**ELECTIONS LAW – LAW N. 9,504 OF SEPTEMBER 30th, 1997.**

*Establishes the rules governing the elections.*

The Vice-President of the Republic, exercising the duties of the President of the Republic,

The National Congress has decreed and I sanction the following Law:

**GENERAL PROVISIONS**

**Article 1.** The elections for President and Vice-President of the Republic, Governors and Lieutenant Governors of States and the Federal District, Mayors and Vice-Mayors, Senators, Federal Congressmen, State Representatives, District Representatives and City Councilors will be held nationwide on the first Sunday of October of the respective year.

**Sole Paragraph.** The elections listed below shall be held simultaneously:

**I -** for President and Vice-President of the Republic, Governors and Lieutenant Governors of States and the Federal District, Senators, Federal Congressmen, State Representatives and District Representatives;

**II -** for Mayors, Vice-Mayors and City Councilors.

**Article 2.** The candidate running for President or Governor who obtains the absolute majority of votes, not counting blank or void votes, shall be considered elected.

**Paragraph 1.** If no candidate attains the absolute majority in the first voting, a run-off shall be held on the last Sunday of October gathering the two candidates with the highest number of votes, and the candidate who wins the majority of valid votes shall be considered elected.

**Paragraph 2.** Should one of the candidates die, withdraw or become legally impaired before the run-off is held, the candidate with the highest number of votes among the remaining candidates shall be called.

**Paragraph 3.** If in the event of the preceding paragraphs, more than one candidate with an equal number of votes remains in second place, the eldest one shall qualify.

**Paragraph 4.** The election of the President of the Republic shall imply the election of the Vice-President registered with him, being the same procedure applicable to the elections of Governors.

**Article 3.** The candidate running for Mayor who obtains the absolute majority of votes, not counting blank or void votes, shall be considered elected.

**Paragraph 1.** The election of the Mayor shall imply the election of the Vice-Mayor registered with him.

**Paragraph 2.** The provisions established in Paragraphs 1 – 3 of the previous Article shall apply to Municipalities with up to two-hundred thousand voters.

**Article 4.** Political parties are entitled to participate in elections provided they have registered their by-laws at the Superior Electoral Court within up to one year prior to the poll as provided by law, and as long as they have established a steering body in their district before the date of their respective Convention, as provided for in their respective by-laws.

- Superior Electoral Court (TSE) case nos. 13,060/1996, 17,081/2000 and 21,798/2004: The existence of a political party body is not conditioned to registration at the Regional Electoral Court.

- TSE case of 6-2-2011, in Consultation (Cta) n. 75535; "the submission of the listing of a political party, whose by-laws have been registered at the Superior Electoral Court (TSE) within one year prior to the elections does not fulfill the legal requirement that establishes the minimum deadline of one year for party affiliation, to be counted from the effective creation of the political party."

**Article 5.** Only votes to regularly-registered candidates and political parties shall be considered valid in the proportional election system.

**ON THE COALITIONS**

**Article 6.** Political parties are entitled to, within the same district, establish coalitions to majority, proportional or both election systems, in which case more than one coalition shall be established for the proportional poll among the political parties that form the coalition for the majority election.

- Constitution of the Federative Republic of Brazil, 1988 (CF/88), Article 17, Paragraph 1, as amended by Constitutional Amendment (EC) n. 52/2006: political parties are ensured of autonomy to adopt the selection criteria and the composition of their electoral coalitions, without being required to follow the same party alliances at the national, state, district or municipal levels. Federal Supreme Court (STF) case of 3-22-2006, in the Direct Action for the Declaration of Unconstitutionality (ADI) n. 3,685: The new wording of Paragraph 1 of Article 17 of the Federal Constitution is not applicable to the 2006 elections, which remains subject to the provisions established in the original wording of the said article. V. With regard to the verticalization of coalitions, the following decisions were issued prior to the enactment of EC n. 52/2006: TSE Resolution n. 21,002/2002 ("Political parties which establish a coalition for the presidential elections are not allowed to establish coalitions for the elections of Governor of State or the Federal District, Senator, Federal Congressman and State or District Representative with other parties that have launched, either individually or through another alliance, a presidential candidate"); TSE Resolution n. 22,161/2006 (establishes that this rule is applicable to the general elections of 2006) and TSE Resolution n. 21,474/2003 and 21,500/2003: verticalization is not applicable to municipal elections.

- TSE Resolution n. 23,260 of 5-11-2010: “the political parties that already form a coalition for the majority election are entitled to establish coalitions among them for the proportional poll”; TSE Resolution n. 23,261 of 5-11-2010: “With regard to the majority election, it is possible to establish just one coalition to run for one or more elective offices”; TSE Resolution n. 23,289 of 6-29-2010: “Parties are not allowed to establish one majority coalition to run for Senator and another to run for Governor, even among the parties that form such coalition” – Admissibility of individual candidacies for the Federal Senate; TSE Case of 10-7-2010 in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 461646: “The political party which did not establish a coalition for the majority election is entitled to form a proportional coalition with other parties that have already established a majority coalition among themselves”; TSE Case of 9-1-2010 in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe): admissibility of one single coalition in majority election to run for one or more elective offices; inadmissibility of party´s individual candidacy for the Federal Senate in case it has opted to establish coalitions for the majority elections of Governor and Senator.
- TSE Resolution n. 22,580/2007: “The political parties are entitled to establish coalitions to run election campaigns, as set forth in head provision of Article 6 of Law N. 9,504/1997, and the existence of such coalitions is of temporary nature and limited to the electoral process”.

**Paragraph 1.** The coalition shall have a specific name, which may consist in the merger of all member parties´ acronyms, and, with regard to the electoral process, it shall be granted all the prerogatives and attributions of a political party, and shall work as a single party when interacting with the Electoral Justice and when handling inter-party interests.

- TSE Case nos. 345/1998, 15,529/1998, 22,107/2004, 5,052/2005 and 25,015/2005: the existence of the coalition is based on the consent of the involved political parties rather than on a ratification issued by the Electoral Justice.

**Paragraph 1-A.** The denomination of the coalition shall not coincide with, include or refer to other candidate´s name or registration number, nor shall it feature request for vote in favor of any political party.

- Paragraph 1-A as amended by Article 3 of Law N. 12,034/2009.

**Paragraph 2.** It is mandatory to display all acronyms of member parties under the coalition´s name in advertisement/publicity material related to the majority election; with regard to advertisement/publicity material related to the proportional election, each party will be entitled to use its own acronym under the coalition´s name.

- TSE Case of 4-3-2012, in Special Electoral Appeal (REspe) n. 326581: no statutory provision of any financial penalty for the inobservance of the provisions established in this paragraph. TSE Case nos. 439/2002, 446/2002

and TSE Case of 9-13-2006, in Complaint (RP) n. 1,069: with regard to free campaign advertising time, in the case of breach of both this provision and the respective Electoral Code and given the lack of a sanctioning rule, the judge shall admonish the perpetrator of the illicit conduct, under penalty of contempt.

- TSE Case of 8-22-2006 in Complaint (RP) n. 1,004: exemption of the identification of the coalition and its member parties in radio campaign advertising insertions of 15 seconds.

- See head provision of Article 242 of the Electoral Code (CE)/65.

**Paragraph 3.** The following rules shall apply to the establishment of coalitions:

**I** - candidates are entitled to register in the coalition candidate lists provided their political party is a member of the said coalition;

**II** - candidates´ registration request shall be subscribed by the Presidents of the political parties that form the coalition, by their Delegates, by the majority of members of their respective steering bodies or by a representative of the coalition, as provided for in item III;

**III -** the political parties that form the coalition shall appoint a representative, whose attributions shall be similar to the ones exercised by Presidents of political parties with regard to the handling of coalition interests and its representation in the electoral process.

**IV** - the coalition shall be represented before the Electoral Justice by a person appointed under the procedures established in item III or by Delegates appointed by the parties that form the said coalition, noting that the parties may appoint up to:

- TSE Case of 9-20-2006, in Special Electoral Appeal (REspe) n. 26,587: this provision does not confer capacity to practice law upon delegate of political party.

**a)** three Delegates before Electoral Courts;

**b)** four Delegates before the Regional Electoral Court;

**c)** five Delegates before the Superior Electoral Court.

**Paragraph 4.** The political party that forms a coalition is only capable of filing suit before Electoral Courts if acting individually and in order to question the validity of its own coalition, within the period counted from the date of the convention and the deadline to object the registration of candidates.

- Paragraph 4 as amended by Article 3 of Law N. 12,034/2009.

**ON THE CONVENTIONS TO NOMINATE CANDIDATES**

**Article 7.** The provisions for nominating and replacing candidates and for forming coalitions shall be set forth in the by-laws of the political party, provided they comply with the provisions established in this Law.

**Paragraph 1.** In the case of omission of the by-laws, the national steering body of the political party shall be held responsible for establishing the provisions referred to in this article, and shall have them published in the Federal Gazette within up to one-hundred and eighty days before the elections are held.

- TSE Case n. 19,955/2002: given the permanent nature of the provisions applicable to the nomination and substitution of candidates and to the forming of a coalition, they should not be confused with the guidelines established by the national convention on coalitions, as the guidelines vary according to the established political scenario that influences each campaign.

**Paragraph 2.** Should a lower-level party convention oppose, during deliberations on coalitions, to the *guidelines lawfully established* by the national steering body, the said body will be entitled to nullify, pursuant to the provisions established in its respective by-laws, the aforementioned deliberations and the acts that resulted from them.

- Paragraph 2 as amended by Article 3 of Law N. 12,034/2009.

- See annotations to the preceding paragraph.

**Paragraph 3.** The annulment of the deliberations implemented during a party convention, given the conditions established above, shall be reported to the Electoral Justice within 30 (thirty) days counted after the deadline for registration of candidacies.

- Paragraph 3 as amended by Article 3 of Law N. 12,034/2009.

**Paragraph 4.** In case the annulment results in a need to nominate new candidates, the registration request shall be submitted to the Electoral Justice within 10 (ten) days counted after the deliberation, in compliance with the provisions established in Article 13.

- Paragraph 4 included by Article 3 of Law N. 12,034/2009.

**Article 8.** The nomination of candidates by the political parties and the deliberation on coalitions shall be carried out from June 10$^{th}$ to 30$^{th}$ of the year the elections are held, and the respective minutes shall be registered in an open book, which is to be initialed by the Electoral Justice.

- TSE Case of 9-21-2006, in Special Electoral Appeal (REspe) n.26,763: the convention may delegate the deliberation to the steering body of the political party; in this case, the deliberation may be held after the deadline established in Article 8, but shall comply with the deadline established in Article 11 of this Law.

**Paragraph 1.** Holders of political office, including Federal Congressmen, State or District Representatives or City Councilors along with anyone who has filled a legislative office during the ongoing legislature are entitled to register their candidacy for the same office under the party they are affiliated to.

- Federal Supreme Court (STF) Case of 4-24-2002, in the Provisional Remedy for the Direct Action for the Declaration of Unconstitutionality (ADI-MC) n. 2,530: the effects of Paragraph 1 shall remain suspended until final order is issued for this case.

**Paragraph 2.** Political parties are authorized to use public property to organize Conventions to nominate candidates, and shall be held liable for any damages that may result from the implementation of said events.

**Article 9.** The candidate shall have registered voting residency in the respective district for at least one year before the elections are held and shall be duly affiliated to a political party for the same time in order to run as candidate in the elections.

- Law N. 9,096/1995, Articles 18 and 20: one year is the minimum affiliation deadline; however, a longer affiliation period may be established in party´s by-laws at the discretion of the political party.

- TSE Case of 6-16-2011 in Consultation (Cta) n. 76142: For campaign purposes, it is not possible to consider the period in which the voter served as a founding-member or supporter advocating the creation of the political party.

- TSE Case of 10-13-2011, in Consultation (Cta) n. 150889; TSE Resolution (RES) nos. 19,978/1997, 19,988/1997, 20,539/1999, 22,012/2005, 22,015/2005, 22,095/2005 and TSE Case of 9-21-2006, in Ordinary Appeal (RO) n. 993: the deadline for party affiliation is equal to the deadline for judges, members from the courts of accounts and from prosecution offices to resign voluntarily in order to compete in a new election. TSE Resolution n. 22,088/2005: civil servants allocated in Electoral Courts must resign voluntarily in order to meet the legal deadline for party affiliation, even if they no longer serve under the body of origin and plan to run in another state, different from their professional domicile. TSE Case n. 11,314/1990 and TSE Resolution (RES) n. 21,787/2004: Military officers are exempted from previous party affiliation, being solely required to submit the request to register their candidacy after having been nominated in a party convention. TSE Resolution (RES) nos. 20,614/2000 and 20,615/2000: Retired military officers shall join the political party within 48h after retiring, in case their retirement occurs after the deadline for party affiliation but before their nomination in a party convention. TSE Case of 9-23-2004 in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 22,941: requirement of timely party affiliation of unpaid retired military officers. TSE Case of 10-19-2006 in Ordinary Appeal (RO) n. 1,248: no prohibition for public defenders to join political parties, provided their political party activities are limited to the Electoral Courts and that the general affiliation rule is duly observed (up to one year prior to the elections in which they wish to compete).

- TSE Case of 9-15-2010 in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 254118: this eligibility requirement does not apply to cases in which domicile transfer was completed at an electoral register after the deadline set forth in this article, even if preliminary services were rendered at a previous time.

- TSE Case of 3-4-2008 in Writ of Mandamus (MS) n. 3,709: the minimum party affiliation deadline of one year shall be observed even in the event of organization of new elections as referred to in Article 224 of the Electoral Code (CE/65).

- See annotations to Paragraph 4 of Article 11 of this Law.

- TSE Case of 4-3-2012 in Consultation (Cta) n. 3364: voting residency of judges and justice (appellate judges).

**Sole Paragraph.** In case party merger or incorporation is implemented after the deadline set forth in head provision of this Article, the date of candidate´s affiliation to his/her party of origin shall be considered for party affiliation purposes.

**ON THE REGISTRATION OF CANDIDATES**

**Article 10.** Each party is entitled to register candidates for the Chamber of Deputies (House of Representatives), District Senate, State Senates and Municipal Councils in a percentage of up to one-hundred fifty percent of the seats to be filled.

- Supplementary Law (LC) N. 78/1993: "Establishes the number of deputies pursuant to the provisions set forth in Article 45, Paragraph 1 of the Federal Constitution".

- Federal Constitution (CF/88), Article 29, item IV and related sub-items, as amended by Constitutional Amendment (EC) n. 58/2009: criteria to establish the number of City Councilors. STF Case of 3-24-2004 in Appeal to the Federal Supreme Court (RE) n. 197,917: use of strict arithmetical criteria to establish the number of City Councilors. TSE Resolution (RES) nos. 21,702/2004 and 21,803/2004: with regard to the 2004 municipal elections, establishment of the number of City Councilors per municipality based on criteria set forth by the Federal Supreme Court (STF) in the aforementioned Appeal to the Federal Supreme Court (RE). STF Case of 8-25-2005 in the Direct Actions for the Declaration of Unconstitutionality (ADI) nos. 3.345 and 3,365: the claim for the declaration of unconstitutionality of the aforementioned resolutions was denied.

**Paragraph 1.** In case coalitions are established for proportional election purposes, regardless of the number of parties that form such coalitions, they are entitled to register up to twice candidates than the number of seats to be filled.

- See the third annotation to Paragraph 3 of this Article.

**Paragraph 2.** With regard to the States, they are entitled to fill up to twenty seats in the Chamber of Deputies (House of Representatives), and each party is entitled to register up to twice candidates running for Federal Congressman and State or District Representative than the number of seats to be filled; in case coalitions are formed, these numbers may be increased in up to fifty percent.

- TSE Resolution (RES) n. 20,046/1997: the increase of "up to fifty percent" is applicable to "twice the number of seats to be filled". TSE Resolution (RES) n. 21,860/2004: the TSE Resolution (RES) n. 20,046/1997 is not applicable to municipal elections.

**Paragraph 3.** Out of the number of seats established according to the provisions set forth in this article, each party or coalition shall account for a minimum share of 30% (thirty percent) and a maximum of 70% (seventy percent) for male and female candidacies.

- Paragraph 3 as amended by Article 3 of Law N. 12,034/2009.

- See TSE Resolution (RES) n. 23,270/2010: CANDex system used to produce medias related to registration requests and notice to political parties and coalitions reporting the minimum and maximum percentage to be filled by each gender.

- TSE Case of 8-12-2010 in Special Electoral Appeal (REspe) n. 78432 and TSE Case of 9-9-2010 in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 84672: it is mandatory to comply with the percentages set forth in this legal provision, which are based on the number of candidates effectively nominated by parties and coalitions, regardless of the limits established in Article 10, head provision and Paragraph 1, of this Law. The non-compliance with the respective percentages shall result in the forwarding of the case to the Regional Electoral Court (TRE), the duly notification of the party, and its subsequent adjustment and regularization as required by law.

- TSE Case of 9-8-2010 in Special Electoral Appeal (REspe) n. 64228: in case of a fraction increase, even if higher than 0.5% (half percent), in the percentage to be filled by male or female candidates, the said fraction shall be deemed irrelevant if the political party does not make full use of the possibilities to nominate candidates.

**Paragraph 4.** With regard to percentage calculations, in case fractions are smaller than half percent, they shall be disregarded, and figures that either match or are higher than the said percentage shall be matched to one percent.

- TSE Resolutions (RES) n. 21,608/2004, Article 21, Paragraph 4; 22,156/2006, Article 20, Paragraph 5; 22,717/2008, Article 22, Paragraph 4; and 23,221/2010, Article 18, Paragraph 6 (instructions on the registration of candidates) and TSE Case n. 22,764/2004: in the event of Paragraph 3 of this Article, any resulting fraction shall be matched to one percent in the calculations of the minimum percentage for each gender, being disregarded in the calculations of the remaining vacancies for the opposite gender.

- See the fourth annotation to the previous Paragraph.

**Paragraph 5.** In case the Conventions organized to nominate candidates fail to appoint the maximum number of candidates, which is established in head provision and Paragraphs 1 and 2 of this Article, the management bodies of the respective parties are entitled to fill the remaining vacancies within sixty days before the election.

**Article 11.** The political parties and coalitions shall request the registration of their respective candidates to the Electoral Justice until 7:00 p.m., July 5$^{th}$ in the year elections are scheduled to be held.

**Paragraph 1.** The registration request shall be accompanied by the following documents:

- TSE Case of 10-6-2010, in Complaint (RP) n. 154808: it is not mandatory to attach certificates issued by civil registries in order to register a candidacy; as such documents are not referred to in the list set forth in this Paragraph.

- TSE Resolutions (RES) n. 20,993/2002, Article 24, item IX; 21,608/2004, Article 28, items VII and VIII; 22,156/2006, Article 25, items IV and V; 22,717/2008, Article 29, items IV and V; 23,221/2010, Article 26, items IV and V; and 23,373/2011, Article 27, items IV and V (instructions for the nomination and registration of candidates): in addition to the documents listed in this Paragraph, it is mandatory to attach the following: proof of voluntary resignation, if applicable, and proof of education, which can be replaced by a handwritten statement. With regard to the aforementioned proof of education, see, *inter alia*, TSE Cases n. 318/2004; 21,707/2004; and 21,920/2004: in case of reasonable doubt candidate´s literacy shall be individually checked, in a no coercive manner; literacy examination or test cannot be carried out during a public hearing at the risk of violating human dignity. TSE Case n. 24,343/2004: a literacy test shall be deemed unlawful if it causes embarrassment to the candidate, regardless of being held in a collective environment or not. TSE Case of 6-7-2011, in Internal Interlocutory Appeal - Ordinary Appeal (AgR-RO) n. 445925: a Driver´s License (CNH) indicates sufficient education level for the granting of the requested registration.

- TSE Case of 5-4-2010, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 3919571: “The eligibility of a candidacy in a supplementary election shall be checked by the time a new registration request is submitted, and the status of the candidate in the cancelled election shall not be taken into account, unless s/he is deemed responsible for the said cancellation.”

- TSE Case of 9-15-2010, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 190323: The conditions of eligibility are set forth both in Article 14, Paragraph 3, items I to VI of the Federal Constitution of 1988 (CF/88) and in this Paragraph.

**I -** copy of the minutes referred to in Article 8;

**II -** written consent signed by the candidate;

**III -** proof of party affiliation;

- TSE Case of 6-16-2011, in Inquiry n. 76142: inexistence of impediments preventing the founder of a political party to remain affiliated to his/her former party.

- See annotations to item II of Paragraph 1 of Article 1 of TSE Resolution (RES) n. 22,610/2007.

**IV -** declaration of assets, signed by the candidate;

- TSE Case of 9-26-2006, in Special Electoral Appeal (REspe) n. 27,160: this provision has tacitly repealed the last part of item VI of Paragraph 1 of Article 94 of the Electoral Code, making it mandatory for the candidate to attach, along with other documents, his/her declaration of assets to his/her registration request, being released from the obligation of indicating up to date amounts and figures and/or asset variations. TSE Case n. 19,974/2002: it is not mandatory to attach a copy of candidate´s income tax return.

- TSE Resolution (RES) n. 21,295/2002: publicity of the contents of candidate´s income tax return.

**V -** copy of candidate´s voter´s card or certificate issued by an Electoral Registry confirming that the candidate votes in the reported district or has requested his/her registration there or has transferred his electoral domicile to the said district within the timeframe set forth in Article 9;

**VI -** a voting release certificate;

- See Article 11, Paragraphs 7 – 9 of this Law.

- TSE Case of 9-15-2010 in Special Electoral Appeal (REspe) n. 190323: voting release is also a condition of elegibility.

- TSE Case of 9-28-2010 in Special Electoral Appeal (REspe) n. 442363: the mere submission of campaign´s accounts shall suffice for voting release purposes, noting that the approval of such accounts is deemed unnecessary.

- TSE Resolution (RES) n. 21,667/2004: "It disciplines the online issuance of voting release certificates and sets forth other provisions".

- TSE Resolution (RES) n. 23,241/2010: it is not possible to issue voting release certificates for convicted individuals serving semi-open and open regimes with the aim of allowing them to get a job; it is possible, though, to request the Electoral Justice to issue certificates that attest the suspension of their political rights, detailing the nature of such constraint and the subsequent

impossibility for convicted individuals to exercise their voting rights and straighten out their electoral status.

- CGE Decision n. 5/2004, Article 1: "Voting release requires full enjoyment of political rights, regular exercise of voting rights, except in cases where the individual is not legally obliged to vote, compliance with orders issued by the Electoral Justice to assist in election-related works and no pending matters related to fines issued by the Electoral Justice, except in cases where legal amnesty applies, and the rendering of candidate´s accounts".

- TSE Resolution (RES) n. 22,783/2008: "The Electoral Justice does not issue any 'certificate of tax liability that is temporarily not payable', as the debt that results from the application of an electoral fine does not have a taxable nature, and it is, thus, impossible to draw an analogy to Articles 205 and 206 of the Brazilian Tax Code". This decision also addresses the following: "The installment payment of a debt that results from the application of an electoral fine [...] is authorized by either the Office of the General Counsel to the National Treasury or by the Electoral Justice [...] and provides for the acknowledgement of voting release for purposes of candidacy registration requests, provided that such installment plan has been required and granted prior to said registration requests and overdue sums have been duly paid".

**VII –** criminal certificates issued by distribution bodies under the Electoral, Federal and State Justice;

- TSE Case of 9-25-2006, in Ordinary Appeal (RO) n. 1,192: "A certificate issued by a criminal sentence execution court does not meet the requirements established in Article 11, Paragraph 1, item VII of Law n. 9,504/1997. Mandatory attachment of a certificate issued by a distribution body under the Electoral, Federal and State Justice". TSE Cases of 9-21-2006 in Special Electoral Appeal (REspe) n. 26,375 and of 10-10-2006 in Ordinary Appeal (RO) n. 1,028: it is not mandatory that such certificates feature annotations stating that they were issued for electoral purposes. TSE Case of 9-15-2010 in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 247543: in case a criminal record reports criminal conviction, it is mandatory to attach a certificate of purpose and status under penalty of denial of candidacy registration.

**VIII –** candidate´s photograph printed in standard dimensions, established in Electoral Justice´s regulations, as provided for in Paragraph 1 of Article 59;

**IX –** proposals endorsed by candidates running for Mayor, State Governor and President of the Republic;

- Item IX as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 2.** The minimum age as a constitutional condition of eligibility shall be checked on the date the candidate takes office.

- Federal Constitution of 1988 (CF/88), Article 14, Paragraph 3, item VI.

**Paragraph 3.** The judge is entitled to take measures within seventy-two hours should s/he deem it necessary.

- TSE Precedent (SUM) n. 3/1992: documents may be attached to an ordinary appeal in actions related to registration of candidates, especially when the judge does not establish a timeframe to correct irregularities in documents accompanying the complaint.

- TSE Cases of 10-2-2008 in Special Electoral Appeal (REspe) n. 30,791; of 8-21-2008 in Special Electoral Appeal (REspe) n. 29,027; of 8-12-2008 in Special Electoral Appeal (REspe) n. 28,941: this provision entitles the candidate to attach documents that prove his/her compliance with candidacy´s requirements at the time s/he files a registration request, preventing the said candidate to correct occasional irregularities at a later date.

- TSE Case of 9-15-2010 in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 123179: documents may be attached to a registration request after the denial of such request in order to correct irregularities in case the candidate has not been summoned to take such measure during the evidentiary remedy stage.

**Paragraph 4.** In case a political party or coalition does not file the registration of their candidates, such request may be performed before the Electoral Justice within forty-eight hours after the Electoral Justice publishes the list of candidates.

- Paragraph 4 as amended by Article 3 of Law n. 12,034/2009.

- TSE Case of 9-29-2010 in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 224358: the electoral system in place does not provide for individual candidacies that are not associated with a political party, which leads to the fact that only party affiliates that have been nominated in party conventions are entitled to run for elected government offices.

**Paragraph 5.** Account Courts and Councils shall submit, to the Electoral Justice, a list with the candidates who had accounts related to their former exercise of public offices or functions denied because of fatal defect, in decision issued by competent authority. Such provision does not apply to cases which are being reviewed at the judicial branch or when the interested party is granted a favorable judgment.

- Law n. 8,443/1992 (LOTCU), Article 91: "For the purpose prescribed in Article 1, item I, sub-item g, and in Article 3, both of the Supplementary Law n. 64, of May 18, 1990, the Court shall send to the Electoral Prosecution Office, timely, the name of the accountable officials whose accounts have been judged to be irregular in the five years immediately preceding the holding of each election".

- TSE Cases of 12-12-2008 in Special Electoral Appeal (REspe) n. 34,627; of 11-13-2008 in Special Electoral Appeal (REspe) n. 32,984; of 9-2-2008 in Special Electoral Appeal (REspe) n. 29,316; and TSE Resolution (RES) n. 21,563/2003: the mere inclusion of the name of the accountable official in the list

submitted to the Electoral Justice by the Account Court or Council does not lead to ineligibility, as it consists of a proceeding carried out for informational purposes only.

**Paragraph 6.** The Electoral Justice shall grant access to the documents filed for the purposes of Paragraph 1 to all interested parties.

- Paragraph 6 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 7.** The voting release certificate shall exclusively cover the full enjoyment of political rights, the regular exercise of voting rights, the compliance with orders issued by the Electoral Justice to assist in election-related works, the inexistence of fines issued by the Electoral Justice and not yet remitted and the filing of electoral campaign accounts.

- Paragraph 7 as amended by Article 3 of Law n. 12,034/2009.
- TSE Case of 12-16-2010 in Special Electoral Appeal (REspe) n. 482632 and TSE Case of 9-28-2010 in Special Electoral Appeal (REspe) n. 442363: the filing of campaign accounts is sufficient for the granting of voting release, regardless of its approval.
- TSE Case of 9-15-2010 in Special Electoral Appeal (REspe) n. 108352: "The concept of voting release encompasses, *inter alia*, the regular exercise of voting rights".
- See the sixth annotation to item VI of Paragraph 1 of this Article.
- TSE Case of 11-11-2010 in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 411981: "it is not possible to establish the lack of voting release of a petitioning candidate when the judgment that determined that his/her campaign accounts were not duly rendered is still at bar".

**Paragraph 8.** For purposes of issuance of the certificate referred to in Paragraph 7, voting release shall be granted to those who:

**I -** have filed proof of payment or due settlement of debt installment plan in case of being sentenced to the payment of fine, until the date of the formalization of their request for candidacy registration;

**II -** pay the fine they were individually sentenced to, with disregard of any type of joint and several liability, even if such fine has been simultaneously applied to other candidates on the grounds of the same fact.

- Paragraph 8 and items I and II as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 9.** The Electoral Justice shall send the list of all debtors of electoral fines, which shall serve as reference for the issuance of voting release certificates, to all political parties based in the respective district until June 5 of the election year.

- Paragraph 9 as amended by Article 3 of Law n. 12,034/2009.

- See Resolution (RES) n. 23,272/2010: it establishes that the access of political parties to the lists of debtors of electoral fines shall be performed through the Filiaweb system upon qualification of users from national and regional party organizations.

- See CGE Decision n. 5/2010: it establishes the registration procedures for Filiaweb users with the exclusive aim of accessing the list of debtors.

- TSE Case of 10-6-2010 in Motion of Clarification - Internal Interlocutory Appeal - Special Electoral Appeal (ED-AgR-REspe) n. 883723: "adoption of procedures based on the use of the Filiaweb system, including information updates even after June 5 of the election year, reporting the approved proposal to national and regional party organizations".

**Paragraph 10.** The conditions of eligibility and the causes of ineligibility shall be checked by the time the request for candidacy registration is formalized, exception made to factual or legal amendments effected after the registration that render ineligibility inapplicable.

- Paragraph 10 as amended by Article 3 of Law n. 12,034/2009.

- TSE Case of 10-5-2010 in Internal Interlocutory Appeal - Ordinary Appeal (Agr-RO) n. 231945 and TSE Case of 9-15-2010 Internal Interlocutory Appeal - Ordinary Appeal (Agr-RO) n. 415441: preliminary injunction (even if issued after the registration request) or interlocutory relief that suspend the effects of the denial of accounts.

- TSE Case of 4-28-2011 in Ordinary Appeal (RO) n. 927112: The Electoral Justice is responsible for analyzing future events pursuant to the provisions set forth in this paragraph provided it still has jurisdiction over the candidate´s registration.

- TSE Case of 3-22-2011 in Ordinary Appeal (RO) n. 223666: Non applicability of ineligibility in case of sufficiency of TCU´s review request.

- TSE Case of 9-29-2010, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 139831: Impossibility to obtain voting release certificates when the rendering of accounts of the campaign is submitted after the candidacy´s registration request.

- TSE Case of 11-12-2008, in Motion of Clarification - Motion of Clarification - Special Electoral Appeal (ED-ED-REspe) n. 29,200: The judgment of ratification on cases of option for Brazilian nationality has *ex tunc* effects and provides for the granting of a candidacy´s registration request, even if rendered after the submission of the said request.

- See Article 11, Paragraph 3 of this Law and respective annotations.

- See the third annotation to Paragraph 1 of this Article.

- TSE Case of 9-28-2010 in Internal Interlocutory Appeal - Ordinary Appeal (Agr-RO) n. 91145: there is no impediment to the granting of a candidacy´s registration request if a new provisional remedy is filed while the ordinary appeal on the registration request is still being analyzed.

- TSE Case of 10-28-2010, in Internal Interlocutory Appeal - Ordinary Appeal (Agr-RO) n. 219796: with regard to causes of ineligibility, only changes effected after the filing of a registration request are to influence the review of the said request. Not applicable to conditions of ineligibility.

- TSE Case of 10-11-2008, in Special Electoral Appeal (REspe) n. 33,969: with regard to irregular electoral campaigning, in case a judgment against a candidate passes into matter adjudged, that shall not affect the eligibility of the said candidate if the order to annotate a fine in his/her electoral record has been issued after the filing of his/her candidacy´s registration request.

- TSE Case of 5-2-2012, in Internal Interlocutory Appeal - Ordinary Appeal (Agr-RO) n. 407311 and TSE Case of 10-7-2010, in Internal Interlocutory Appeal - Ordinary Appeal (Agr-RO) n. 396478: the granting of interlocutory relief in courts of general jurisdiction or of preliminary injunction after the filing of a registration request are changes of supervening nature and shall prevent ineligibility cases related to denial of accounts.

**Paragraph 11.** The Electoral Justice shall comply with installment rules set forth in federal tax laws when reviewing the settlement of a debt installment plan as referred to in Paragraph 8 of this Article.

- Paragraph 11 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 12.** (Vetoed.)

- Paragraph 12 as amended by Article 3 of Law n. 12,034/2009.

**Article 12.** The candidate for proportional elections shall indicate, in his/her registration request, his/her full name and up to three nominal variations he/she wishes to be acknowledged by, which may include name, surname, nickname, abbreviated name or name he/she is more generally referred to, provided it does not create any doubt with regard to his/her identity, and does not sound indecent, ridiculous nor irreverent, noting that the said candidate shall register such names in order of preference.

**Paragraph 1.** In the event of homonymous names, the Electoral Justice shall adopt the following measures:

**I -** in case of doubt, it may ask for the candidate to prove that he/she is known by the name that was indicated in the registration request;

**II -** if, on the last day to file a registration request, a candidate is exercising or has exercised a public elective mandate over the past four years, or if the said candidate has run a campaign over the said four-year term under the name he/she registered,

the use of such name shall be granted and other candidates shall be prohibited to run a campaign using that name;

**III -** if a candidate is known by a certain name he/she indicated in his/her registration request because of his/her political, social or professional experience, the registration of that name shall be granted, provided the conditions set forth in the last part of the previous item are observed;

**IV -** the two previous items should apply to candidates with homonymous names; nevertheless, if such rules are not sufficient to solve the problem, the Electoral Justice shall notify these candidates, urging them to try and reach a consensus, within two days, on the names to be used;

**V -** in case the consensus referred to in the previous item is not reached, the Electoral Justice shall register each candidate under the name and surname informed in their respective registration requests, in the reported order of preference.

- TSE Precedent (SUM) n. 4/1992: "should there be no preference between candidates who intend to register the same nominal variation, the candidate who first requires the registration of such name shall have his/her request granted". In that sense, see TSE Cases ns. 265/1998, 275/1998 and 20,228/2002.

**Paragraph 2.** The Electoral Justice may ask for the candidate to prove that he/she is known by the nominal option he/she indicated in case the use of such name is expected to leave voters confused.

**Paragraph 3.** The Electoral Justice shall deny nominal variation requests that coincide with names of candidates for majority elections, except for candidates who are exercising or have exercised a public elective mandate over the past four years, or who have ran a campaign using that same name over the same four-year term.

**Paragraph 4.** The Electoral Justice shall publish the nominal variations granted to each candidate after reviewing the registration requests.

**Paragraph 5.** The Electoral Justice shall organize and publish, within thirty days before the elections are held, the following lists to be used for voting and polling purposes:

- TSE Resolution (RES) n. 21,607/2004: organization of only a list of candidates, in alphabetic order, without prejudice to other lists of candidates, organized by the numbers the candidates are running under, which may be kept and disclosed by electoral registries.

**I -** the first list, organized by the political parties, features the candidates in numerical order, comprising the three nominal variations of each candidate, in the order of preference they indicated;

**II -** the second list features a name index and is organized in alphabetic order, detailing the full name and the nominal variations of each candidate, also in alphabetic order, followed by their respective party and campaign number.

**Article 13.** The political party or coalition is entitled to replace *candidates* who are considered ineligible, or who resign or pass away after the registration deadline or have their registration request denied or cancelled.

- TSE Resolution (RES) n. 22,855/2008 and TSE Case n. 23,848/2004: candidate, in this article, "refers to individuals who ask to have their candidacy granted and not to candidates whose registration request has already been granted".
- TSE Case of 3-18-2010, in Special Electoral Appeal (REspe) n. 36150: the resignation of one´s candidacy is a unilateral act, which is to be ratified solely for validity purposes, requiring no further assessment of its content.

**Paragraph 1.** The nomination of a substitute shall observe the rules set forth in the by-laws of the political party of the candidate to be replaced, and the registration shall be filed within 10 (ten) days counted from the fact or the notification of the party about the judicial order which authorized the substitution.

- Paragraph 1 as amended by Article 3 of Law n. 12,034/2009.
- TSE Case of 2-14-2012, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 206950 and TSE Case of 12-6-2007, in Special Electoral Appeal (REspe) n. 25,568: "After the ten-day term, to be counted from the fact or the judicial order which authorized the respective request, it is possible to replace a candidate for majority office at any time before the election (article 101, Paragraph 2 of the Electoral Code) […]".
- TSE Case of 8-25-2009, in Special Electoral Appeal (REspe) n. 35,513: "in case the resigning candidate files an appeal, the resignation date is the *dies a quo* for the establishment of a timeframe for the substitution".
- TSE Case of 11-17-2009 in Special Electoral Appeal (REspe) n. 36032: a substitution request filed simultaneously to the resignation of the candidate to be replaced is not considered untimely if submitted within ten days counted from the said act or the respective ratification.

**Paragraph 2.** With regard to majority elections, if the candidate belongs to a coalition, his/her substitution shall be based on a decision issued by the absolute majority of the executive steering bodies of the parties that form such coalition, and the substitute may be affiliated to any member party, provided that the party to which the candidate to be replaced was affiliated waives its preemptive rights.

**Paragraph 3.** In proportional elections, the substitution shall only be implemented if the new request is filed within sixty days before the elections are held.

- TSE Cases ns. 348/1998, 355/1998 and 22,701/2004: the denial of a registration request filed after the timeframe set forth in this paragraph does not preclude the substitution, as the delay in the issuance of a decision cannot bring any harm to the interested party. TSE Case n. 22,859/2004:

"There is no timeframe for the substitution set forth in Article 13 of Law n. 9,504/1997 if an appeal was filed against the decision that denied the registration of the candidacy. In case the party discontinues the action, the timeframe for the substitution begins on the moment of such discontinuation. A substitution cannot occur if the appeal was discontinued within less than 60 days to the elections".

- TSE Case of 9-29-2006, in Special Electoral Appeal (REspe) n. 26,976: admissibility of a substitution request filed within 60 days when the denial of the registration of the candidate to be replaced is issued within such timeframe.

- TSE Case of 4-26-2012, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 151880: "the nomination of a substitute candidate shall occur within up to ten days after the fact that originated such substitution, observed the rule that establishes a 60-day timeframe before the elections are held".

**Article 14.** Candidates which are expelled from a party, in an action where they are given an opportunity to be heard and by-laws provisions are observed, may have their registration cancelled.

**Sole Paragraph.** The cancellation of a candidate´s registration shall be determined by the Electoral Justice, upon party´s request.

**Article 15.** The numerical identification of candidates shall comply with the following criteria:

- Electoral Code (CE/65), Article 101, Paragraph 4: number of the substitute candidate in proportional elections.

**I -** the candidates for majority elective offices shall run under the identifying number of the party to which they are affiliated;

- TSE Resolutions (RES) ns. 20,993/2002, Article 16, II; and 22,156/2006, Article 17, II (instructions for the nomination and registration of candidates): insertion of a digit on the right if the candidate is running for the Senate.

- TSE Resolutions (RES) ns. 21, 728/2004; 21,749/2004; 21,757/2004 and 21,788/2004: It is not possible to register a candidate running for President of the Republic, governor or mayor under the number of another party which forms the political coalition.

**II -** candidates running for the Chamber of Deputies (House of Representatives) shall use the number of the party to which they are affiliated with the insertion of two more digits on the right;

- TSE Resolutions (RES) ns. 20,993/2002, Article 16, sole paragraph, I; and Article 17; and 22,156/2006, Article 17, Paragraphs 1 and 2 (instructions for the nomination and registration of candidates): insertion of three digits on the right in States where the number of candidates running for the Chamber

of Deputies (House of Representatives) might exceed one hundred, except if all political parties that participate in the election waive the right to nominate more than one hundred candidates.

**III –** candidates running for the District Senate and State Senates shall use the number of the party to which they are affiliated with the insertion of three more digits on the right;

**IV –** The Superior Electoral Court shall issue a resolution on the numbers of candidates running for municipal elections.

**Paragraph 1.** The political parties are entitled to keep the numbers used in a previous election, and the candidates, under such circumstances, shall be granted the right to keep the numbers used in a previous election when campaigning for the same elective office.

**Paragraph 2.** The candidates referred to in Paragraph 1 of Article 8 are entitled to request a new number to the steering body of their respective parties, regardless of the drawing referred to in Paragraph 2 of Article 100 of Law n. 4,737, of July 15th, 1965 – the Electoral Code.

**Paragraph 3.** Coalition candidates shall be registered under the number of their respective political parties in majority elections and, with regard to proportional elections; they shall use the number of their respective parties with the insertion of the digit(s) they were authorized to use in the campaign, pursuant to the provisions established in the previous paragraph.

**Article 16.** The Regional Electoral Courts shall forward a list of candidates for majority and proportional elections to the Superior Electoral Court within up to forty-five days before the elections are held with the aim of ensuring data centralization and disclosure, noting that it is mandatory that such lists indicate the gender of the candidates and the elective office they are running for.

**Paragraph 1.** The registration requests filed by the candidates, including those that were challenged, and the respective appeals, shall have been reviewed in all instances and the respective decisions shall have been published within the timeframe referred to in the head provision of this article.

- Paragraph 1 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 2.** The procedures related to the registration of candidacies shall have priority over any other type of procedure, and the Electoral Justice shall adopt the necessary measures to comply with the timeframe established in Paragraph 1, which may include the organization of extraordinary sessions and the calling of additional judges by the Courts, without prejudice to the application of provisions established in Article 97 and the filing of complaints at the National Council of Justice.

- Paragraph 2 as amended by Article 3 of Law n. 12,034/2009.

**Article 16-A.** The candidate whose registration is at bar may perform all acts related to his/her electoral campaign, which includes the use of campaign free advertising

time on television and radio networks and the possibility of having his/her name stored in electronic voting machines while such situation lasts, and the validity of the votes cast to him/her shall be conditioned to the granting, by a higher instance, of his/her registration.

**Sole Paragraph.** The attribution of votes cast to candidate whose registration is at bar on the day the election is held to his/her respective party or coalition shall be conditioned to the granting of the registration of the said candidate.

- Article 16-A and sole paragraph as amended by Article 4 of Law n. 12,034/2009.

- TSE Resolution (RES) n. 23,273/2010: if a registration is denied but remains at bar, the candidate is eligible for the purposes provided for in Article 46, Paragraph 5 of this law.

- TSE Case of 6-30-2011, in Writ of Mandamus (MS) n. 422341: "in case of confirmation of a denied registration, the status of candidate´s registration – granted or denied – is irrelevant on the day the election is held […]".

- TSE Case of 10-1-2010, in Administrative Proceeding (PA) n. 325256: possibility of disclosure of the number of votes cast to each candidate, regardless of the status of their candidacies, on the official website of the Superior Electoral Court (TSE).

- TSE Case of 12-15-2010, in Internal Interlocutory Appeal - Writ of Mandamus (AgR-MS) n. 403463 and TSE Case of 6-30-2011, in Writ of Mandamus (MS) n. 422341: it is henceforth understood that this paragraph repeals Article 175, Paragraph 4, of the Electoral Code (CE).

- TSE Case of 5-22-2012, in Internal Interlocutory Appeal - Appeal against Writ of Mandamus (AgR-RMS) n. 273427: the votes cast to candidate whose registration was denied are not attributed to the party or the coalition.

**ON FUNDRAISING AND ALLOCATION OF FUNDS DURING ELECTORAL CAMPAIGNS**

- Joint TSE/SRF Administrative Rule n. 74/2006: "Disciplines the exchange of information between the Superior Electoral Court and the Federal Revenue Service and establishes other provisions", comprising information on the rendering of accounts of the candidates and of the financial committees of the political parties (Article 1, head provision) and the annual rendering of accounts of the political parties (Article 1, Paragraph 1); on the grounds that entitle any citizen to file a complaint before the Federal Revenue Service (SRF) questioning the undue allocation of financial and non-financial resources in electoral campaigns or in activities carried out by political parties (Article 2); on the assessment of potential tax crimes (Article 3) and the obligation to report any identified tax offense to the Superior Electoral Court (TSE) (Article 4, head provision) and on the provisions established on Articles 23, 27 and 81 of this law (Article 4, sole paragraph). Joint TSE/RFB Normative Act (IN) n. 1,019/2010: "Disciplines the acts performed by the

financial committees of political parties and candidates running for elective office, including their deputies and substitutes, before the National Register of Corporate Taxpayers (CNPJ)".

**Article 17.** The expenses related to electoral campaigns shall be incurred by the parties or their candidates and shall be funded as provided for in this Law.

**Article 17-A.** The limit to campaign spending aimed at filling public elective offices shall be established by law, in observance to local peculiarities, by June 10 of each electoral year; in case such law is not timely published, each political party shall establish their respective spending limits and report them to the Electoral Justice, which shall ensure broad publicity to such information.

- Article 17-A as amended by Article 1 of Law n. 11,300/2006.
- TSE Decree (DEC) of 5-23-2006 (minutes of the 57th Session, Court Gazette – DJ of 5-30-2006): this provision shall not apply to the elections of 2006.

**Article 18.** Political parties and coalitions shall include in the registration requests for their candidates, which are to be submitted to their respective Electoral Courts, the maximum amounts to be spent in the campaigns for each elective office in each election, making sure to comply with the limits established pursuant to the provisions set forth in Article 17-A of this Law.

- Head provision as amended by Article 1 of Law n. 11,300/2006.
- TSE Decree (DEC) of 5-23-2006 (minutes of the 57th Session, Court Gazette – DJ of 5-30-2006): this provision shall not apply to the elections of 2006.

**Paragraph 1.** With respect to coalitions, each member party shall establish the maximum amount referred to in this article.

**Paragraph 2.** In case expenditures exceed the amounts established pursuant to the provisions set forth in this article, the responsible party or coalition shall be subject to the application of a fine ranging from five to ten times the sum overspent.

- TSE Case of 11-10-2011, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 9893: the denial of campaign accounts combined with the application of the fine provided for in this paragraph does not constitute a "*ne bis in idem*" ruling.

**Article 19.** Parties shall create financial committees within up to ten working days after the nomination of their candidates in their respective Conventions, so as to raise funds and allocate them in their electoral campaigns.

- Law n. 9,096/1995, Article 34, I: creation of committees to allocate financial resources in electoral campaigns.
- Joint TSE/RFB Normative Act (IN) n. 1,019/2010: "Disciplines the acts performed by the financial committees of political parties and candidates

running for elective office, including their deputies and substitutes, before the National Register of Corporate Taxpayers (CNPJ)".

**Paragraph 1.** Committees shall be created for each election where parties launch their own candidacies, and one single committee may centralize all duties and responsibilities related to the elections for a certain district.

**Paragraph 2.** With respect to presidential elections, it is mandatory that parties create a national committee and optional to establish committees in the States and the Federal District.

- TSE Case of 9-1-2010, in Complaint (PET) n. 2,606: the political party shall not be deemed to incur in intentional omission if, because of technical, material and legal limitations, it did not establish a national financial committee for presidential elections.

**Paragraph 3.** Financial committees shall be registered at competent candidate-registration bodies under the Electoral Justice within up to five days after their establishment.

- TSE Resolution (RES) n. 23,294/2010: the non-compliance with this rule shall not result in any kind of sanction.

**Article 20.** Candidates to public elective offices shall be responsible, either directly or through a person they appoint for the job, for the financial management of their campaigns, allocating the funds transferred by their committees, including funds related to their quota in the Party Fund, as well as their own resources or contributions made by individuals or legal entities as established in this Law.

**Article 21.** Candidates and the persons appointed pursuant to the provisions established in article 20 of this Law are held jointly and severally liable for the veracity of financial and accounting information related to their campaigns, and both shall be required to sign the respective rendering of accounts.

- Article 21 as amended by Article 1 of Law n. 11,300/2006.

**Article 22.** It is mandatory that both parties and candidates open a specific bank account to record all the financial transactions effected during the campaign.

- See second annotation to Article 19, head provision, of this law.
- TSE Case of 10-13-2011, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n.139912 and TSE Case of 3-21-2006, in Special Electoral Appeal (REspe) n. 25,306: it is mandatory to open a bank account even if no financial transactions are effected during the campaign.
- TSE Case of 12-13-2011, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 149794: fund raising and spending before a specific bank account is open constitute an incurable irregularity.

- TSE Case of 11-29-2011, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 126633: campaign´s financial transactions comprise even the candidate´s personal assets, under penalty of denial of accounts.

**Paragraph 1.** The banks are required to accept account-opening requests filed by any financial committee or candidate nominated in convention within up to 3 (three) days, and are prohibited to condition such request to a minimum bank deposit or to the charge of fees and/or other administrative costs.

- Paragraph 1 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 2.** The provisions set forth in this article shall not apply to candidacies of Mayors and City Councilors in Municipalities where there are no operating bank branches, and the same ruling applies to candidacies of City Councilors in Municipalities with less than twenty-thousand voters.

**Paragraph 3.** In case financial resources that were not credited in the specific bank account referred to in the head provision of this article are used for the payment of electoral expenditures, the rendering of accounts of the party or candidate will be denied; in case abuse of economic power is proven, either the registration of candidacy will be cancelled or the certificate of election, if already issued, will be annulled.

- TSE Case of 4-26-2012, in Special Electoral Appeal (REspe) n. 227525: the principle of reasonableness shall be applied to the assessment of lawfulness of expenditures that were paid with funds not credited in a specific bank account.

- TSE Case of 5-26-2011, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 33360: approval of campaign accounts with reservations after the submission of documents that prove the regularity of expenditures and candidate´s lack of bad faith.

**Paragraph 4.** In case the accounts are denied, the Electoral Justice shall forward a copy of the entire case to the Electoral Prosecution Office for the purposes set forth in article 22 of Supplementary Law n. 64, of May 18, 1990.

- Paragraphs 3 and 4 as amended by Article 1 of Law n. 11,300/2006.

**Article 22-A.** Both the candidates and the Financial Committees are required to register at the National Register of Corporate Taxpayers (CNPJ).

- Article 22-A as amended by Article 4 of Law n. 12,034/2009.

- RFB Normative Act (IN) n. 1,183/2011, which “Disciplines the National Register of Corporate Taxpayers (CNPJ)”:

  > “Article 5. Individuals and entities listed below are obliged to register at the CNPJ:
  >
  > […]

> XII – candidates to public elective offices and financial committees of political parties, pursuant to provisions set forth in specific legislation;
>
> […]
>
> Paragraph 5. The entities listed below shall be registered as parent offices:
>
> I – national, regional, municipal or district steering bodies of political parties; and
>
> […]
>
> Paragraph 6. Coalitions formed by political parties shall not register at the CNPJ."

**Paragraph 1.** The Electoral Justice shall issue a CNPJ registration number within up to 3 (three) working days after the receipt of the candidacy registration request.

**Paragraph 2.** After complying with the provisions established in Paragraph 1 of this Article and in Paragraph 1 of Article 22, candidates and financial committees shall be authorized to raise funds and incur in expenditures related to their electoral campaigns.

- Paragraphs 1 and 2 as amended by Article 4 of Law n. 12,034/2009.

**Article 23.** Individuals may make donations in cash or estimated cash amounts to electoral campaigns, pursuant to the provisions set forth in this Law.

- Head provision as amended by Article 3 of Law n. 12,034/2009.
- Joint TSE/SRF Administrative Rule n. 74/2006, Article 4, sole paragraph: the SRF shall report to the TSE any breach of the provisions established in this Article.

**Paragraph 1.** The donations and contributions referred to in this article shall be limited to:

**I -** in case of individuals, a maximum amount of up to ten per cent of the gross income earned in the year before the election;

- TSE Case of 5-27-2010, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 28,218: unlawfulness of evidence collected through breach of confidentiality of tax records of the donor with no prior judicial authorization with the aim of providing the grounds for filing a complaint which claims the violation of this item and of Article 81, Paragraph 1 of this law; exception made for the Prosecution Office, which may request information to the Federal Revenue Service on the compatibility of the amount donated to the electoral campaign by the contributor and the restrictions set forth in the electoral legislation.

- TSE Case of 3-20-2012, in Special Electoral Appeal (REspe) n. 183569: the gross income of a couple married under a regime of universal community property may be reviewed upon assessment of the maximum amount to be donated by individuals.

- TSE Case of 2-24-2011, in Special Electoral Appeal (REspe) n. 399352273: the maximum income tax exemption amount may be used as a reference for the establishment of the limit provided for in this item.

**II -** in case of candidates that make use of their own resources, the maximum spending amount as established by their respective parties, as required by this Law.

**Paragraph 2.** Any donation made to a specific candidate or party shall be made upon the issuance of a receipt after the filling in of a printed or, in case of donations effected through the internet, electronic form, which shall comprise the data listed in the Annex of this Law, being the donor discharged from signing the aforementioned document.

- Paragraph 2 as amended by Article 3 of Law n. 12,034/2009.

- TSE Case n. 6,265/2005 and TSE Case of 4-18-2006, in Interlocutory Appeal (Ag) n. 6,504 and, of 10-31-2006, in Special Electoral Appeal (REspe) n. 26,125: the non-attachment of electoral receipts is an incurable irregularity.

- Annex templates were replaced and can be presently obtained at the System of Rendering of Electoral Accounts (SPCE), which is in compliance with the regulations that discipline the rendering of accounts of each election.

**Paragraph 3.** Donations that exceed the limits established in this article shall subject offenders to the payment of a fine of five to ten times the amount paid in excess.

- TSE Case of 3-8-2012, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 124656: the proceedings set forth in Article 96 of this law shall be adopted for the purposes of applying the fine referred to in this paragraph.

- TSE Case of 12-15-2011, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 24826: inapplicability of the *de minimis doctrine* when determining the amount of this fine.

**Paragraph 4.** Donations of financial resources shall only be transferred to the account referred to in Article 22 of this Law by means of:

- Paragraph 4 as amended by Article 1 of Law n. 11,300/2006.

**I -** crossed and nominal checks or *wire transfer* of the donated amount;

- TSE Resolution (RES) n. 22,494/2006: "In case cash donations for electoral campaigns are made through wire transfers, donor´s signature is not mandatory, provided his/her identification features in the banking document itself".

**II -** cash deposits, provided they are duly identified and do not exceed the amount established in item I of Paragraph 1 of this article;

- Items I and II amended by Article 1 of Law n. 11,300/2006.

**III -** mechanism available in website maintained by the candidate, party or coalition, which may even allow the use of credit card and which shall meet the following requirements:

a) Identification of the donor;

b) Mandatory issuance of an electoral receipt for each donation made.

- Item III and sub-items *a* and *b* as amended by Article 3 of Law n. 12,034/2009.

- TSE Case of 12-15-2011, in Internal Interlocutory Appeal- Ordinary Appeal (AgR-RO) n. 4080386: the non-attachment of electoral receipt in the rendering of accounts constitutes an incurable irregularity.

**Paragraph 5.** The candidate is forbidden to make donations in cash as well as donations of trophies, prizes or allowances of any kind to individuals or legal entities after his/her candidacy is registered and before the elections are held.

- Paragraph 5 as amended by Article 1 of Law n. 11,300/2006.

**Paragraph 6.** In case donations are made virtually (through the internet), any frauds or mistakes committed by donors without the awareness of candidates, parties or coalitions shall not impose any liability on them nor result in the denial of their electoral accounts.

- Paragraph 6 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 7.** The limit referred to in item I of Paragraph 1 is not applicable to estimated cash amounts related to the use of donor´s personal and real property, provided the donated amount does not exceed BRL 50,000.00 (fifty-thousand *Brazilian reais*).

- Paragraph 7 as amended by Article 3 of Law n. 12,034/2009.

**Article 24.** Political parties and candidates are prohibited to receive, either directly or indirectly, cash donations or estimated cash amounts, including by means of publicity of any kind, that originate from:

**I -** foreign entity or government;

**II -** body under direct or indirect Public Administration or foundation maintained with government resources;

**III -** concessionaire or permittee authorized to work as a public-utility company;

- TSE Case of 6-18-2009, in Writ of Mandamus (MS) n. 558: the prohibition provided for in this item is not applicable to non-concessionaire companies licensed to explore public utility.

- TSE Case of 3-6-2012, in Internal Interlocutory Appeal- Ordinary Appeal (AgR-RO) n. 255 and TSE Case of 9-15-2011, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 13438: the prohibition provided for in this item is not applicable to company licensed to explore public utility upon private use of public property (concession to use public property). In this sense, see TSE Case of 2-17-2011, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 960328576: company authorized to render public-utility operations; and TSE Resolution (RES) n. 22,702, of 2-14-2008: private company licensed by the government.

- TSE Case of 5-22-2012, in Internal Interlocutory Appeal - Action for a Provisional Remedy (AgR-AC) n. 4493: non-concessionaire or non-permittee type of company that owns capital share of a legally established company which is concessionaire or permittee of public utility is not subject by the prohibition referred to in this item.

**IV -** legal entity governed by private law which benefits from mandatory contribution set forth in statutory provisions;

**V -** public utility type of entity;

**VI -** professional association or union;

- TSE Case of 6-24-2010, in Appeal against Issuance of Certificate of Election (RCEd) n. 745: as this item prohibits the direct or indirect donation of cash or estimated cash amount that originates from unions, the use of financial resources that are not in compliance with the provisions established in this law is not sufficient to indicate abuse.

**VII -** not-for-profit legal entity that receives funds from abroad;

**VIII -** entities devoted to charity and religious affairs;

- Item VIII as amended by Article 1 of Law n. 11,300/2006.

**IX -** sports organizations;

- Item IX as amended by Article 3 of Law n. 12,034/2009.

**X -** non-governmental organizations that receive public funds;

**XI -** civil society organizations of public interest.

- Items X and XI as amended by Article 1 of Law n. 11,300/2006.

**Sole paragraph.** The prohibitions referred to in this article do no apply to cooperatives whose members are neither concessionaires nor permittees of public

utility, provided they do not receive public funds, pursuant to provisions established in Article 81.

- Sole paragraph as amended by Article 3 of Law n. 12,034/2009.

**Article 25.** Parties that violate the regulations on fundraising and allocation of resources established in this Law shall loose the right to receive a quota from the Party Fund in the coming year, which does not exempt candidates that benefited from abuse of economic power to be held liable for such offense.

- Supplementary Law (LC) n. 64/1990, Articles 19 and 21: assessment of violations related to the origin of cash amounts and abuse of economic or political power.

**Sole paragraph.** A sanction that results in the suspension of transfer of new quotas from the Party Fund because of full or partial denial of the candidate´s rendering of accounts shall be applied in a proportional and reasonable manner for 1 (one) up to 12 (twelve) months or by means of deduction of the amount considered irregular from the sum to be transferred, noting that such suspension shall not be applied in case the rendering of accounts is not reviewed by the competent court within 5 (five) years after its submission.

- Sole paragraph as amended by Article 3 of Law n. 12,034/2009.

- Law n. 9,096/1995, Article 37, Paragraph 3: provision of similar content, related to the rendering of accounts of political party.

**Article 26.** The items below shall be considered electoral spending and thus be subject to registration and to the limits established in this Law:

- Head provision as amended by Article 1 of Law n. 11,300/2006.

**I -** printed materials of any nature and size;

**II -** direct or indirect advertising and publicity, disseminated by any appropriate means with the aim of winning votes;

**III -** lease of property with the purpose of holding events related to electoral campaign;

**IV -** expenditures related to the transportation or transfer of candidates and campaign staff;

- Item IV as amended by Article 1 of Law n. 11,300/2006.

**V -** mailing services and other postal expenditures;

**VI -** expenditures related to the setting up, organization and running of committees and other campaign services;

**VII -** compensation and bonus of any kind paid to staff that render services to candidacies or to electoral committees;

**VIII -** set up and operation of sound trucks, advertising trucks and similar vehicles;

**IX -** organization of campaign rallies or events aimed at promoting one´s candidacy;

- Item IX as amended by Article 1 of Law n. 11,300/2006.

**X** - production of radio, television or audiovisual programs, including those to be broadcasted during free air time;

**XI -** (Repealed by Article 4 of Law n. 11,300/2006.);

**XII -** pre-election research or voting simulations;

**XIII -** (Repealed by Article 4 of Law n. 11,300/2006.);

**XIV** - lease of personal property to be broadcasted by any means of campaign advertising;

**XV -** costs related to the design and operation of websites in the internet;

**XVI** - fines applied to parties or candidates because of violations of provisions set forth in the electoral legislation;

**XVII -** production of jingles, audio spots and slogans for electoral campaign purposes.

- Item XVII as amended by Article 1 of Law n. 11,300/2006.

**Article 27.** Any voter is entitled to contribute to his/her preferred candidate with an amount equivalent to up one-thousand *UFIR* (Fiscal Unit of Reference), which shall not be recorded, provided it is not reimbursed either.

- See annotation to Article 105, Paragraph 2 of this law.

- Joint TSE/SRF Administrative Rule n. 74/2006, Article 4, sole paragraph: the SRF shall report to the TSE any breach of the provisions established in this Article.

**ON THE RENDERING OF ACCOUNTS**

- Joint TSE/SRF Administrative Rule n. 74/2006: "Disciplines the exchange of information between the Superior Electoral Court and the Federal Revenue Service and establishes other provisions", comprising information on the rendering of accounts of the candidates and of the financial committees of the political parties (Article 1, head provision) and the annual rendering of accounts of the political parties (Article 1, Paragraph 1); on the grounds that entitle any citizen to file a complaint before the Federal Revenue Service (SRF) questioning the undue allocation of financial and non-financial resources in electoral campaigns or in activities carried out by political parties (Article 2); on the assessment of potential tax crimes (Article 3) and the obligation to report any identified tax offense to the Superior Electoral Court (TSE) (Article 4, head provision) and on the provisions established on Articles 23, 27 and 81 of this law (Article 4, sole paragraph).

**Article 28.** The rendering of accounts are mandatory for:

- TSE Resolution (RES) n. 21,295/2002: disclosure and publicity of rendering of accounts.

**I** - candidates for majority elections, in compliance with regulations set forth by the Electoral Justice;

**II** - candidates for proportional elections, provided they use the templates that feature in the *Annex* of this Law.

- Annex templates were replaced and can be presently obtained at the System of Rendering of Electoral Accounts (SPCE), which is in compliance with the regulations that discipline the rendering of accounts of each election.

**Paragraph 1.** The rendering of accounts of candidates running for majority elections shall be performed by the financial committee, and shall be accompanied by statements of the bank accounts that detail financial transactions operated during the campaign and list deposited checks, indicating their respective numbers, amounts and issuers.

**Paragraph 2.** The rendering of accounts of candidates running for proportional elections shall be performed by either the financial committee or the candidate him/herself.

**Paragraph 3.** All contributions, donations and revenues referred to in this Law shall be converted into *UFIR* (Fiscal Unit of Reference), using the applicable UFIR monthly quote.

- See annotation to Article 105, Paragraph 2 of this law.

**Paragraph 4.** It is mandatory that political parties, coalitions and candidates disclose on the world wide web (Internet), during the electoral campaign, on August 6$^{th}$ and on September 6$^{th}$, reports detailing resources in cash or estimated cash amounts that they earned to fund the electoral campaign, as well as campaign expenditures, and such information shall be published in a website to be designed by the Electoral Justice; the names of campaign donors as well as the amounts respectively donated by them shall be informed in the final rendering of accounts referred to in items III and IV of Article 29 of this Law.

- Paragraph 4 as amended by Article 1 of Law n. 11,300/2006.

**Article 29.** When receiving the rendering of accounts and other information on candidates running for majority elections and on candidates running for proportional elections who choose to render their respective accounts through their support, the committees shall:

**I** - check if the amounts recorded by candidates running for majority elections as sums received through the committee match their own financial and accounting records;

**II** - summarize all information reported in received rendering of accounts so as to deliver a consolidated statement on candidates´ campaigns;

**III** - forward the committee´s and the candidates´ rendering of accounts, prepared according to rules set forth in the previous article, exception made to the case referred to in next item, to the Electoral Justice within thirty days after the elections are held;

**IV** - forward, in the event of a run-off, the rendering of accounts of racing candidates, covering both election rounds, within up to thirty days after the elections are held.

**Paragraph 1.** Candidates running for proportional elections who choose to directly submit their rendering of accounts to the Electoral Justice shall comply with the same timeframe referred to in item III of the head provision.

**Paragraph 2.** The non-compliance with the timeframe established to the filing of campaign´s rendering of accounts shall prevent elected candidates from being certified.

**Paragraph 3.** Occasional campaign debts which were not paid until the last day to file the rendering of accounts may be taken over by the related political party based on decision issued by its national steering body.

- Paragraph 3 as amended by Article 3 of Law n. 12,034/2009.
- See fourth and fifth annotations to the head provision of Article 30 of this law.
- TSE Case of 2-8-2011, in Complaint (PET) n. 2,597: "campaign debts do not prevent candidates´ or financial committee´s accounts from being approved, provided the political party takes over the pending obligation and indicates the entries related to unpaid campaign expenditures in its annual rendering of accounts".

**Paragraph 4.** In the event of provisions set forth in Paragraph 3, the party association of the respective electoral district shall be held jointly and severally liable with the candidate for all the debts, noting that the existence of such debt shall not be considered as grounds for the denial of accounts.

- Paragraph 4 as amended by Article 3 of Law n. 12,034/2009.
- See fourth annotation to the head provision of Article 30 of this law.

**Article 30.** The Electoral Justice shall perform an assessment of the regularity of campaign accounts, and shall decide as follows:

- Head provision as amended by Article 3 of Law n. 12,034/2009.
- TSE Case of 11-10-2011, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 9893: the denial of campaign accounts combined with the

application of the fine provided for in Article 18, Paragraph 2 of this law does not constitute a "*ne bis in idem*" ruling.

- TSE Case of 4-11-2006, in Appeal against Writ of Mandamus (RMS) n. 426: the provisions established in Law n. 9,096/1995, Article 35, sole paragraph, which entitle other parties to review and challenge the rendering of accounts is not applicable to the rendering of accounts of electoral campaigns.

- TSE Case of 6-6-2006, in Interlocutory Appeal (Ag) n. 4,523: in case campaign debts are not paid until the rendering of accounts, such accounts are likely to be denied. See, however, TSE Case of 2-8-2011, in Complaint (PET) n. 2,596: "campaign debts do not prevent candidates´ or financial committee´s accounts from being approved, provided the political party takes over the pending obligation and indicates the entries related to unpaid campaign expenditures in its annual rendering of accounts".

- TSE Resolution (RES) n. 22,500/2006: Admissibility of novation with further discharge of political party´s campaign debts provided the supporting documentation is sufficiently consistent, noting that the party shall prove, by the time it render its annual accounts, the origin of the funds used to pay such debts, which shall be subject to the same restrictions imposed to the funds used in the electoral campaign.

- TSE Case of 12-6-2011, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 224432: formal irregularity does not necessarily result in the denial of the candidate´s rendering of accounts.

**I -** approval of accounts in case they are proper and correct;

- Item I as amended by Article 3 of Law n. 12,034/2009.

**II -** approval with reservations in case the accounts feature minor errors which do not compromise their regularity;

- Item II as amended by Article 3 of Law n. 12,034/2009.

**III -** denial of accounts in case they feature errors that compromise their regularity;

- Item III as amended by Article 3 of Law n. 12,034/2009.

**IV -** non-rendering of accounts in case they are not filed after notice issued by the Electoral Justice which expressly orders the rendering of such accounts within seventy-two hours.

- Item IV as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 1.** Decisions that assess the rendering of accounts of elected candidates shall be published within 8 (eight) days before the certification of such candidates.

- Paragraph 1 as amended by Article 1 of Law n. 11,300/2006.

- TSE Case of 6-6-2006, in Interlocutory Appeal (Ag) n. 4,523: it is not possible to refer to tacit approval of accounts in case no judgment on the rendering of accounts of candidates is entered within eight days before the certification. The timeframe established herewith is aimed at harmonizing the judgment on the assessment of accounts with the certification of candidates, pursuant to the provisions set forth in Article 29 of this law.

**Paragraph 2.** The correction of formal and material errors prevent accounts from being denied and do not provide for the application of any sanction to either candidate or party.

**Paragraph 2-A.** In case the accounts feature irrelevant formal or material errors, and provided they do not compromise the result of such accounts, they shall not be denied.

- Paragraph 2-A as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 3.** The Electoral Justice shall require the assistance of technicians from the Federal Court of Accounts or Courts of Accounts of the States, Federal District or Municipalities, for as long as it deems necessary, to perform the assessments referred to in this article.

**Paragraph 4.** Should circumstantial evidence point to irregularities in the rendering of accounts, the Electoral Justice may directly request to the candidate or financial committee to provide any additional information it deems necessary and may also determine evidentiary remedy to supplement existing data or to correct errors or flaws.

**Paragraph 5.** It is possible to challenge decisions on the accounts rendered by candidates or financial committees by filing an appeal at a higher instance of the Electoral Justice within 3 (three) days after the publication of such decision on the *Official Journal*.

- Paragraph 5 as amended by Article 3 of Law n. 12,034/2009.

- TSE Case of 2-3-2011, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 11,504: the provisions established in this paragraph shall have immediate effectiveness given their procedural nature and applicability to pending actions; appeals are accepted, provided they are filed while Law n. 12,034/2009 is still in force.

**Paragraph 6.** Special Appeals to the Superior Electoral Court shall be accepted in the events of items I and II of Paragraph 4 of Article 121 of the Federal Constitution, provided they are filed within the timeframe referred to in Paragraph 5.

- Paragraph 6 as amended by Article 3 of Law n. 12,034/2009.

- See second annotation to Paragraph 5 of this Article.

- TSE Case of 10-28-2010, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 11,221: the provisions set forth in this paragraph shall not be retroactively applicable.

**Paragraph 7.** The provisions set forth in this article shall apply to pending actions.

- Paragraph 7 as amended by Article 3 of Law n. 12,034/2009.

- See second annotation to Paragraph 5 of this Article.

**Article 30-A.** Any political party or coalition is entitled to represent before the Electoral Justice within 15 (fifteen) days after the certification, reporting facts and indicating evidence, and require judicial investigation on conducts that do not comply with the regulations established in this Law, notably those related to fund raising and spending.

- Head provision as amended by Article 3 of Law n. 12,034/2009.

- TSE Case of 8-18-2011, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 34693: if notice is served upon the vice-mayor for him/her to join the dispute in the appealing stage, that does not correct occasional flaws related to service of process, which should occur within the timeframe established to formalize electoral investigation.

- TSE Case of 2-1-2011, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 28,315: the adoption of the procedure established in Article 22 of Supplementary Law (LC) n. 64/1990 for purposes of representation as provided for in this article does not shift the jurisdiction of the matter to the judge in charge of internal affairs.

- TSE Case of 10-13-2011, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 3776232: coalitions have standing to sue even after elections are held. TSE Case of 2-12-2009, in Ordinary Appeal (RO) n. 1,596: the Electoral Prosecution Office has standing to file suit. TSE Case of 4-28-2009, in Ordinary Appeal (RO) n. 1,540: non-elected candidates and substitutes have standing to be sued, but substitutes only after candidacy´s registration. TSE Case of 3-19-2009, in Ordinary Appeal (RO) n. 1,498: lack of candidate´s standing to sue.

- See annotations to Paragraphs 1 and 2 of this article.

- TSE Case of 3-1-2011, in Internal Interlocutory Appeal - Action for a Provisional Remedy (AgR-AC) n. 427889: decision issued in an action based on provisions established in this article featured immediate effectiveness, resulting in the annulment of certification.

- TSE Case of 3-21-2012, in Ordinary Appeal (RO) n. 444696: funds obtained from legal entity established in the year of election do not indicate sufficient severity as to result in the annulment of certification on the ground of this article.

- TSE Case of 2-7-2012, in Special Electoral Appeal (REspe) n. 1632569: the annulment of certification on the ground of illegal fund raising or spending demands proof of proportionality of the action performed in favor of the candidate.

**Paragraph 1.** The procedure set forth in Article 22 of Supplementary Law n. 64, of May 18, 1990, shall apply, whenever appropriate, to the investigation referred to in this article.

- TSE Case of 3-19-2009, in Special Electoral Appeal (REspe) n. 28,357: magistrate judges have jurisdiction to preside over and enter judgment on actions filed during the electoral season on the grounds of this provision.

- TSE Case of 12-4-2007, in Writ of Mandamus (MS) n. 3,567: immediate effectiveness of judgment that imposes the annulment of registration or denial of certification on the grounds of Article 30-A of Law n. 9,504/1997 as it does not relate to ineligibility.

**Paragraph 2.** Should fund raising and spending for electoral purposes be proven illegal, the candidate shall have his/her certification denied or annulled, in case it has already been issued.

- Paragraphs 1 and 2 as amended by Article 1 of Law n. 11,300/2006.

- TSE Case of 4-28-2009, in Ordinary Appeal (RO) n. 1,540: supervening lack of subject matter of the action after the elective term is completed.

- TSE Case of 4-28-2009, in Ordinary Appeal (RO) n. 1,540: action potential is not deemed claimable, being the proof of proportionality (legal relevance) of the committed offense sufficient to impose sanction of annulment of registration or denial of certification.

- TSE Case of 12-1-2011, in Ordinary Appeal (RO) n. 444344: defect of incurable nature that results in the denial of campaign accounts does not necessarily lead to the annulment of candidate´s certification, being it necessary to assess the legal relevance of the offense.

**Paragraph 3.** The timeframe to appeal decisions rendered in actions filed on the grounds of this article is 3 (three) days, to be counted from the date of the publication of such decisions on the *Official Journal*.

- Paragraph 3 as amended by Article 3 of Law n. 12,034/2009.

- TSE Case of 4-13-2010, in Motion of Clarification – Internal Interlocutory Appeal- Ordinary Appeal (ED-AgR-RO) n. 2,347: timeframe of 24 (twenty-four) hours to appeals filed before the enactment of Law n. 12,034/2009, noting that the timeframe established in this paragraph shall not be applied retroactively.

- TSE Administrative Rule n. 218/2008: “Creates the Electronic Official Journal of the Superior Electoral Court (TSE)”.

- TSE Case of 4-13-2010, in Motion of Clarification – Internal Interlocutory Appeal- Ordinary Appeal (ED-AgR-RO) n. 2,347: the adoption of the procedure set forth in Article 22 of Supplementary Law (LC) n. 64/1990 to investigate the offenses referred to in this article does not alter the timeframe of 24h to file an appeal, being it inadmissible to apply retroactively such timeframe as established in Law n. 12,034/2009 with respect to motions for clarification filed before the aforementioned Law came into force.

**Article 31.** If there are financial resources still available by the end of the campaign, it is mandatory to report the existence of such amount in the rendering of accounts and, after the review of all appeals, the sum shall be transferred to a body associated with the political party in the district where the elections were held or to the coalition, in which case the sum shall be split between the parties that form such structure.

- Head provision as amended by Article 3 of Law n. 12,034/2009.

- Law n. 9,096/1995, Article 34, V: financial balance of electoral campaigns.

**Sole Paragraph.** Financial resources which have not been spent shall be used by political parties, which are required to report the existence of such amounts and the identification of candidates in their respective rendering of accounts, to be submitted to the Electoral Justice.

- Sole Paragraph as amended by Article 3 of Law n. 12,034/2009.

**Article 32.** Candidates or parties are required to keep the documentation related to their respective accounts within up to one-hundred and eighty days after the certification.

- TSE Case of 5-6-2010, in Special Electoral Appeal (REspe) n. 36,552: the timeframe to file an action against donation of funds to electoral campaign which are above the limit established by law is of 180 days, to be counted from the certification pursuant to the provisions established in this Article.

**Sole Paragraph.** If there is any account-related action pending to be adjudicated, the documentation related to such accounts shall be kept until a final judgment is entered.

**ON PRE-ELECTION RESEARCH AND VOTING SIMULATIONS**

**Article 33.** Entities and companies that carry out *public opinion polls* related to the elections or the candidates, to be later disseminated to the public, are required to register, for each poll, the following information at the Electoral Justice within up to five days before the disclosure of their results:

- TSE Case n. 20,664/2003: it is not mandatory to register a poll, as it shall not be taken for an electoral research. TSE Resolution (RES) n. 22,265/2006: electoral research, polls or surveys may be broadcasted even on the day the elections are held, either on free air time or during the regular programming schedule of radio and television networks. TSE Resolution (RES) n.

23,364/2011, Article 2, Paragraph 1 (instructions for the elections) and TSE Case of 3-16-2006, in Special Electoral Appeal (REspe) n. 25,321: the dissemination of polls and surveys shall be accompanied by clarification notes indicating that they shall not be taken for electoral research, being otherwise subject to the application of the sanction referred to in Paragraph 3 of this Article.

- TSE Case n. 4,654/2004: the registration of electoral research is not subject to approval or denial. TSE Case n. 357/2004: judges cannot prohibit the publication of electoral research, even if on the grounds of exercise of police power.
- See sixth annotation to Article 96, head provision, of this law.
- TSE Case of 5-18-2010, in Appeal against Complaint (R-Rp) n. 79988: it is mandatory to previously register essential data within five days, under penalty of application of the fine referred to in Paragraph 3 of this Article.
- TSE Case of 8-17-2006, in Special Electoral Appeal (REspe) n. 26,029: penalty shall apply in the event of disclosure of unregistered information indicating that a certain candidate leads the polls; it is irrelevant not to disseminate consolidated rankings. See dissenting understanding in TSE Case n. 3,894/2003.

**I -** who commissioned the poll/survey;

**II -** the amount and origin of resources allocated in the poll/survey;

**III -** methodology and period in which the poll/survey was carried out;

**IV -** sampling plan and weight of gender, age, level of education, economic status and physical area where the poll/survey was carried out, confidence interval and margin of error;

**V -** internal control and assessment system, analysis and inspection of data collection and field work;

**VI -** full questionnaire – either applied or to be applied;

**VII -** name of the individual/legal entity who paid for the poll/survey.

**Paragraph 1.** Information related to polls and surveys shall be registered at Electoral Justice bodies, which are responsible for registering the candidates.

**Paragraph 2.** The Electoral Justice shall issue a notice, which shall also be disclosed in its official website, within twenty-four hours, reporting on the registration of the information referred to in this Article, granting free access to such information for 30 (thirty) days to parties or coalitions which have candidates running for the elections.

- Paragraph 2 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 3.** The disclosure of polls and surveys without the previous registration of the information referred to in this Article shall result in the application of a fine ranging from fifty-thousand to one-hundred thousand UFIR (Fiscal Unit of Reference).

- TSE Case of 6-21-2011, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 629516: it is not possible to establish a reduced fine below the statutory limits.
- See first annotation to the head provision of this Article.
- See annotation to Article 105, Paragraph 2 of this law.
- TSE Case of 9-15-2011, in Special Electoral Appeal (REspe) n. 21227: "establishment of fine even if the disclosure occurred partially during an interview or has just reproduced information which had already been unduly broadcasted".
- TSE Case of 5-18-2010, in Appeal against Complaint (R-Rp) n. 79988: fine shall also be applied in the event of disclosure before the timeframe referred to in the head provision of this Article.
- TSE Case of 9-25-2007, in Special Electoral Appeal (REspe) n. 27,576: "The penalty set forth in Article 33, Paragraph 3, of Law n. 9,504/1997 applies to those who disclose electoral polls or surveys that were not previously registered; it does not relate to those who disclose polls or surveys that do not feature the information referred to in the respective head provision".

**Paragraph 4.** The disclosure of fraudulent poll or survey constitutes an offense to be punished with imprisonment of six months to one year combined with the settlement of fine of fifty-thousand to one-hundred thousand UFIR (Fiscal Unit of Reference).

- See annotation to Article 105, Paragraph 2 of this law.

**Article 34.** (Vetoed.)

**Paragraph 1.** The parties may be granted access, upon request to the Electoral Justice, to the system of internal control, analysis and inspection of data collected by entities which disseminated opinion polls related to the elections, including access to data related to the identification of the interviewers and, based on a free and random choice of individual spreadsheets, maps or related material, such parties will be able to compare and check the disclosed data, making sure not to disclose the identity of the respondents.

- TSE Case of 8-19-2010, in Internal Interlocutory Appeal – Complaint (AgR-Pet) n. 194822: if the parties disagree on the costs of copies of forms filled in the electoral poll or survey, after the issuance of a decision that grants the access to the internal control system of the research institute, such matter falls out of the jurisdiction of the Electoral Justice, needing to be then submitted to the Courts of General Jurisdiction.

**Paragraph 2.** The non-compliance with the provisions established in this Article or the commitment of any act that is targeted at delaying, blocking or hindering actions of inspection nature performed by the parties constitutes an offense to be punished with imprisonment of six months to one year, or the rendering of community services for the same period, combined with the settlement of fine ranging from ten-thousand to twenty-thousand UFIR (Fiscal Unit of Reference).

- See annotations to Article 105, Paragraph 2 of this law.

**Paragraph 3.** If any irregularity is proved, with respect to published data, the penalties referred to in the previous paragraph shall apply to the individuals responsible for such irregularities, who shall be also obliged to publish the corrected data in the same space, venue, time, page, characters and any other relevant elements, according to the type of vehicle that has been originally used.

**Article 35.** Legal representatives of companies or research entities and of broadcasting agencies may be held criminally liable for the offenses set forth in Articles 33, Paragraph 4 and 34, Paragraphs 2 and 3.

**Article 35-A.** It is prohibited to disclose electoral polls or surveys through any means of communication from the fifth day prior to the elections until the day the elections are held, at 18 (eighteen) hours.

- Article 35-A as amended by Article 1 of Law n. 11,300/2006.

- STF Case of 9-6-2006, in Direct Action for the Declaration of Unconstitutionality (ADI) n. 3,741: it establishes that this article is unconstitutional. The provisions established in this article were also considered unconstitutional by the TSE, pursuant to administrative decision of 5-23-2006 (minutes of the 57th Session, Court Gazette – DJ of 5-30-2006). Electoral Code (CE/65), Article 255, of similar content. TSE Case n. 10,305/1988: the regulation that prohibits the disclosure of results of electoral polls or surveys is not compatible with the Federal Constitution.

**ON OVERALL CAMPAIGN ADVERTISING**

**Article 36.** Campaign advertising shall only be allowed after the 5th of July of the year elections are held.

- See Article 36-A of this law.

- TSE Case of 4-6-2010, in Complaint (Rp) n. 1,406: “early campaign advertising does not depend on the length of time between the objected act and the date of elections or of party conventions aimed at nominating candidates”.

**Paragraph 1.** Individuals seeking to be nominated to run for an elective office are allowed to carry out intra-party campaign advertising two weeks before the party makes a decision with the purpose of being nominated; they are, however, prohibited to make use of radio and television networks as well as outdoor boards.

- TSE Case of 5-3-2011, in Special Electoral Appeal (REspe) n. 43736: intra-party campaign advertising broadcasted earlier than authorized by law and targeted at the entire community, and not only to party affiliates, constitutes untimely campaign advertising and results in the application of fine.

**Paragraph 2.** In the second half of the year in which elections are to be held, neither legally authorized campaign advertising shall be broadcasted for free nor any kind of paid political campaign shall be disseminated in radio and television networks.

**Paragraph 3.** The violation of the provisions established in this article shall subject the individual/entity responsible for the dissemination of campaign advertising and the beneficiary of such publicity, provided it is possible to prove s/he was already aware of such practices, to the payment of a fine ranging from BRL 5,000.00 (five-thousand Brazilian *reais*) to BRL 25,000.00 (twenty-five thousand Brazilian *reais*), or a sum equivalent to the advertising costs, in the event the latter consists of a larger amount.

- Paragraph 3 as amended by Article 3 of Law n. 12,034/2009.

- See Article 40-B and Sole Paragraph of this law. TSE Case of 5-17-2007, in Special Electoral Appeal (REspe) n. 26,262: "[…] advertising in outdoor boards indicates that the beneficiary is already aware of undue advertising".

- TSE Case of 5-3-2011, in Complaint (Rp) n. 113240: the advertising, however subtle, of a certain candidacy, of the purposes to obtain voting support as well as exclusive personal marketing with electoral purposes, especially when in favor of an affiliate of a different party, constitutes untimely campaign advertising in party messages.

- See second annotation to Paragraph 3 of Article 367 of the Electoral Code (CE/65).

- TSE Case of 12-16-2010, in Motion of Clarification – Internal Interlocutory Appeal – Interlocutory Appeal (ED-AgR-AI) n. 10,135: electoral fines do not have a taxable nature; with respect to facts that occurred before the enactment of Law n. 12,034/2009, which resulted in amendments to this Paragraph, fine amounts shall be established in compliance with the previous wording of the said paragraph.

- TSE Cases of 10-16-2007, in Interlocutory Appeal (Ag) n. 7,763 and of 5-15-2007, in Interlocutory Appeal (Ag) n. 6,204: "It is possible to apply the fine set forth in Article 36 of Law n. 9,504/1997 in the event of early campaign advertising in party messages". TSE Case of 2-13-2007, in Interlocutory Appeal (Ag) n. 6,349: "There are no impediments to the application of fine in virtue of the untimely advertising referred to in Article 36, Paragraph 3, of Law n. 9,504/1997, in cases of judicial electoral investigation, as it does not bring any harm to the defense, given the observance of ordinary proceeding rules which are more beneficial and are established in Article 22 of Supplementary Law n. 64/1990". TSE Cases of 8-1-2006, in Complaint (Rp) n. 916, and of 8-8-2006, in Complaint (Rp) n. 953: "This Court has decided, on Complaint n. 916,

that recidivism shall be taken into account for the establishment of an amount to be paid as fine. Not exclusively, though. The judge in charge shall analyze practical circumstances and make a wise assessment before applying a legal sanction". TSE Case of 3-15-2007, in Special Electoral Appeal (REspe) n. 26,251: the non-incidence of the penalty referred to in this paragraph, in the event of dissemination of informational brochure in which the congressman/woman markets his/her achievements before the election season.

- TSE Case of 10-3-2006, in Special Electoral Appeal (REspe) n. 26,273: the fine referred to in this paragraph shall be applied individually.
- TSE Case of 5-12-2011, in Appeal against Complaint (R-Rp) n. 222623: magistrate judges have jurisdiction to enter judgment on electoral actions filed in virtue of early campaign advertising in the event it is not objectively coupled with statutory sanctions for the distortion of party advertising. TSE Case of 6-5-2007, in Complaint (Rp) n. 942: the electoral corrective magistrate has jurisdiction to analyze case on the use of space originally spared for party advertising in the event of untimely campaign advertising and, in case of objective accumulation of claims, it is possible to carry out a dual assessment pursuant to Laws n. 9,096/1995 and 9,504/1997.
- TSE Resolution (RES) n. 23,086/2009: analogical application of these provisions to intra-party advertising.
- TSE Case of 4-13-2011, in Appeal against Complaint (R-Rp) n. 320060: "The granting of a complaint on campaign advertising in electronic website operated by the Government requires strict identification of the person directly responsible for dissemination of undue content".

**Paragraph 4.** Campaign advertising for candidates running for majority offices shall also disclose the names of candidates running for deputy posts or Senator Substitutes, in a clear and easy-to-read style, using a font size of not less than 10% (ten percent) of the size used to advertise the name of the main candidate.

- Paragraph 4 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 5.** The proof of compliance with the orders issued by the Electoral Justice and related to campaign advertising that violates the provisions established in this Law may be submitted to the Superior Electoral Court, in case of candidates running for President and Vice-President of the Republic; to the respective Regional Electoral Courts, in case of candidates running for Governor, Vice-Governor, Federal Congressmen, Senators, State and District Representatives; and to Electoral Courts, in case of candidates running for Mayor, Vice-Mayor and City Councilors.

- Paragraph 5 as amended by Article 3 of Law n. 12,034/2009.

**Article 36-A.** The following circumstances are not to be considered *early campaign advertising*:

- TSE Case of 4-6-2010, in Appeal against Complaint (R-Rp) n. 1,406: any manifestation which is carried out within three months before the elections and which does not fall into the exceptions set forth in this article, announcing, even if in a subtle manner, a candidacy, even if no nomination has been formalized, to the general public, along with political actions which are to be developed or reasons that indicate that the beneficiary of such ad is the most qualified individual to take public office, shall be considered early campaign advertising.

- TSE Case of 8-10-2010, in Appeal against Complaint (R-Rp) n. 132118: “the disclosure, in a website on the internet, of materials related to the launching of one´s own candidacy through a determined party to the office of President of the Republic does not constitute early campaign advertising”.

- See fourth and fifth annotations to Article 57-A of this law.

**I** - the participation of political party affiliates or pre-candidates in interviews, shows, meetings or debates broadcasted in radio and television networks and the internet, including the disclosure of political platforms and projects, provided there is no vote-asking in such events, being radio and television networks responsible for treating the aforementioned individuals in an equal manner;

- TSE Case of 4-5-2011, in Appeal against Complaint (R-Rp) n. 189711: the deadline to file a complaint against early or irregular campaign advertising is the date of the election; early campaign advertising does not depend exclusively on the simultaneous combination of candidate, vote-asking and office sought; need to assess the entire context in which the facts unraveled and not only the message textual content, but also other circumstances, so as to properly check the existence of early campaign advertising, especially when carried out in a subtle manner.

- TSE Case of 8-5-2010, in Appeal against Complaint (R-Rp) n. 165552: “Interviews to the press, with explicit journalistic content and in a context of political debate, with questions randomly formulated by the audience, does not constitute untimely campaign advertising nor preferential treatment”.

- TSE Case of 8-5-2010, in Appeal against Complaint (R-Rp) n. 134631: interviews with prominent politicians from a certain State, provided their journalistic content is observed, do not constitute early campaign advertising, regardless of making reference of plans to run for presidential elections; the provisions established in this item apply in case the broadcasting network carry out similar programs with different politicians, making sure to treat them equally.

- TSE Case of 6-16-2010, in Consultation (Cta) n. 79636: possibility to organize a debate on the internet, at any time, to be broadcasted live, and not subject to the condition that was imposed on both radio and television broadcasters to treat the candidates equally.

- TSE Case of 3-25-2010, in Internal Interlocutory Appeal – Complaint (AgR-Rp) n. 20574: speech delivered during an inauguration, broadcasted live by public TV network, does not fall into the exception provided for in this item.

- TSE Case of 5-31-2011, in Special Electoral Appeal (REspe) n. 251287: interview to a television show featuring personal marketing and highlighting the personal achievements to the detriment of potential competitors in the elections, with the candidate expressly asking for votes, constitutes early campaign advertising.

**II -** the organization of meetings, seminars or conferences, held indoors and covered by political parties, designed to address the organization of electoral procedures, government plans or party alliances with a view to the elections;

- TSE Case of 11-16-2010, in Appeal against Complaint (R-Rp) n. 259954: speech delivered during a party meeting held indoors, in which the affiliate expresses his/her support to the candidacy of one of his/her peers does not constitute early campaign advertising; its subsequent dissemination on the internet, however, exceeds the boundaries of the exception provided for in this item, being the provider of webpage´s content held responsible for the disclosure of speech delivered during an intra-party event.

**III -** the organization of caucuses and their disclosure through intra-party communication tools; or

- TSE Resolution (RES) n. 23,086/2009, which establishes provisions on intra-party advertising for the nomination of candidates during a convention: "[…] the disclosure of caucuses shall not be considered early campaign advertising as it consists of an opinion survey carried out within intra-party boundaries. 1. The disclosure of caucuses on webpage published on the internet exceeds intra-party boundaries and, therefore, hinders the inspection to be performed by the Electoral Justice on its impacts. 2. Considering that the disclosure of caucuses shall not exceed intra-party boundaries, the exchange of electronic messages are to be allowed only for party affiliates. 3. Pursuant to Article 36, Paragraph 3 of Law n. 9,504/1997, which may be analogically applied to caucuses, banners and posters may be used for intra-party advertising purposes, provided that such use occurs in location nearby the place where the race is to be held, with messages directed to party affiliates. […] 4. […] printing pamphlets to be later distributed to party affiliates, within party boundaries, is not prohibited pursuant to provisions established in electoral legislation. […] 5. The sending of electronic messages and letters, as means of intra-party advertising, is allowed for caucus purposes, provided that such documents are forwarded exclusively to party affiliates. 6. It is not admissible to authorize paid content to be disseminated in the media as it exceeds or may exceed intra-party boundaries and therefore reach the entire community […]".

**IV -** the disclosure of representatives´ activities and legislative debates, provided the potential candidacy is not referred to and there is no asking for votes or electoral support.

- Article 36-A and items I to IV as amended by Article 4 of Law n. 12,034/2009.

- TSE Case of 11-23-2010, in Appeal against Complaint (R-Rp) n. 270176: the dissemination of representatives' newsletters which highlight the name of notorious pre-candidates and make express reference to their political platform and qualification to fill the office constitutes early campaign advertising.

**Article 37.** Property which depend on government´s assignment or permission to be used, or which are owned by the government, as well as public easement, including poles for public lighting and traffic signaling, viaducts, bridges, bus stops and other urban equipment, shall not be used for any kind of advertising, including graffiti, ink writing, hanging of signs, flags, banners and related items.

- Head provision as amended by Article 1 of Law n. 11,300/2006.

- TSE Case n. 2,890/2001: the permission referred to in this article encompasses license to render taxi services.

- See Paragraph 4 of this Article.

- See second annotation to item VIII of Article 243 of the Electoral Code (CE/65).

- TSE Case of 8-12-2010, in Administrative Proceeding (PA) n. 107267: this article shall apply to correctional facilities and youth detention centers; with respect to correctional facilities and detention centers, the access to campaign advertising broadcasted in radio and television networks during free air time shall be permitted, as well as access to advertising disseminated in printed media. TSE Case of 8-14-2007, in Special Electoral Appeal (REspe) n. 25,682: prohibition to distribute campaign pamphlets in public schools; TSE Resolution (RES) n. 22,303/2006: prohibition of campaign advertising of any kind in motor vehicles that are used for public service purposes, such as buses used to provide collective transportation services.

**Paragraph 1.** Campaign advertising that violates the provisions established in the head provision of this article shall hold the person in charge, who shall be duly notified and whose responsibility shall be proven, accountable for property repair and, in case the said restoration is not timely performed, a fine ranging from BRL 2,000.00 (two-thousand Brazilian *reais*) to BRL 8,000.00 (eight-thousand Brazilian *reais*) shall be applied.

- Paragraph 1 as amended by Article 1 of Law n. 11,300/2006.

- TSE Case of 4-28-2011 in Special Electoral Appeal (REspe) n. 264105: the dissemination of campaign advertising on billboards or similar devices is

subject to the provisions established in Paragraph 8 of Article 39 and not the ones set forth in this paragraph.

- TSE Cases of 12-13-2007, in Special Electoral Appeal (REspe) n. 27,692, and of 12-18-2007, in Special Electoral Appeal (REspe) n. 27,768: considering the legislative innovation consolidated in the provisions set forth in this paragraph by virtue of Law n. 11,300/2006, previous judicial decisions shall be rendered inapplicable as circumstances and peculiarities of the particular case would lead to the application of the sanction, regardless of the removal of campaign advertising.

**Paragraph 2.** With respect to private property, the dissemination of campaign advertising shall not depend on the issuance of municipal license nor authorization from the Electoral Justice in case it refers to the holding of banners, signs, posters, paintings or writings, provided they do not exceed $4m^2$ (four square meters) and do not violate electoral legislation provisions, in which case the offender shall be subject to the sanctions set forth in Paragraph 1.

- Paragraph 2 as amended by Article 3 of Law n. 12,034/2009.

- TSE Case of 2-10-2011, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 368208: the removal of ad that exceeds the $4m^2$ dimension from private property does not exclude the application of the fine set forth in Paragraph 1 of this Article.

- TSE Case n. 22,718/2008, Article 14: prohibition to hold banners, signs, posters, paintings or writings that exceed $4m^2$ in private property, under penalty of application of the fine set forth in Article 17 of the said resolution (campaign advertising on billboards). TSE Case of 12-4-2007, in Special Electoral Appeal (REspe) n. 27,696: prohibition extended to candidates´ committees for the 2008 elections.

- TSE Case of 2-15-2011, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 369337: with respect to irregular advertising on private property, even after the amendments introduced by Law n. 12,034/2009, the application of fine remains mandatory, regardless of ad removal after occasional notification.

- TSE Case of 10-7-2010, in Appeal against Complaint (R-Rp) n. 276841: the burden of proof is on the representative.

- TSE Case of 8-24-2010, in Appeal against Complaint (R-Rp) n. 186773: in case of no commercial intent, the device is deemed to be equivalent to a sign, being the offender subject to the application of the penalties set forth in Paragraph 1 of this Article.

- TSE Case of 4-15-2010, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 11,670: despite of the permission set forth in this Paragraph, billboard advertising remains prohibited.

**Paragraph 3.** The dissemination of campaign advertising in the facilities of the Legislative Branch shall be authorized by the Legislative Steering Committee.

**Paragraph 4.** For electoral purposes, public easement comprises property referred to in Law n. 10,406, of January 10, 2002 – Civil Code, and those accessible to the population, including movie theatres, clubs, shops, malls, churches, gyms and stadiums, even if privately owned.

- Paragraph 4 as amended by Article 3 of Law n. 12,034/2009.
- TSE Cases n. 2,124/2000; 2,125/2000; 21,241/2003; 21,891/2004; 25,263/2005; and TSE Case of 3-7-2006, in Special Electoral Appeal (REspe) n. 25,428: the definition of public easement, for electoral purposes, encompasses private property which are freely accessible to the public. TSE Case of 3-30-2006, in Special Electoral Appeal (REspe) n. 25,615: newsstands are considered public easement as they depend on authorization of the government to be operated and are usually located in preferential spots, easily accessible to the population (in case of ads placed in the external part of newsstands).

**Paragraph 5.** It is prohibited to place campaign ads of any type in trees and gardens located in public spaces as well as in walls, fences and construction fencing, even if they do not result in damages to the said structures.

- Paragraph 5 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 6.** It is admissible to place easels, dummies, posters, counters to distribute campaign materials and flags along public roads, provided these items can be easily moved and do not hamper the traffic and the transit of individuals.

- Paragraph 6 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 7.** The mobility mentioned in Paragraph 6 refers to the placement and removal of advertising materials between 6:00 a.m. and 10:00 p.m.

- Paragraph 7 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 8.** The placement of campaign advertising materials in private property shall be spontaneous and free of charge, and any kind of payment to make use of spaces with such intent is prohibited.

- Paragraph 8 as amended by Article 3 of Law n. 12,034/2009.

**Article 38.** Campaign advertising by means of distributing pamphlets, flyers or other printed materials, which shall be edited under the responsibility of the party, coalition or candidate, does not require the issuance of municipal license or the authorization of the Electoral Justice.

**Paragraph 1.** All printed materials related to the electoral campaign shall feature the Corporate Taxpayer Registration Number (CNPJ) or the Individual Taxpayer Registration Number (CPF) of the legal entity/individual responsible for the design of

such materials, of the legal entity/individual which hired their services and the respective number of printed copies.

- Paragraph 1 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 2.** In case printed materials feature joint ads of different candidates, the spending of each one of them shall be recorded in their respective rendering of accounts, or just in the accounts of the candidate who paid for such services.

- Paragraph 2 as amended by Article 3 of Law n. 12,034/2009.

**Article 39.** The organization of any event related to party or electoral campaign, either held outdoors or indoors, does not require permit to be issued by the police.

- Law n. 1,207/1950: "Disciplines the right to hold meetings".

**Paragraph 1.** The candidate, party or coalition that promotes such events shall report their organization to the police within at least twenty-four hours before they are held, enabling police authorities to guarantee their right to occupy the informed location/venue and preventing others to use it in the same day and time.

**Paragraph 2.** Police authorities shall adopt the necessary measures to make sure the event is held with safety, and that traffic and services that may be affected by the said event remain functioning normally.

**Paragraph 3.** Speakers and sound amplifiers shall only be used, exception made to the case described in the next paragraph, between 8:00 a.m. and 10:00 p.m., and they shall be installed and used at the minimum distance of two-hundred meters from:

**I -** the seats of the Executive and Legislative branches of the Federal Government, the States, the Federal District and the Municipalities, the seat of State Appellate Courts, and military barracks or other military facilities;

**II -** hospitals and nursing homes;

**III -** schools, public libraries, churches and theatres, during opening hours.

**Paragraph 4.** The organization of rallies and the use of standing sound systems are allowed from 8:00 a.m. (eight in the morning) to 12:00 midnight (midnight).

- Paragraph 4 as amended by Article 1 of Law n. 11,300/2006.

**Paragraph 5.** The practices listed below constitute offenses if carried out on election day and shall be punished with imprisonment from six months up to one year, with the option to render services to the community for the same period, and the application of a fine ranging from five-thousand to fifteen-thousand *UFIR* (Fiscal Unit of Reference):

- See annotation to Article 105, Paragraph 2 of this Law.

**I -** use of speakers and sound amplifiers or promotion of rally or motorcade;

**II -** recruitment of voters or illegal electoral campaign on election day, close to pooling stations;

- Item II as amended by Article 1 of Law n. 11,300/2006.

- See Article 39-A of this Law.

- TSE Case of 6-4-2009, in *Habeas Corpus* (HC) n. 604: the amended wording of this provision, established by Law n. 11,300/2006, did not repeal previously-described conducts, having actually expanded the definition of the offense.

**III -** the dissemination of any kind of advertisement related to political parties or their candidates.

- Item III as amended by Article 3 of Law n. 12,034/2009.

- TSE Case of 4-26-2012, in Special Electoral Appeal (REspe) n. 485993: the indirect disclosure of one´s voting preferences does not constitute an electoral offense provided there is no attempt to convince, put pressure on or persuade others.

- TSE Case of 5-3-2011, in Special Electoral Appeal (REspe) n. 1188716: non-applicability of the *de minimis doctrine* to the offense described in this item.

**Paragraph 6.** Committees, candidates or individuals who were authorized by them are prohibited to design, use or distribute t-shirts, key chains, caps, pens, souvenirs, basic food baskets or any other goods or materials that may bring benefits to voters.

- Paragraph 6 as amended by Article 1 of Law n. 11,300/2006.

- TSE Resolution (RES) n. 22,274/2006: artists and entertainers are prohibited to attend private events held at private property and the use of t-shirts or other materials that may bring any benefit to voters shall be forbidden as well.

- TSE Resolution (RES) n. 22,247/2006: the design, distribution and placing of displays, pennants and flags on private motor vehicles shall be permitted as it does not bring any benefit to voters; a prohibition shall apply in case of motor vehicles that render public services. TSE Resolution (RES) n. 22,303/2006: "Regardless of the similarity to billboards, the placing of campaign ads of any nature in motor vehicles that render public services, such as buses used to provide collective transportation services, is prohibited (head provision of Article 37 of Law n. 11,300/2006)".

- TSE Case of 10-28-2010, in Ordinary Appeal (RO) n. 1,859: the prohibition set forth in this paragraph "does not apply to the supply of snacks – breakfast and soups – in meetings that gather citizens with the aim of raising awareness of candidacies".

**Paragraph 7.** It is prohibited to organize shows/rallies and similar events with the aim of promoting candidates, and to hire performers (even if on a cost-free basis) to liven up rallies and electoral meetings.

- Paragraph 7 as amended by Article 1 of Law n. 11,300/2006.
- See TSE Resolution (RES) n. 23,251/2010: candidate who is also a professional singer; TSE Resolution (RES) n. 22,274/2006: artists and entertainers are prohibited to attend private events held at private property and the use of t-shirts or other materials that may bring any benefit to voters shall be forbidden as well.

**Paragraph 8.** Campaign advertising shall not be carried out in billboards, being the company, parties, coalition and candidates that are responsible for such practice subject to the immediate removal of the irregular advertisement and to a fine that ranges from 5,000 (five-thousand) to 15,000 (fifteen-thousand) *UFIRs* (Fiscal Unit of Reference).

- Paragraph 8 as amended by Article 1 of Law n. 11,300/2006.
- See Article 37, Paragraph 2 of this Law. TSE Case of 11-23-2006, in Special Electoral Appeal (REspe) n. 26,404 and TSE Resolution (RES) n. 22,246/2006: “Sign placed in private property which does not exceed $4m^2$ shall not be taken for a billboard”.
- See annotation to Article 105, Paragraph 2 of this Law.
- TSE Resolution (RES) n. 22,270/2006: prohibition to use electronic panels for campaign advertising purposes.
- TSE Case of 4-28-2011, in Special Electoral Appeal (REspe) n. 264105: the use of billboards or related devices to disseminate campaign ads shall result in the application of the provisions established in this paragraph instead of the provisions established in Paragraph 1 of Article 37.
- TSE Case of 8-24-2010, in Appeal against Complaint (R-Rp) n. 186773: signs and devices that exceed $4m^2$, placed in private property and used for commercial purposes shall be considered equivalent to billboards and therefore subject to the penalties established in this paragraph.
- TSE Case of 8-19-2010, in Motion of Clarification – c Interlocutory Appeal (ED-AgR-AI) n. 11,670: the regulating provisions established in Article 14 of TSE Resolution (RES) n. 22,718/2008 do not exceed the regular jurisdiction of the Superior Electoral Court (TSE).
- TSE Case of 10-7-2010, in Appeal against Complaint (R-Rp) n. 276841: the burden of proof falls on the representative.
- TSE Case of 2-22-2011, in Internal Interlocutory Appeal – Interlocutory Appeal (AgR-AI) n. 375310: the boundaries established by the Electoral Justice shall

take into account not only the dimension, but also the visual impact of the advertisement.

**Paragraph 9.** The distribution of printed materials, walks, motorcades, campaign marches or sound trucks that cross the city disseminating jingles or messages from the candidates shall be allowed until 10:00 p.m. of the day before the elections are held.

- Paragraph 9 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 10.** "*Trios elétricos*" (an "*electric trio*" is a kind of truck equipped with a high power sound system and a music group on the roof, playing for the crowd) shall not be used in electoral campaigns, except in rallies.

- Paragraph 10 as amended by Article 3 of Law n. 12,034/2009.

- TSE Resolution (RES) n. 22,267/2006: LED displays and fixed stage may be used in rallies; prohibition to broadcast artistic performances and to make use of "*trios elétricos*".

**Article 39-A.** The silent and individual display of a voter´s preference for a certain political party, coalition or candidate, to be expressed exclusively through the use of flags, badges, signs and stickers, is permitted on the day elections are held.

**Paragraph 1.** On the day elections are held, during voting hours, people wearing standardized garments shall not gather in crowds nor make use of the advertising tools referred to in the head provision as that would be considered a collective manifestation, regardless of the occasional use of motor vehicles.

**Paragraph 2.** Electoral Justice servants, poll workers and tellers shall not wear garments or carry objects that feature advertisements of political parties, coalitions or candidates at polling stations or by commissions in charge of counting the ballots.

**Paragraph 3.** Party inspectors, when performing poll-related work, are allowed to write their names and the acronym of the political party or coalition they are affiliated to in their badges, being, however, prohibited to wear standardized garments.

**Paragraph 4.** Copies of this Article shall be placed in visible spots inside and outside polling stations on the day the elections are held.

- Article 39-A and Paragraphs 1 to 4 as amended by Article 4 of Law n. 12,034/2009.

**Article 40.** In case symbols, slogans or images associated or similar to the ones used by government agencies, state-owned companies or government-controlled companies are used for campaign advertising purposes, that shall be considered an offense to be punished with imprisonment of six months to one year, or the rendering of community services for the same period, combined with the settlement of fine ranging from ten-thousand to twenty-thousand UFIR (Fiscal Unit of Reference).

- See annotation to Article 105, Paragraph 2 of this Law.

- TSE Resolution (RES) n. 22,268/2006: there is no prohibition for the use of national, state and municipal symbols (flag, anthem, colors) for campaign advertising purposes, being their undue use, however, subject to punishment pursuant to applicable legislation.

- TSE Case of 5-15-2008, in Special Electoral Appeal (REspe) n. 26,380: "the use of a certain color during electoral campaign does not encompass the concept of symbol, pursuant to the provisions established in Article 40 of Law n. 9,504/1997".

- TSE Case of 6-30-2011, in *Habeas Corpus* (HC) n. 355910: the use of slogans which are also used in institutional ads does not constitute any type of offense if used for campaign advertising purposes.

**Article 40-A.** (Vetoed.)

- Article 40-A as amended by Law n. 11,300/2006.

**Article 40-B.** Complaints related to irregular advertising shall produce evidence on the person that committed the offense or on the previous awareness of the beneficiary of such practice in case s/he is not held responsible for it.

**Sole Paragraph.** The candidate´s responsibility shall be proved in case s/he is notified about the existence of irregular campaign advertisement and does not take any measure to have it removed or regularized within forty-eight hours and if the circumstances and peculiarities of the case indicate that it was impossible for the beneficiary not to be aware of such advertisement.

- Article 40-B and Sole Paragraph as amended by Article 4 of Law n. 12,034/2009.

**Article 41.** Advertising activities implemented in compliance with the provisions established in electoral legislation shall not be subject to the application of fines nor limited on the grounds of exercise of police power or of *violation of municipal principles*, cases which shall meet the procedural requirements established in Article 40.

- Head provision as amended by Article 3 of Law n. 12,034/2009.

- TSE Case of 8-19-2010, in Special Electoral Appeal (REspe) n. 35,182 (reception, by the Federal Constitution – CF/88, of Article 243, VIII, of the Electoral Code – CE/65); TSE Case of 3-14-2006, in Special Electoral Appeal (REspe) n. 24,801; and TSE Case n. 301/2004: in the event of conflict, the law on municipal principles shall prevail over Article 37 of Law n. 9,504/1997.

**Paragraph 1.** With respect to campaign advertising, electoral judges and judges appointed by Regional Electoral Courts shall have authority to exercise police power.

- Paragraph 1 as amended by Article 3 of Law n. 12,034/2009.

- TSE Case of 4-10-2012, in Appeal against Writ of Mandamus (RMS) n. 154104: legal incapacity of electoral judges to issue administrative ruling that prescribes punishments for the non-compliance with this law.

**Paragraph 2.** Police power shall only apply to measures deemed necessary to prevent illegal practices, being the previous censorship of the content of programs to be broadcasted on television, radio or the internet considered inadmissible.

- Paragraph 2 as amended by Article 3 of Law n. 12,034/2009.

- See second annotation to Paragraph 1 of this Article.

**Article 41-A.** Except for the provisions of Article 26 and its respective items, candidates who donate, offer, promise or deliver goods or personal advantages of any nature, including public office or function, from the day their candidacy is registered until the day elections are held, incur in vote-asking practices, which are prohibited by this Law, and shall be subject to the application of a fine ranging from one-thousand to fifty-thousand UFIR (Fiscal Unit of Reference) and to the annulment of their registration or diploma, pursuant to the proceedings established in Article 22 of Supplementary Law n. 64, of May 18th, 1990.

- Article as amended by Article 1 of Law n. 9,840/1999.

- TSE Cases n. 19,566/2001; 1,229/2002; 696/2003; 21,264/2004; 21,792/2005 and 787/2005: the act does not need to be directly performed by the candidate, being it sufficient that s/he has taken part in its execution or agreed with it.

- TSE Case of 3-1-2007, in Special Electoral Appeal (REspe) n. 26,118: these provisions shall also apply to cases where money is given in exchange of abstention, analogically to the provisions set forth in Article 299 of the Electoral Code (CE/65).

- See annotations to Article 105, Paragraph 2 of this Law.

- Federal Supreme Court (STF) Case of 10-26-2006, in the Direct Action for the Declaration of Unconstitutionality (ADI) n. 3,592: denies the claim for unconstitutionality of the expression "annulment of registration or diploma" set forth in this Article. Additionally, TSE Cases n. 19,644/2002; 21,221/2003; 612/2004; 25,227/2005; 25,215/2005; 5,817/2005 and, *inter alia*, TSE Case of 8-8-2006, in Special Electoral Appeal (REspe) n. 25,790: constitutionality of this provision as it does not result in ineligibility.

- TSE Case of 5-8-2012, in Internal Interlocutory Appeal - Appeal against Issuance of Certificate of Election (AgR-RCEd) n. 707: joinder of penalties and impossibility to carry on procedures to settle a fine after the term is completed; and TSE Case of 2-24-2011, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 36601: in case of complaint against only one of the listed candidates.

- TSE Case of 2-15-2011, in Special Electoral Appeal (REspe) n. 36,335: illegal vote-asking practices require the submission of consistent proof of at least one of the conducts referred to in this Article, the purpose to win voter´s preference and the participation or consent of the benefited candidate.

- TSE Case of 12-16-2010, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 123547: it is mandatory to submit consistent proof of illegal vote-asking practices, as mere assumptions will not suffice.

- TSE Case of 12-16-2010, in Internal Interlocutory Appeal - Action for a Provisional Remedy (AgR-AC) n. 240117: immediate satisfaction of judgment entered in complaint against illegal vote-asking practices.

- TSE Case of 11-30-2010, in Internal Interlocutory Appeal - Interlocutory Appeal (AgR-AI) n. 196558: "The delivery of a government plan and promises related to the housing problem that were made during the campaign and which are to be fulfilled only after the elections do not constitute illegal vote-asking practices".

- TSE Case of 6-16-2010, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 35,740: with respect to complaint filed on the grounds of this Article, the Electoral Prosecution Office has standing to sue in case plaintiff abandons action.

- TSE Case of 5-20-2010, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 26,110: admissibility of testimonial evidence as an exclusive means to prove illegal vote-asking practices, noting that in case only one witness confirms vote-buying practices, the circumstances of each related fact shall not withdraw the credibility and validity of such testimony.

- TSE Case n. 2-18-2010, in Appeal against Issuance of Certificate of Election (RCEd) n. 761: for the purposes of this article, there shall be no distinction between the social and economic nature of benefited voters or between the quality and value of the offered advantage.

- TSE Case n. 81/2005: this Article did not amend the provisions set forth in Article 299 of the Electoral Code nor resulted in the revocation of the electoral corruption offense therein described.

- TSE Case of 9-16-2008, in Appeal against Issuance of Certificate of Election (RCEd) n. 676; TSE Cases n. 4,422/2003 and 5,498/2005: the provisions of this article shall not apply to vague promises, made without the aim of satisfying individual and private interests.

- TSE Resolution (RES) n. 21,166/2002: the magistrate judge has jurisdiction to preside over and report on the complaint referred to in Article 41-A, complying with the proceedings established in Article 22 of Supplementary Law (LC) n. 64/1990; jurisdiction of judges in charge of internal affairs on violations of Supplementary Law (LC) n. 64/1990. TSE Case n. 4,029/2003:

magistrate judges who worked in state and federal elections shall not render judgment on complaints.

- TSE Cases of 10-8-2009, in Ordinary Appeal (RO) n. 2,373; of 4-17-2008, in Special Electoral Appeal (REspe) n. 27,104; and of 3-1-2007, in Special Electoral Appeal (REspe) n. 26,118: it is not mandatory to assess the potential of the fact to cause imbalances to the elections in order to apply the sanction set forth in this provision. TSE Case of 10-28-2010, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 39974: it is mandatory to assess the harmful potential of the illegal act to determine the existence of illegal vote-asking practices – a form of corruption – in the event of action of objection of elective office (AIME).

- TSE Case of 4-6-2010, in Special Electoral Appeal (REspe) n. 35,770: for the purposes of this article, the promise of personal advantage shall be related to the benefit to be concrete and individually obtained by a specific voter.

**Paragraph 1.** To fall into the description of the illegal conduct, it is not mandatory to explicitly ask for votes, being it sufficient to prove the intent, which shall be consistent with action´s objectives.

- Paragraph 1 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 2.** The sanctions referred to in the head provision shall apply to anyone who performs violent acts or makes serious threat to an individual with the aim of winning his/her vote.

- Paragraph 2 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 3.** It is admissible to file a complaint against any of the prohibited conducts referred to in the head provision until the certification date.

- Paragraph 3 as amended by Article 3 of Law n. 12,034/2009.

**Paragraph 4.** It is possible to file an appeal against judgment entered on the grounds of this article within 3 (three) days after the publication of such decision on the *Official Journal*.

- Paragraph 4 as amended by Article 3 of Law n. 12,034/2009.

- TSE Case of 7-1-2011, in Internal Interlocutory Appeal - Special Electoral Appeal (AgR-REspe) n. 190670: “Until the enactment of Law n. 12,034/2009, with regard to cases that encompass investigations on illegal vote-asking, the timeframe to file appeals and motions of clarification at regional courts was of 24 hours (Article 96, Paragraph 8 of Law n. 9,504/1997)”.

**ELECTORAL PUBLICITY VIA *BILLBOARDS***

**Article 42.** (Repealed by Article 4 of Law 11,300/2006.)

**ELECTORAL PUBLICITY IN THE PRESS**

- TCE Dec. 1,241/2002: the diversity of constitutional regimes to which written press, radio and television are submitted is reflected in the difference of restrictions under electoral law; lack of competence by the Electoral Justice to impose restrictions or prohibitions on the freedom of information and opinion of the press, except solely to those related to paid advertising and the guarantee of the right of reply.

**Article 43.** *Paid publicity* in the press and the reproduction on the Internet of the printed newspaper shall be allowed until two days before the elections, and limited to ten (10) electoral ads per media vehicle, on different dates, for each candidate; such ads shall occupy a maximum of 1/8 (one eighth) of a page per newspaper issue and 1/4 (one fourth) of a page per magazine or tabloid issue.

- *Caput* as amended by Article 3 of Law 12,034/2009.
- TSE Dec. of 1.MAR.2007, in Ag. No. 6881, delivered with the previous writing in force: the imposition of a fine as established under this device shall only be possible when dealing with paid electoral publicity, either directly paid or through indirect donations.
- TSE Res. No. 23,086/2009, issued under the previous wording: impossibility of placement of paid intra-party publicity in the communication media.
- TSE Dec. of 15.OCT.2009 in Special Res. 35,977: necessity that the texts accused of being untrue be the result of paid advertising to constitute the offense provided for in Article 323 of CE/65.

- TSE Dec. of 18.OCT.2011 in CTA No. 195781: the fact that the space used by an ad falls below the established maximum limit does not alter the limit of number of ads provided for in this Article.

Paragraph 1 The ad must bring visible indication of the amount paid for the insertion.

- Paragraph 1 added by Article 3 of Law 12,034/2009.

**Paragraph 2** Failure to comply with the provisions of this Article shall subject those responsible for the media vehicles and the benefitting parties, coalitions and candidates to a fine ranging between one thousand reais (R$ 1,000.00) and ten

thousand reais (R$ 10,000.00), or the amount equivalent to the price of the paid advertising, if that be greater.

- Paragraph 2 added by Article 3 of Law 12,034/2009. Corresponds to the sole paragraph in the wording given by Law 11,300/2006.

**ELECTORAL PUBLICITY ON RADIO AND TELEVISION**

**Article 44.** Electoral publicity on radio and television shall be limited to the free publicity time defined in this Law, with any placement of paid advertising therefore being forbidden.

- TSE Res. 22,927/2008: as of the 2010 elections, during the free publicity period "[...] generating stations shall block transmission to their relay stations and repeaters located in diverse municipalities, who shall replace the program broadcast with a static image that reads 'time reserved for free electoral publicity'".
- TSE Res. 23,086/2009: impossibility of placement of paid intra-party publicity in the communication media.

**Paragraph 1** The free electoral publicity aired on television shall use the Brazilian Sign Language - LIBRAS - or the closed caption feature, which shall be included on the material delivered to the broadcasters.

- Paragraph 1 added by Article 3 of Law 12,034/2009.

**Paragraph 2** At the time reserved for the electoral publicity, no commercial use or advertising shall be carried out with the intent, even if covert or subliminal, to promote a brand or a product.

- Paragraph 2 added by Article 3 of Law 12,034/2009.

**Paragraph 3** Under Paragraph 1 of Article 37, any station that is not licensed by the competent authority to broadcast electoral publicity shall be punished if it does so.

- 3rd Paragraph added by Article 3 of Law 12,034/2009.

**Article 45.** Beginning on July 1st of the election year, it is forbidden for radio and television stations, in their regular and news broadcasts, to:

**I -** present, even if in the form of journalistic interview, imagery of polls or any other type of referendum of electoral nature in which it is possible to identify the respondent or in which there is data manipulation;

**II -** *use trickery, edits or other audio or video technique in any way to degrade or ridicule a candidate, party or coalition, or produce or air any program with such purpose;*

- STF Dec. of 2.SEP.2010, in ADI No. 4451: countersigned injunction to suspend the standard of this subsection.

**III -** air any political publicity or *spread opinions favorable or unfavorable to a candidate, party, coalition, their bodies or representatives;*

- STF Dec. of 2.SEP.2010, in ADI No. 4451: countersigned injunction to suspend the second part of this section.

**IV -** give preferential treatment to a candidate, party or coalition;

**V -** publicize or air films, "novelas", miniseries or any other program with allusion or criticism to a candidate or political party, even if covertly, except for news programs and political debates;

- See notes to Article 58 of this Law.

**VI -** disclose the name of a program that refers to a candidate chosen in Convention, even if preexisting, including if it coincides with the name of the candidate or the nominal variation adopted by the candidate. If the program's name is the same as that of the candidate, its disclosure shall be forbidden under penalty of cancellation of their registration.

**Paragraph 1** As of the result of the Convention, stations are also prohibited from broadcasting any programs presented or reviewed by a candidate chosen in convention.

- Paragraph 1 as amended by Article 1 of Law 11,300/2006.

**Paragraph 2** Without prejudice to the provisions of the sole paragraph of Article 55, failure to comply with the provisions of this Article shall subject the station to pay a fine ranging between twenty thousand to one hundred thousand *UFIR*, which shall be doubled in case of recidivism.

- See note to Article 105, paragraph 2, of this law.
- TSE Dec. of 3.JUN.2008 in Special Res. 27,743: impossibility of imposing any fines to journalists, since the *main section* of this Article refers explicitly only to the radio and television broadcasters.

**Paragraph 3** (Repealed by Article 9 of Law 12,034/2009.)

**Paragraph 4** Trickery is here understood as any and all effects applied to audio or video that degrade or ridicule a candidate, party or coalition, or misrepresents the reality and benefits or harms any candidate, political party or coalition.

- Paragraph 4 added by Article 3 of Law 12,034/2009.
- STF Dec. of 2.SEP.2010, in ADI No. 4451: countersigned injunction to suspend the rule of section II and the second part of section III of this Article and, by extension, this paragraph.

**Paragraph 5** Editing is here understood as any and all combination of audio or video records that degrade or ridicule a candidate, party or coalition, or misrepresents the reality and benefits or harms any candidate, political party or coalition.

- Paragraph 5 added by Article 3 of Law 12,034/2009.
- STF Dec. of 2.SEP.2010, in ADI No. 4451: countersigned injunction to suspend the rule of section II and the second part of section III of this Article and, by extension, this paragraph.

**Paragraph 6** Political parties are allowed to use the image and voice of candidates or militants of the political party that integrate their coalition at the national level as electoral publicity for their candidates at the regional level, including during free electoral publicity time.

- Paragraph 6 added by Article 3 of Law 12,034/2009.
- See Article 53-A and paragraphs of this law.
- See Article 54 (*caput*) and sole paragraph of this Law.

**Article 46.** Regardless of the free electoral publicity to be aired at the times set in this Law, radio or television stations shall have the right to host debates for proportional or majoritarian elections, with guaranteed participation of all candidates from parties represented in the Brazilian House of Representatives and optional to the others, in observance of the following:

- TSE Res. 22,318/2006: impossibility, in the case of debates, to demand that party representation in the House of Representatives be bound to the beginning of the legislature; impossibility to expand the scope of Paragraph 3 of Article 47 of this Law. TSE Res. 22,340/2006: the representation of parties in the House of Representatives at the time of the conventions shall be considered the criterion for choice of candidates for the debate.
- TSE Dec. of 26.OCT.2010, in Pet. # 377216: possibility of airing the debates considering the local time of each unit of the Federation.
- TSE Dec. of 16.JUN.2010 in CTA No. 79636: possibility of holding the debate on the Internet, at any time and with live streaming, without the conditions imposed on radio and television of isonomic treatment between candidates.

**I -** in majoritarian elections, the debate candidates may be introduced:

a) jointly, with the presence of all candidates for the same elective office;

b) in groups, if at least three candidates are present;

**II -** in proportional elections, the debates shall be organized so as to ensure the presence of an equal number of candidates from all parties and coalitions to the same elective position, and may unfold over more than one day;

**III -** the debates shall be part of programming previously established and disclosed by the broadcaster and the choice of the day and order of speaking of each candidate shall be made by lot, unless otherwise agreed between the interested parties and coalitions.

**Paragraph 1** Debates shall be admitted without the presence of a given candidate from a party, as long as the communication vehicle responsible for the debate attests to have invited that candidate to the debate with at least seventy-two hours' notice.

- TCE Dec. 19,433/2002: This rule also applies when there are only two candidates running for election, except if the debate is scheduled unilaterally or with the purpose of favoring one candidate.

**Paragraph 2** The presence of one candidate for the proportional elections in more than one debate organized by the same station is not allowed.

**Paragraph 3** Failure to comply with the provisions of this Article shall subject the infringing company to the penalties provided for in Article 56.

**Paragraph 4** The debate shall be held according to the rules established in agreement between the political parties and the legal entity organizing the event, and the Electoral Justice shall be informed of such agreement.

- Paragraph 4 added by Article 3 of Law 12,034/2009.

**Paragraph 5** For debates taking place in the first round of the elections, the rules for its conduction must be agreed upon by at least two thirds of the *suitable candidates* in the case of a major election, and by at least two thirds of the parties or coalitions with *suitable candidates* in the case of proportional elections.

- Paragraph 5 added by Article 3 of Law 12,034/2009.
- TSE Res. 23,273/2010: "Suitable candidates are those affiliated to a political party with representation in the House of Representatives which have applied for a candidacy in the Electoral Justice. After the candidacy applications have been reviewed, only those candidates whose registration have been granted (or, if rejected, are *sub judice*) shall be considered suitable."
- See Article 16-A of this law.

**Article 47.** The radio, television and pay-TV broadcasters mentioned in Article 57 shall reserve slots during the forty-five days prior to two days before the election for network-wide advertising of the free electoral publicity in the manner prescribed in this article.

- TSE Res. 22,290/2006: inability to live-broadcast free electoral publicity in blocks.
- TSE Dec. of 29.SEP.2010 in R-Rp 297892: the deadline for filing of claims requesting right of reply during free electoral publicity is counted in hours, beginning at the end of the broadcast of the program one wishes to challenge, and is not to be confused with the end of the transmission range on which inserts may be placed, which is treated by Article 51 of this Law.

**Paragraph 1** The publicity shall be aired:

**I -** in elections for President of the Republic on Tuesdays, Thursdays and Saturdays:

a) on the radio, from 7 AM to 7:25 AM and from 12:00 to 12:25 PM;

b) on television, from 1 PM to 1:25 PM and from 8:30 PM to 8:55 PM

**I -** in elections for Federal Representative on Tuesdays, Thursdays and Saturdays:

a) on the radio, from 7:25 AM to 7:50 AM and from 12:25 PM to 12:50 PM

a) on TV, from 1:25 PM to 1:50 PM and from 8:25 PM to 8:50 PM

**III -** in elections for Governor of the State and of the Federal District, on Mondays, Wednesdays and Fridays:

a) on the radio, from 7 AM to 7:25 AM and from 12:00 to 12:20 PM, in years in which one third of the members of the Senate are to be renewed; Item *a* as amended by Article 3 of Law 12,034/2009.

b) on television, from 1 PM to 1:20 PM and from 8:30 PM to 8:50 PM, in years in which one third of the members of the Senate are to be renewed;

- Item *b* as amended by Article 3 of Law 12,034/2009.

a) on the radio, from 7 AM to 7:18 AM and from 12:00 to 12:18 PM, in years in which two thirds of the members of the Senate are to be renewed;

- Item *c* added by Article 3 of Law 12,034/2009.

b) on television, from 1 PM to 1:18 PM and from 8:30 PM to 8:48 PM, in years in which two thirds of the members of the Senate are to be renewed;

- Item *d* added by Article 3 of Law 12,034/2009.

**IV -** in elections for State Representative and District Representative, on Mondays, Wednesdays and Fridays:

a) on the radio, from 7:20 AM to 7:40 AM and from 12:20 PM to 12:40 PM, in years in which one third of the members of the Senate are to be renewed;

- Item *a* as amended by Article 3 of Law 12,034/2009.

a) on TV, from 1:20 PM to 1:40 PM and from 8:50 PM to 9:10 PM, in years in which one third of the members of the Senate are to be renewed;

- Item *b* as amended by Article 3 of Law 12,034/2009.

a) on the radio, from 7:18 AM to 7:35 AM and from 12:18 PM to 12:35 PM, in years in which two thirds of the members of the Senate are to be renewed;

- Item *c* added by Article 3 of Law 12,034/2009.

a) on TV, from 1:18 PM to 1:58 PM and from 8:48 PM to 9:05 PM, in years in which two thirds of the members of the Senate are to be renewed;

- Item *d* added by Article 3 of Law 12,034/2009.

**V -** in the elections for Senator, on Mondays, Wednesdays and Fridays:

a) on the radio, from 7:40 AM to 7:50 AM and from 12:40 PM to 12:50 PM, in years in which one third of the members of the Senate are to be renewed;

- Item *a* as amended by Article 3 of Law 12,034/2009.

a) on TV, from 1:40 PM to 1:50 PM and from 9:10 PM to 9:20 PM, in years in which one third of the members of the Senate are to be renewed;

- Item *b* as amended by Article 3 of Law 12,034/2009.

a) on the radio, from 7:35 AM to 7:50 AM and from 12:35 PM to 12:50 PM, in years in which two thirds of the members of the Senate are to be renewed;

- Item *c* added by Article 3 of Law 12,034/2009.

a) on TV, from 1:35 PM to 1:50 PM and from 9:05 PM to 9:20 PM, in years in which two thirds of the members of the Senate are to be renewed;

- Item *d* added by Article 3 of Law 12,034/2009.

**VI -** in elections for Mayor and Deputy Mayor, on Mondays, Wednesdays and Fridays:

a) on the radio, from 7 AM to 7:30 AM and from 12:00 to 12:30 PM;

b) on television, from 1 PM to 1:30 PM and from 8:30 PM to 21:00 PM;

**VII -** in elections for Councilor, on Tuesdays, Thursdays and Saturdays, at the same times provided for in the preceding section.

**Paragraph 2** The time slots reserved for electoral publicity in each election under the previous paragraph shall be distributed among all parties and coalitions that have candidates *and representation in the House of Representatives*, according to the following criteria:

- TSE Dec. No. 8,427/1986 and instructions for elections: one third of the time is distributed equally among all parties and coalitions that have candidates, regardless of representation in the House of Representatives.

**I -** one third of the time distributed equally;

**II -** two-thirds, distributed proportionally to the number of representatives in the House of Representatives; for coalitions, consider the sum of the number of representatives of all parties that comprise it.

**Paragraph 3** For the purposes of this Article, the representation of each party in the House of Representatives is the one measured according to the results of the election.

- Item I as amended by Article 1 of Law 11,300/2006.
- TSE Dec. of 23.MAI.2006 (Minutes of 57th session *DJ* of 30.MAI.2006): inapplicability of this provision to the 2006 elections.
- TSE Res. 21,541/2003: the affiliation of a federal representative to a new party does not transfer his fraction of the time gained by his former party.

**Paragraph 4** The number of representatives of a party that is the result of a merger or that has incorporated another shall be the sum of the original representatives the parties of origin had at the date mentioned in the previous paragraph.

**Paragraph 5** If a candidate for President or Governor leaves the race at any stage of the election, and if there is no replacement as provided for in Article 13 of this Law, a new distribution of the time shall be calculated among the remaining candidates.

**Paragraph 6** Parties and coalitions who are allotted less than thirty seconds after application of the calculation criteria listed in the *main section* shall have the right to accumulate their slots for subsequent use in equivalent time.

**Article 48.** In the elections for mayors and councilors in municipalities without radio or television stations, the Electoral Justice shall assure political parties participating in the election the right to broadcast free electoral publicity in those localities

where there will be a second round of elections and on which it is operationally feasible to perform the retransmission.

- *Caput* as amended by Article 3 of Law 12,034/2009.

**Paragraph 1** The Electoral Justice shall regulate the provisions of this article so that the maximum number of municipalities to be served be equal to that of generating stations available.

- Paragraph 1 as amended by Article 3 of Law 12,034/2009.

**Paragraph 2** This Article applies to radio stations, under the same conditions.

**Article 49.** If there is a second round of elections, radio and television stations shall set aside time for airing free electoral publicity divided into two daily periods of twenty minutes for each election, beginning forty eight hours after proclamation of the results of the first round and until two days before the elections, starting at 7 AM and 12 PM on the radio, and at 1 PM and 8:30 PM on television.

**Paragraph 1** In jurisdictions where there are second-round elections for President and Governor, the time reserved for electoral publicity of the latter shall start immediately after the end of the slot of the former.

**Paragraph 2** The time of each daily period shall be divided equally between candidates.

**Article 50.** The Electoral Justice shall make the draw to choose the order of placement of the publicity of each party or coalition in the first day of free electoral publicity; on every day that follows, the party that showed his publicity last on the day before shall be the first on the current, the others presenting in the order of the draw.

**Article 51.** During the periods set forth in Articles 47 and 49, the radio, television and cable stations mentioned in Article 57 shall set aside thirty additional minutes daily for free electoral publicity to be used in inserts of up to sixty seconds, at the discretion of the respective party or coalition. Such inserts shall bear the signature of the party or coalition and be distributed over the broadcaster's daily schedule between 8 AM and 12 AM, as per the terms of Paragraph 2 of Article 47 and in observance of the following:

- See second note to Article 47 of this Law.

- TSE Dec. of 22.AGO.2006, in Rp. # 1,004: exemption from identification of the coalition and parties that comprise it in radio inserts of 15 seconds.
- TSE Res. 20,377/1998: time distribution of the inserts in the second round.

**I -** the time shall be divided into equal parts for use in the campaigns of candidates for majoritarian and proportional elections, as well as of their party labels or parties that comprise the coalition, if applicable;

**II -** setting aside of time for the campaigns of candidates for Mayor and Deputy Mayor, in the case of municipal elections;

**III -** the distribution shall take into account the demographics blocks of 8 AM to 12 PM, 12 PM to 6 PM, 6 PM to 9 PM and 9 PM to 12 AM;

**IV -** it is forbidden to use *external recordings*, edits or trickery, computer graphics, cartoons and special effects in the inserts, as is the broadcasting of messages that may degrade or ridicule a candidate, party or coalition.

- TSE Dec. of 12.SEP.2006, in Rp. # 1,100: "The playback of videos produced by the candidate *ex adverse* in the previous election does not constitute an external recording". TSE Dec. of 29.AGO.2006, in Rp. # 1,026: "[...] 2. External recording. If the appearance is of a scene recorded outside a studio, and if there was no evidence to the contrary, it is judged that the claim proceeds".
- TSE Dec. of 21.OCT.2010, in Rp. 352535: "Political criticism, although acidic, must not be offered in coarse language."

**Article 52.** Beginning on July 8 of the election year, the Electoral Justice shall convene the parties and representatives from the television broadcasters to develop a media plan, in observance of the terms of the preceding article, for the use of the portion of the free electoral publicity they are entitled to, ensuring participation of all in lower and higher rating periods of the day.

**Article 53.** No instant cuts or any kind of censorship shall be allowed during free electoral publicity.

**Paragraph 1** No publicity shall be allowed that may degrade or ridicule candidates; in case of non-compliance, the offending party or coalition shall be subject to loss of their right to deliver free electoral publicity in the next day.

- TSE Dec. of 25.AGO.2010, in Rp. 240991: "Interpretative references may not be considered to be degrading or infamous. Provided that the limit of preserving the dignity of the person is not surpassed, having this degree of freedom may be considered normal in political campaigns."
- TSE Dec. of 23.OCT.2006, in Rp. # 1,288: "Granted right of reply under Article 58, no grounds for application of the penalty under Paragraph 1 of Article 53 of the Elections Law".

**Paragraph 2** Notwithstanding the preceding paragraph and at the request of a party, coalition or candidate, the Electoral Justice shall prevent the replay of publicity that is offensive to the honor of the candidate or to morals and good customs.

- See second note to section IV of Article 51 of this Law.
- TCE Dec. 1,241/2002: inadmissibility of analogical application of this provision to print media vehicles.
- TCE Dec. 21,992/2005: each repetition shall case a cumulative doubling of the suspension.

**Article 53-A.** Political parties and coalitions may not include publicity for candidates for major elections in the publicity time allotted for candidates of proportional elections, or vice versa, except for the use of captions with reference to majority election candidates or posters or photographs of these candidates in the background during the broadcast.

- TSE Dec. of 16.SEP.2010 in Special Res. 113623: possibility of participation of national candidates in the publicity of state elections in majoritarian elections; need to refrain from interference in proportional election spaces except to provide support.
- TSE Dec. of 31.AGO.2010, in Rp. 254673: the rule of this article does not address the "invasion" of majority candidates in majority publicity space; TSE Dec. of 2.SEP.2010, in Rp. 243589: "Invasion of time, as typified in this article, is understood as the broadcasting of negative publicity towards a duly identified political opponent in major elections in the space allotted for candidates to proportional elections."

**Paragraph 1** Testimonies by candidates for proportional elections may be inserted on the time allotted for majority candidates (and vice versa) that are registered under the same party or coalition, as long as the testimony is solely used to ask for votes for the candidate who has ceded his/her time.

**Paragraph 2** The time allotted for proportional elections may not be used as publicity for majority elections, and vice versa.

**Paragraph 3** A political party or coalition that fails to observe the rule contained in this article shall have time deducted from their free electoral publicity slot time equivalent to that used for electoral publicity of the benefitting candidate.

- Article 53-A and Paragraphs 1 to 3, added by Article 4 of Law 12,034/2009.
- TSE Dec. of 2.SEP.2010, in Rp. 243589: in the case of inserts, the penalty will consider the number of such inserts the party or coalition would have the right to deliver in a particular audience block in the state in which the time invasion took place.
- See Article 45, paragraph 6, of this law.
- See Article 54 (*caput*) and sole paragraph of this Law.

**Article 54.** The radio and television programs used for the free electoral publicity of each party or coalition can feature *participation* by any citizen who is not affiliated with another party organization or party from another coalition to support the candidates of the party or coalition; no person may participate in return for payment.

- TSE Dec. of 31.AGO.2010 in R-Rp 242460: this article refers to active participation, i.e. that in which the citizen appears spontaneously and joins the electoral publicity broadcast to support a given candidacy.
- TSE Dec. of 22.AGO.2006, in Rp. # 1,005: application of proportionality and forfeiture of inserts in national time (of the presidential election) in cases where the candidate for President invaded state-level free publicity time allotted to a candidate for Governor.
- See Article 45, paragraph 6, of this law.
- See Article 53-A and paragraphs of this law.

**Sole paragraph.** On the second round of elections, the programs mentioned in this article may not have the participation of affiliated members who have formalized their support to other candidates.

**Article 55.** The use of free electoral publicity subjects the party, coalition or candidate to the prohibitions indicated in sections I and *II of Article 45*.

- STF Dec. of 2.SEP.2010, in ADI No. 4451: countersigned injunction to suspend the standard of this subsection.

**Sole paragraph.** Failure to comply with the provisions of this Article shall subject the party or coalition to loss of time equal to twice as much the time used in the offense in its subsequent free electoral publicity time, and such loss of time shall double at every recurrence; the lost time shall be replaced with a message explaining that the non-airing of the program is the result of a breach of election law.

- See notes to Article 58 of this Law.

**Article 56.** At the request of the party, coalition or candidate, the Electoral Justice may determine the suspension for twenty-four hours of the normal programming of a station that fails to comply with the provisions of this Law on publicity.

**Paragraph 1** During the suspension period referred to in this Article, the broadcast shall display a message every fifteen minutes informing that it is off the air for disobeying election law.

**Paragraph 2** For each repetition of the wrongful conduct, the period of suspension shall be doubled.

**Article 57.** The provisions of this Law apply to television stations operating in VHF and UHF and to pay-TV channels under the responsibility of the Senate, the House of Representatives, the Legislative Assemblies, the Legislative Chamber of the Federal District and the Municipal Legislative Chambers.

**Article 57-A.** It is permitted to display electoral publicity on the Internet, under the terms of this Law, after July 5 of the election year.

- Article 57-A added by Article 4 of Law 12,034/2009.
- TSE Dec. of 10.AGO.2010 in R-Rp 132118: "The publication on a website of a story focused on the launch of candidacy for the position of President of the Republic by a given party does not constitute extemporaneous publicity."
- TSE Res. 23,086/2009: "The publicity of primaries via the Internet goes beyond the inner boundary of the party, and therefore compromises the surveillance of its reach by the Electoral Justice".

- TSE Dec. of 15.MAR.2012 in R-Rp 182524: messages broadcast in Twitter during embargoed periods that lead to general knowledge of a future

candidacy, political action or reasons that allow one to infer that its beneficiary is the fittest for the public office shall constitute extemporaneous publicity.

- TSE Dec. of 17.MAR.2011 in R-Rp 203745: the fact that it depends on the willingness of the Internet user to access the message contained in any a website does not preclude the possibility of characterizing extemporaneous publicity.

**Article 57-B.** Electoral publicity in the internet may be conducted in the following manners:

**I -** in a candidate's website, provided that its electronic address is reported to the Electoral Justice and that it is hosted, directly or indirectly, in an internet service provider established in the country;

**I -** in a party's or coalition's website, provided that its electronic address is reported to the Electoral Justice and that it is hosted, directly or indirectly, in an internet service provider established in the country;

**III -** via electronic messages sent to addresses collected without payment by the candidate, party or coalition;

**IV -** by means of *blogs*, social networks, *instant messaging websites and other similar services* whose content is generated or edited by candidates, parties or coalitions or by initiative of any natural person.

- Article 57-B and sections I to IV added by Article 4 of Law 12,034/2009.
- TSE Dec. of 29.OCT.2010, in Rp. 361895: feasibility of right of reply due to a message posted on Twitter.
- See second note to Article 57-D of this law.

- See fourth and fifth notes to Article 57-A of this law.

- TSE Dec. of 15.MAR.2012 in R-Rp 182524: “Twitter is a suitable means for extemporaneous electoral publicity.”

**Article 57-C.** Any form of paid electoral publicity on the Internet is forbidden.

**Paragraph 1** The placement of electoral publicity on the Internet is forbidden, even for free, on:

**I -** websites owned by legal entities, be they profit or nonprofit;

- TSE Dec. of 16.NOV.2010 in R-Rp 347776: inexistence of irregularity when websites, even if owned by legal persons, disclose - for informational and journalistic purposes - pieces of electoral publicity.
- TSE Dec. of 17.MAR.2011 in R-Rp 380081: "[...] freedom of expression shall prevail when the opinion is expressed by a properly identified individual."
- See Articles 5, section IV, and 220, Paragraph 1, of the 1988 Constitution.

**II -** the official websites of agencies or entities of the direct or indirect public administration of the Federal Government, the States, the Federal District or the Municipalities.

- TSE Dec. of 21.JUN.2011 in AgR-Special Res. No. 838119: *link* to the personal *website* of a candidate does not remove the illegal nature of the conduct.

**Paragraph 2** Violations of the provisions of this Article shall subject those responsible for the dissemination of the publicity and, if prior knowledge is proven, its beneficiary to a fine ranging between five thousand reais (R$ 5,000.00) to thirty thousand reais (R$ 30,000.00).

- Article 57, Paragraphs 1 and 2, added by Article 4 of Law 12,034/2009.
- TSE Dec. of 13.APR.2011 in R-Rp 320060: “For purposes of making claims of electoral publicity being made in a website of the Public Administration, the person directly responsible for publishing the story must be accurately identified.”

**Article 57 D.** Free expression of thought is granted, except under anonymity, in the World Wide Web - Internet, ensuring right of reply in accordance with subparagraphs *a*, *b* and *c* of section IV of Paragraph 3 of Article 58 and 58-A, and through other means of interpersonal communication via electronic mail.

- See note to section III of paragraph 1 of Article 58 of this Law.
- TSE Dec. of 29.JUN.2010 in AgR-AC 138443: need to extract elements that prove violation of electoral law or offend the rights of those who participate in the electoral process, thus making the claim that the material is anonymous insufficient for suspension of publicity by the Electoral Justice. If a given website features a sentence or article that constitutes irregular electoral publicity, or even more than one, all such sentences or articles

must be identified by those who wish to delete the content in the original claim petition requesting such action, even if it becomes necessary to specifically detail the entire page; the suspension determined must cover exclusively the content considered irregular, protecting, as much as possible, the free thinking expressed.

**Paragraph 1** (Vetoed.)

**Paragraph 2** Violations of the provisions of this Article shall subject those responsible for the dissemination of the publicity and (if prior knowledge is proven) its beneficiary to a fine ranging between five thousand reais (R$ 5,000.00) to thirty thousand reais (R$ 30,000.00).

- Article 57-D and Paragraphs 1 and 2 added by Article 4 of Law 12,034/2009.

**Article 57-E.** The persons listed in Article 24 may not use, donate or transfer the electronic records of their customers in favor of candidates, parties or coalitions.

**Paragraph 1** The sale of email address lists is forbidden.

**Paragraph 2** Violations of the provisions of this Article shall subject those responsible for the dissemination of the publicity and (if prior knowledge is proven) its beneficiary to a fine ranging between five thousand reais (R$ 5,000.00) to thirty thousand reais (R$ 30,000.00).

- Article 57-E and paragraphs added by Article 4 of Law 12,034/2009.

**Article 57-F.** The penalties provided for in this Law shall apply to the multimedia content and services provider which hosts the electoral publicity candidate, party or coalition if it fails to make arrangements for the removal of such material within the deadline determined by the Electoral Justice (counted as of the notification of the decision on the existence of irregular publicity).

**Sole paragraph.** The multimedia content or services provider shall be deemed liable for the dissemination of the publicity if the publication of such material is effected with proven prior knowledge.

- Article 57-F and single paragraph added by Article 4 of Law 12,034/2009.

**Article 57-G.** The electronic messages sent by a candidate, party or coalition by any means shall include a mechanism that allows recipients to unsubscribe from receiving

such messages, and in case of activation of such mechanism the sender is required to effect the change within forty-eight hours.

**Sole paragraph.** Messages sent after the deadline in the *main section* of this Article shall subject those responsible to pay a fine in the amount of one hundred reais (R$ 100.00) per message sent.

- Article 57-G and single paragraph added by Article 4 of Law 12,034/2009.

**Article 57-H.** Without prejudice to other legal penalties applicable, anyone who conducts electoral publicity on the Internet while incorrectly attributing its authorship to a third party, including a candidate, party or coalition, shall be punished with fine ranging between five thousand reais (R$ 5,000.00) and thirty thousand reais (R$ 30,000.00).

- Article 57-H added by Article 4 of Law 12,034/2009.

**Article 57-I.** At the request of a candidate, party or coalition and in observance of the procedures established in Article 96, the Electoral Justice may determine the suspension, for twenty four hours, of access to all informational content of websites that fail to comply with the provisions of this Law.

**Paragraph 1** Each repetition of conduct shall double the suspension period.

**Paragraph 2** During the suspension period referred to in this Article, the company shall inform all users who try to access their services that it is temporarily down due to breach of Electoral Law.

- Article 57-I Paragraphs 1 and 2 added by Article 4 of Law 12,034/2009.

**RIGHT TO REPLY**

**Article 58.** As of their choice of candidates in the Convention, candidates, parties or coalitions shall be assured right of reply whenever affected, even if indirectly, by libelous, defamatory, slanderous or knowingly untrue concepts, imagery or statements broadcast by *any social communication vehicle*.

- TSE Dec. of 29.OCT.2010, in Rp. 361895: feasibility of right of reply due to a message posted on *Twitter*.
- STF Dec. of 30.APR.2009, in ADPF 130: declaration of non-adoption of Law 5,250/1967 (Media Law) by the Federal Constitution of 1988.

- TSE Dec. of 29.SEP.2010 in R-Rp 287840: statements made during free electoral publicity periods, even if with greater emphasis on comparisons between governments, that assign responsibility for electricity rates adjustment to a candidate and are embodied in mere political criticism do not fall under the hypotheses established in this Article.
- TSE Dec. of 8.SEP.2010 in Rp 274413: denies concomitant application of this Article, to ensure the right of reply, and of Article 55, sole paragraph, of this Law, to decree loss of publicity time due to display of publicity considered irregular.
- TSE Dec. of 1.SEP.2010 in Rp. # 254151: non-applicability of this Article if the publicity is focused on a journalistic piece and simply reports a known episode.
- TSE Res. 20,675/2000: it is incumbent on Electoral Justice to examine only claims for right of reply made by third parties in relation to offenses made during free electoral publicity time, in observance of Article 58 of Law 9,504/1997.
- V. FC/65, Article 243, Paragraph 3 and its third note.
- TSE Dec. of 19.SEP.2006, in Rp. # 1,080: no right of reply if the fact mentioned is true even if presumption of innocence prevails.
- TSE Dec. of 2.OCT.2006, in Rp. # 1,201: newspapers have no passive legitimacy in claims for the right of reply, which must involve only agents of the electoral context, namely candidates, political parties and coalitions.
- TSE Dec. of 17.MAI.2011 in R*HC* 761681: the granting of right of reply and interruption of broadcast of the offense does not preclude liability for crimes of defamation and dissemination of untrue facts during electoral publicity.

**Paragraph 1** The offended party or its legal representative may request exercise of right of reply to the Electoral Justice under the following deadlines, counted as of the broadcast of the offense:

**I -** twenty four hours in the case of free electoral publicity;

- TSE Dec. of 29.SEP.2010 in R-Rp 297892: the deadline for representation to request right of reply during free electoral publicity is counted in hours, beginning at the end of the broadcast of the program one wishes to challenge, and is not to be confused with the end of the transmission range one which inserts may be placed, which is treated by Article 51 of this Law.

- TSE Dec. of 2.SEP.2010 in R-Rp 259602: impossibility of amendment to the initial petition in claims with request for right of reply in electoral publicity after the deadline for filing of the demand expires.

**II -** forty eight hours for publicity aired on the regular schedule of radio and television stations;

**III -** seventy two hours for print media.

- TSE Dec. of 2.AGO.2010 in R-Rp 187987: possibility that the person concerned claim right of reply while the material seen as offensive is still published on the Internet (absence of legal provision of decay for this hypothesis); upon spontaneous withdrawal of the offense, right of reply (by analogy to this subsection) shall be required within three (3) days; the coalition has the right to request right of reply when one of the parties that compose it has been offended and, as part of a coalition, is unable to seek reparation from Electoral Justice in isolation; the right of reply to be made in the Internet must be published for a period not less than twice than that to publish the offense.

**Paragraph 2** Having a the request been received, the Electoral Justice shall immediately notify the offender to present defense in twenty-four hours, and the decision shall be handed down within seventy-two hours from the date of the request.

- TCE Dec. 385/2002: a judge or rapporteur may choose to hear from the Electoral Attorney General's Office when reviewing the claims referred to in this Article, provided that such judge or rapporteur does not exceed the maximum deadline for issuance of his/her decision.
- TCE Dec. 195/2002: possibility of reducing the deadline for defense to 12 hours on requests for right of reply for print media made on the eve of the election.

**Paragraph 3** The following rules shall also be observed in right of reply claims presented upon the broadcasting of an offense:

**I -** in print media:

a) The request shall be accompanied with a copy of the publication and the text of the reply;

- TSE Dec. 1,395/2004 and 24,387/2004: the text of the reply must address the allegedly offending facts.

b) upon granting of the request, the reply shall be published be in the same vehicle and with the same area, location, page, size, font and other elements of enhancement used in the offending piece within forty-eight hours after the decision or the next time it circulates (in the case of vehicles published at intervals greater than forty-eight hours);

c) at the request of the offended party, the reply shall be published on the same day of the week in which the original offense was published, even if such day occurs after the deadline of forty-eight hours;

d) If the offense occurs at a day and time that render unfeasible its reparation within the deadlines established in the previous paragraphs, the Electoral Justice shall determine the immediate publication of the reply;

e) the offender must prove fulfilment of the decision on the case records by providing data on the regular distribution of printed copies, number of copies printed and coverage radius of distribution;

**II -** in the regular schedule of radio and television stations:

a) the Electoral Justice, in view of a request for right of reply, shall promptly notify the broadcaster responsible for conducting the offending program to deliver, within twenty-four hours (under the penalties of Article 347 of Law No. 4,737 of July 15, 1965 - Electoral Code), a copy of the tape of the broadcast, which shall be returned after issuance of the decision;

b) the person responsible for the broadcaster shall preserve the recording until a final decision is made on the case upon notification to do so by the Electoral Justice or upon being informed so by the complainant or his/her representative through a registered copy of the request for right of reply;

c) upon granting of the request, the reply shall be played within forty eight hours after the decision for time equal to that of the offense (but never for less than one minute);

**III -** during free electoral publicity time:

a) the offended party shall use time equal to that of the offense for its reply (but never less than one minute);

b) the reply shall be played on the time allotted for the party or coalition responsible for the offense, and must necessarily address the facts therein conveyed;

c) if the free publicity time allotted for the party or coalition responsible for the offense is of less than one minute, than the reply shall be aired as many times as necessary to constitute one minute;

d) upon granting of the request for right of reply, the generating broadcaster and the offended party or coalition shall be promptly notified of the decision, which shall indicate which time slots are to be used for the placement of the response (both on the afternoon and evening broadcasts); such time slots shall take place at the beginning of the program of the offending party or coalition;

e) the magnetic medium containing the reply shall be delivered to the generating broadcaster up to thirty-six hours after being notified of the decision, after which it shall be aired in the subsequent program of the party or coalition in whose time the offense took place;

- TCE Dec. 461/2002: the deadline referred to in this provision is counted as of the expiration of deadline for interlocutory appeal of the decision, if none is submitted; if an interlocutory appeal is presented, it shall be counted as of being notified of the decision of the Court, which can be made in the Plenary.

f) if the offended party is a candidate, party or coalition who has used the time granted without responding to the facts conveyed on the offense, it shall have identical time subtracted from its respective electoral program; if the offended party is a third-party, it shall be subject to suspension of equal time in its next requests of right of reply and to fine of two thousand to five thousand *UFIR*s.

- See note to Article 105, paragraph 2, of this law.

**IV -** in electoral publicity made on the Internet:

- See second note to Article 57-D of this law.

b) upon granting of the request, the reply shall be published on the same vehicle and electronic page and with the same area, location, time, size, font and other

elements of enhancement used in the offending piece within forty-eight hours after delivery of the physical media with the reply of the offended party;

b) the reply shall be made available for access by users of the internet service for a time not less than twice as that during which the message considered offensive has been accessible;

c) the costs of publishing the reply shall be borne by those responsible for the original offending publicity.

- Section IV and subsections *a* to *c* added by Article 3 of Law 12,034/2009.

**Paragraph 4** If the offense occurs in day and time that render it unfeasible its repair within the deadlines established in the previous paragraphs, the reply shall be published on the times determined by Electoral Justice, even if during the forty-eight hours prior to the election and in previously approved terms and manner so as not give rise to new requests of right of reply.

**Paragraph 5** The decision issued on the right of reply may be appealed to higher instances within twenty-four hours of the date of its publication in the notary office or in session, being the appellee entitled to offer counter-arguments within the same deadline after notification.

- TSE Dec. of 6.MAR.2007 in Special Res. 27,839: incidence of the 24-hour deadline to appeal against the decision of a Deputy Judge, special appeal or motion for clarification against decisions of a Regional Electoral Court in claims for right of reply in free electoral publicity, with non-applicability of Article 258 of the Electoral Code.

**Paragraph 6** The Electoral Justice shall render its decision within twenty-four hours, in observance of the provisions of subsections *d* and *e* of section III of Paragraph 3 for restitutions of time in case of appeals.

**Paragraph 7** Failure to observe the deadline provided for in the preceding paragraph shall subject the judicial authority to the penalties provided for in Article 345 of Law 4,737 of July 15, 1965 - Electoral Code.

**Paragraph 8** Failure to comply, in whole or in part, with the decision that grants the reply shall subject the offending party to pay a fine of five thousand to fifteen

thousand *UFIR*, which shall double in case of repetition of conduct, without prejudice to Article 347 of Law 4,737 of July 15, 1965 - Electoral Code.

- See note to Article 105, paragraph 2, of this law.

**Article 58-A.** The requests for right of reply and the claims for irregular electoral publicity in the radio, television and internet shall preferably proceed in connection with other ongoing proceedings in the Electoral Justice.

- Article 58-A added by Article 4 of Law 12,034/2009.

**ELECTRONIC VOTING SYSTEM AND VOTE COUNTING**

**Article 59.** The voting and the counting of votes shall be made through an electronic system, and the Superior Electoral Court may authorize, in exceptional cases, the application of the rules established in Articles 83 to 89.

- Decree 5,296/2004, Article 21, sole paragraph: "Regarding the exercise of the right to vote, the ballot boxes of the polling stations shall be suitable for autonomous use for persons with disabilities or reduced mobility, and be installed in polling places fully accessible with close parking".

**Paragraph 1** Electronic voting shall be made through the number of the candidate or party, with the name and photo of the candidate and the name or acronym of the party appearing on the panel of the voting machine; the noun designating the position the candidate is running for shall be expressed in the appropriate gender (male of female) according to the case.

- TSE Dec. of 19.OCT.2010 in PA 348383: impossibility of replacing candidate data between the 1st and 2nd rounds of the election.

**Paragraph 2** In the voting for proportional elections, those votes for which it is not possible to identify the candidate, provided that the number of the party identifier is entered correctly, shall be counted towards the party.

**Paragraph 3** The electronic ballot shall display the screens for proportional elections first and then those for majority elections.

**Paragraph 4** The electronic ballot box shall have features that allow the digital registration of each vote and the identification of the ballot box that received the

vote through a digital signature mechanism, yet maintaining the anonymity of the voter.

**Paragraph 5** It shall be incumbent upon the Electoral Justice to define the security key and the identification of the electronic ballot box mentioned in Paragraph 4 .

**Paragraph 6** At the end of the election, the electronic ballot box shall digitally sign the voting file generated with the use of timestamps and a ballot box bulletin file so as to prevent the substitution of votes and the changing of voting records regarding start and end times of the voting process.

**Paragraph 7** The Superior Electoral Court shall make electronic ballot boxes available to voters for training purposes.

- Paragraphs 4 to 7 with wording given by Article 1 of Law 10,740/2003.

**Paragraph 8** (Suppressed by Law 10,740/2003.)

**Article 60.** The electronic voting system shall consider it a party vote if the voter inserts only the party number when voting for a given position, and only for that party shall that vote be assigned.

**Article 61.** The electronic ballot box shall record each vote, assuring it secrecy and inviolability, and political parties, coalitions and candidates are hereby granted the right for broad oversight of the process.

- TSE Dec. of 2.SEP.2010 in PA 108906: calculation of a single vote in an electronic ballot box, even if it means, in theory, the removal of secrecy for that vote.

**Article 61-A.** (Repealed by Article 2 of Law 10,740/2003.)

**Article 62.** Only those voters whose names are on the voting sheets for that station may vote in Polling Stations where the electronic ballot box is adopted. The exception referred to in Article 148, Paragraph 1 of Law No. 4,737, 15 July 1965 (Electoral Code) does not apply.

**Sole paragraph.** The Superior Electoral Court shall regulate the possibility of failure in electronic ballot boxes that may impair the regular voting process.

- TSE Res. 23,090/2009: conduction of public security testing in the electronic ballot boxes, with visits to the 2010 elections, to assess the vulnerability of the computer systems that integrate them.

**POLLING STATION RECEPTION DESKS**

**Article 63.** Any party can make claims to an Electoral Judge within five days of the appointment of the Reception Desk, and the decision on such complaint shall be issued within 48 hours.

**Paragraph 1** The Judge's decision may be appealed to the Electoral Regional Court within three days of its issuance, and the appeal shall be resolved within the same period.

**Paragraph 2** Persons under eighteen years of age cannot be appointed Chairman or Assistant to Reception Desks.

**Article 64.** No relatives of any level nor civil servants of the same government body nor workers of the same company may be members of the same Reception Desk, "Turma Eleitoral" (Election Oversight Subcommission) or "Junta Eleitoral" (Election Oversight Commission)

**OVERSIGHT OF THE ELECTIONS**

**Article 65.** The persons chosen to act as Election Inspector and Delegate ("Fiscal Eleitoral" and "Delegado Eleitoral") by the parties or coalitions cannot be persons who are under eighteen or who, by appointment of the Election Judge, are already part of a Reception Desk.

**Paragraph 1** The Inspector may be appointed to oversee more than one Polling Station ("Seção Eleitoral") in the same polling place.

**Paragraph 2** The Election Inspector and Delegate credentials shall be issued exclusively by the parties or coalitions.

**Paragraph 3** For the purposes of the preceding paragraph, the President of the party or coalition or his/her representative shall register in the Electoral Justice the names of the persons authorized to issue the Inspector and Delegate credentials.

**Article 66.** Parties and coalitions may oversee all stages of the voting process, as well as the electronic processing of the aggregation of results.

- *Caput* as amended by Article 3 of Law 10,408/2002.

**Paragraph 1** All computer programs owned by the Superior Electoral Court (either developed by it or by its order) utilized by the electronic ballot boxes for the voting, counting and aggregation processes may have their specification and development stages accompanied by experts nominated by the political parties, the Brazilian Bar Association and the Attorney General's Office until six months before the elections.

**Paragraph 2** Once the programs referred to in Paragraph 1 are completed, they shall be presented for analysis by accredited representatives of political parties and coalitions within twenty days before the elections on the premises of the Superior Electoral Court; such programs shall be presented in the form of source code and executable applications, including application and security systems and special libraries, with any electronic keys and passwords remaining confidential under guard of the Electoral Justice. After presentation and verification of the devices, the copies of the compiled programs and program source codes shall be sealed.

**Paragraph 3** Political parties and coalition may present their grounded objections to the Electoral Justice within five days from the date of the presentation referred to in Paragraph 2.

**Paragraph 4** If it becomes necessary to make any changes in the programs after the presentation mentioned in Paragraph 3, the representatives of political parties and coalitions shall be notified of the fact so that they can be once again analyzed and sealed.

- Paragraphs 1 to 4 with wording given by Article 1 of Law 10,740/2003.

**Paragraph 5** The loading or preparation of the electronic ballot boxes shall be made in a public session with prior notice to parties and coalitions to assist and oversee the acts, including to check whether the programs loaded on the ballot are identical to those sealed in the presentation referred to in Paragraph 2 of this Article, after which the ballot boxes will be sealed.

**Paragraph 6** On Election Day the electronic ballot boxes will be inspected through sampling audits, conducted with parallel voting, in the presence of party and coalitions inspectors and under the terms established by resolution of the Supreme Electoral Court.

**Paragraph 7** The contesting parties may constitute their own system for inspection, assessment and aggregation of the results, including by hiring systems audit companies; such companies, accredited by the Electoral Justice, shall receive in advance the computer programs and the same data fed to the official calculation and aggregation system.

- Paragraphs 5 to 7 with wording given by Article 3 of Law 10,408/2002.

**Article 67.** The bodies in charge of the electronic data processing are required to provide copies of the data from the partial processing of each day, in magnetic media, to the parties or coalitions.

**Article 68.** The ballot box bulletin (a second file format approved by the Superior Electoral Court) shall contain the names and numbers of the candidates which received votes in that ballot box.

**Paragraph 1** The Chairman of the Reception Desk is required to submit a copy of the ballot box bulletin to the parties and coalitions whose representatives request it no later than one hour after the issuance of the same.

**Paragraph 2** Failure to comply with the provisions of the paragraph above is a crime, punishable by imprisonment of one to three months or community service for the same period, as well as a fine of one thousand to five thousand *UFIR*.

- See note to Article 105, paragraph 2, of this law.

**Article 69.** Challenges not received by the Election Oversight Commission may be submitted directly to the Regional Electoral Court within forty-eight hours of the fact, accompanied by statements by two witnesses.

**Sole paragraph.** The Court shall decide on granting or not the claim within forty-eight hours, publish the judgment in the judgment session itself and immediately inform the Commission of the entire content of the decision and appeal by telex, fax or other electronic means.

**Article 70.** A Chairman of an Electoral Oversight Commission who fails to receive or mention in the Minutes any challenges received or prevents the exercise of oversight by parties or coalitions shall be immediately removed and held liable for the crimes provided for in Law 4,737, 15 July 1965 - Electoral Code.

**Article 71.** It is an attribution of parties and coalitions (through their duly accredited Inspectors and Delegates) and of the candidates themselves to file appeals against the votes verified in the ballot box, annexing a copy of the ballot box bulleting of the allegedly offending ballot box to their claim.

**Sole paragraph.** In the event obstacles arise to securing the bulletin, the appellant shall request, through indication of the necessary data, that the Electoral Justice body to which the appeal is filed obtain the same and annex the respective ballot box bulletin to the claim.

**Article 72.** The following acts constitute crimes punishable by imprisonment of five to ten years:

- Law 6,996/1982, Article 15: "Shall incur in the penalties established by Article 315 of the Electoral Code those who, in the electronic processing of the ballots, alter their results, whatever the method used".

**I -** gain access to the automatic data processing service used by the electoral service in order to alter the calculation or counting of votes;

**II -** develop or introduce a computer command, instruction, or program capable to destroy, delete, remove, modify, record, or transmit data, instructions or programs or cause it to generate any result other than that expected after processing by the automatic data processing service used by the electoral service;

**III -** purposefully cause physical damage to the equipment used for voting or for the aggregation of votes or parts of votes.

**CONDUCTS FORBIDDEN TO PUBLIC AGENTS IN ELECTION CAMPAIGNS**

**Article 73.** Public agents, be they civil servants or not, are forbidden from engaging the following conducts that tend to affect the assurance of equal opportunities for candidates in elections:

- TSE Dec. of 21.OCT.2010, in Rp. # 295986: need for examination of the conducts prohibited under this Article in two moments - first, upon verification that the fact fit the assumptions established (when inquiring about the potentiality of the facts is not feasible), and second, if so, when determining the penalty to be applied in accordance with the principles of reasonableness and proportionality.

- TSE Dec. of 6.MAR.2007 in Special Res. 25,770: The reimbursement of expenses does not void occurrence of the conducts prohibited by Article 73 of Law 9,504/1997. See, also, Article 76 of this Law.

- TSE Dec. of 29.NOV.2011 in RO 169677: the public agent responsible for the prohibited conduct has passive and indelible joint liability in claims proposed against potential beneficiaries, and must be cited until the date of commencement of the elected official, under penalty of dismissal of the claim.

**I -** transfer or use, for the benefit of a candidate, political party or coalition, movable or immovable property belonging to the direct or indirect administration at the Federal, State, Federal District, Territory or Municipality government levels, except for holding party Conventions;

- TSE Dec. of 1.SEP.2011 in Rp. # 481883: possibility of the use of information from databases whose access is restricted to public administration constituting, in theory, the conduct prohibited by this subsection.
- TSE Decs. 24,865/2004, 4,246/2005 and TSE Dec. of 1.AGO.2006 in Special Res. 25,377: the prohibition does not cover public goods of common use.

- TSE Dec. of 4.AGO.2011 in AgR Special Res. 401727: discourse by a public official that expresses preference for a certain candidacy during the inauguration of a public building/facility does not characterize the use or disposal of public property for the benefit of the candidate.

- TSE Dec. of 25.AGO.2011 in Special Res. 93887: incidence of this section is independent of the conduct having occurred in the three months preceding the election or not.

**II -** use materials or services paid for by Governments or Legislative Houses that exceed the prerogatives enshrined in the regulations and standards of the bodies that compose them;

- TSE Dec. of 6.SEP.2011 in AgR Special Res. 35546: incidence of this section, as well as section III, is independent of the conduct having occurred in the three months preceding the election or not.

**III -** allocate public servants or employees of the direct or indirect administration of the Executive Branch at the federal, state or municipal levels, (or use such civil

servant or employee's services) to work for electoral campaign committees of a candidate, political party or coalition during normal business hours, *except whether the civil servant or employee is on leave from his/her position;*

- TCE Dec. 25,220/2005: "To characterize the conduct prohibited under clause III of Article 73 of Election Law, one cannot presume responsibility by the public agent".
- TSE Res. 21,854/2004: caveat extended to public servants on paid vacation.

- See note to section II of this Article.

**IV -** make or allow promotional use of the free distribution of goods and services of social nature paid or subsidized by the Government in favor of a candidate, political party or coalition;

- See Article 73, paragraphs 10 and 11, of this Law.
- TCE Dec. 5,283/2004: "Electoral Law does not prohibit the provision of social services paid or subsidized by the government in the three months preceding the election, but rather its use to promote a candidate, party or coalition".
- TCE Dec. 24,795/2004: goods of cultural nature, made available to the entire community, do not fit the provisions of this item.

**V -** appoint, hire or otherwise admit, dismiss without cause, remove or retroactively alter advantages or otherwise hinder or prevent functional exercise, and also, *ex officio*, remove, transfer or dismiss a public servant in the election district during the three months that precede the inauguration of those elected and until such inauguration, under penalty of nullity of the right to take office, except for:

- TSE Res. 21,806/2004: does not prohibit the holding of a civil service test.
- TSE Dec. of 25.NOV.2010 in AgR-AI 31488: examination of the condition of potentiality only when cancellation of registration or diploma is being considered.
- TCE Dec. 405/2002: redistribution is not prohibited by this device. See, to the contrary, Superior Court of Justice Dec. of 27.OCT.2004, in MS 8930.

a) the appointment or dismissal of commissioned positions and appointment or dismissal from positions of trust;

- Law 6,091/1974, Article 13 *main section*: staff changes prohibited in the period between the ninety days prior to the parliamentary elections and, respectively, of the mandate of the state governor.

b) appointment to positions in the Judiciary, the Attorney General's Office, the Courts or Councils of Audit and agencies of the Presidency;

- TSE Dec. of 20.MAI.2010 in CTA No. 69851: The Public Defender's Office is not comprised under this legal caveat.

c) the appointment of citizens approved in civil service tests certified by the beginning of that period;

d) the appointment or hiring of personnel required for the deployment or urgent operation of public services, with prior and written approval by the Head of the Executive Branch;

- TSE Dec. of 12.DEC.2006 in Special Res. 27,563: "The caveat in subsection *d* , section V of Article 73 of Law No. 9,504/1997 can only be coherently understood from a strict point of view of the essentiality of public services. Otherwise, Electoral Law would be innocuous in prohibiting certain conducts to public servants which tend to affect equality of competition in the elections. Consequently, education is not here seen as an essential public service. Its eventual discontinuity at some point, albeit bringing obvious detriment to society, is due to be recomposed. That is due to lack of irreparable harm to the 'survival, health or safety of the population'". For the purpose of this device, essential public services are understood as those linked to the "survival, health or safety of the population".

e) the *ex officio* transfer or removal of military, civilian police and correctional officers;

**VI -** in the three months preceding the election:

a) conduct voluntary transfers of federal funds to states and municipalities, and from states to municipalities, under penalty of nullity under the law, except for the resources earmarked to meet preexisting formal obligation to perform *ongoing works or services* with prefixed schedules, as well as those intended to meet public emergency and calamity situations;

- TSE Res. 21,878/2004 and TSE Dec. 25,324/2006: work or services that have already been physically initiated.
- TSE Dec. 16,040/1999 and 266/2004: non-applicability of extensive interpretations of this provision and non-applicability to the transfer of funds to private law associations.
- Supplementary Law 101/2000 (Fiscal Responsibility Law), Article 25 *caput*: "For purposes of this Supplementary Law, voluntary transfer is understood as the delivery of current or capital funds to another member of the Federation for financial cooperation, assistance or aid that is not due to constitutional or statutory provision or that are destined to the Unified Healthcare System".
- TSE Res. 22,931/2008: "The Electoral Court is not competent, based on Article 73, VI, *a* of Law 9,504/1997 [...] to authorize the execution of credit transaction for purposes of financing the acquisition of vehicles for school transport, in view of the absence of allocation of such jurisdiction in legal rulings".

b) with the exception of advertising of products and services that have market competition, *authorize* institutional advertising of acts, programs, public works, services and campaigns by federal, state or municipal public agencies or by indirect administration entities, except in cases of serious and urgent public need thus recognized by the Electoral Justice;

- TSE Dec. of 15.SEP.2009 in Special Res. 35240; TSE Dec. of 25.AGO.2009 in Special Res. 35445; TSE Resolutions 25096/2005, 5304/2004, 21106/2003 and 4365/2003: prohibition from broadcasting, regardless of the date of authorization.
- See fourth note to Article 1, I, *h*, of Supplementary Law 64/1990.
- TSE Dec. of 31.MAR.2011 in AgR Special Res. 999897881: disclosing the name and image of the beneficiary in institutional advertising is not required in order to constitute the prohibited conduct.
- TSE Dec. of 7.OCT.2010, in Rp. 234314: interviews made within the limits of journalistic information do not constitute irregular institutional advertising.
- TSE Dec. of 14.APR.2009 in Special Res. 26,448; TSE Resolutions 24,722/2004, 19,323/2001, 19,326/2001 and 57/1998: the permanence of signs in public works is allowed as long as they do not contain expressions that can identify

the authorities, civil servants or administrations whose leaders are undergoing an election campaign.

- TSE Dec. of 7.NOV.2006 in Special Res. 25,748: "The publication of official acts, such as laws and decrees, does not characterize institutional advertising".
- TSE Dec. of 7.DEC.2011, in Special Res-AgR 149260 and TSE Dec. of 16.NOV.2006 in Special Resolutions 26,875 and 26,905: publication of deeds by state representatives in the website of a House of Legislature does not characterize the conduct prohibited by this section.
- TSE Dec. of 1.AGO.2006 in Special Res. 25,786: constitutionality of this device.
- TSE Dec. of 1.DEC.2011 in AgR-AC 12046: institutional advertising broadcast within the three months preceding the election constitutes non-compliance with this subsection.

c) make pronouncements on radio and television stations outside of free electoral publicity time, except when considered, at the discretion of the Electoral Court, an urgent, relevant and characteristic matter of government functions;

**VII -** realize *expenses* with advertising for federal, state or municipal agencies or their indirect administration entities during the term fixed in the previous section which exceed the average spending in the three years preceding the election or the last year before the election.

- TSE Dec. of 26.MAI.2011 in AgR Special Res. 176114: inability to use this expression in the sense given by financial law.
- Dec. (no number) of 29.JUN.2006, in Pet. 1,880: information on institutional advertising expenditures of the Federal Government: competence of the Electoral Justice to request such expenses, legitimacy of political parties to request it and responsibility of the president of the Republic to provide it.

**VIII -** to conduct a general review, within the jurisdiction of the election, of the remuneration earned by civil servants which exceeds the recovery of losses made throughout the election year, beginning on the *deadline established in Article 7 of this Law* and until inauguration of those elected.

- TSE Res. 22,252/2006: the initial deadline is the one given by Article 7, Paragraph 1 of this law, i.e. 180 days before the election; the final deadline is the inauguration of those elected.
- TSE Dec. of 8.AGO.2006 in Special Res. 26,054: the granting of benefits to state-level public servants working in the vicinity of municipal elections can characterize abuse of political power, as long as the possibility of such act having repercussions within the jurisdiction of municipal elections is demonstrated (given the coincidence of voters).

**Paragraph 1** A public servant is hereby understood, for the purposes of this Article, one who exercises, by election, even if temporarily or unpaid, an appointment, assignment, hiring or any other form of endowment or bond, office, position, employment or role in agencies or entities of the Direct, Indirect or Foundational Public Administration.

**Paragraph 2** The prohibition in section I of the *main section* does not apply to the use of official transportation by the President of the Republic, pursuant to the provisions of Article 76, nor to the use by candidates for reelection for President and Vice-President, State Governor and Deputy Governor, Governor and Deputy Governor of the Federal District and Mayor and Deputy Mayor of their official residences during the campaign to conduct contacts and meetings relevant to the campaign itself, as long as those do not have the nature of public acts.

- TSE Dec. of 27.SEP.2007, in Rp. # 1,252: "An audience granted by a holder of office that is running for reelection at his/her official residence does not constitute a public act for the purposes of Article 73 of Law 9,504/1997, notwithstanding it being widely reported, which happens because of the very nature of the position he/she exercises".

**Paragraph 3** The prohibitions in section VI of the *main section*, subsections *b* and *c*, apply only to public agents of the administrative spheres whose offices are being disputed in the election.

**Paragraph 4** Failure to comply with the provisions of this Article shall result in immediate suspension of the prohibited conduct, if applicable, and subject those responsible to fine between five thousand and a hundred thousand *UFIR*.

- TSE Res. No. 21,975/2004, Article 2, *main section*: deadline for the court or Electoral Court to notify the Secretariat of Administration of the TSE of the

amount and date of the fine collected and the name of the party benefited by the prohibited conduct.

- See note to Article 105, paragraph 2, of this law.
- TSE Dec. of 31.MAR.2011 in AgR Special Res. 36,026: non-necessity to demonstrate electioneering or personal promotion by the public agent, with the existence of illicit conduct being sufficient to constitute the offense.
- TSE Dec. of 21.OCT.2010, in Rp. # 295986: gradation of the fine in accordance with the economic capacity of the offender, severity of the conduct and the impact the fact has caused.
- TSE Dec. of 26.AGO.2010 in Special Res. 35,739: minimal harmfulness does not affect equal opportunities for competitors; the fine is sufficient to suppress the prohibited conduct and cancellation of registration or diploma is a disproportionate measure.
- TSE Dec. of 6.JUN.2006 in Special Res. 25,358: "Article. 73 refers to behavior intended to affect equality of opportunity among candidates, which is why it submits to the principle of proportionality". TSE Decisions of 16.NOV.2006 in Special Res. 26,905; of 14.AGO.2007 in Special Res. 25,994, and of 11.DEC.2007 in Special Res. 26,060, among others: the practice of conduct prohibited in Article 73 does not necessarily implicate in cancellation of registration or diploma; the penalty must be proportionate to the severity of the electoral offense.

**Paragraph 5** In cases of non-compliance with the provisions of the *main section* sections and of Paragraph 10, without prejudice to the provisions of Paragraph 4, the benefited candidate, public official or not, shall be subject to *cancellation of registration or diploma*.

- Paragraph 5 as amended by Article 3 of Law 12,034/2009.
- See third note to the preceding paragraph.

- TSE Dec. of 26.AGO.2010 in Special Res. 35,739: need for individual analysis before cancellation of registration in accordance with the legal relevancy of the conduct.

- TSE Decs. 24,739/2004, 25,117/2005 and TSE Dec. of 31.MAI.2007 in Special Res. 25,745: constitutionality of this device due to it not implicating ineligibility under the previous wording.

- TSE Dec. of 24.MAR.2011 in AgR-AI 11359: possibility of applying penalty of cancellation of the diploma throughout the course of the mandate.

**Paragraph 6** The fines referred to in this Article shall be doubled at each recurrence.

**Paragraph 7** The conducts listed in the *main section* also characterize acts of administrative misconduct as referred to in Article 11, item I of Law 8429 of June 2, 1992, and are subject to the provisions of that statute, especially the impositions of Article 12, section III.

**Paragraph 8** The sanctions of Paragraph 4 apply to the public officials responsible for the prohibited conduct and to the parties, coalitions and candidates that benefit from them.

**Paragraph 9** The distribution of resources from the Party Fund (Law 9,096 of September 19, 1995) arising from the application of the provisions of Paragraph 4 shall exclude parties benefited by acts that gave rise to fines.

- TSE Res. 21,975/2004, Article 2, sole paragraph: deadline for compliance with the provisions of this paragraph by the Secretariat of Administration of the TSE. TSE Ordinance288/2005, Article 10, Paragraph 2, II.
- TSE Res. 22,090/2005: the amounts shall be cut from the national directory and successively through the lower bodies so as to effectively reach the partisan body responsible.

**Paragraph 10.** In the year in which the election takes place, the government is prohibited from conducting *free distribution of goods, values or benefits* , except in cases of public calamity, state of emergency or for social programs authorized by law and already budgeted for in the previous year, in which cases the Attorney General's Office may monitor the financial and administrative execution of the process.

- Paragraph 10 added by Article 1 of Law 11,300/2006.
- TSE Dec. of 1.JUL.2010 in Pet. 100080: prohibition to donate perishable seized goods.
- TSE Dec. of 20.SEP.2011 in CTA No. 153169: prohibition to implement tax benefits related to the outstanding public debt of a municipality, as well as of submitting bills to the City Council aimed at establishing rules that can favor delinquents.

- TSE Dec. of 24.APR.2012 in RO 1717231: the signing of agreements and the transfer of funds to private entities to carry out projects in the fields of culture, sport and tourism do not fit the concept of free distribution.
- TSE Dec. of 13.DEC.2011 in RO 149655: animal loan programs for use and reproduction in an election year fit the conduct prohibited by this paragraph.
- TSE Dec. of 30.JUN.2011 in AgR-AI 116967: social programs not authorized by law, even if provided for in budget, do not meet the qualifications of this paragraph.

**Paragraph 11.** In election years, the social programs mentioned in Paragraph 10 cannot be executed by an entity nominally bound to a candidate or maintained by a candidate.

- Paragraph 11 added by Article 3 of Law 12,034/2009.

**Paragraph 12.** Claims of non-compliance with the provisions of this Article shall observe the rite established by Article 22 of Supplementary Law 64, 18, May 1990, and may be filed until the date of commencement.

- Paragraph 12 added by Article 3 of Law 12,034/2009.

**Paragraph 13.** The deadline for appeals against decisions taken under this Article shall be of three (3) days from the date of publication of the judgment in the *Official Gazette*.

- Paragraph 13 added by Article 3 of Law 12,034/2009.

**Article Paragraph 74.** Non-compliance with the provisions of Paragraph 1 or Article 37 of the Federal Constitution constitutes abuse of authority for the purposes of Article 22 of Supplementary Law 64, 18 May 1990, and the offending party, if a candidate, shall be subject to the cancellation of his/her registration or diploma.

- Article 74, as amended by Article 3 of Law 12,034/2009.
- TSE Dec. of 10.AGO.2006, in Rp. 752: TSE has jurisdiction over matters relating to offenses to Article 37, Paragraph 1 of the Constitution outside election period.

**Article 75.** In the three months that precede the elections, carrying out inaugurations with *concerts* with artists paid with public funds is prohibited.

**Sole paragraph.** In cases of non-compliance with the provisions of this Article and without prejudice to the immediate suspension of the conduct, the benefited candidate, public official or not, shall be subject to cancellation of his/her registration or diploma.

- Sole Paragraph added by Article 3 of Law 12,034/2009.

**Article 76.** The reimbursement of expenses with the use of official transport by the President of the Republic and his/her team while campaigning shall be the responsibility of the political party or coalition to which he/she belongs.

**Paragraph 1** The reimbursement referred to in this Article shall be based on the type of transport used and the respective market tariff charged for the corresponding trip, except for the use of the presidential plane, whose compensation shall correspond to the cost of renting a jet propulsion aircraft of the air taxi type.

**Paragraph 2** Within ten days of the completion of the first or second round of elections (if the latter occurs), the competent internal control body shall proceed to the *ex officio* recovery of the amounts due under the preceding paragraphs.

**Paragraph 3** Failure to provide reimbursement within the stipulated deadline shall implicate communication of the fact to the Electoral Attorney General's Office by the internal comptroller body.

**Paragraph 4** Once the complaint is received by Attorney General's Office, the Electoral Justice shall consider the fact within thirty days and apply to the offenders a fine equivalent to twice the costs reimbursable, doubled at every reiteration of conduct.

**Article 77.** It is forbidden for any candidate to attend the inauguration of public works during the three (3) months preceding the election.

- *Caput* as amended by Article 3 of Law 12,034/2009.
- STF Dec. of 13.SEP.2006 in ADI No. 3305: dismisses direct unconstitutionality claim filed against this article and its sole paragraph in its previous writing; besides these, TSE Dec. 23,549/2004 and 5,766/2005: constitutionality of the device due to its not implying ineligibility.

**Sole paragraph.** Failure to comply with this Article may subject the offender to cancellation of registration or diploma.

- Sole Paragraph as amended by Article 3 of Law 12,034/2009.
- TSE Dec. 22,059/2004 and 5,134/2004: non-incidence of this provision if a request for registration of candidacy had not yet been filed when the future candidate attended the inauguration of the public work.
- See second note in the *caput* of this Article.

**Article 78.** The application of the sanctions established in Article 73, Paragraphs 4 and 5, shall occur without prejudice to any other sections of constitutional, administrative or disciplinary nature determined by other laws in force.

**TRANSITIONAL PROVISIONS**

**Article 79.** The financing of election campaigns with public funds shall be governed by a specific law.

**Article 80.** In the elections to be held in 1998, each party or coalition shall reserve for candidates of each sex a minimum of twenty-five per cent of the positions and a maximum of seventy-five percent of the number of candidacies that it may register.

**Article 81.** Donations and contributions from corporations to political campaigns may be made after due registration of the finance committees of the parties or coalitions.

- TSE/SRF Joint Ordinance 74/2006, Article 4, sole paragraph: The SRF shall inform the TSE of any violation to the provisions of this Article.

**Paragraph 1** The donations and contributions referred to in this Article are limited to two percent of gross revenues earned in the year preceding the election.

- See first note to Article 23, paragraph 1, of this law.
- TSE Dec. of 7.DEC.2011 in AgR Special Res. 4197496: corporations without earnings in the year prior to the election cannot donate to political campaigns.
- TSE Dec. of 29.NOV.2011 in AgR-AI 309753: the ceiling amount for donations includes both cash donations and non-cash donations whose amount is estimable in cash.

**Paragraph 2** Donations made amount above the limit established in this Article shall subject the corporation to pay a fine in the amount of five to ten times the amount in excess of the limit.

- See third note in Paragraph 4 of this Article.

**Paragraph 3** Notwithstanding the provisions of the preceding paragraph, legal entities that exceed the limit set out in Paragraph 1 shall be prohibited from participating in public tenders and enter into contracts with the Government for a period of five years, by determination of the Electoral Justice, after due process in which it shall be assured ample right of defense.

- See note to Article 23, paragraph 1, of this law.
- TSE Dec. of 9.JUN.2011, in Rp. 98140: the jurisdiction to which the donor is legally bound is competent to adjudicate a legal claim of donation of resources above the legal limit.
- See third note in Paragraph 4 of this Article.

**Paragraph 4** The claims proposed with the purpose of causing the penalties in Paragraphs 2 and 3 shall observe the rite provided for in Article 22 of Supplementary Law 64, 18 May 1990, and the deadline for appeals against decisions taken under this Article shall be of three (3) days from the date of publication of the judgment in the *Official Gazette*.

- Paragraph 4 added by Article 3 of Law 12,034/2009.
- TSE Dec. of 9.JUN.2011, in Rp. 98140: competence of the jurisdiction to which the donor is legally bound to adjudicate a legal claim of donation of resources above the legal limit.
- TSE Dec. of 4.AGO.2011 in AgR-Pet 34914: impossibility of preventive waiver of the penalties contained in Paragraphs 2 and 3.

**Article 82.**Electoral Divisions where the electronic voting and vote aggregation system is not used shall comply with the rules set out in Articles 83 to 89 of this Law and relevant provisions of Law 4,737, 15 July 1965 - Electoral Code.

**Article 83.** The official ballots shall be prepared by the Electoral Justice, which shall print them exclusively for distribution to the Reception Desks, and the printing shall be done in opaque paper with black ink and uniform types of letters and numbers, identifying the genre in the name of the positions.

**Paragraph 1** There shall be two separate ballots, one for majoritarian elections and another for proportional elections, to be prepared in such models as determined by the Electoral Court.

**Paragraph 2** Candidates for majority elections shall be identified by the name specified in the application for registration and by the acronym adopted by the party to which they belong; the order in which they appear shall be determined by lot.

**Paragraph 3** For the elections in the proportional system, the ballot shall have a space for the voter to write the name or number of the candidate selected, or the acronym or number of the party of his/her preference.

**Paragraph 4** Within fifteen days after the lot draw referred to in Paragraph 2, the Regional Electoral Courts shall divulge the template of the ballot, complete with the names of the majority election candidates in the order already defined.

**Paragraph 5** Elections with second round shall be subject to the provisions of Paragraph 2 and the lot draw shall take place within forty-eight hours after announcement of the results of the first round, with disclosure of the ballot template within the subsequent twenty-four hours.

**Article 84.** At the moment of voting, the voter shall proceed to the voting booth twice: the first time to fill the ballot for proportional elections (white) and the second to fill out the ballot for majority elections (yellow).

**Sole paragraph.** The Electoral Justice shall determine voting time and the number of voters per Polling Station to ensure full exercise of voting rights.

- FC/65, Article 117.
- Law 6,996/1982, Article 11, *main section*: fixation by the TSE of the number of voters per polling station according to the number of booths; sole paragraph of Article 11: "Each polling station shall have at least two booths". TSE Res. 14,250/1988: "[...] Fixation of the number of 250 voters per booth in polling stations located in the capitals and 200 votes per booth for polling stations in the interior of states, according to Article 11 of Law 6,996/1982".

**Article 85.** In case of doubt in the aggregation of votes given to homonyms, the number of the candidate shall prevail over his/her name.

**Article 86.** The conventional voting system shall consider it a party vote when the voter inserts the party number in the exact location reserved for the position, and only for that party shall the voter's vote be assigned.

**Article 87.** In the calculation, Delegates and Inspectors from parties and coalitions shall be ensured the right to directly observe, from a distance not exceeding one meter from the table, the opening of the ballot box, the opening and counting of the ballots and the filling in of the bulletin.

**Paragraph 1** Failure to comply with the provisions of the *main section* shall allow for the challenging of the result of the ballot box, as long as said challenge is presented before the release of the bulletin.

**Paragraph 2** At the end of the transcription of the results recorded in the bulletin, the President of the Electoral Board is required to deliver a copy of the bulletin to the competing parties and coalitions whose representatives require it no later than one hour after its issuance.

**Paragraph 3** For the purposes of the preceding paragraph, each party or coalition may accredit up to three Inspectors with the Electoral Justice, with a single Inspector working at a time.

**Paragraph 4** Failure to comply with any of the provisions in this Article is a crime, punishable by imprisonment of one to three months or community service for the same period, as well as a fine of one thousand to five thousand *UFIR*.

- See note to Article 105, paragraph 2, of this law.

**Paragraph 5** Draft bulletins or any other type of annotation made outside the ballot box bulletins used at the time of counting of the votes do not serve as subsequent evidence to the Board that aggregates or totalizes the votes.

**Paragraph 6** The bulletin mentioned in Paragraph 2 must contain the name and number of the candidates in the first columns, which shall precede those columns where the votes made to a party or coalition are to be displayed.

**Article 88.** The Presiding Judge of the Electoral Board is required to recount the ballot box when:

- See note to section II of this Article.

**I -** the bulletin presents results that do not coincide with the number of voters or presents results that are discrepant from the data obtained at the time of aggregation;

**II -** it becomes evident that votes have been allocated to non-existing candidates, the counting of the votes in the ballot box doesn't add up or the final tally of invalid, blank or valid votes is incongruent from the overall average of the remaining Stations of the same City and Electoral Area.

- TSE Decisions of 6.MAR.2007 in Special Res. 25,142: inapplicability of this rule in the case of the digital registration of votes introduced by Law 10,740/2003.

**Article 89.** The use of instruments that help illiterate voters to vote shall be allowed; the Electoral Justice is not required to provide such instruments.

**FINAL PROVISIONS**

**Article 90.** The crimes defined in this Law are subject to the provisions of Articles 287 and 355 to 364 of Law 4,737, 15 July 1965 - Electoral Code.

**Paragraph 1** For the purposes of this Law, the legal representatives of parties and coalitions shall respond criminally for such parties and coalitions.

**Paragraph 2** In cases of recurrence, the monetary penalties provided for in this Law shall double.

**Article 90-A.** (Vetoed.)

- Article 90-A added by Law 11,300/2006.

**Article 91.** No application for voter registration or voter transfer shall be received within one hundred fifty days prior to the election.

- TSE Dec. of 26.AGO.2010 in AgR-MS 180970: compliance with the deadline for closing of the electoral registration process provided for in this article, in the case of new elections, based on the date of the new election.

**Sole paragraph.** Retention of a voter ID or proof of voter registration is a crime, punishable by imprisonment of one to three months or community service for the same period, as well as a fine of five thousand to ten thousand *UFIR*.

- See note to Article 105, paragraph 2, of this law.
- FC/65, Article 295: retention of voter ID as a crime.

**Article 91-A.** At the moment of voting, besides producing his/her respective voter ID, the voter must also present photo identification.

- TSE Res. 23,281/2010: implementation, in the ELO system, of the functionality to reprint voter IDs, exceptionally and temporarily, based on a standardized request and with data identical to that of the lost or unusable ID, in any electoral registry office or electoral service station, subject to the deadline for request of the voter ID duplicate (up to ten days before the election).

**Sole paragraph.** It is prohibited to carry mobile devices, cameras or camcorders into the voting booth.

- Article 91-A and sole paragraph added by Article 4 of Law 12,034/2009.
- STF Dec. of 30.SEP.2010 in ADI No. 4467: injunction (depending upon interpretation) granted to the recognition that only the absence of official photo ID shall preclude the exercise of voting rights.
- TSE Dec. of 2.SEP.2010 in PA 245835: appropriateness of the use of the passport on voting day for voter identification.

**Article 92.** The Superior Electoral Court, when processing the voter IDs, shall determine the review or correction of the distribution of Electoral Areas whenever:

- TSE Res. 21,538/2003, Articles 58 to 76: Rules on electorate review. TSE Res. 21,372/2003: routine corrections at least once each year. TSE Resolutions 20,472/1999, 21,490/2003, 22,021/2005 and 22,586/2007, among others: need to fill the three cumulative requirements.

**I -** the total number of voter area transfers in the current year is ten percent higher than that of the previous year;

**II -** the electorate is more than twice as large as the combined population aged between ten and fifteen and over seventy in the territory of that municipality;

**III -** the electorate exceeds *sixty-five percent* of the population forecast for that year as determined by the Brazilian Institute of Geography and Statistics (IBGE).

- TSE Resolutions 20,472/1999 and 21,490/2003: Review when the electorate exceeds 80% of the population. TSE Res. 21,490/2003: in municipalities in which the electorate/population ratio is above 65% and less than or equal to 80%, compliance with this Article is achieved through the routine annual correction provided for in TSE Resolution 21,372/2003.
- TSE Res. 21,538/2003, Article 58, Paragraph 2 : "No electorate review shall be conducted in an election year, except in exceptional circumstances and as authorized by the Superior Electoral Court".

**Article 93.** The Superior Electoral Court may request from radio and television stations to offer, in the period between July 31 and election day, up to ten minutes per day, continuous or not and usable cumulatively in spaced days, for the dissemination of announcements, bulletins and instructions to the electorate.

- See notes to Article 99 of this law on fiscal compensation for the granting of free time.

**Article 94.** Electoral deeds conducted in the period between the registration of candidacy and five days after the completion of the second round of elections shall have priority of review by the Attorney General's Office and Judges of all branches and all instances of justice, except for *habeas corpus* and security injunction claims.

- See Article 16, paragraph 2, of this law: priority of candidacy submission-related claims. See, also, Article 58-A: preferential processing of applications for right of reply and claims of irregular electoral publicity on radio/television and on the Internet. See also Law 4,410/1964: "Establishes priority for electoral deeds, and provides for other measures".

**Paragraph 1** It is forbidden of the authorities mentioned in this Article to fail to comply with any term of this Law by reason of the performance of their regular duties.

- See Articles 16, paragraph 2 and 97 of this law.

**Paragraph 2** Failure to comply with this Article is a "crime of responsibility" (liability incurred in the performance of public service) and shall be appended to the functional records of the offender for purposes of future promotions.

**Paragraph 3** In addition to the judicial police forces, the bodies of the federal, state and municipal revenue service agencies, Courts and courts of audit shall assist the

Electoral Justice in the adjudication of electoral offenses, with priority over their regular assignments.

**Paragraph 4** The attorneys of candidates from parties and coalitions shall be notified of the deeds referred to in this Law with minimum notice of twenty-four hours, even if by fax, telex or telegram.

**Article 94-A.** The bodies and entities of the direct and indirect public administration may, upon request in specific cases and motivated by the Electoral Courts:

**I -** provide information on their areas of competence;

- Decree 4,199/2002: "Provides for the provision of institutional information relating to the federal public administration to political parties, coalitions and candidates for the Presidency of the Republic until the date of official publication of the final results of the elections".

**II -** assign employees from other areas in the period between three (3) months prior and three (3) months after each election.

- Article 94-A and sections added by Article 1 of Law 11,300/2006.
- Law 6,999/1982 and TSE Res. 23,255/2010: provide for the requisition of public servants by the Electoral Justice.

**Article 95.** An Electoral Judge who is a party to lawsuits involving a certain candidate is forbidden from exercising his/her functions in the electoral process within which the same candidate is an interested party.

- Electoral Code/65, Articles 20 and 28, Paragraph 2.
- STJ Dec. of 25.OCT.2005 in RMS 14,990: application of this device also to a member of the Attorney General's Office. STJ Precedent 234/2000: "The participation of a member of the Attorney General's Office during the criminal investigation stage does not cause its impediment or suspicion to the offering of complaints."
- TSE Dec. of 21.MAR.2006 in Special Res. 25,287: non-applicability of this device when it comes to representation of administrative nature against an electoral judge.

**Article 96.** Unless otherwise specified in this Law, claims or representations regarding noncompliance with this Law can be made by any political party, coalition or candidate, and shall be addressed to:

- TSE Precedent 18/2000: "Although vested with police power, electoral judges have no legitimacy to, as part of their office, establish legal proceeding for the purpose of imposing fines for the broadcasting of electoral publicity in violation of Law 9,504/1997".
- TSE Dec. of 17.MAI.2011 in AgR-AI 254928: existence of compulsory passive joinder between the main and vice candidates in electoral claims where the cancellation of their registration, diploma or mandate are an expected penalty (AIJE, representation, RCED and AIME); impossibility of amendment to the initial petition and subsequent extinction of the deed without resolution of the merit if the deadline for the filing of an AIME has elapsed without the inclusion of the vice candidate as defendant in the claim. For the same TSE Dec. of 24.FEB.2011 in AgR No. 36,601.
- TSE Resolutions 39/1998, 15805/1999, 2744/2001, 19890/2002 and 5856/2005: legitimacy of the Attorney General's Office to file claims on matters of electoral publicity; TCE Dec. 4654/2004: legitimacy of the Attorney General's Office to file claims on matters of electoral polling; TSE Dec. of 6.MAR.2007 in Special Res. 25770: "Coalitions participating in majoritarian elections have legitimacy to propose claims based on Law 9504/1997 even if the claim refers to proportional elections". TSE Dec. of 25.NOV.2008 in RO 1537: "Interpreting Article 96, *main section* of Law 9504/1997, Article 22, *main section*, of Supplementary Law 64/1990 and case law on the matter, TSE understands that, in order to file electoral claims, it is sufficient that a candidate belongs to the jurisdiction of the defendant, has been registered for the election and the facts motivating the claim relate to the same election, with direct repercussions in the political sphere of the plaintiff not being necessary".
- TSE Dec. of 15.MAI.2007 in Ag 6,204; Dec. of 5.SEP.2006 in Rp 1,037 and TSE Decisions 443/2002 and 21,599/2004: 48 hours deadline to file claim for invasion of free electoral publicity by another candidate or placement of irregular publicity in regular broadcasting hours.
- Deadline for filing of claim, until election day, in cases of irregular electoral publicity: TSE Dec. of 19.JUN.2007 in Special Res. 27,993; TSE Dec. of 1.MAR.2007 in Rp 1356 and TSE Dec. of 22.2.2007 in Rp 1,357 (publicity in *billboards*); TSE Dec. of 10.APR.2007 in Rp 1,247 and TSE Dec. of

30.NOV.2006 in Rp 1,346 (early publicity); TSE Dec. of 18.DEC.2007 in Special Res. No. 27,288 (early publicity aired in party program); TSE Dec. of 2.OCT.2007 in Special Res. 28,372; TSE Dec. of 18.SEP.2007 in Special Res. 28,014; TSE Dec. of 2.AGO.2007 in Special Res. 28,227, and TSE Dec. of 30.NOV.2006, in Rp 1,341 (publicity on public property).

- Deadlines for filing of claims under the rite of Article 22 of Supplementary Law 64/1990 contained in specific provisions in this Law: 15 days from commencement in the case of Article 30-A (*main section*); until the date of graduation, in case of illicit vote capturing (Article 41-A, Paragraph 3) and of conduct prohibited of campaigning public officials (Article 73, Paragraph 12); TSE Dec. of 24.MAR.2011 in Ag 8,225: until election day for disclosures of election poll results prior to registration, under penalty of loss of cause for action.
- TSE Res. 21,078/2002 and TSE Dec. No. 678/2004: legitimacy of copyright holders to make representations to Electoral Courts in order to curb illegal practices during the free political or party publicity slots. In the same lines, competence of the Electoral Justice, TSE Dec. No. 586/2002. See, however, TSE Res. 21,978/2005: jurisdiction of the electoral judge to mandate cessation of electoral publicity irregularities; jurisdiction of Ordinary Courts to examine harms to copyright.
- TSE Dec. of 5.MAI.2009 in Special Res. 27,988, and TSE Dec. of 22.FEB.2007 in Rp # 1,357: once the date of proclamation of election results has elapsed, claims filed for irregular electoral publicity shall be considered to reach “lack of justiciable controversy” status.

- TSE Dec. of 13.OCT.2011 in AgR Special Res. 3776232: active legitimacy of the coalition, even after the elections.

**I -** the Electoral Judges for municipal elections;

**II -** the Regional Electoral Courts for federal, state and federal district elections;

**III -** the Superior Electoral Court for the presidential election.

- TCE Dec. 434/2002: special privileges to candidates for president of the Republic acting as plaintiff or defendant.

**Paragraph 1** The complaints and claims must report facts, *indicating* evidence, indications and circumstances.

- TCE Dec. 490/2002: the word "indicate" refers to those proofs that, given their nature, are not compatible with immediate presentation; plaintiff and defendant shall produce evidence with the initial petition and its contestation.
- TSE Dec. of 8.MAI.2008 in Special Res. 27,141: "The narration of the occurrence of events counted as illegal, including respective material evidence of the alleged, are sufficient to rule out any declaration of invalidity on the formal aspect of the vestibular piece".

**Paragraph 2** In municipal elections where the constituency covers more than one Electoral Area, the Regional Court shall appoint a judge to hear complaints or claims.

**Paragraph 3** The Electoral Courts shall appoint three assisting Judges for the assessment of claims or complaints addressed to such Courts.

- TSE Dec. of 12.MAI.2011 in PA 59896: although there is no obstacle to the appointment of federal judges to act as assistant judges, the constitutional and legal grounding of the designation criteria does not authorize the TSE to define the class of origin of the judges who will undertake that role in the election.
- TCE Dec. 19,890/2004: the competence of assistant judges in reviewing claims as determined on Article 36, Paragraph 3 of this Law is absolute and does not extend across causal connections.
- TSE Dec. of 18.DEC.2007, in Rp. # 997 and TSE Dec. of 30.OCT.2007 in Rp # 944: "Competence of the Corregidor-General to review claims that involve the use of air space allocated to the party program for extemporaneous electoral publicity in case of objective overlapping, with possible dual tests from the perspective of Law No. 9,096/1995 and 9,504/1997".

**Paragraph 4** Appeals against decisions of the assistant judges shall be judged by the Plenary of the Court.

- TSE Dec. of 25.MAR.2010, in Rp. # 20,574: decisions made by an assistant Judge must be contested via innominate appeal within twenty four (24) hours, with oral arguments allowed, and do not admit the filing of interlocutory appeal or grievance procedures.

**Paragraph 5** Once the complaint or claim is received, the Electoral Court shall immediately notify the defendant or claimed party to present his/her defense, if desired, within forty-eight hours.

**Paragraph 6** (Repealed by Article 5 of Law 9,840/1999.)

**Paragraph 7** After the period provided for in Paragraph 5, having a defense been presented or not, the competent body of Electoral Justice shall render and publish the decision within twenty-four hours.

- TSE Dec. of 14.AGO.2007 in Special Res. 28,215: "A decision issued after a period of twenty four (24) hours, provided for in Article 96, Paragraph 5 and 7 of Law 9,504/1997, has as initial term for appeal the summons of the claimed party. Subsidiary applicability of the Brazilian Code of Civil Procedure".

**Paragraph 8** Where an appeal against a decision is applicable, it shall be submitted within twenty-four hours of the publication of the decision (effected in a notary office or during the session), being hereby assured the defendant's right to offer counter-arguments also within twenty four hours, counted as of the date of its notification.

- 24-hour deadline for lodging appeals: TSE Dec. 24,600/2005 and 16,425/2002 (electoral appeal against decision by an Electoral Judge in claim of irregular electoral publicity); TSE Dec. of 6.MAR.2007 in Special Res. 27,839: (decision by TRE Deputy Judge on request for right of reply); Ag. 2,008/1999 (decision by TRE Deputy Judge in claims of practice of extemporaneous electoral publicity); TSE Dec. of 20.NOV.2007 in Special Res. 26,281 (motion for clarification against judgment issued by TRE in claim of extemporaneous electoral publicity); TSE Dec. of 19.JUN.2007 in Special Res. 28,209 (motion for clarification against judgment issued by TRE in claim of irregular electoral publicity); TSE Dec. of 6.MAR.2007 in Special Res. 27,839 (motion for clarification against judgment issued by TRE in claim of request for right of reply); TSE Decisions of 6.MAR.2007 in Special Res. 27,839 and of 25.SEP.2006 in Special Res. 26,714 (motion for clarification against judgment issued by TRE in claim of request for right of reply); TSE Dec. of 20.MAR.2007 in Rp 1,350 and TSE Dec. of 10.AGO.2006 in Rp 884 (interlocutory appeal against monocratic decision issued by Minister of the TSE in claim of extemporaneous electoral publicity).

- TSE Dec. of 17.APR.2008 in Special Res. 27,104: "Election deeds are not subject to the doubling of deadlines provided for in the Brazilian Code of Civil Procedure, Article 191 for cases of joint liability with different prosecutors".
- Deadline for appeal against decision issued under the rite of Article 22 of Supplementary Law 64/1990 contained in specific provisions of this Law: 3 days of publication in the *Official Gazette* in the cases provided for in Article 30-A (Paragraph 3), of illicit vote capturing (Article 41-A, Paragraph 4), of conduct prohibited of campaigning public officials (Article 73, Paragraph 13), and of non-compliance with the limit for donations and contributions by a legal entity to election campaigns (Article 81, Paragraph 4 ).
- TSE Dec. of 22.FEB.2011 in AgR Special Res. 3901470; TSE Dec. of 18.MAI.2010 in AI 11,755: possibility of the twenty-four-hour deadline being converted into a day. TSE Dec. of 15.MAR.2007 in Special Res. 26,214; TSE Dec. of 27.NOV.2007 in Special Res. 26,904 and TSE Dec. 789/2005: "Once a deadline is fixed in hours which can be exactly converted to a day or days, the phenomenon shall occur, as does the phenomenon of 24 hours representing one day. The rule is not applicable only when the law expressly provides that the deadline is incompatible with the practice of converting it to days". TSE Dec. of 3.AGO.2010 in AgR Special Res. 36,694: "The deadline shall be considered closed upon the last business hour of the next day". See, to the contrary, TSE Dec. 369/2002: "The deadline in hours is counted to the minute".
- TSE Resolutions 20890/2001, 21518/2003, 22249/2006 and 22579/2007 (electoral calendars): the deadline for proclamation of the elected candidates has also been considered to be the date from which decisions are no longer publishable in session, except those relating to rendering of accounts for campaigns. See, however, TSE Res. 23341/2011 (electoral calendar for the 2012 elections) and TSE Res. 23089/2009 (electoral calendar for the 2010 elections): change in the criterion for definition of date.
- TSE Dec. of 20.NOV.2007 in Special Res. 26,281: "The statement made by Paragraph 8 regarding the 'publication of the decision in session' refers to the simple reading of the result of the judgment rendered by the deputy judges, and not to the hearing of the innominate appeal addressed to the TREs".

**Paragraph 9** The courts shall judge the appeal within forty-eight hours.

**Paragraph 10.** Should it not be judged within the determined deadlines, the request may be directed to the next higher instance, and the decision shall take place according to the rite defined in this Article.

**Article 96-A.** During the election period, the subpoenas sent via facsimile by the Electoral Justice to the candidate shall be conducted solely to the telephone line previously registered by the candidate upon registration of the request for candidacy.

**Sole paragraph.** The deadline for compliance with the provisions in the *main section* is of forty-eight hours, counted as of the receipt of facsimile.

- Article 96-A and sole paragraph added by Article 4 of Law 12,034/2009.

**Article 97.** The candidate, party or coalition may file a claim in a Regional Electoral Court against an Electoral Judge who fails to comply with the provisions of this Law or gives rise to non-compliance with such Law, including with respect to procedural deadlines; in this case, having the claimed party been heard in twenty-four hours, the Court shall order the observance of the procedure explicitly, under penalty of the Judge being held in disobedience.

- TCE Dec. 3,677/2005: inapplicability of the provisions of Article 54 of the Organic Magistrature Law (confidentiality) for a claim made under this article.

**Paragraph 1** It is mandatory for members of the Electoral Courts and of the Attorney General's Office to monitor compliance with this law by electoral judges and prosecutors of the lower courts, determining, where appropriate, the opening of disciplinary proceedings for verification of any irregularities verified.

- Paragraph 1 added by Article 3 of Law 12,034/2009.

**Paragraph 2** In case of non-compliance with the provisions of this Law by the Regional Electoral Court, the claim may be filed with the Superior Electoral Court, subject to the provisions of this Article.

- Paragraph 2 added by Article 3 of Law 12,034/2009. Corresponds to sole paragraph of the original wording.

- TSE Dec. of 8.MAR.2007, in Rp. # 1,332: impossibility of bringing a claim when the provision considered as breached by the Regional Electoral Court is not in Law 9,504/1997 but in a resolution of the Supreme Electoral Court.

**Article 97-A.** Pursuant to section LXXVIII of Article 5 of the Federal Constitution, reasonable duration for a claim that can result in loss of mandate shall be of a maximum of one (1) year of its submission to the Electoral Justice.

**Paragraph 1** The duration of the procedure referred to in the *main section* covers procedural flow through all instances of Electoral Justice.

**Paragraph 2** Once the period mentioned in the *main section* expires, the provisions of Article 97 shall go in effect, without detriment to deadlines for filing of claims in the National Council of Justice.

- Article 97-A, Paragraphs 1 and 2, added by Article 4 of Law 12,034/2009.

**Article 98.** Those voters appointed to compose the Reception Desks or Electoral Boards and those requested to assist their work shall be dismissed from attending work by declaration issued by the Electoral Justice, without discounts in wages, salaries or any other advantages, for twice the amount of days for which the voter has been summoned.

- TSE Res. 22,747/2008: "Approves instructions for application of Article 98 of Law No. 9,504/1997, which provides for paid leave from work for twice as many days as those worked for the Electoral Justice in events related to the conduction of elections.
- Law 8,868/1994, Article 15: "Public servants at the federal, state and municipal levels of the direct and indirect administration, when called upon to compose the Reception Desks of Electoral Boards, shall, upon production of declaration issued by the respective Electoral Judge, have the right to be absent from service in their departments for twice as many days as those for which they were summoned to work by the Electoral Justice".

**Article 99.** Radio and television stations shall be entitled to tax compensation for the concession of free time provided in this Law.

- Decree 5,331/2005: "Regulates the sole paragraph of Article 52 of Law 9,096 of September 19, 1995, and Article 99 of Law 9,504 of September 30, 1997,

for purposes of tax compensations for the free dissemination of party or electoral advertising".

- SRF Interpretive Declaratory Act No. 2/2006 (*Official Gazette* of 10.MAR.2006), which "Provides the criterion for calculating the tax compensation applicable to free dissemination of party or electoral advertising":
  "Sole Article. The tax compensation referred to in Article 1 of Decree 5331/2005 corresponds to eight tenths of the sum of the amounts effectively practiced on the programming grid on the day before the commencement of the free dissemination of party or electoral advertising.
  Paragraph 1 For the purposes of the *caput*, "amounts effectively practiced" mean the amount obtained by multiplying the price of the marketed space by the time of screening of the advertising contracted.
  Paragraph 2 In the event that the time allotted for free publicity covers only part of a slot marketed/sold on the day before the first free publicity, the amount actually charged shall be determined in proportion to the time covered.
  Paragraph 3 The provisions of this Article shall apply also in relation to communiqués, instructions and other requests from Electoral Courts relating to party and electoral advertising".

- TSE Res. 22,917/2008: establishes the competence of Federal Courts to review requests for extension of the fiscal compensation prerogatives for companies authorized by the government for exploration of transport and communications network services. Also annulled alternative request for formalization of contract with the TSE for transmission of the signal generated to television and radio stations during free party and electoral advertising.

**Paragraph 1** The right to tax compensation for radio and television stations defined in the sole paragraph of Article 52 of Law No. 9,096 of September 19, 1995 and in this Article for their concession of free time for the dissemination of party and electoral advertising extends also to the free advertising offered for plebiscites and referendums provided in Article 8 of Law No. 9,709, of November 18, 1998, and in both cases the following understanding shall prevail:

- Paragraph 1 added by Article 3 of Law 12,034/2009.

**I -** (Vetoed.);

- Item I added by Article 3 of Law 12,034/2009.

**II -** fiscal compensation consists of determining the value of eight tenths (0.8) of the result of multiplying one hundred percent (100%) or twenty five percent (25%) of the time of individual inserts and block broadcasts, respectively, by the price of marketable space proven to be in effect in the market, being considered as such the prices released by radio and television stations in their public ad placement charts, in observance of the regulations and conditions mentioned in Paragraph 2-A;

- Section II with wording given by Article 58 of Law 12,350/2010.

**III -** the amount calculated under section II may be deducted from the net income for purposes of determining taxable income for Income Tax of Legal Entities (IRPJ) purposes, including the calculation of the basis for collection of the monthly fees provided for in tax law (Article 2 of Law No. 9430 of December 27, 1996), as well as the basis for calculating the deemed income.

- Section III added by Article 58 of Law 12,350/2010.

**Paragraph 2** (Vetoed.)

- Paragraph 2 added by Article 3 of Law 12,034/2009.

**Paragraph 2-A.** The application of the public ad placement price charts for purposes of tax compensation shall meet the following provisions:

**I -** calculations shall be made of the percentage variations of the sum of the prices actually charged, thus considered the amounts owed to the radio and television stations for local commercial placements, and of the amount corresponding to 0.8 (eight tenths) of the sum of the prices stated in the public ad placement price chart;

**II -** the percentage variations calculated in section I shall be deducted from the prices shown in the public chart referred to in section II of Paragraph 1 .

- Paragraph 2-A added by Article 58 of Law 12,350/2010.

**Paragraph 3** In the case of micro and small businesses who opt for the Special Unified Regime for Collection of Taxes and Contributions (the Simples Nacional), the full amount of tax compensation calculated in accordance with item II of Paragraph 1 shall be deducted from the basis for calculation of federal taxes and contributions

payable by the issuer, following the criteria defined by the Steering Committee of the Simples Nacional (CGSN).

- Item I as amended by Article 58 of Law 12,350/2010.

**Article 100.** The hiring of staff to provide services in election campaigns does not generate employment with the contracting candidate or party.

- Normative Instruction 872/2008, from the Secretariat of Federal Revenue of Brazil (*Official Gazette of* 28.AGO.2008), which "provides for the declaration and payment of social security contributions and contributions owed to other entities or funds arising from the hiring of staff to provide services in election campaigns:
  The Secretary of Federal Revenue of Brazil, in exercise of the powers conferred upon him by section III of Article 224 of the Internal Regulations of the Secretariat of Federal Revenue of Brazil, approved by Ministry of Finance Decree 95 of April 30, 2007, and in view of the provisions of Laws 8212 of 24 July 1991, 8213 of July 24 1991, 8706 of 14 September 1993, 9504 of 30 September 1997, 10666 of 8 May 2003 and SRF/TSE Joint Normative Instruction 609 of 10 January 2006, has resolved as follows:
  Article 1 This normative instruction disciplines the declaration and payment of social security contributions and contributions owed to other entities or funds arising from the contracting by the finance committee of a political party and by candidates for elective office of staff to provide services in election campaigns.
  Article 2 The status of insured individual taxpayer, as defined pursuant to the provisions of subsections *g* and *h* of section V of Article 12 of Law No. 8212, 24 July 1991, applies, respectively, to natural persons hired by the finance committee of a political party or by candidates for elective office to provide services in an election campaign.
  Article 3 The finance committees of political parties are equivalent to a company in relation to the insured staff contracted to provide services in election campaigns, as per the terms of the sole paragraph of Article 15 of Law 8,212/1991.
  Article 4 The equivalency of status referred to in Article 3 shall not apply to candidates for elective office who hire insured taxpayers to provide services in an election campaign.
  Article 5 The finance committee of a political party has the obligation to:
  I - collect the contribution owed by the insured individual taxpayer under its

service, discounting them from remuneration; and
II - collect the retained together with the contribution owed by the committee using its Taxpayer ID number in the National Register of Legal Entities (CNPJ).
Sole paragraph. In addition to the obligations set out in sections I and II of the *main section*, the finance committee of a political party must collect (through discounts to the respective salaries) and pay the contributions owed to the Social Service of the Transportation Sector (SEST) and to the National Transportation Training Service (SENAT) payable by insured individual taxpayers working as an autonomous drivers of road vehicles who render services in an election campaign.
Article 6 The occurrence of events generating payment obligations for social security contributions and contributions owed to other entities or funds, as well as other relevant information, shall be reported to the Internal Federal Secretariat of Revenue (RFB) through the use of the Collection Note for the Government Severance Indemnity Fund for Employees and Information to Social Security (GFIP).
Article 7 The provisions of Articles 3, 5 and 6 apply to events occurred until December 31 of the year in which registration into the CNPJ was effected.
Article 8 This normative instruction shall enter into force on the date of its publication.
Article 9 is hereby repealed MPS/SRP Joint Normative instruction 16, 12 September 2006".

- RFB Normative Instruction 971/2009, which "provides for general rules for social security taxation and collection of social contributions intended for the Social Security Service and other entities or funds administered by the Federal Revenue Secretariat of Brazil (RFB)," Article 9, XXI: natural persons hired by a political party or candidate for elective office for remuneration to provide services in election campaigns shall necessarily contribute to Social Security in the capacity of individual taxpayer.

**Article 101.** (Vetoed.)

**Article 102.** The sole paragraph of Article 145 of Law 4,737, 15 January 1965 (Electoral Code) shall henceforth be added by section IX as follows:

"Article 145. [...]

Sole paragraph. [...]

IX - military police on duty."

**Article 103.** Article 19 of *Law 9,096, 19 September 1995 (Party Law)* shall henceforth read as follows:

"Article 19. In the second week of April and October of each year, the parties shall, through their municipal, regional or national management bodies, submit to the Electoral Judges a list of the names of all its members, containing date of membership, voter ID number and the Electoral Section in which they are registered, for purposes of archiving, publication and establishment of deadlines for party affiliation and candidacy to elective office."

**Article 104.** Article 44 of Law 9,096, 19 January 1995 shall henceforth be added by paragraph 3 as follows:

"Article 44. [...]

Paragraph 3 The funds mentioned in this Article are not subject to the regime of Law 8,666 of June 21, 1993."

**Article 105.** Until March 5 of election year, the Superior Electoral Court, in compliance with regulatory standards and without restricting rights or establishing penalties other than those provided in this Law, may issue all necessary instructions for its faithful execution, ensuring prior public hearing of the delegates or representatives of political parties.

- *Caput* as amended by Article 3 of Law 12,034/2009.

**Paragraph 1** The Superior Electoral Court shall publish the budget code for the collection of electoral fines to the Party Fund through payment of the corresponding collection note.

**Paragraph 2** In case the *UFIR* is replaced with another official index, the Superior Electoral Court shall amend the amounts set forth in this Law according to the new index.

- The Fiscal Reference Unit (UFIR), established by Law 8,383/1991, was abolished by Provisional Measure 1,973-67/2000, with its last reissue (PM 2,176-79/2001) converted into Law 10,522/2002; the last amount set is of R$ 1.0641. TCE Dec. 4,491/2005: possibility of conversion into currency of the amounts set in UFIR.

**Paragraph 3** only those resolutions published until the date referred to in the *main section* shall apply to the subsequent election.

- 3rd Paragraph added by Article 3 of Law 12,034/2009.

**Article 105-A.** In electoral matters, the procedures set forth in Law 7347, 24 July 1985 are not applicable.

- Article 105-A added by Article 4 of Law 12,034/2009.
- Law 7,347/1985: "Disciplines civil public liability for damages caused to the environment, consumer, goods and rights of artistic, aesthetic, historical, tourist and landscape value and provides for other measures".

**Article 106.** This Law shall enter into force on the date of its publication.

**Article 107.** Are hereby repealed Articles 92, 246, 247, 250, 322, 328, 329, 333 and the sole paragraph of Article 106 of Law 4737 of July 15, 1965 - Electoral Code; Paragraph 4 of Article 39 of Law 9096, 19 September 1995; Paragraph 2 of Article 50 and paragraph 1 of Article 64 of Law 9100, 29 September 1995; and paragraph 2 of Article 7 of Decree-Law 201, 27 February 1967.

Brasilia, 30 September 1997; 176th year of the Independence and 109th of the Republic.

Marco Antonio de Oliveira Maciel

Iris Rezende

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**ANNEX**

- Currently, the models listed in the Annex have been replaced and can be obtained from the System for Rendering of Electoral Accounts (SPCE), which is in accordance with the statement of accounts for each election.