

The Constitutional Status of the President of the Federative Republic of Brazil as the Head of State – a Member of the BRICS



Tatiana Alexeeva

Professor, Dean of the Law Faculty, National Research University Higher School of Economics. Address: 17 Promyshlennaya Str., Saint Petersburg, 19809917, Russian Federation. E-mail: ta_al@mail.ru



Abstract

This article is devoted to the analysis of the constitutional status of the President of Brazil, as guaranteed by the Brazilian constitution, vis-à-vis the statuses of heads of states of other BRICS countries. Although the president's position is outlined in the national constitution, it takes into account the country's federative structure: the president (Presidente da República) acts as the representative of the union internally and represents Brazil abroad. The presidential term of four years is one of the shortest when compared to other BRICS countries. The president is elected directly by the Brazilian people. Direct election is more typical in countries with presidential governments, where the direct mandate provides a higher degree of legitimacy to the executive office. The office term can end early for three reasons: 1) conviction for the commitment of crimes de responsabilidade (crimes of malversation) by resolution of the Federal Senate, or by sentence of the Federal Supreme Court on commitment of infrações comuns (common criminal offenses); 2) in the event of death, resignation, loss to the right to vote or loss of citizenship; 3) resolution of the National Congress to declare the office vacant. In Brazil, as well as in India and South Africa, the president is the country's chief executive. The president's powers are classified into three categories: deriving from his/her role as the head of a state, the head of government, or the head of federal administration. The President of Brazil, like the president of Russia, has the strongest position of authority in the higher bodies of the governmental system.



Keywords

Brazil; BRICS; head of state; President; executive power, impeachment.

Citation: Alexeeva T. (2014) The Constitutional Status of the President of the Federative Republic of Brazil as the Head of State – a Member of the BRICS. *Pravo. Zhurnal Vysshey shkoly ekonomiki*, no 4, pp. 160–170. (in English)

The role of the BRICS' heads of state and government is significant. During their annual meetings, they adopt various BRICS declarations, which play a fundamental role in the development of an alliance between the five countries. Each head of state has a different constitutional status in his/her own country, albeit there are some similarities. The presidents of Brazil and the Russian Federation hold the strongest positions in the higher bodies of their respective governmental systems. In this paper, I compare the legal status of the President of Brazil, guaranteed by the Brazilian constitution, to the statuses of the heads of state of the other BRICS countries.

The constitution of the Federative Republic of Brazil (Presidente da República) is not a concept, but it does p

In contrast to the new concept, the President of the Federative Republic of Brazil. The country's first president (15 November 1889) (power) and introduction of the basic principles of the federal structure

The constitution of Brazil as a parliamentary system made to amend the constitution, promulgated

The constitution in the system of the Brazilian president is "Executive Power" sets divided into four "Duties of the President" (art. 85-86), "The President's powers, where the order to demonstrate federal bodies. Since the President occupies a peculiar position and the establishment of the President, however, the pres

¹ Accioli W. Instituto de Direito Especializado em Presidencialismo // Arinos de Melo Francisco de Janeiro, 1976. P. 10. Roure A. de. A Cons

² Projeto de Constituição 43 p.

³ Vianna Lopes J. B. Cabral. Rio de Janeiro

⁴ Vianna Lopes J. Progressistas, Conselho De Tancredo a Collor

⁵ <http://www.sen>

⁶ The status of the precedes provisions

The constitutional and legal position of the president, as set out by the constitution of the Federative Republic of Brazil. In Brazil the head of state is known as “the President of the Republic” (*Presidente da República*). The Brazilian constitution does not contain a definition of this concept, but it does provide the basis for its legal and practical understanding.

In contrast to Russia, India, South Africa and China, where the presidency is a relatively new concept, the office of the president goes back more than 120 years in the Federative Republic of Brazil. The presidency was first set out in the 24 February 1891 Constitution. This was the country’s first republican constitution, with Brazil having first proclaimed itself as a republic on 15 November 1889. The constitution enshrined the rejection of *poder moderador* (mediatory power) and introduced the classic three-element system of checks and balances, which is one of the basic principles of the organization of power in Brazil. The 1891 Constitution set out the federal structure of government in Brazil for the first time.¹

The constitutional draft, submitted to the 1987–1988 constituent assembly, initially set up Brazil as a parliamentary republic.² However, during the course of discussions, a proposal was made to amend the text in favor of establishing a presidential republic. This decision was supported by the majority of the assembly (61.53% voted ‘for’)³ and was enshrined in the constitution, promulgated on 5 October 1988.⁴

The constitutional provisions concerning the president’s post reflect the president’s position in the system of higher authorities in Brazil. The constitutional and legal position of the Brazilian president is outlined in Title IV “The Organization of the Powers”. Chapter I “The Legislative Power” sets out the powers of the Brazilian legislature. Chapter II “The Executive Power” is divided into four sections: “The President and the Vice President of the Republic” (art. 76–83), “Duties of the President of the Republic” (art. 84), “Liability of the President of the Republic” (art. 85–86), “The Ministers of the State” (art. 87).⁵ This arrangement of constitutional provisions, where the legislature precedes the executive office, was specifically designed this way in order to demonstrate that the presidency was second to the National Congress in a system of federal bodies. Similar provisions are included in the South African constitution. The presidency occupies a peculiar position in the Chinese constitution and reflects Chinese constitutional founders’ attempt to avoid the accumulation of significant state power in the hands of one person and the establishment of a regime of personal power. In Indian and Russian constitutions, however, the president assumes a leading position within the hierarchy of state bodies.⁶

¹ Accioli W. *Instituições del direito constitucional*. Rio de Janeiro, 1981. P. 392–398; *Valladão H. Historia do Direito Especialmente do Direito Brasileiro*. Rio de Janeiro, 1980. P. 171–174; *Trigueiro O. O novo presidencialismo // As tendências naturalis do direito público: Estudos em homenagem ao Professor Afonso Arinos de Melo Franco*. Rio de Janeiro, 1976. P. 363–386; *Russomano R. Dos poderes legislativo e executivo*. Rio de Janeiro, 1976. P. 198–208; *Chacon V. Vida e Morte das Constituições Brasileiras*. São Paulo, 1987. P. 99–126; *Roure A. de. A Constituinte Republicana*. Vol. 1. Brasília, 1979. P. 229–243, 459–479.

² *Projeto de Constituição. Parecer do relator B. Cabral sobre as emendas oferecidas em plenário*. Brasília, 1988. 43 p.

³ *Vianna Lopes J.A. A. Carta da Democracia. O processo constituinte da ordem pública de 1988 / Prefácio* B. Cabral. Rio de Janeiro, 2008. P. 146.

⁴ *Vianna Lopes J.A. Op.cit.* P. 109–111, 145–147, 171–179; *Pilatti A. A Constituinte de 1987–1988. Progressistas, Conservadores, Ordem Económica e Regras do Jogo*. Rio de Janeiro, 2008. P. 172–176; *Reale M. De Tancredo a Collor*. São Paulo, 1992. P. 215–220.

⁵ <http://www.senado.gov.br/sf/legislacao/const>

⁶ The status of the president of India is set out in art. 52–65 of Chapter I “Executive power” (Part V), which precedes provisions devoted to other federal powers and bodies. Chapter IV “President of the Russian Federa-

Job title. Prominent Brazilian constitutionalist J. Afonso da Silva emphasizes the official title of the President of Brazil — “The President of the Republic”, rather than “The President of the Union (Federation)”. da Silva notes that, although the republic is federative, the term used in the constitution “covers the entire state reality: when at home, the president acts as the representative of the Union (Federal) Government; when abroad, he represents the community of Brazil as a republic.”⁷ Anyway, his powers “are not identified with the powers of the Federal Government.”⁸ In constitutional theory of Brazil, the president is recognized as the head of state and the representative of the Federative Republic to foreign countries. Brazilian constitutionalists point out that the president actually performs the functions of both the head of state and the head of government.⁹ It should be noted that in India and South Africa, as in Brazil, the president is also the country’s chief executive. In Russia and China, however, the head of state is not included in the structure of executive bodies. It is noteworthy that the president is called “the head of state” only in the Russian (i.1, Art. 80) and South African (i. “a”, Art. 83) constitutions.

The president’s term of office. The term of office for the Brazilian president is four years (art. 82). The current length of the presidential term of office was introduced in 1994, replacing the initial five-year term.¹⁰ It is the shortest term of office out of all the BRICS, especially when compared to Russia where the president’s term lasts six years (art. 81). Moreover, since 1997, the Brazilian constitution allows the president to be elected for consecutive terms (art. 82); previously, the presidency was limited to one term. The practicality of serving consecutive terms was an active topic of scholarly debate in Brazilian literature on constitutional law.¹¹

Procedure for assuming office. The heads of all BRICS countries are popularly elected. However, each country’s constitutionally set procedures for elections are different. Russian constitutionalists purport that “direct elections are more typical for countries with presidential [and semi-presidential] governments (except for the USA and Indonesia), where the ‘direct’ mandate from the electors provides greater legitimacy to the office”¹² A similar view is taken by Brazilian scholars.¹³ The same logic can be applied to BRICS countries: direct elections take place in Brazil and Russia. In India, such elections are indirect. In China and the RSA, the heads of state are elected through representative bodies, elected by the people.

Election procedures are set out in detail in the Brazilian constitution. The dates of elections are clearly stated: the first Sunday of October for the first round, and the last Sunday of October for the second round (if required) of the year preceding the final year of the current president’s term of office (art.77). Before 1997, elections took place 90 days before the end of the

tion” (art. 80–93) precedes chapters of the Constitution of Russia, which determine the status of other supreme federal bodies.

⁷ Afonso da Silva J. Comentário contextual à Constituição. Brasil. 2009. P. 473.

⁸ Afonso da Silva J. Comentário contextual à Constituição. P. 473–474; Araujo L.A.D., Serrano Nunes j. V, Curso de direito constitucional. São Paulo. 2004. P. 283–289.

⁹ Afonso da Silva J. Curso de direito constitucional positivo. São Paulo. 1990. P. 465–466.

¹⁰ Afonso da Silva J. Comentário contextual à Constituição. P. 480.

¹¹ Accioli W. Op.cit. P. 402–403; Constituinte. Anteprojeto da comissão Afonso Arinos. Comentado por Duarte Pereira O. Brasília, 1987. P. 71.

¹² Cherkasov A.I. *Institute of the Head of State and its Varieties*. Comparative Constitutional Law / ed. by V.E. Chirkin. Moscow, 2002. P. 359 (in Russian).

¹³ Trigueiro O. O novo presidencialismo // As tendências naturais do direito público: Estudos em homenagem ao Professor Afonso Arinos de Melo Franco. Rio de Janeiro, 1976. P. 385–386; Accioli W. Op.cit. P. 402; Acquaviva M.C. Teoria geral do estado. São Paulo. 1987. P. 195.

presidential to be registered majority in two candidates within twenty date with the president take and the vice can appoint years of the

Requirements president must to have Brazil electoral dis cal office six

The comm the president election (art. determined by the in p.1 of art.

The Braz auguration: eral well-bei of Brazil” (S of the text of exact text of The RSA con Republic and ence to the fa solemn act in of the Nation

The end of end of the pr or early term expiration of

Brazilian 1) cassação – dade or by P early termina citizenship; the office vac date schedule president leave more than 15

¹⁴ Afonso da

¹⁵ Afonso da

presidential term of office. The Brazilian constitution requires for each presidential candidate to be registered with a political party. A candidate becomes president if he attains an absolute majority in the first round of voting. If no candidate attains a majority in the first round, the two candidates with the highest number of votes take part in the second round, which is held within twenty days of the announcement of the result of the first round. In this case, the candidate with the majority of valid votes becomes the president (art. 77). The election of the vice-president takes place at the same time. Direct elections are in place for selecting the president and the vice-president, with one notable exception. The national congress, rather than voters, can appoint the president and the vice-president if the post becomes vacant during the last two years of the president's term of office (§ 1 art. 81).¹⁴

Requirements for a presidential candidate. As in Russia, the Brazilian president and vice-president must be at least 35 years old when they assume office. Candidates are also required to have Brazilian citizenship, must be able to vote, must be registered to vote, must live in an electoral district, must be a member of a political party, and must resign from any other political office six months ahead of the presidential election (§ 3 and 6, art. 14).

The commencement of the president's term of office. The Brazilian constitution sets out that the president's term of office commences on 1 January of the year following the year of his/her election (art. 82). In other BRICS countries the commencement of the term of office is determined by the effective time of inauguration (for example, the Russian constitution sets this out in p.1 of art. 92).

The Brazilian constitution sets out the presidential oath, recited by the president during inauguration: "maintain, defend, and carry out the Constitution, obey the laws, promote the general well-being of the Brazilian people, sustain the union, the integrity, and the independence of Brazil" (§3 art. 57, art. 78). This constitutional provision sets forth the intermediate position of the text of the Brazilian constitution compared with that of the other BRICS countries. The exact text of the oath is set out in the Russian (p. 1 art. 82) and the Indian constitutions (art. 60). The RSA constitution sets out the general idea of the oath (giving the oath in "allegiance to the Republic and Constitution carrying out" (art. 87)), while the PRC constitution just makes reference to the fact of giving an oath. The giving of the oath by the chief executive is a public and solemn act in all BRICS countries. In Brazil, the president gives his/her oath during a session of the National Congress. (art. 78).

The end of the term of office of the President of Brazil. Similar to other BRICS countries, the end of the president's term of office can take one of two forms: expiration of the term of office or early termination of office. In Brazil, the president's term of office normally ends due to the expiration of a four-year presidential term.

Brazilian constitutional law lists the following reasons for the early termination of office: 1) *cassação* — conviction by Federal Senate resolution for committing *crimes de responsabilidade* or by Federal Supreme Court sentence for committing *infrações comuns*; 2) *extinção* — early termination of office in the event of death, resignation, loss of the right to vote or loss of citizenship; 3) *declaração de vacância do cargo* — the National Congress resolution to declare the office vacant, in the instance that the president has not assumed office ten days from the date scheduled for inauguration (except for reasons of *force majeure*) (§1 art.78) or when the president leaves the country without authorization from the National Congress for a period of more than 15 days (art. 83).¹⁵

¹⁴ Afonso da Silva J. *Comentário contextual á Constituição*. São Paulo. 2009. P. 479–480.

¹⁵ Afonso da Silva J. *Comentário contextual á Constituição*. P. 479–480.

Unlike the Russian constitution, in Brazil, illness cannot be considered a reason for impeachment. *Impedimento* is a temporary period during which the president is not presiding, owing to actual and legally relevant reasons, which include: 1) authorization from the National Congress; 2) illness; 3) a vacation; 4) suspension from office.¹⁶

Removal of the president from office. The constitutions of all BRICS countries, except the PRC, enshrine the procedures for holding the head of state to account through a removal from office.

This procedure, termed in scholarly literature as *cassação* — or impeachment — of the president's mandate is set out in the Brazilian constitution (art. 85–86). Impeachment proceedings may be commenced if the president violates the law (§4, Art. 86). There are two types of offences: common crimes (*infrações comuns*) and malversation (*crimes de responsabilidade*). Criminal offenses are set out in the country's criminal law. Malversion acts are defined by "a special law, containing not only substantive laws, but also the 'rules of procedure and trial'" (Sole paragraph, Art. 85). *Crimes de responsabilidade* are divided into two groups in constitutional law: political offenses and public malfeasance.¹⁷

The first group deals with offenses against the federal constitution, primarily with offenses against "the existence of the Union" and "the free exercise of legislative power, judicial power, public prosecution and constitutional powers of the units of the federation, the exercise of political, individual and social rights, and the internal security of the country." The second group of offenses is aimed at violations of "probity in the administration, the budgetary law, compliance with the laws and with court decisions" (art. 85). Statutory Act 1.079, dated 10 April 1950, outlined responsibility for *crimes de responsabilidade*, in instances where the president and government ministers are the offenders. This act also established the procedure for bringing to account those responsible for committing such offences.

In order for impeachment proceedings to commence, two-thirds of deputies from the Chamber of Deputies, the lower house of the National Congress, must accept the charges against the president. The jurisdiction of the case depends on the type of offence committed by the president. The case shall be submitted to the Supreme Federal Court if the offence is an *infrações comuns* or to the Federal Senate, the upper house of the National Congress, if the case is a *crime de responsabilidade* (art. 86).

The president shall be temporarily suspended from his/her political functions during the case proceedings, but he/ she shall resume his/her functions if the trial has not come to an end after a period of one hundred and eighty days (§1, §2, art. 86). If convicted, either by a decision of the Supreme Federal Court or by a legal resolution of the Federal Senate, the president shall be brought to justice. Additionally, in a case of a conviction, the president sustains "the loss of office", whereby his/her powers as the head of state are terminated ahead of the official end of term office. In a sense, this is not only a legal liability, but also "a political sanction".¹⁸

The constitutionally prescribed procedure was implemented in 1992. As a result, then-president Fernando Collor de Mello forfeited the right to occupy a high office before the end of the presidential term by the decision of the Federal Senate.¹⁹

¹⁶ Afonso da Silva J. Curso de direito constitucional positivo. P. 469–470.

¹⁷ Afonso da Silva J. Comentário contextual à Constituição. P. 490.

¹⁸ Ramos Tavares A. Curso de Direito Constitucional. São Paulo, 2013. P. 1048.

¹⁹ Cerqueira M. Constituição e o Direito Anterior: o Fenômeno da Recepção. *Estudos de Direito Constitucional em homenagem a José Afonso da Silva* / Coord. Grau E.R. e Da Cunha S.S. São Paulo, 2003. P. 198–220; Reale M. De Tancredo a Collor. São Paulo, 1992. P. 347–350.

The vi
The 1934
that the co
vice-presi

The vi
shall take
together. T
the presi
she shall s
president
attributed

The Br
the presi
within ten
or when t
period of

Early
and the vi
the offic
Deputies
called suc
years of th

The po
sive powe
head of st
da Silva's
with fore
treaties, o
over the
the justice
in the eve
whenever
or partial
Congress
suppleme
therein (L

As the
isters of st
in the con
decrees an
decree th
(i.10); gra
Forces, pr

²⁰ Afonso

²¹ Afonso
constitucio

The vice-president. There was no office of the vice-president always the history of Brazil. The 1934 and 1937 constitutions did not set out provisions for this post. It was not until 1946 that the constitution returned to the system established in 1891, introducing the position of the vice-president “as a substitute and successor to the president”.²⁰

The vice-president of Brazil shall be elected at the same time as the president, and they shall take the oath, take office and exercise their powers within the prescribed term of office together. The Brazilian vice-president shall execute four functions: firstly, he/she shall replace the president “in the event of the president’s inability to execute his/her duties”; secondly, “he/she shall succeed the president in the event of vacancy” (art. 79); thirdly, “he/she shall assist the president whenever summoned by him/her for special missions”; fourthly, “other duties can be attributed to him by supplementary law” (§1 of art. 79).

The Brazilian vice-president shall temporarily assume the president’s office in the event that the president’s office becomes vacant, including in cases when the president has not taken office within ten days following the taking of the oath (except in the even of a *force majeure*) (art. 78) or when the president leaves the country without the approval of the National Congress for a period of more than fifteen days.

Early elections shall be held only in the event of vacancy of the offices of both the president and the vice-president, and they shall be declared by the National Congress within ninety days of the offices becoming vacant. Until a new head of state is elected, “the president of the Chamber of Deputies, the president of the Senate and the chief justice of the Supreme Federal Court shall be called successively to exercise the presidency” (art. 80). If the vacancy occurs during the last two years of the president’s term of office, the indicated period shall be shortened to 30 days.

The powers of the Brazilian president are mainly outlined in a non-limited list of “exclusive powers” (art. 84). J. Afonso da Silva classifies presidential powers into three functions: the head of state, the head of government, and the head of federal administration.²¹ According to da Silva’s classification, as the head of state, the president is empowered to maintain relations with foreign states and accredit their diplomatic representatives (i.7); conclude international treaties, conventions and acts, ad referendum of the National Congress (i.8); call and preside over the National Defense Council (i.18); appoint, with the approval of the Federal Senate, the justices of the Supreme Federal Court and those of the superior courts (i.14); declare war, in the event of foreign aggression, authorized by the National Congress or confirmed by it, whenever it occurs between legislative sessions and, under the same conditions, to decree full or partial national mobilization (i.19); make peace, authorized or confirmed by the National Congress (i.20); award orders and honorary distinctions (i.21); permit, in the cases set forth by supplementary law, foreign forces to pass through national territory, or to remain temporarily therein (i.22).

As the head of government, the president has jurisdiction to appoint and dismiss the ministers of state (i.1); commence legislative procedure, in the manner and in instances as set out in the constitution (i.3); sanction, promulgate and order the publication of laws, as well as issue decrees and regulations for the true enforcement thereof (i.4); veto bills, wholly or in part (i.5); decree the state of defense and the state of siege (i.9); decree and enforce federal intervention (i.10); grant pardons and reduce sentences (i.12); exercise the supreme command of the Armed Forces, promote general officers and appoint them to offices held exclusively by them (i.13);

²⁰ Afonso da Silva J. *Comentário contextual à Constituição*. P. 473–474.

²¹ Afonso da Silva J. *Comentário contextual à Constituição*. P. 481–489; Afonso da Silva J. *Curso de direito constitucional positivo*. P. 471–472.

appoint, with Senate's approval, the governors of the territories, the attorney-general of the Republic, the president and the directors of the Central Bank and other civil servants, when established by law (i.14); appoint, with due regard for the provisions of article 73 (i.15), the justices of the Federal Court of Accounts (i.15); appoint judges in the events provided by the constitution and the Attorney-General of the Union (i.16); call and preside over the Council of the Republic (i.18); submit to the National Congress the pluriannual plan, the bill of budgetary directives and the budget proposals (i.23); render, each year, accounts to the National Congress concerning the previous fiscal year, within sixty days of the opening of the legislative session (i.24).

As the head of federal administration, the president, with the assistance of the Ministers of State, can exercise the higher management of federal administration (i. 2, art. 84); provide for the organization and operation of the federal administration, as established by law (i.6); introduce and abolish positions in public authorities in accordance with the provisions of the law (including those applicable to public administration) (i.25); enter and abolish positions in public authorities in accordance with the requirements of the law (claim 25); fill and abolish federal government positions in the bodies of public administration, as set out by law (i.25).

The powers of the president as representative of the state. "Maintain[ing] relations with foreign states" (i.7, art. 84) comprises one of the competencies of the Brazilian president, similar to competencies of other BRICS heads of state. The 1988 constitution also grants the president the power to "conclude international treaties, conventions and acts, ad referendum of the National Congress" (i.8, art. 84) as part of his/her "exclusive powers". The constitution refers to the exclusive competency of the National Congress to "decide conclusively on international treaties, agreements or acts which result in charges or commitments that go against the national property" (i.1, art. 49).

The Brazilian constitution refers the competency to "accredit foreign states' diplomatic representatives" (i.7, art. 84) to "exclusive competencies". The head of state shall award decorations and honorary distinctions (i.21, art. 84).

Powers of the president in the military. The Brazilian president, like the presidents of Russia and India, is vested with extensive powers in the military sphere. Brazilian lawyers have repeatedly stressed the importance of the Brazilian armed forces in the country's constitutional history.²² The 1891 Constitution declared the armed forces as "a permanent national institution" for the first time. The 1988 Constitution contains a special Chapter "the Armed Forces" in Section V (art. 142–143). The president shall exercise the supreme command of the Armed Forces, promote general officers and appoint them to the offices held exclusively by them (i.13, art. 84). He/she has the right to "declare war in the event of foreign aggression, authorized by the National Congress", or confirmed by it whenever it occurs between legislative sessions. Also, under certain conditions, he/she has the jurisdiction to decree full or partial mobilization of the Armed Forces (i.19, Art. 84).

The President may «make peace, authorized or confirmed by the National Congress» (i.20 art.84). The President may permit, in cases set out by supplementary law, foreign forces to pass through national territory, or to remain temporarily therein. (i. 22 art.84).

Presidential powers in case of emergency. BRICS constitutions vest their heads of state with special powers in cases of state emergency, with the Brazilian president's emergency powers outlined in (art. 136–141) Chapter I "The state of defense and the state of siege" of Title V "The

²² Guimarães Teixeira Rocha M.E., Costa Ribeiro Bastos R. Os militares e a ordem constitucional republicana brasileira: de 1891 a 1964. "La Constitución es una cosa; los militares somos otra". Revista Latino-Americana de Estudios Constitucionais. 2003. no 1. P. 425–446.

defense of the
of defense and
84). The proced
of Section V of
"the situation
the social peac

The decre
riod of time an
in order to pro
disturbance or

The aim of
serve or to pro
peace threaten
(i.1, art. 136).

The state of
there is eviden
second, if there
art. 137).

The state of
of siege can be
state of defense
art. 136). The
30 days, in the
the entire dura
a presidential
and shall be de
and extended b
basis of the pre
extraordinary

The provis
the National C
in the constitut

Federal int
petency of the
requirements (

The presiden
RSA, is one of
Brazilian and S
tive. The Brazil
president in "ca
84). The fact th

²³ Afonso da S
constitucional. P

²⁴ Afonso da S
constitucional po

²⁵ Afonso da S

defense of the state and of democratic institutions". The Brazilian president may decree the state of defense and the state of siege, as well as decree and enforce federal intervention (ii. 9, 10 Art. 84). The procedure for decreeing the state of defense or the state of siege is set out in Chapter I of Section V of the constitution (art. 136–141). The constitution defines the state of defense as "the situation during which events aimed at the preservation of the threatened public order and the social peace are delivered".²³ The procedure for its decree is set out in detail in article 136.

The decree to institute the state of siege is "an extraordinary order lasting for a certain period of time and throughout specific locations, including the whole territory of the federation in order to provide and reestablish the force of the constitution, in case of serious national disturbance or war or foreign aggression".²⁴

The aim of the decree of the state of defense is clearly outlined in the constitution: "to preserve or to promptly reestablish, in specific or restricted locations, the public order or the social peace threatened by serious and imminent instability or affected by major natural calamities" (i.1, art. 136).

The state of siege can be declared, if, first, a serious nation-wide disturbance takes place or there is evidence that a measure used during the state of defense has proven ineffective, and, second, if there is a declaration of state of war or a response to foreign armed aggression (i. 1, art. 137).

The state of defense can be declared only in specific areas across the country, while the state of siege can be declared in specific areas, as well as across the whole territory of the country. The state of defense lasts for 30 days and may be extended once for another period of 30 days (§2, art. 136). The state of siege may be declared for 30 days, and can be extended for not more than 30 days, in the first instance. During a period of war or armed aggression, it can be declared for the entire duration of the event (§1 art. 138). The state of defense is declared and extended by a presidential decree, which is submitted to the National Congress within twenty-four hours, and shall be decided by absolute majority (§4 art. 136). In contrast, the state of siege is decreed and extended by a presidential act only after it has been adopted by absolute majority on the basis of the president's address. In such an event, the National Congress shall be called to an extraordinary session if it is in recess (§4, 5 art. 138).

The provisions for presidential decrees, the procedures for examining his/her addresses to the National Congress and the order of implementation of emergency measures are set out fully in the constitution in the above-mentioned articles.

Federal intervention in the affairs of the states and federal districts, referred to as the competency of the Union (i.5, Art. 21), can be undertaken by the president, who must follow the requirements (grounds and procedures) outlined in article 34.²⁵

The president and the government. As mentioned above, Brazil, along with India and the RSA, is one of three BRICS states where the president is the country's chief executive. The Brazilian and South African constitutions don't set out the government as a collective executive. The Brazilian constitution just describes the existence of ministers of state who "assist" the president in "exercising the higher management of the federal administration" (art. 76, i.2 art. 84). The fact that there is no collective government, alongside the fact that ministers are recog-

²³ Afonso da Silva J. Comentário contextual à Constituição. P. 619; Afonso da Silva J. Curso de direito constitucional. P. 637.

²⁴ Afonso da Silva J. Comentário contextual à Constituição. P. 621–622; Afonso da Silva J. Curso de direito constitucional positivo. P. 640.

²⁵ Afonso da Silva J. Comentário contextual à Constituição. P. 324–325.

nized as the head of state's consultants, is considered in Russian theory of constitutional law to be one of the specific features of a presidential republic.²⁶

The concept of treating state ministers as assistants to the president was developed by Brazilian constitutional legal theory.²⁷ Ministers of state are appointed and dismissed by the president (i.1, art. 84). They can be chosen from among Brazilians over 25 years of age with the right to vote. Their duties include: the guidance, coordination and supervision of agencies and entities of federal administration in the area of his/her authority and countersigning acts and decrees signed by the president; issuing instructions for the enforcement of laws, decrees and regulations; submitting to the president an annual report on his/her administration of the ministry; performing acts pertinent to the duties assigned or delegated to him by the president or other acts in accordance with the constitution (art. 87). State ministers can be held criminally liable on the same grounds and in the same manner as the president. The ministers' roles and duties are outlined in Brazilian legislation (art. 88).

The constitution establishes two consultation bodies for the President: the Council of the Republic (art. 90) and the National Defense Council (art. 91). These consultations bodies are regulated by and run according to relevant legislation. According to the constitution, the Council of Republic has the jurisdiction to express opinion on federal intervention, state of defense and state of siege, as well as other important matters relevant to the stability of democratic institutions (i.1, art. 90). The National Defense Council has the right to express opinion in the event of declaration of war or making peace, the declaration of state of defense, state of siege and federal intervention. It can also propose criteria and conditions for the use of areas which are indispensable to the security of the national territory, and to express opinion on their use, as well as study, propose and monitor the development of initiatives required to guarantee national independence and the defense of the democratic state (§1 art. 91).

The president and the National Congress. The Brazilian president can call a special session of the National Congress "in case of urgency or important public interest" (§6 art. 57).

The right to address parliament and deliver statements is set out in many modern constitutions. The Brazilian president delivers a government statement and a plan to National Congress upon the opening of the legislative session, offering information on the state of the nation and proposing measures he/she deems necessary. He/she also submits to the National Congress the pluriannual plan, the bill of budgetary directives and budget proposals, and within sixty days of the opening of the legislative session, renders accounts concerning the previous year.

The president and lawmaking. The President of Brazil may initiate amendments to the constitution, as well as adopt supplementary and ordinary laws (art. 60, 61). Amendments to the constitution are adopted under specific procedure: proposals are discussed and voted on in each house of the National Congress in two readings and are considered approved if, during both readings, three-fifths of the respective members vote for them. Amendments are promulgated by the directing boards of the Chamber of Deputies and the Federal Senate (art. 60).

The discussion and voting on the bills of law, initiated by the president and proposed by the Federal Supreme Court and the Superior Courts, first take place in the Chamber of Deputies. Some Brazilian laws can be initiated exclusively by the president, including the following: laws which determine and modify the number of Armed Forces troops; laws which concern issues outlined in the constitution, such as the creation of public offices, functions and positions in the direct or indirect administration, or increase in the salaries of those who work in those

²⁶ Chirkin V.E. *President's Power*. State and Law. 1997. no 5. P. 19 (in Russian).

²⁷ Ramos Tavares A. *Curso de Direito Constitucional*. P. 1049.

position
budget
employ
retireme
education
public
the crea
art. 61)

The
are ad
tion it
the dat
ate of t
uncons
the ent
is susp
of the
who st
bers of

If a
within
Senate
Senate

R
well as
have t
decre
tant a
with t
fully
gress
five d
into la

The
dons
cour
the S
appo
tion,
pres
judge

C
the le
BRIC

positions or carry out the named functions; administrative and judicial organization, tax and budgetary matters, public services and administrative personnel of the territories, government employees of the Union and Territories, their legal statute, appointment to offices, tenure and retirement, retirement and transfer to the reserve of military men; organization of public prosecution and public legal defense of the Union, as well as general rules for the organization of the public prosecution and public legal defense of the states, the federal district and the territories; the creation, structuring and duties of the ministries and public administration agencies (§ 1 art. 61).

The National Congress has the powers to adopt legislation. Bills of law, as outlined above, are adopted by both legislative houses and are sent to the president. He/she can sign it, i.e. sanction it or veto it (art. 66). He/she can exercise this right only within fifteen working days from the date of receipt, and he/she shall, within forty-eight hours, inform the President of the Senate of the reasons of his/her veto. The president can veto a bill if he/she considers the bill of law unconstitutional or contrary to public interest. A veto can be full or partial. A full veto affects the entire law, while a partial veto concerns separate articles, items, paragraphs. President's veto is suspensive and can be withdrawn in case of the bill's reconsideration during the joint session of the Chambers by the absolute majority of deputies and senators. According to E. Rodriguez, who studied the issue of the presidential veto, secret voting provides a guarantee "for the members of parliament and the security of the law-making process".²⁸

If a veto is withdrawn, the bill is sent to the president for promulgation and must be signed within forty-eight hours. If the bill is not promulgated by the president, the president of the Senate can sign it; and if he/she fails to do this within the same period, the vice-president of the Senate shall do so.

Right to decree. Heads of BRICS countries have the power to make rules independently, as well as issue regulatory and non-regulatory enactments. In some instances, presidential decrees have the force of law in Brazil and India. The Brazilian president's powers include the issue of decrees and regulations "for the true enforcement of law" (i.4 art.84). Additionally, "in important and urgent cases", the President is vested with the right "to adopt provisional measures with the force of law". Silva remarks that "unfortunately, these two conditions have never been fully followed" in practice.²⁹ However, the president shall «submit them to the National Congress immediately», and if Congress is in recess, a special session shall be called to meet within five days. These enactments are temporary, as they «lose effectiveness if they are not converted into law within a period of thirty days from their publication» (art. 62).

The President and justice. The President of Brazil exercises the traditional right to grant pardons and to reduce sentences (art. 84). Heads of states also take part in the creation of supreme courts. The President of Brazil can appoint, with the approval of the Federal Senate, justices to the Supreme Federal Courts and superior courts, as well as the attorney-general. He/she also appoints justices to the Federal Court of Accounts, judges when it is established by the constitution, and the attorney-general of the Union (art. 84). This power is comparable to the Russian president's power to nominate judges to the Constitutional and Supreme Courts and appoint judges to other federal courts.

Conclusion. The scope of this article was not to provide a full and exhaustive analysis of the legal status of the president of the Federative Republic of Brazil vis-à-vis the heads of other BRICS countries. Such an analysis can be conducted in further studies of the subject. This ar-

²⁸ Rodrigues E. *O veto no Direito Comparado*. São Paulo, 1993. P. 162–163.

²⁹ Afonso da Silva J. *Comentário contextual à Constituição*. P. 619.

ticle sets the ground for this important research. The comparison of the legal statuses of heads of state in BRICS countries constitutes important research in light of the continuing development of cooperation between Brazil, Russia, India, China and the Republic of South Africa. The significance of the BRICS heads of state is obvious, with each leader already considered "a consolidating center, a joining basis"³⁰ inside their countries, a position which is extended in the foreign policy of the states.



References

- Acquaviva M.C. (1987) *Teoria geral do estado*. Sao Paulo.
- Accioli W. (1981) *Instituições del direito constitucional*. Rio de Janeiro.
- Afonso da Silava J. (2009) *Comentário contextual á Constituição*. Sao Paulo.
- Afonso da Silva J. (1990) *Curso de direito constitucional*. Sao Paulo.
- Araujo L.A.D., Serrano Nunes j. V, (2004) *Curso de direito constitucional*. Sao Paulo.
- Chacon V. (1987) *Vida e Morte das Constituições Brasileiras*. Sao Paulo.
- Cherkasov A.I. (2002) Institut glavy gosudarstva i ego vidy [Institute of the Head of State and its varieties]. Chirkin V.E. (ed.) *Sopostavitel'noe konstitutsionnoe pravo* [Comparative constitutional law]. Mezhdunarodnie otnosheniya, Moscow, 448 p..
- Cerqueira M.(1987) *Constituição e o Direito Anterior: o Fenomeno da Recepção*.Estudos de Direito Constituinte. Anteprojeto da comissau Afonso Arinus. Commentado por Duarte Pereora O. Brasilia. Constituição da República Federativa do Brasil.
- Grau E.R., Cunha S.S.da(2003) *Constitucional em homenagem a Jos é Afonso da Silva*. Sao Paulo.
- Chirkin V.E. (1997) Prezidentskaya vlast' [President's Power]. *Gosudarstvo i pravo*, no 5, pp. 15–23.
- Guimarães Teixeira Rocha M.E., Costa Ribeiro Bastos R. (2003) Os militares e a ordem constitucional republicana brasileira: de 1891 a 1964. La Constitución es una cosa; los militares somos otra. *Revista Latino-Americana de Estudios Constitucionais*, no 1, pp. 425–446.
- Kutafin O.E. (2013) *Glava gosudarstva* [Head of State]. Prospekt, Moscow, 560 p.
- Pilatti A. (2008) *A Constituinte de 1987–1988. Progressistas, Conservadores, Ordem Econômica e Regras do Jogo*. Rio de Janeiro.
- Projeto de Constituição. Parecer do relator B. Cabral sobre as emendas oferecidas em plenário. Brasília. 1988.
- Ramos Tavares A. (2013) *Curso de Direito Constitucional*. Sao Paulo.
- Reale M. (1992) *De Tancredo a Collor*. Sao Paulo.
- Rodrigues E. O (1993) *Veto no Direito Comparado*. Sao Paulo.
- Roure A. de. A (1979) *Constituinte Republicana*. Vol. 1. Brasília.
- Russomano R. (1976) *Dos poderes Legislativo e executivo*. Rio de Janeiro.
- Trigueiro O. O (1976) *Novo presidencialismo.As tendências naturalis do direito público: Estudos em homenagem ao Professor Afonso Arinos de Melo Franco*. Rio de Janeiro.
- Valladão H. (1980) *Historia do Direito Especialmente do Direito Brasileiro*. Rio de Janeiro.
- Vianna Lopez J.A. A. (2008) *Carta da Democracia. O processo constituinte da ordem pública de 1988*. Rio de Janeiro.

³⁰ Kutafin O.E. *Head of State*. Moscow, 2013. P. 6 (in Russian).

Rus



Associat
of the Ne
St. Peter



Al

In this stu
the main s
(Bank of R
market com
however, he
sidering the
thor insists
generally, th
of free ban
for the orga
state financ
financial ma
banking sys
reason, the
criticizes the
role of the B
of immediate
independen
existing ban



Key
Banking law
banking sys

Citation: Ne
no 4, pp. 17

The D

Russia
has been m
principles
from the p

¹ Nefed
Petersburg, I