2
1978	5.0	40.73	115,9

1 SOURCE: BANCO CENTRAL DO BRASIL.

2 SOURCE: FUNDAÇÃO GETÚLIO VARGAS – FOR THE APPROACH OF THE MENSURATION OF THE GENERAL INDEX OF PRICES – INTERNAL AVAILABILITY (IGP-DI).

3 SOURCE: INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA.

The government of João Batista Figueiredo (from 15.3.79 to 15.3.85) was, somewhat, politically confused and terrible for the Brazilian economy. After a few months of government, Mário Henrique Simonsen, who had already changed offices from the Ministry of Finance for Planning, left Figueiredo's team, and Delfim Neto came back to command the economic area (he had already changed the Ministry of Agriculture for Planning). Delfim did not have anymore authoritarian tools, as he had during the hard days of the military regime, in order to control the prices and other economic indicators, and then he did not get to implement a coherent economic policy. Even worse the Brazilian government was unable to deal with the crisis of foreign debts for the developing countries in the beginning of the '80s.

On the other hand, president Figueiredo made an effort to maintain the democratization process of the country and was challenged by the radical sector of the Armed Forces even with terrorist attacks. Figueiredo got to sustain his project, but he also did not face or punish the radicals and he was less feared by the politicians (whom he did not like to work with) than any other military president. Therefore, after half of his term, he suffered a heart attack and he was taken to be operated on in the United States. After he came back to Brazil, he demonstrated absolute indifference for the government's tasks, concentrating his efforts on pushing for the return of a democratic political process and his succession.

In 1984, Brazil was the stage of an immense popular campaign: the "Directs Now", that wanted the direct election by the population for the next president of the Republic. Figueiredo, although in favor of the theme of the campaign, said that he could not support it for State's reasons. The campaign was not victorious, but marked the end of the military rule.

There were many factors that contributed to the end of the dream of the "Big Brazil". There were recessions in two years (1981 and 1983) and the return of the inflationary process combined with the brutal fall in economic growth rates - in this period, with strong variations, the average annual rate was 2.5%. In addition, the lack of external credits to cover the fiscal deficits; the disarray in the public expenses; the corruption in the public sector which was exposed by the media; the closed market and its lack of competitiveness and low productivity; high national income concentration; and the increase of the unemployment rate, that was around 4% and climbed to 7%, during the years 81 and 84.

TABLE 8

MAIN ECONOMIC INDICATORS IN THE PERIOD

YEAR	% OF REAL GDP'S EVOLUTION <sup>1</sup>	INFLATION IN %/YEAR <sup>2</sup>	POPULATION IN MILLION <sup>3</sup>
1979	6.8	77.30	118,6
1980	9.2	110.24	118,6 <sup>4</sup>
1981	- 4.3	95.19	121,2
1982	0.8	99.72	123,9
1983	- 2.9	211.00	126,6
1984	5.4	223.81	129,3

1 SOURCE: BANCO CENTRAL DO BRASIL.

2 SOURCE: FUNDAÇÃO GETÚLIO VARGAS – FOR THE APPROACH OF THE MENSURATION OF THE GENERAL INDEX OF PRICES – INTERNAL AVAILABILITY (IGP-DI).

3 SOURCE: INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA.

4 AFTER THE CENSUS OF 1980, SOME ADJUSTMENTS OCCURED ON ESTIMATES.

Despite the existing divergences, the lack of reliable statistics, the distortions provoked by the dimension of the informal economy in Brazil (nowadays, for instance, the rate is 57%), and the volume of tax evasion of the formal economy, most of the Brazilian economists consider that the evolution of the national income distribution occurred, approximately, according to the data in the following table.

TABLE 9  
NATIONAL INCOME DISTRIBUTION

YEAR	% CAPITAL	% LABOR
1953	55	45
1963	45	55
1984	70	30

President Figueiredo had lost much power by the end of his term and he could not choose his successor inside his own political party. He preferred Mário Andreazza but Paulo Maluf was chosen in a convention. The president chosen by the National Congress was the opposition Deputy Tancredo Neves, and the vice-president was Senator José Sarney, the former-president of the party that had supported the military regime.

Tancredo Neves got sick and had an operation on the day that he should have taken office (15.3.85). Sarney assumed as vice-president and acted as the president. Tancredo died after a few weeks. Then, Sarney governed to the end of his term in 15.3.90.

During Sarney's administration, the political command was broken up due to the president's commitments with the National Congress that sustained the legitimacy of his mandate. The Deputy Ulisses Guimarães, president of the PMDB (Brazilian Democratic Movement Party), who personified the opposition in the military era, was an influential leader. He was the president of the largest political party in the country, of the Chamber of Deputies, of the National Congress and of the Constituent Assembly, the latter would begin its work of writing a new Constitution.

The new Constitution, issued in 5.10.88, was the most important political event of the Sarney's era. The president began his government changing the ministers chosen by Tancredo, because he wanted to be free of these commitments. He began by replacing Francisco Dornelles, Tancredo's nephew named minister of Finance. To leave the dead president's shadow, Sarney became more and more dependent on Ulisses Guimarães.

In 1985, the Brazilian economy demonstrated the same lack of direction that marked the end of the Figueiredo's government. The main government economic problem was high inflation rates (in spite of the slight improvement in the growth rates). The citizens, in this period, did not trust in the future. On 28.2.86, the government began an economic stabilization plan that was called the "Cruzado Plan". It should have been a wide project of improving economic and political government performance but it was no more than a freezing of prices by Brasília. There were not the complementary macroeconomics measures and in November of '86, the government tried to adjust the original plan with the "Cruzadinho Plan", but the new proposals did not solve the existing problems.

During the Cruzado Plan, between February and November of 1986, there was an immediate improvement in the national income distribution. The poor population got access to new goods and Sarney's popularity was great. But Brazil had a closed economy, the fiscal deficit was a real problem and there was no possibility to finance it with external capital. The legal barriers to import consumption goods were immense and the productive sector did not want to lose his influence in the control and of the benefits of the previous system (incomes and reserves were integrally protected against inflation through indexation, an instrument created in the first government of the military cycle).

In August of 86, the lack of products in the supermarkets was a constant. The demand exploded and the supply stayed rigid - consequences of a closed economy. In July, the government had created a compulsory loan of fuels and sale of vehicles, with the objective of breaking the demand, and, in the case of the automobiles, to combat the black market. At the end of November, the Cruzado Plan had already arrived at its end.

In fact, after the Cruzado Plan, Sarney tried a series of unsuccessful plans: Bresser, Verão and the rice with bean policy (the latter received this name by the media, in the end of his government, when the minister of Finance was Mailson da Nóbrega). All of them did not have coherent macroeconomic policies and the president did not receive the needed political support for these plans. In sum, the plans did not resist the reality and, in a few months, they were abandoned.

There were inflation and economic stagnation in this period. In the last two years inflation surpassed the mark of 1,000.00% per year and the average of the GDP's evolution in the last three years was 2.2% per year. The average of the GIPI/GDP (Gross Increase in Permanent Investments / Gross Domestic Product) of Sarney's government was 17.4%, but the unemployment rate had dropped and the average rate of the period did not reach 4%. The new Constitution, on the other hand, restricted the economy, when it established the transfer of the Union's funds to the States and Counties without transferring to them the respective responsibilities, thus reducing the Federal Government managerial capacity. The "available" revenue or for "free movement" was in excess of 50% of total Union revenue and began to drop significantly (in 1988 it was 55.5%, in 89 it was 40.7% and it would still worsen).

The end of the Sarney's term was melancholic. His successor, Fernando Collor, was chosen directly by the population with 35 million votes approximately, after a period of 29 years without direct election for the president of the Republic. Among Collor's main preachings were the fight against corruption, the reduction of inflation, the opening of the Brazilian market to foreign capital and the privatization of state companies.

**TABLE 10**

**MAIN ECONOMIC INDICATORS IN THE PERIOD**

<b>YEAR</b>	<b>% OF REAL GDP'S EVOLUTION <sup>1</sup></b>	<b>INFLATION IN %/YEAR <sup>2</sup></b>	<b>POPULATION IN MILLION <sup>3</sup></b>
1985	7.8	235.11	131,9
1986	7.5	65.03	134,7
1987	3.5	415.83	137,3
1988	- 0.1	1,037.56	139,8
1989	3.2	1,782.90	142,3

1 SOURCE: BANCO CENTRAL DO BRASIL.

2 SOURCE: FUNDAÇÃO GETÚLIO VARGAS – FOR THE APPROACH OF THE MENSURATION OF THE GENERAL INDEX OF PRICES – INTERNAL AVAILABILITY (IGP-DI).

3 SOURCE: INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA.

2.2 - FROM 1990 TO 1998

This period concentrated the events that are the object of this work and, therefore, the economic situation and the policies adopted by the different governments of this time will be analyzed more deeply.

The social, political and economic environment, in the beginning of the 90s, was, of course, completely different from the one in existence in 1950. We can point out:

- Population: it almost tripled in this period, adding approximately 143,5 million (that was the estimate for 1<sup>st</sup>.1.90). In the 80s, a decline was noticed in the rate of demographic growth, that, in the beginning of the fifties was 2.9% / year, dropping for 1.7% / year. The population also started to occupy the interior of the country, in spite of the great concentration in the cities. The statistics related to education and the health of the Brazilian population were improved.

- GDP: it increased from US\$ 37.3 billion (end of 1950) to US\$ 469.02 billion (end of 1989); the GDP per capita jumped from US\$ 717.50 to US\$ 3,268.40 (values based in the dollar of 1997); and, in its composition, the participation of the industry and the services grew, and the importance of the agriculture sector fell.

- Industry: it was diversified and more concentrated in the Southeast Area; the labor force was not so skilled, although much superior in amount and quality if compared with the 50s; it presented low productivity indexes and little competitiveness; many sectors were oligopolized or belonged to the public sector; and, in general, legal protection continued against external competitors.

- Agriculture: it had grown and had been modernized; it was present in the whole country, except part of the Amazon; and, perhaps because it lost the subsidies in the 80s, it had increased its productivity.

- Services: the most dynamic, modern and competitive economic sector in Brazil, corresponding to 60% of GDP.

- Public administration: despite its ups and downs, it lost quality in the first half of the 80s, recovering a little at the end of this decade. Anyway, it was far from the ideal model. This sector has a lot of formality and the servants were worried about procedures and controls, not about the efficient management of the public sector.

- Inflation: always growing, it suffered a great increase during the last five months of the Sarney's government. Inflation defeated all of the economic plans, provoked more income concentration, and impeded any economic development program in the country.

- Politics: the Constitution of 88, the end of the military regime, the freedom of expression and the media contributed to a glorious democratic period, but also reduced the governability of the country. The great number of parties in the Congress and the electoral system also hindered Federal Government action. And, no less important, the president José Sarney, in fact, had his political legitimacy questioned several times (he was the vice-president when Tancredo died, but a former-partner of the military regime). Besides, he lacked political leadership, causing more instability in that moment of democratic transition.

On 15.3.1990, Fernando Collor took office as president of the Republic, with a speech in favor of the fight against corruption and the privileges of the public service. He also talked about the need to modernize the country and to eliminate inflation.

In the period that precedes his term, Collor gave signs that he could adopt radical measures to combat inflation, affirming that he had only one bullet to kill the tiger of inflation. The formation of his ministerial team was confused, but Zélia Cardoso's choice to occupy the Ministry of Economy, Finance and Planning (gathered in one Ministry), indicated the president's intention of having personal control of this area, because Zélia was an economics professor without support from the political environment.

The president began his government issuing a series of provisional measures dealing with the New Brazil Plan, that was also well-known as Collor Plan.

The following were the new government's main proposals:

- the freeing of financial assets, that dried up 2/3rds of M4 (this measured reached all the accounts' deposits and the savings in the bank system above 50,000 *crúzados novos* – approximately US\$1,300.00);

- the fixing of prices and wages;

- the launching of a new currency, the *cruzeiro* (that had already been the name of one of the national currency); and

- cuts in public expenses, especially, with civil servants.

After that, Collor turned his efforts to open the Brazilian economy to the import of consumer goods, to improve industrial productivity and the quality of the products traded in the country. It is interesting to notice that the opening of the Brazilian market to the foreigner and the attempt to modernize the country persisted after Collor's impeachment. If this commercial liberalization had been begun at least three or four years before, perhaps the Collor Plan would have had some chance of success. However, these policies were fundamental for the success of the Real Plan, the other economic stabilization program proposed by the minister of Finance, Fernando Henrique Cardoso, in 1994, during Itamar Franco's government.

The Collor Plan began to lose steam in June of '90. The inflation rate that dropped in April and May, began to increase again. In August, besides the high inflation rate, there were supply problems. This plan had the same problems of the Cruzado Plan: the domestic supply did not support the growth of the demand, partly because of the lack of the productive capacity and partly because the private sector acted as it had done during Sarney's government.

The Brazilian private sector, when make a boycott against economic plans to combat inflation, like during the Cruzado and Collor Plans, acted in an extremely rational way. The inflationary model and the weakness of the central government, combined with a closed economy, assured them political power and enrichment capacity without risks or competition. This is not a very explored aspect, but it is present in many moments of the Brazilian political and economic history in the second half of this century. But the business community did not notice that this short-term rational choice contained a long-term trap: the enormous national income concentration would make unfeasible a competitive economy.

In September of 1990, the inflation rate (measured by the INPC-IBGE) was 14.26%, almost the double of the index 7.31% recorded in May of '90 – the Collor Plan's best moment. No structural changes happened in the economy and the effects of the commercial liberalization and modernization had not materialized. The president's popularity decreased, contributing to this freeing of the *crúzados novos* combined with the rise in inflation. As a consequence, many of his allies were defeated in the elections for the Congress and State representatives, in October of the same year.

Still in October, the minister of Justice, Bernardo Cabral, who was married, was dismissed after the publishing of his romance with the minister of Economy, Zélia Cardoso, who was single. Besides, the former-treasurer of the presidential campaign, Paulo César Farias, was accused by the president of the PETROBRÁS, Luis Octávio da Motta Veiga, of negotiating business between the aviation company VASP and PETROBRÁS. Motta Veiga left the government and his accusations reached the Planalto Palace, provoking damages to the government's image.

The year of 1990 would finish with an inflation rate of 1,476.56%, a fall in the GDP rate of 4.3%, an average unemployment rate of 4.3%, and the GIPI/GDP of 15.5% (the smallest since the beginning of the series in 1970).

At the end of the first year of his term, Collor did not get to execute his main campaign pledge: to reduce in a significant way the inflation rates. But after the invasion of Kuwait by Iraq, and the beginning of the Gulf War, the government found temporarily, reasons to justify the failure of the economic plan.

The year of 1991 began with discussions about constitutional reform, defended by Collor as the solution for the current national problems. There was not any agreement with foreign creditors about the Brazilian debt and the government's privatization program did not get off the ground. The only exit for the government was to start again, and the president tried issuing the Collor Plan II (MP's no. 294 and no. 295), freezing prices and wages, eliminating the indexation of the economy, extinguishing the use of the BTN (National Treasury Bonds) as an index and creating a fund to increase investments. The president got approval in the Congress of the fundamental lines of his plan.

In January and February of 91, inflation was 20.95% and 20.20%, respectively, but in March it began to drop: 5.01% in April, and 6.68% in May (indices INPC-IBGE). In June the inflation increased again, demonstrating that the Collor Plan II would not be sustained in the long run.

In May of 91, after the minister Zélia Cardoso's dismissal, Marcílio Marques Moreira was appointed and he tried to transmit serenity to the internal and external public, guaranteeing an economic policy without shocks and austere in relation to the public expenses.

After 18 months of a mandate under suspicion, Collor was weak with several accusations of corruption inside the government. In the Congress, the opposition parties began to negotiate the installation of a Parliamentary Commission of Inquiry (CPI) to investigate these accusations of corruption.

In September, the financial assets blocked at the beginning of the government began to be returned to the population in installments of 1/12<sup>th</sup> of the existing balances, and, in December, inflation reached 24.15%. At the end of the year, there was a recession, more unemployment and scandals in a government that did not have the ability to change the course of events. The year of 1991 finished with the following indicators: growth of GDP = 1.0%; inflation = 480.18%; unemployment rate = 4.9%; and the relation between GIPI/GDP = 15.2%.

In the beginning of 1992, the accusations about corruption inside the government were expanded. Pedro Collor, who was one of the president's brothers, gave a series of interviews accusing the friend and former-treasurer of the presidential campaign, Paulo César Farias, of driving a scheme of corruption with the president's participation.

In June of 92, some politicians began to talk about the impeachment of the president, while the inflation rate stayed around 20%. The economic indicators were not good: for instance, at the end of the year, the GDP fell 0.5%. The available portion of the Union revenue had dropped from 40.7% in 89 to 24.3% in 90; 24.5% in 91; and 19.5% in 92.

On September 29, the Chamber of Deputies authorized the beginning of the impeachment in the Congress: 441 votes pros, 38 cons, 23 absences and one abstention. On the following day, the president of the Senate, Mauro Benevides, installed the Special Commission of the Senate in charge of judging president Collor, who would be far from his office for 180 days. The vice-president, Itamar Franco took over the exercise of the presidency of the Republic, on October 2<sup>nd</sup>.

The judgement happened on December 29, and Collor, foreseeing his condemnation, resigned after the session have already began in the Senate, which provoked controversy among jurists and politicians concerning the validity of the senators' decision of continuing the voting, denying him the right to occupy public office for eight years.

TABLE 11

MAIN ECONOMIC INDICATORS IN THE PERIOD

YEAR	% OF REAL GDP'S EVOLUTION <sup>1</sup>	INFLATION IN %/YEAR <sup>2</sup>	POPULATION IN MILLION <sup>3</sup>
1990	-4.3	1,476.56	144,7
1991	1.0	480.18	147,1
1992	-0.5	1,157.95	149,4

1 SOURCE: BANCO CENTRAL DO BRASIL.

2 SOURCE: FUNDAÇÃO GETÚLIO VARGAS – FOR THE APPROACH OF THE MENSURATION OF THE GENERAL INDEX OF PRICES – INTERNAL AVAILABILITY (IGP-DI).



On December 29, 1992, Itamar Franco took office as president of the Republic, promising a government without corruption and without economic shocks. He developed an image of a simple man for the public, criticizing mayors and governors (the states and municipalities administrations) for the high inflation rates in the country.

By the beginning of 1993, the politicians, the media and the entrepreneurs saw the new president in a positive light: the GIPI/GDP rate dropped to 14.0% (the smallest rate registered) and the average annual unemployment rate was 5.8%.

The year of 1993 was characterized by political discussions about the plebiscite to define the form (republic or constitutional monarchy) and system of government (parliamentary or presidential) to be in force in Brazil and for the beginning of the constitutional review. This year was marked by the installation of a Parliamentary Commission of Inquiry to investigate accusations of fraud made by parliamentarians in the Union's budget, which disturbed the Congress reviewer's activities.

In the first month, Gustavo Krause resigned his office as minister of Finance, and Paulo Haddad was appointed to replace him. But the latter also left the office in March, after disagreements with Itamar. Eliseu Resende was appointed to occupy the main Ministry of the government, but the poll makers did not like it very much. Eliseu was accused of maintaining inappropriate relationships with contractors, besides he had already been condemned by the Court of Accounts of the Union, that found irregularities in his accounts when he was chief of the National Department of Highways (DNER). The pressure to dismiss Eliseu Resende increased, and, in May, he was replaced by senator Fernando Henrique Cardoso, who was the minister of International Affairs.

Due to the effects of inflation on the *cruzeiro* (the currency of the Collor Plan in 1990), it was replaced by the *cruzeiro real*, in August of 1993.

In September, while the Brazilian electorate chose the republican form and the presidential system of government in the plebiscite, the Ministry of Finance's team announced the launching of an economic stabilization program in the beginning of the year 1994.

Still in this month, the CPI to investigate the corruption in the Union's budget was installed in the Congress, when many parliamentarians and employees of the Legislative branch were accused of manipulating funds of the Union's budget in favor to their personal interests.

Itamar Franco received from his team in the Ministry of Finance the proposal for the creation of two new currencies that would be the base of the economic plan. The minister of Finance announced, for February of 1994, the creation of the *Unidade Real de Valor (URV)*, that would be a temporary index for prices and wages and an exchange anchor for the adoption of the new currency.

The economic indicators in 1993 were contradictory: inflation was 2,708.55%; the GIPI/GDP was 14.4%; the available revenue of the Union was 22.9%; the average unemployment rate was 5.3%; and the growth of GDP was 4.9%.

Itamar was not as popular as in the beginning of his term and there was not re-election for the president of the Republic. The favorite opposition candidate was Luís Inácio Lula da Silva, and Fernando Henrique Cardoso became a natural candidate to oppose Lula.

The second half of 1993 was a period of gestation of the Real Plan, the name of the economic stabilization program. Some measures were adopted to diversify the items and to increase the amount of Brazilian imports; to raise the volume of the exchange reserves; and to renegotiate the foreign debt.

Fernando Henrique explained to the population the measures of the economic plan that would go into effect on March 1<sup>st</sup>, 1994 (on Monday), through the Provisional Measure no. 434, of 27.2.94. In summary, the *cruzeiro real* would be maintained as a legal currency and at the same time there would be an almost-currency – the *Unidade Real de Valor (URV)*; in the future, a new currency would be created: the *real*; and the *URV* would adjust daily all the prices, costs and factors of the economy, besides the wages.

The inclusion of wages among the items that were index-linked was fundamental to break the transfer of income that damaged great part of the population. The creation of the *URV* also signalled for other economic sectors that: it would be eliminate the existing divergences among relative prices - the prices were, in fact, those expressed in *URV* -; the inflation of the *cruzeiro real* (the currency that would be eliminated) was inercial; and the inflation to be considered would be extracted from the *URV*.

The *URV* was used for the first time with an equivalent value of one American dollar. The economic team judged that when the *URV* and the dollar varied together, or almost, it would be the moment to suppress the *cruzeiro real* and the *URV*. For the success of the plan, the government had also two great difficulties: 1st) the general elections in October and the favoritism of the Lula for the presidency of the Republic; and 2nd) the new experience, in Brazil and in the world, of the existence of several currencies at the same time.

However, the population understood the mechanism of the *URV* quickly. In the first two months of its existence (March and April), the inflation in *URV* was above 10% a month but in May, it was already falling, and, in June, it was below 5%. The economic team opted for the launching of the new currency, the *real*, on July 1<sup>st</sup>, 1994. In the beginning of April, Fernando Henrique left the Ministry to be the presidential candidate.

The inflation rate in 1994 was 909.61%. However, the inflation in the second half did not reach 20% (19.8% - according to INPC of the IBGE).

The economic plan was going well, inflation was controlled and the candidate, former-minister of Finance, was directly tied to this success and he was chosen president of the Republic in the first round of the elections, on October 3<sup>rd</sup>. Itamar also had great popularity, reappearing in events all over the country.

The year finished with the GIPI/GDP of 15.3%, the available revenue of the Union was 21.4% (in 1994, the government created the Social Fund of Emergency and without it, the available revenue would be 9.9%) and the average unemployment rate was 5.1%.

## TABLE 12

### MAIN ECONOMIC INDICATORS IN THE PERIOD

YEAR	% OF REAL GDP'S EVOLUTION <sup>1</sup>	INFLATION IN %/YEAR <sup>2</sup>	POPULATION IN MILLION <sup>3</sup>
1993	4.9	2,708.55	151,6
1994	5.9	909.61	153,7

1 SOURCE: BANCO CENTRAL DO BRASIL.

2 SOURCE: FUNDAÇÃO GETÚLIO VARGAS – FOR THE APPROACH OF THE MENSURATION OF THE GENERAL INDEX OF PRICES – INTERNAL AVAILABILITY (IGP-DI).

3 SOURCE: INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA.

Established by the results of the elections and supported by the success of the stabilization economic plan, initiated when he was minister of Finance of Itamar's government, Fernando Henrique Cardoso took office as president of the Republic on January 1<sup>st</sup>, 1995, wanting changes in the Constitution. He got a majority in the Congress, gathering different groups from the center-left-wing to the right-wing. He proposed a wide program of constitutional reforms but he did not get it approved fast, neither with the desirable extension. The reforms were concerning: economic order (approved in 1995 and almost without changes by the Congress), Public Administration (approved in 1998 but deeply altered in the Parliament), and social security (still in the Congress but it has already been very distorted).

In order to sustain this stabilization program, the country needed to attract external investment. To achieve this goal, the government raised interest rates because, from the end of 1994 on, the Brazilian trade balance has been have deficit to keep the flow of imports (and low inflation rates) through competition of foreign products in the national market. However, high interest rates cool the economy, bring unemployment and increase the cost of the public debt running, and thus, raise the fiscal deficit. A wide privatization program and the public services concessions have been contributing to the maintenance of the current economic policy but there are pressures in favor of social investments.

The modernization of the industrial sector, the imports, high interest rates and the unemployment rates became the most serious economic and political problems for the current government. The bureaucracy argued that the Mexican crisis, in 94 and 95, and the Asian crisis, in October of 97, forced the maintenance of high interest rates. The opposition prefers to blame the economic team for the use of monetary orthodoxy approach. In fact, the unemployment rates in the 90s are worse than in second half of the 80s, and during Fernando Henrique's government, they were always growing: in 95 = 4.6%; in 96 = 5.6%; in 97 = 5.7%; and in 98 = 7.8% (by May).

However, the rate of the Gross Increase in Permanent Investments in the GDP improved from 16.6% in 95 to 20.0% in 97 (not established data / estimative from IPEA in May/98). The available part of the revenue of the Union, supported by the creation of the Fund of Fiscal Stabilization that succeeded the Social Fund of Emergency, also presented positive data: in 95 = 27.0%; in 96 = 32.1%; in 97 = 36.7%; and in 98 = 35.8%.

In the period of Fernando Henrique's first term, the great conquest was the elimination of the inflation (see table 13).

TABLE 13  
MAIN ECONOMIC INDICATORS IN THE PERIOD

YEAR	% OF REAL GDP'S EVOLUTION <sup>1</sup>	INFLATION IN %/YEAR <sup>2</sup>	POPULATION IN MILLION <sup>3</sup>
1995	4.2	14.78	155,8
1996	2.8	9.33	157,5
1997	3.2*	7.48	159,2*
1998	1.5*	2.00*	161,0*

1 SOURCE: BANCO CENTRAL DO BRASIL.

2 SOURCE: FUNDAÇÃO GETÚLIO VARGAS – FOR THE APPROACH OF THE MENSURATION OF THE GENERAL INDEX OF PRICES – INTERNAL AVAILABILITY (IGP-DI).

3 SOURCE: INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA.

\* ESTIMATES.

In summary, the stability of the currency was fundamental to prepare the conditions of the promised, although not yet accomplished, cycle of sustained development and for the obtaining of the high indices of popularity for the president of the Republic. A candidate for re-election, Fernando Henrique was victorious in the first round on October 4<sup>th</sup> of 1998.

### 3 - THE IMPACT OF THE SUPREME COURT'S DECISIONS

In this chapter, the impact of the Supreme Court's decisions about four cases will be discussed. Three actions are directly related to the public servants and the other one is more generic and interests the whole of society. In each case we will observe the amount of money involved, identifying the real influence of these Court's decisions in the economic situation during the period in focus.

#### 3.1 - DIRECT ACTION OF UNCONSTITUTIONALITY no. 313

On June 15<sup>th</sup>, the president Fernando Collor issued the Decree no. 99.300, establishing proportional time of work wage payment for civil servants placed on paid availability. After that, several actions were referred to different instances of the Judiciary against this act and eight Direct Actions of Unconstitutionality were submitted to the STF. Four actions were initiatives of different trade unions and four actions were brought by opposition parties. The *Adin* no. 313 was brought by the Brazilian Democratic Party (PDT) in 20.6.90, and it was the only action to receive definitive judgement by the STF. The others, in the measure that they were related to the same object, were not considered on their merits.

When in June of 1990 the Supreme conceded the preliminary verdict requested in the *ADIn* no. 313, forcing the government to pay integral wages for the officials placed on paid availability, the first sign of dissatisfaction with the Collor's administration had already been demonstrated by the National Congress when it rejected MP no. 185. Starting with the edition of MP no. 190, like MP no. 185, the Supreme Court judged against the admissibility of the measure, leaning on the will of the majority of the parliamentarians, that had already appreciated and rejected the similar MP no. 185, which authorized the Superior Labor Court to suspend Regional Labor Court's decisions about collective lawsuits.

At that moment, the government's allies in the Congress were dispersed and amazed by a lot of controversial proposals. On the other hand, the decision on this case could not be postponed, once the subject had primary consumption nature and the wages of the officials were, in fact, frozen.

Approximately 50,000 employees would be reached by this measure, but, in 27.6.90, the majority of the Supreme Court's justices decided to grant the preliminary verdict requested by PDT and suspend the effects of the Decree by the final decision on this subject matter. This decision reached all the involved employees, because this kind of action has *erga omnes* effects, that means, besides the parts that brought the action.

In 21.8.91, the majority of the justices decided to judge in favor of the officials, declaring unconstitutional the Decree issued by Collor. This decision happened after the issue of a new economic plan by the government, that did not agree with the Congress about wage policy; the inflation rates increased every month; the economy of the country was in a recessive phase; and president Collor's team was involved in accusations about corruption. On the other side, the Executive also paid high wages for some officials and adjusted the military salaries above the values for the civil servants.

The amount of officials that would be reached by the Decree no. 99.300 (50,000 employees) corresponded to 8.3% of the total civil servants in activity, that was about 600,000. The payroll of the federal public sector (including the military sector) was R\$ 35.1 billion and the payroll of the civil servants in activity was about 40%, that means R\$ 14 billion.

Among the civil servants placed in availability, most of them had lower wages and a medium level of formal education. In both cases, they had more than 20 years of service. Even if we considered the hypothesis that these officials in availability had the same profile of those in activity and, as a consequence, the same average wage, and that their time of service was in the average time of career, we would have an annual saving of, at the most, R\$ 581 million (14.000.000.000 x 0,083 x 0,5).

In 1990, the government's available revenue was R\$ 27 billion (24.3% of the total revenue of R\$ 111,4 billion). It means that, it was not possible for the government to press the STF, affirming that economic chaos would happen in case of a defeat of the Executive in this matter, because it would not be true. A favorable decision of the Supreme Court to the public employees would not imply the failure of the government's economic plan. The Court judged with readiness and rigidity in the defense of the constitutional text, which said that the salaries of civil and military government employees may not be reduced and that they have tenure.

#### 3.2 - DIRECT ACTION OF UNCONSTITUTIONALITY no. 525

This action was brought by the Brazilian Socialist Party (PSB), on 31.5.91, alleging the unconstitutionality of MP no. 296, of 29.5.91, that established different wage adjustment among civil and military servants. Other actions were also brought to the STF and to other levels of the Judiciary, but this was the first suit to be heard and it influenced the other cases. By majority vote, on 12.6.91, the justices denied the preliminary verdict requested by PSB, that intended to suspend the different wage rates and to extend the increase to other careers.

With this judgement, the Court transferred to the Congress the responsibility of the decision about the constitutionality or not of the measure. On 26.6.91, the Congress rejected the MP and the Supreme Court escaped to judge the merit of the matter and did not rule on the concept of equal wages nor on the constitutionality of the concession of different wage adjustments among the officials as established in the Constitution. On 28.8.91, the STF filed the action because it had lost its object.

The STF avoided conflict. The constitutional text hindered, expressly, the different wage adjustments among the servants - rule that the government wanted to suppress (and it was, when the public administration constitutional reform was approved at the beginning of 1998). Besides, the political and economic scenery of the country was full of turmoil in this period. The president tried to start over. He changed the minister of Economy and he sought new alliances in the Congress, since his political base had been unhappy with the measures of the Collor Plan II. With the edition of this plan, in February, inflation, which was more than 20% during the months at the beginning of the year, dropped to less than 10% in the following months, and only in June did the inflation rate cross the barrier of the 10%. The chief of Justice Sidney Sanches declared to the press that if the preliminary verdict was granted it would remove an advantage of many officials that received low wages and president Collor could blame the Judiciary for suspending the adjustment.

This case is very interesting because, although it is not possible to quantify the cost of the possibility of different wage adjustments in the medium and long term, and the cost in short term for the government be reduced, which was in game was a public policy desired by the Executive in order to separate the wage adjustments among civil and military servants, privileging some careers in the civil service.

The government argued that the impossibility of concession of different wages among the servants impeded the recruitment/maintenance of good professionals and, if the government granted high wages for every public servant, the investments in the public sector would be made impracticable, worsening the budget deficit.

### 3.3 – WRIT OF MANDAMUS no. 22.307

A group of officials brought this case to the Superior Court of Justice, and the writ went to the STF to judge it on ordinary appeal on 31.5.95. In this case, a judicial decision about this matter would be only applicable to the parts of the suit. On 19.2.97, the request was granted by the justices, although only partially. On 17.6.97, the Union appealed and most of justices decided partly in favor of the officials on 11.3.98.

This case challenged the military wage adjustment of 28.86%, which was extended to a few civil servants in the beginning of the year 1993 by Law no. 8.622, of January 19, 1993, and Law no. 8.627, of February 19, 1993. Other similar cases were brought to the STF by the public servants requesting the use of the same index in their wages. Many of them were victorious in their first judicial hearing but the government always appealed these decisions and they arrived at the Supreme Court for final decision.

Although the STF's decision in this case had effect only among the parts involved in the suit, the government decided to issue MP no. 1.704, of June 30, 1998, extending to all officials adjustments from 0% to 28.86%, which was the object of the STF's decision. It means that the government had adopted this measure because the labor indebtedness in this case was already high; there were a lot of suits about this subject in the judicial system and the government was only delaying these decisions when appealed; and perhaps because it was an election year.

The projections done at that time showed that about 600 thousand servants in activity and retired will receive any kind of index in their wages (an average of 12.5%). Nowadays, the payroll of the Union's employees (including servants in activity and retired) is around R\$ 48 billions / year. According to the terms of the MP, the government should spend about R\$ 600 million by the end of the year 1998 to pay its adjustments. The indebtedness will begin in 1999 and it will be done in two instalments (in February and August), and could be concluded in seven years. It will cost from R\$ 5 to 6 billion. From 1999 on, the servants' payroll should have an annual growth about R\$ 1,2 billion.

In this case, the Executive power concentrated its efforts to avoid a favorable judgement to the civil servants by the Supreme Court. Ministers of State and the president declared that the judges who decided in favor of increasing the wages using the index of 28.86% did not want what was best for Brazil, because the budget would not support the costs of this benefit and it would imply expenses above R\$ 10 billion per year, besides the indebtedness could add about R\$ 40 billion. If the values were really in this way, there were no doubts that the concession of the adjustments back to February, 1993, could provoke enormous disarray in the Brazilian economy but, in fact, the cost of the Supreme Court's decision was much smaller.

In this episode, the Executive branch, when challenged in Court, tried to win on the merit of the case, and did not argue in time that many careers of servants had already received other adjustments in that period. When the government was defeated, it presented new arguments appealing against the sentence (prohibited procedure in this stage). However, the Supreme Court accepted the new arguments of the appeal, which should be only to explain better the content of the previous sentence. Instead, the STF used these arguments to decrease significantly the government's debt.

This judgement was very polemic and jurists, politicians and bureaucrats did not accept the final arrangement. Some justices decided against the government's interest in this case, causing a split decision. In fact, the Court preferred the economic peace to the unharmed of the law.

### 3.4 - DIRECT ACTION OF UNCONSTITUTIONALITY no. 534

As we saw, the freezing of the financial assets established by MP no. 168, of 15.03.90, during the Collor's government reached 67% of M4. The inflation rate in March would surpass 80%, being the highest monthly index in Brazilian economic history. The involved constitutional aspect was very ordinary: it was a government's rule impeding the free use of the financial assets by the citizens. The jurists did not have doubts concerning the unconstitutionality of the measure. However, the central issue was another: what would happen if the STF decided immediately on this matter?

After the issue of this MP, several cases were brought at different levels of the Judiciary requesting the liberalization of the money. Some judges decided in favor of the free movement of the financial assets and privileged citizens got to recover the frozen money, but the majority of the population reached by the MP was not benefited. The Court did not rule on the matter.

The condition of the Brazilian economy was so critical in this phase, that the opposition parties did not make a lot of noise against the measure. MP no. 168 was approved by the National Congress and transformed into Law no. 8.024, on April 12, 1990. Only on 19.6.91, the Brazilian Socialist Party (PSB) submitted a Direct Action of Unconstitutionality (*Adin* no. 534) to the STF, challenging the Law no. 8.024/90. When the majority of the Court's justices denied, on 27.6.91, the preliminary verdict in the case, alleging that the action was brought much time after the act, the party had to wait the final decision about the matter.

The balances above 50,000 *cruzados novos* would be indexed and returned in 12 monthly equal instalments starting from September 16, 1991. On 26.8.92, the STF decided to file the action and the justices did not analyze the constitutionality of the freezing. It happened because the last instalment of the blocked money had already been returned and the action lost its object. Starting from the frozen financial assets, without any residual effects, and the complete elimination of the effectiveness of the state act, the STF filed the action.

If the Supreme Court decided, immediately, in favor of the unconstitutionality of the frozen money, the Executive power could react against the decision which would be contrary to its interest, forcing the financial system to have no respect for the decision. On the other hand, we did not have an idea of how the financial system could react. Because in despair, it could opt to disobey the Court's decision. Anyway, there would be a serious institutional crisis.

From the point of view of the economic stability, the maintenance of the freezing was fundamental in the period that preceded the total liberation of the financial assets, because, otherwise, the population would withdraw its money from the banks and the financial system could be seriously affected. Those that got to recover their assets, would try to buy dollars, real state or any other kind of tradable assets or goods, provoking a considerable increase in the dollar rates and, certainly, hyperinflation. In fact, in this case, it was not simply the government's alarmism or pessimism, but it could really cause chaos.

The position of the Supreme Court was extremely uncomfortable. If the justices decided for the constitutionality of the MP it would be a juridical aberration but if they decided for its unconstitutionality would throw the whole country into a dangers situation. Under these conditions, the STF adopted the non-decision strategy.

The Supreme Court did not judge the actions related to this subject submitted for its consideration, did not grant the preliminary verdict requested in the *Adin* no. 534 to suspend the currency freezing and did not decide the merit of the case in time for the sentence produce a real effect. That means that the STF gave in to the dictatorship of the political and economic situation, in order to satisfy the Executive power and guarantee the social peace.

## 4 - CONCLUSIONS

It seems reasonable to conclude that when the Supreme Federal Court understands that the social and economic peace are threatened by its decisions about any specific matter, the justices opt to protect the Nation's governability, although sometimes, to the detriment of the constitutional principles which they should care for.

On the issues involving public servants' rights, the STF also acts carefully, to avoid destabilizing the government with undesirable decisions about State funds distribution to the officials.

In the period on which this study was based, the main national problems to be solved by the governments were related to the control of the inflation rates and the public debt. Therefore, the STF needed to judge supported by the law but exercising its political and juridical mission, it had to make its decisions compatible with the expectations of the society and making effectiveness the government's program.

In general, the poll makers wanted the government balanced its budget, reducing the official's wages. They said the servants had a lot of benefits that are not usual in the private sector and they were inefficient. Then, the STF lived in a permanent dilemma: it should opt for decisions that grant or suppress economic benefits to the officials.

The Welfare State, that flourished in the United States and in the Western Europe after the World War II (Offe, 1984), did not happen in the same way in Brazil. Some laws, however, were created to protect workers' rights, such as vacations, 13<sup>th</sup> wage, turn of work, etc., and the Brazilian Constitutions used to guarantee benefits that the State had difficulties to execute.

The Constitution of 1988 expanded much more the social rights guaranteed by the State, but the congressmen who wrote the text did not point out the sources of money that would assure their execution. For public servants, for instance, the Constitution established that (1) the general review of the remuneration of government employees would be made without distinction between the indices applied to civil and military servants, and it shall always occur on the same date; (2) the salaries of civil and military government employees may not be reduced; (3) the retirement pension shall be revised, in the same proportion and on the same date, whenever the remuneration of the servants in activity is changed, and any benefits or advantages subsequently granted to the servants in activity shall also be extended to the retired servants; (4) the job tenure was extended to other employees; (5) it would have a sole juridical regime; and (6) would have equal salaries for officials with equal or similar duties.

The agencies created by governments to execute the tasks of the Welfare State, as mentioned by O'Connor (1973), were also created in Brazil, for example, the agencies to implement public policies in the health, education, habitation, transport and social security areas. However, the author teaches also that the welfare state proposal brings, in consequence, the growth of the unproductive public sector, which consumes many funds from the State and requests high taxes, provoking high inflation rates and fiscal deficit (as also happened in Brazil).

Nevertheless, despite the Brazilian State did not realize the desirable social welfare by the population, the public sector suffered the consequences of successive inefficient management and had serious fiscal problems. The public servants were seen as the main ones responsible for the government budget disarray. Brazil got welfare's burden without having the expected social programs.

The protection of the job and the attention to the basic needs of the workers that Offe (1984) refers to as one of the commitments of the Welfare State can be seen in the public sector. These workers got tenure in the job and a special retirement system (different from workers in the private sector), but the officials also became a labor force with lack of incentive, inefficient and costly for the government.

As well as in other countries, the neutrality of the Judicial branch in Brazil was broken with new laws. The Brazilian constitutional court needed to settle many disputes that came from the expansion of the collective rights in the Constitution of 1988, deciding in accordance with the needs of the State and the expectations of society about desirable social justice goals. The new Constitution was an important factor in the democratization process of the country, after the long military dictatorship period, and still propitiated a discussion about the role of the Judiciary in the political scenery, in the measure that the Constitution facilitated the access of the population to the judicial system. In the case of the STF, for instance, a larger number of actors acquired the capacity to bring Direct Actions of Unconstitutionality and, therefore, to submit for the court's consideration important and polemic issues for the society.

The disputes involving public servants' rights (those expanded by the Constitution or changed by specific rules) also arrived at the STF. These lawsuits with distributive nature placed the Supreme Court in an uncomfortable position, which was to decide about conflicts not solved by the Executive and Legislative branches, confirming or rejecting the validity of the public policies for the officials, vis-à-vis the expectations of the society around the government's programs.

Since the Republic, the STF has juridical and political duties. Inspired by the American Supreme Court, the STF, from its creation, received the capacity to decide about issues formerly restricted to the political branches, the Executive and the Legislative. But in spite of its capacity to intervene against other powers, which was reinforced in the Constitution of 1988, the Supreme Court has difficulties to exercise this role and acts as the necessary counterbalance in the Brazilian "checks and balances" democratic system, mentioned by Cappelletti (1993). This author believes that the role of the constitutional courts is emphasized in judgements involving constitutional matter, social rights and diffuse interests, a similar situation to when the STF had to decide the actions selected for this study.

The magistrates' warranties and the Judiciary autonomy to manage its budget were guaranteed in the Constitution and it was a great leap forward to create an independent and harmonious relationship among the three powers in Brazil. However, it does not mean that the Judiciary, and particularly the STF, will be free from political pressures.

We also could notice that opposition political parties used the STF as an alternative channel for the discussions of their disputes. And as explained by Stone (1994), when the parties submit an issue to the constitutional court for review, they modify the discussion about the subject matter – like the actions brought by PDT and PSB.

Therefore, the expansion of the role of the Brazilian Supreme Court was not restricted to the new duties brought about by the Constitution of 1988, but the growth of the conflicts among the three powers, which ended many times in the STF, is provoking the politicization of the Judiciary. Due to the political nature of these conflicts, the Judicial branch, and especially the STF, have been confronted more and more with issues that have political, economic and social implications, and need to be decided in the light of juridical and political arguments. In sum, the Supreme Court was and will be requested to make a ruling in the important moments in the history of the country, the more improved was the democratic regime in Brazil.

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#### APPENDIX

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Depois de concluir o curso de graduação em Comunicação Social, na Universidade de Brasília, UnB, a bolsista fez o de Mestrado em Ciência Política na mesma Universidade. Antes de se tornar assessora do Ministro de Estado Extraordinário dos Esportes, foi analista do Tribunal Superior do Trabalho, em Brasília. Tem experiência de jornalismo, pois ocupou a editoria econômica de diferentes órgãos de imprensa do país.