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The Impact of the Brazilian Social Insurance Law on its People's Retirement Preparation

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Abstract

This thesis focuses on the impact of the Brazilian Social Insurance Law, more specifically the Public Retirement rules, on its People's retirement preparation. The Public Retirement rules in Brazil are included in the Social Insurance Law and Legislation. And the Social Insurance Law, on its turn, is included in the Social Security System. Therefore, this thesis presents a case study on the Social Security Law, focusing on the Public Retirement Legislation. In Brazil, the rights of social security, social insurance and retirement pension are considered fundamental social rights, included then in the Brazilian Federal Constitution. However, their specific regulations are implemented by ordinary Law, and therefore this paper analyzes both Laws.

The theoretical part of this thesis is based on the concepts of legitimacy and social efficacy on the social fundamental rights, within the framework of Sociology of Law. Moreover, this research is based on a qualitative type, in which the methods are document analyses and narrative interviews. This last one plays an important role in the analysis of the impact of the legislation on people's retirement preparations.

After conducting this research, it could be concluded that the constant changes of the Public Retirement Law together with the people's lack of legal knowledge contribute to a lack of interest in retirement planning and moreover to a misunderstanding by the workers of their public retirement rights. Furthermore, as a result of this, there is a lack of trust in the Social Security and Public Retirement Systems in Brazil, which also have a negative impact in people's retirement preparation.

Key Words: Brazil, Social Security, Social Insurance, Public Retirement System, Public Retirement Legislation, Legitimacy, Social Efficacy, and Sociology of Law.

Words: 21,373

Abbreviations

ILO	International Labour Organization
INSS	Instituto Nacional de Seguridade Social ¹
RGPS	Regime Geral de Previdência Social ²
RPPS	Regime Próprio de Previdência dos Servidores Públicos ³

¹ In English: General Regime of the Social Insurance.

² In English: Regime of Social Security of Public Servants.

³ In English: the Brazilian National Institute of Social Security.

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Preface

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1 Introduction

In Brazil, the Constitutional Law is based on the social welfare model. This model is based on a combination of pensions and social protection benefits, social services and labour market regulation (Wood & Gough, 2006, pp. 1686-1712). This fundamental law, dated from 1988, places the democratic State as the main body responsible to promote the social equality through guarantees of social protection for the individuals. Thus, the Social Security right has been, since then, included in this Law, becoming then with the status of a fundamental right. The article 194 from this Law states that, “The Social Security includes an integrated set of actions initiated by the Government and society to ensure the rights to health, social insurance and social assistance”⁴. As stated by the International Labour Organization (ILO), the Social Security policies “are part of – and interact with – a wide range of social policies, such as investments in basic social services, protective labour legislation and the enforcement of basic rights” (International Labour Office, 2001, p. 54).

The Social Insurance Law, included then in the social security system, governs and determines whether a person is capable or incapable of working and/or receiving benefits. This means that this law not only provide rules for the public retirement pension, but also for the other forms of incapacity that bring detachment from work, total or partial, provisory or definitive, as well as in cases of work accident, illness, pregnancy and birth, reclusion or imprisonment, or death of the worker (Article 201 of the Brazilian Federal Constitution). As mentioned by the International Labour Organization, the goal of this kind of social protection “is not mere survival, but also social inclusion and the preservation of human dignity” (International Labour Office, 2001).

In Brazil, according to Articles 201 and 202 of the Federal Constitution of 1988, the Social Insurance System is divided into two regimes: public and private. In the public regime, which, in itself, is subdivided into the General Regime of the Social Insurance

⁴ Art. 194, Brazilian Federal Constitution (Constituição Federal Brasileira), 1988 – own translation

(RGPS⁵) and the Regime of Social Security of Public Servants (RPPS⁶), is always obligatory. Therefore, according to the Brazilian Legislation, any person who has a remunerated activity and is not employed by the informal economy is obligatory insured by the Public Social Insurance.

In the private regime, there are various possibilities and forms for a person to acquire insurance, although most people have it with a supplementary character to the public one. The public regime, on the other hand, has a basic and compulsory character, as previously mentioned. So even being already a contributor included in the public retirement system, the worker can still have a private insurance plan that will result on private pension, which will complement his/hers retirement income.

This research will approach the Social Security Law in Brazil, focusing on the Retirement and Pension System, more specifically its Public Regime, analyzing the impact of this law and its historical aspects on people's expectations and preparations for their retirement. Following this purpose, it is important to first briefly explain the rules of this Regime in Brazil and what are its core principles and objectives.

1.1 Social Insurance and the Public Retirement Pension in Brazil

As mentioned in the previous section, the Social Insurance Law does not provide rules only for the Public Retirement Pension. It also regulates social benefits for cases such as:⁷

- “Benefits in cases of illness, invalidity, death and to the elderly;
- Maternity protection, specially to the women, including maternal-salary, provided during the period of maternal leave;
- Financial protection to the worker who is involuntarily unemployed.

⁵ In Brazil this is called Regime Geral de Previdência Social with the acronym RGPS

⁶ In Brazil this is called Regime Próprio de Previdência dos Servidores Públicos with the acronym RPPS

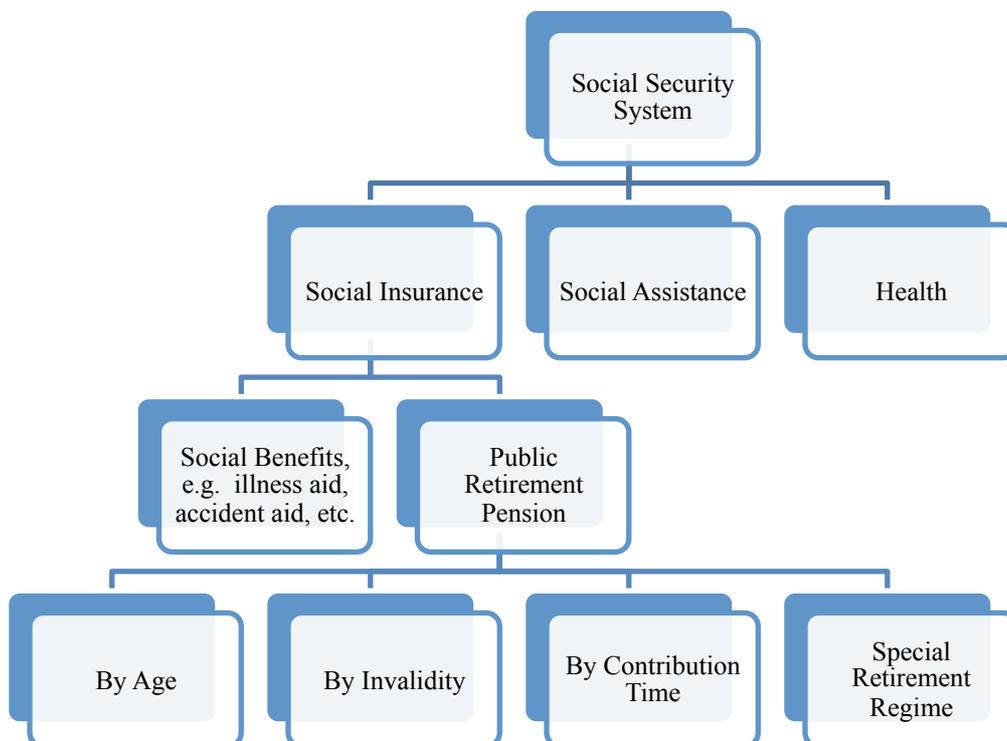
⁷ Article 201 of the Brazilian Federal Constitution of 1988, sections I, II, III, IV and V, my translation.

- Family-salary and imprisonment-aid to the dependents of the insured persons who have a low income,
- Pension because of the death of the insured worker to the partner or to the dependents.”

However, the Public Retirement Pension is the greatest expectation of a social insured worker, enabling the worker the definitive detachment from work (Netto, 2009, p. 59). In Brazil the legislation regulate the possibility for four different species of Public Retirement Pension, which are:

- “Public Retirement Pension by age,
- by invalidity,
- by length of contribution, and
- the Special Public Retirement Pension.”⁸

The following graph illustrates the whole complex of the Social Security System in Brazil.



⁸ Article 201, Para. 7, of the Brazilian Federal Constitution of 1988, my Translation.

1: Hierarchical scheme of the Brazilian Social Security System

In this research, the Public Retirement Pension is then the main aspect of the Social Security Law investigated. More specifically, the focus of this thesis is on the Public Retirement by age and by contribution time. The analysis performed during the work was done by examining the effects of the legislation on people's planning and preparations for their retirement.

Another focus of this paper is to analyze the inequality between social classes in Brazil, analyzing the economic inequality and its consequences on the inclusion and exclusion of an individual on the social welfare system. As it will be discussed in this thesis, the social class difference can also bring another reality for those people who are in the lower income class, which also defines in most of cases their level of education. Therefore, another aspect discussed in this paper is the impact of the information and knowledge about the retirement legislation in Brazil in people's preparation and planning for their retirement life.

1.2 Purposes

The aim of this research project is to investigate the impact of the Social Security System on the Brazilian Society, more specifically towards the consequences of the retirement legislation on the people's retirement preparations. The research will bring different perspectives about retirement planning, such as economical, political, social and legal, to analyze the impacts that this Law has in the society in a legal sociological approach.

As it will be detailed explained in the further chapters, the political parties' disputes in the Government has always influenced the Law as a whole. As a result, the legislations suffer constantly changes, which affects the Brazilian Retirement and Social Security Law.

Therefore, it will be analyzed the people's opinions and perspectives about the government and public bodies, to discuss the trust aspect of the population in the law. As stated by David O. Friedrichs, "people's ideas about law [...] are assumed to influence their behavior" (Friedrichs, 2006, p. 242). Thus, it will be investigated the

legal impact and influence of the Social Security and Retirement Law in Brazil on the behavior of people towards their retirement planning.

1.3 Research question

As already mentioned, the purpose of this work is to analyze the Social Security System in Brazil with a focus on the Public Retirement structure. The subject will be discussed by analyzing the influence of the Brazilian Retirement Legislation on the people's experiences and opinions towards their retirement expectations and strategies. Therefore, the main research questions of this work are:

- How the Brazilian Public Retirement Law and its development influences on people's retirement preparations?
- How the trust aspect of the society on the Brazilian judiciary-legal systems and politics influences the people's preparation for their retirement?
- How well informed are the workers about the Retirement and Pension Law? What is the impact of knowledge in the people's retirement strategies?
- What problems do people face when they are about to retire? How is their view on the Public Retirement Administrative Body?

1.4 Relation to Previous Research

This section relates this thesis to other previous research on the subject of Social Security and Social Insurance, and on the Public Retirement Systems, regarding the Brazilian case. There are extensive literatures related to these subjects in Brazil, in which most of them focus on the present context given by the current Constitutional text from 1988. Also, there are several studies regarding the legal historical background of the Brazilian Social Security System. However, most studies discuss Social Security, Social Insurance and Public Retirement System in Brazil from a legal perspective.

Ionas Deda Goncalves, for instance, did an extensive study on the Social Security Law in Brazil, more specifically on the Social Insurance Law, in which she elaborates

detailed explanations of all the retirement regimes rules and legislations. Also, in this regards, Juliana Presotto Pereira Netto brings an analytical material in relation to the different problems that surrounds the professional and personal life of a worker after the retirement. In her study, she explains the different possibilities for a person to achieve the retirement pension, specifying all the retirement regimes established by the Brazilian Law. Both works will be extensively used in this study to help explain the historical background of the social security system in Brazil and the current situation on the public retirement system (see chapter 4 The evolution of the Social Security and the Retirement Pension System in Brazil), since it is the main focus of this thesis.

Francisco Eduardo Barreto de Oliveira and Kaizo Iwakami Beltrao also did important research in connection to the historical evolution of the social security legal system (Oliveira & Beltrao, 2001). Moreover, they have done some significant researches about the latest legislation reforms. Their article is further discussed in Chapter 4 -Legal Historical Background. In addition, these both authors together with Sonow Sugahara Pinheiro studied the social security system and its enforcement to the rural workers. Their analysis concerns the difficulties and challenges that the rural workers face to reach their labour, social security, social insurance and retirement rights, having then a great number of non-registered workers in this sector (Beltrao, Pinheiro, & de Oliveira, 2004, p. 20). According to these authors, the cases faced by rural workers are still a challenge for the social security system to fulfill their rights “since workers are dispersed throughout the land, very often performing seasonal occupations, with labor relations including non-monetary exchanges, archaic modes and informal ties”. (Beltrao, Pinheiro, & de Oliveira, 2004, p. 20). An analysis of the interviews realized for this study in relation to their article can be found in the subsection The Situation with Non-Registered Workers in section 6.2.2 of this thesis.

Furthermore, other researches were produced on the Social Security from a socio-psychological perspective. An example of this is the researcher Rita de Cassia da Silva Oliveira. Her analysis is concerned with the demographic aspect of the population in relation to the increase of elderly people in Brazil and their retirement life standard is Rita de Cassia da Silva Oliveira. In her book she gives an especial attention to the gerontology factor of the retirement, analyzing the social problems that people face in the Brazilian society when they reach the elderly life and their retirement pension. For her, “the retirement system in Brazil contributes to the social inequality and social

injustice, since the low retirement pension provided by the INSS unable the retirees to enjoy a descent quality of life” (Oliveira R. d., 1999, p. 185)⁹. This study, however, will not be further analyzed, since the author elaborates her analysis on a socio-psychological and chronological perspective concerning the elderly life in Brazil, which is not related to the aim and purposes of this thesis.

There are many other researches in the field of Social Security Law and its Public Retirement system in Brazil, being selected in this section the most relevant ones in relation to the study of this thesis. However, as mentioned, most of them are in a legal perspective. With this in mind, it can be argued that there is a lack of study on this topic on a legal sociological perspective in Brazil, especially concerning the impact of these laws and regulations on people’s retirement preparation, which this thesis elaborates on.

1.5 The Structure of the Thesis

To better analyze the issues towards the impact of the Brazilian Social Insurance Law on its people’s retirement preparation, this thesis will be divided into six chapters:

- Chapter 1, already described here, is the introductory chapter, which briefly describes the main aspects of the Social Insurance System and the Public Retirement pension in Brazil, as well as it explain the purposes of the thesis, pointing out the research questions of the study. Moreover, this chapter brings a section regarding the relation of this thesis with previous research on the subject of Social Security, Social Insurance and Public Retirement Systems in Brazil.
- Chapter 2 provides the description of the Methodology approach used in this research paper, describing the different methods used during the research, as well as the limitation of the study.
- Chapter 3 outlines a detailed analysis of the legal historical background of the Social Security System in Brazil. This will help to illustrate to the reader the evolution of the system and the different changes occurred in this legislation. Also a description and analysis of the current situation of this Law is found in this chapter.

⁹ My translation.

- Chapter 4 discusses the concepts of Fundamental Rights, Legal Legitimacy and Social Efficacy of the Law, which will form the basis of the theoretical framework of this research study.
- Chapter 5 analyses the impact of the Brazilian Public Retirement Law on its people's retirement preparation. After consolidating the structural basis of this study in the previous chapter, a deep analysis of the materials and data collected will be made in chapter 5. In this chapter the interviews will play an important role in this qualitative study, due to the value of the participants experiences and opinions about the subject. The interviews will be analyzed in relation to the impact of the law in the people's retirement preparations, the social efficacy of the Public Retirement Law, the instability of the Social Security Law in Brazil, the effects of the administration problems in people's retirement planning, the popular mistrust in the Public Retirement System, and the Lack of Knowledge about the Law by the society.
- Chapter 6 will conclude the study by restating the research questions, summarizing the answers and the findings of the research brought by the analysis. Moreover, this chapter will give recommendations and suggestion on public policies to implement and improve the public retirement system in the society.

2 Research Methodology

In this section, the methodology of this thesis is presented. This thesis is designed as an explanatory case study, which is based on the analysis of qualitative interviews and legal documents related to the subject. Therefore, in order to increase the validity of the conclusions drawn in this case study, the method of data triangulation is followed, which involves the use of different types of data.

2.1 Research Strategy

A research strategy is the first step of the research methodology. It can be either a quantitative or a qualitative strategy. This research is based on a qualitative type. Since the research questions are about exploring the implementation of the Social Security Law in the Brazilian society and analyzing the people's opinions, values and life experiences, it was decided to base the study on in-depth semi-structured interviews, which is mainly associated with a qualitative research. Interpretations of the described interviews and the analysis of the law and other types of documents are the main research techniques used for this research. It is extremely important to be able to analyze and interpret the data studied in this thesis by using various methods and therefore going beyond the text. In this research the focus is not to test any theory or concept, on the contrary, the study will use the theoretical framework to understand the data obtained. Moreover, the research is trying to look deeper at the people's main concern when they plan their retirement. This will be done by analyzing the role of the retirement law and legislations, and by emerging its main problems, which will explain the current situation of the Brazilian population when it comes to retirement planning.

Thus, this research is based on a case study. In general a case can be a single organization, a single location, a person, or a single event. The most widespread use of the term would be case study of a single location (region). As mentioned before, in this study the case will be Brazil and its public retirement structure, which is included in the Brazilian Social Security System, considered to be one of the basis of the social welfare context. There will be a deep examination of this location, focusing on a particular phenomenon, to provide and in-depth investigation of experiences, social and historical

backgrounds and the development of the Law in this particular instance (Denscombe, 2007, p. 35).

The main problem related to the case study technique is the fact that it can create a generalization. Since the case study analysis focuses on one a particular case, its “most vulnerable criticism is in relation with the credibility of generalizations made from its findings” (Denscombe, 2007, p. 45). Therefore, there is no guarantee that the theory used in this thesis can be also generalized to other researches in the area.

2.2 Research Methods

Selecting the suitable research methods is extremely relevant for the successful outcomes and findings of a study. Since this thesis is mainly based in the people’s strategies and preparations for their retirement, the most appropriated and important method to collect empirical data is the narrative interviews. However, it can be difficult to ensure the validity and credibility of the data only with the interview method. Therefore, it is essential for the research to check the interview data with other sources of information on the topic. Martyn Denscombe (2007, p. 201) affirms that, “triangulation should be used. Documents and observations can provide some back-up for the content of the interview, or can cast some doubt on how seriously the interview data should be taken”.

Thus, to provide the research a broader perspective with different methods, compensating the limitation of each single method, it will be used the triangulation of two qualitative methods: the narrative interviews itself and the document analysis. According to Flick (2005, p. 24), “triangulation goes beyond the limitation of a single method by combining several methods giving them equal relevance”. The triangulation then will not only be used as a way to complete all the topic research with different perceptions, but also as an alternative to the validation of the results from the different methods. “Triangulation is less a strategy for validating results and procedures than an alternative to validation, which increases scope, depth, and consistency in methodological proceedings”. (Flick, 2005, p. 390)

2.2.1 Interviews

The interview is a very common method in qualitative research. Its efficiency and flexibility helps the researcher to obtain insights into things like people's opinions, feelings, emotions, experiences, as well as it covers sensitive issues and gives to the research a good source of information (Denscombe, 2007, p. 174). Therefore, this method is intensively used in this study in trying to answer the research questions.

There are two types of interviews associated with the qualitative research: unstructured interview and the semi-structured interview. The reason why these two types of interviews are more popular than structured interview in qualitative research is because comparing with quantitative research here there is more interest in interviewee's opinions and ideas, and it is usually better because its flexibility, with open-ended answers (Gubrium & Holstein, 2002, p. 104). Qualitative research does a deep interpretation of responses, and can even analyze gestures and the face impression of respondents when they were answering the questions, with very detailed transcriptions (Gubrium & Holstein, 2002, p. 104). This research employed semi-structured in-depth interviews because, as mentioned above, this is a case study and in-depth semi-structured interviews were the most appropriated for that. Also, the research questions involve very personal matters, such as individual's experiences, emotions, values and decisions. With unstructured interview it would be very hard to ensure the necessary emphasis on the subject during the meetings with the selected participants.

The interviews realized for this research were held in Brazil, more specifically in São Paulo State. The interviewees were selected based in their social class and their current employment. Since the aim of the interviews were to compare people's experiences, preparations and strategies for their retirement life, it was chosen employees of private and public companies in São Paulo State, considered the most industrialized and wealthy State in Brazil. The location and the workplaces were purposely selected to therefore promote an empirical material of the ones who are included in the Social Security System, to then collect valid information based on the population with access to retirement rights.

The interviewer found the participants using different techniques. In Sao Paulo city, it was first contacted one person who indicated the interviewer some companies and organizations. After that, the interviewer contacted each of these establishments and

through them found some people that were willing to participate in the interviews. The interviews then were scheduled in individual appointments with each one of the participants. In this case, an introductory meeting was realized previously the interviews, to explain the relevant information about the project and to hand out the interview guide (in APPENDIX 2 – Interview Guide) to the participants.

Aside from these participants, others were found through contacting two private companies: one in the metropolitan area of São Paulo and another one in a city in the countryside of São Paulo State. In these two last cases no introductory meetings were held before the interviews, and the information about the study and the interview guide were sent to the participants via e-mail prior the interviews.

Thus, in São Paulo city, the interviews were realized in following workplaces: one in a private bank, three in a federal autarchy, three in an Autonomous Society, four in a Public Hospital and five in one of the private companies. In the countryside of São Paulo state, five interviews were completed in the other private company contacted by the interviewer, in the town of Jaboticabal. In every interview the interview guide was used very carefully. However, small changes in the questionnaire were needed to ensure the correct interpretation of the questions by the participants. For instance, in many cases instead of asking ‘when did you start contributing to the social insurance system?’ it was asked ‘when did you start contributing to the INSS?’ In this example, the question was changed to some participants, as they did not understand the meaning of the question formulated in the original interview guide.

Therefore, the questions formulated in the original interview guide were in general very flexible, which gave the opportunity to the respondents to answer the interviewer in their own way, in a very personal and subjective approach. For instance, it was not asked leading questions in the interviews, to not affect the interviewee’s insights about the subject. Also the time estimated for each participant was around 60 to 90 minutes, to cover all the relevant aspects of the study and to ensure a greater depth of the responses. Moreover, in the beginning of each interview, the interviewer tried to promote a relaxed environment with a more general and friendly conversation, to allow the participants to feel comfortable when answering the questions.

In total it was realized twenty-one interviews, and all of them were used in the analysis of this study. However, a deep focus was done in ten interviews, which were

selected based on the relevance of the discussed subjects in the analysis chapter (Chapter 5). Thus, these selected interviews were used as examples, being quoted some of the relevant answers and insights of the participants. The interviewer transcribed and translated from Brazilian-Portuguese to English each one of the interviews realized. The transcriptions were made in a very detailed basis, to ensure the qualitative aspect of the research. And the translations were done very carefully, to ensure the exactly meaning of the Brazilian-Portuguese expressions and slangs used by the interviewees.

Problems and Limitation of this Method

As mentioned before, for this research it was interviewed 21 participants. And, even though all of the interviews were generally used in this research, only selected ones were detailed transcribed, due to the lack of time. The selection was based on the content of the interviews. They were transcribed with a very qualitative basis, resulting on a relevant empirical material. Therefore, only a limited amount of the interviews are quoted in this paper, although all data received was used in the elaboration of this paper.

2.2.2 Document Analysis

Document analysis is the other method intensively used in this research. Documents in general can be understood as “*standardized artefacts*, in so far as they typically occur in particular formats: as notes, cases reports, contracts, drafts, death certificates, remarks, diaries, statistics, annual reports, certificates, judgments, letters or expert opinions” (Flick citing Wolff in (Flick, 2005, p. 246)).

In this study the main documents used were public documents. Therefore, it will be analyzed documents such as legislations, annual reports and statistics, as well as jurists, sociologists and political experts opinions about the Brazilian social security Law. This promoted a broad perspective to the research. All the documents were selected based on the connection between them, to make a comparison among different collected data. According to Flick (2005, p. 252), the analyses of all these documents will provide “a way of using unobtrusive methods and data produced for practical purposes in the field under study”.

To select the documents, attention to Scott’s four criteria (Flick, 2005, p. 248) were made it. Authenticity, Credibility, Representativeness and Meaning were steps in which

all the documents went through to be selected (*Ibid*). As the analysis were performed on the Brazilian Constitutional Law and the other specific retirement and pension legislations, these documents were taken as primary documents, in their original form, to assure the authenticity and the credibility of the data collected. A special attention was also present towards of what institution the annual reports were collected from to also understand the whole meaning of the reports, analyzing as well the intentions that the institutions had when produced the documents (Flick, 2005, p. 248). The main institutions that are mentioned in this paper and that were the sources of the annual reports of this research are the Brazilian Institute for Geography and Statistics (IBGE) and Transparency International, a civil society organization that brings annual reports about the corruption level of different countries, which is relevant to analyze the trust aspect of the population in the Brazilian Public Retirement System (section 5.2.3- The Popular Mistrust in the Public Insurance System). Moreover, the International Labour Organization (ILO) will be a source for documents in this thesis, specially its ‘Resolution concerning decent work and the informal economy’ (General Conference of the International Labour Organization, 2002), which defines a clear concept of informal economy, important to analyze the situation of non-registered workers and their retirement situation in Brazil (Section 5.2.2- subsection- The Situation with Non-Registered Workers). It will be also used in this subsection the Labour Panorama from the ILO in Brazil. Moreover, to compare the data provided by the ILO in Brazil it will be used documents provided by the Brazilian government website (Portal Brasil, 2011) in relation to informal work.

Problems and Limitation of this Method

There are some disadvantages in the use of documents analysis as a qualitative method. One of the limitations that occurred during the research was to find some specific jurisprudence materials, since the availability of some of these legal documents is restricted to the lawyers, judges and prosecutors of that particular legal case. Therefore, as Uwe Flick stated about this method: “limitations of resources may force you to be selective instead of using all the available documents” (Flick, 2005, p. 250).

Another concern that had a special attention when the documents were analyzed in this project was the credibility of the sources, particularly internet documents, since there is a lack of control over what is published on the web sites. According to Martyn

Denscombe, “researchers need to evaluate the authority of the source and the procedures used to produce the original data in order to gauge the credibility of the documents” (Denscombe, 2007, p. 244 245).

It was taken documents from different governmental and non-governmental institutions, as well different doctrines, to ensure a better objective picture of the reality, and to not rely in the interpretations of those who produced them (Denscombe, 2007, p. 245). As the documents analyses may restrict sometimes the research towards a specific approach (Flick, 2005, p. 252), the method was also used as a complement of the narrative interviews data.

Although both methods presents limitations and disadvantages, I believe the combination of both was sufficient to deep the approached questions, once it provides more security to the elaboration of the fundament and conclusion of the research.

2.2.3 Ethical Issues

In this research, the ethical guidelines were followed during the use of the interviews. It is considered to be very relevant to include these guidelines in the method, since the empirical materials bring personal information of the interviewees, with questions related from historical and social background to experiences from their current jobs.

For instance, individuals who agreed in participating in the interviews were informed of the purpose of the study and they had the right of anonymity and confidentiality. Each person who participated in the project had the right to read the transcribed interviews before the start of this thesis. It was also informed to the participants, primarily to the interviews, if they would prefer to have their identification preserved. Moreover, they were informed that their personal data could be modified. Also, the participation in the interviews were voluntarily, which also means that the participants had the right to be excluded from the research project at any time. All of this information was explained to the individuals before they agreed in participating in the interviews. See (APPENDIX 1 – Information about the study and the interview to the interviewees).

3 The evolution of the Social Security and the Retirement Pension System in Brazil

This section begins with a short introduction identifying the Social Security system in Brazil in order to help the reader understand how it works and what are its main aspects. This introduction is followed by an in-depth historical explanation of the Legal Background of the Social Security system, focusing on the Retirement Legislation, in order to make an analysis of the effects of the constant changes of this legislation on the people's retirement preparation.

3.1 Introduction

In Brazil, the development of the social security was improved with the Federal Constitution of 1988, known as the 'Citizen Constitution' (Goncalves, 2007, p. 5). Everyone should have the right of the benefits provided by the constitution and the obligation to contribute in order to maintain the solidarity between generations. This was the idea that oriented the social politics after the Second World War in the more developed countries and transformed those societies in welfare states, with an intervention of the State in the society.

The Brazilian Social Security System is provided by Law in the Chapter II of the Title VIII (Social Order) of the Brazilian Federal Constitution, in particular in the articles 194 to 204. The social security system includes a set of actions of the public sector and the society, destined to ensure the right to health, public retirement pension and to social assistance (Moraes, 2004, p. 686)¹⁰. This same concept is reproduced in the article 1 of the Law number 8212, from 1991, which organized the social security system, providing a funding plan, in addition to other measures. It refers to social rights, as affirmed since the Federal Constitution of 1934, as positive contributions from the State with the aim to provide the minimum condition of a dignified life to the human being. The article 5 of the same Law, disposes that these rights are to be organized in a

¹⁰ Also based in the Article 194 of the Brazilian Federal Constitution.

national system of social security, consisting in this system in the arrangement of different parts of a science, in an order where they stand each other mutually (Balera, 2000, p. 13), aiming the welfare and the social justice¹¹.

To maintain a system of social protection, the present Fundamental Law, established a mixed model of financing the system, prescribing in its article 195 that the social security will be supported by all the society, with resources provided both from the fiscal budget of political persons and by means of social contributions, with a obligatory character (Article 195 of the Brazilian Federal Constitution). Thus, the direct funding of the social security must be done with the results of the companies' and workers' contribution, from the revenues of lotteries and the importation of goods and services¹², and the indirect funding must be from the budget allocations of the Federal Union, the Federal States, the Federal Districts and the Municipalities, allowing the Federal Union the residual competence to regulate new sources of contribution.

3.2 Legal Historical Background

In Brazil, the legislative framework of the Social Security was officially recognized in 24/01/1923, when the Eloy Chaves Law (Legislative Decree No. 4682) was created (Goncalves, 2007, p. 1). As Kaizo Iwakami Beltrao, Sonow Sugahara Pinheiro and Francisco Eduardo Barreto de Oliveira state, “even though social security legislation already existed in the nineteenth century (especially with regard to military personnel and federal government employees), it is the Eloy Chaves Law (...) that is considered to be the legal landmark of the social security system currently used in Brazil” (Beltrao, Pinheiro, & de Oliveira, 2004, p. 21). However, before this Law, many companies had a private social security system, which was called ‘deposit box’¹³, to provide benefits and retirement pensions for their employees (Goncalves, 2007, p. 3). Thus, in that period, each company, privately, formulated their rules regarding social security (*Ibid*). In all of them the benefits of retirement and pension by death, as well as health care, were

¹¹ Art. 194, Brazilian Federal Constitution, (Constituição Federal Brasileira), 1988 – own translation. The social order has as a base the primacy of work, and objective the welfare and the social justice.

¹² Added by the Constitutional Emend no. 42/2003

¹³ In Portuguese: CAP – Caixa de Aposentadoria e Pensao

assured and the company and the workers provided the funds, in a similar system as it is nowadays (*Ibid*). With the ratification of the Eloy Chaves Law, these benefits started to be expanded to other sectors of jobs and careers in the private sector (*Ibid*). This system, according to Oliveira and Beltrao, “evolved as a very fragmented, company-based, low-coverage set of isolated programmes, operating under a full capitalization regime.” (Oliveira & Beltrao, 2001)

In 1930 another important fact occurred in the social security system evolution in the country. That was the unification of all the Retirement and Pension Deposit Boxes of the different public companies, originating then the *Institutos de Aposentadoria e Pensão (IAP)*¹⁴ (Goncalves, 2007, p. 3). The retirement system stopped being structured by the company, and it started to be divided by nationwide professional categories (*Ibid*). It is important to note here that this period coincides “with the emergence of the labour movement in Brazil, even though most labour unions were under State control” (Oliveira & Beltrao, 2001, p. 101). The retirement contribution was financed in this period in a tripartite way: by the employee, the employer and the State (*Ibid*)¹⁵. And therefore, the fund administration was exercised by a representative of the employees, of the employer and of the government (*Ibid*). However, this system did not function as it should have. On one hand the State did not fulfill its commitment, and on the other hand, the funds administration were often mismanaged (*Ibid*).

The 1946 Brazilian Constitution abolished the term ‘social insurance’, emphasizing for the first time in the Republic Fundamental Law the term ‘public retirement pension’, which was provided by its article 157. This article ruled that the state was the responsible to ensure the maternity leave and public retirement pension in cases such as illness, old age, invalidity and death (Article 157, XVI of the Brazilian Federal Constitution from 1946). It also regulated the working accident insurance on behalf of the employer (*Ibid*, Article 157, XVII).

In the 1960s, “most urban workers, including employers and self-employed, were theoretically covered by the system” (Oliveira & Beltrao, 2001, p. 101). Moreover, during this decade, the Ministry of Labour and Social Security was created and the

¹⁴ In English: the Public Institutes of Retirement and Pension.

¹⁵ This tripartite way of contribution was regulated by art. 121, §1, "h" of the Federal Constitution of 1934.

Organic Law of Social Welfare¹⁶ was considered one of the most important retirement laws of this time. It was characterized by the unification of benefits and financing schemes among the various institutes (Oliveira & Beltrao, 2001).

However, as mentioned previously, the social security system was covering just the urban-employed population. It was only in 1963 that the first law focusing on rural workers was created (Goncalves, 2007, p. 4). The Law No. 4214/1963 established the Fund for Assistance to the Rural Workers¹⁷ (*Ibid*). In 1966 the government unified the retirement and pension institutes¹⁸, creating the National Social Security Institute¹⁹. And it was only in 1969 that the State extended the social security system to the rural workers²⁰. From that moment the rural workers began to be insured a social insurance pension. There were no contributions by the employee, who was entitled to the retirement pension, invalidity pension and funeral pay.²¹

In 1977 the SINPAS (National System of Social Security)²² was created to integrate the activities of social retirement pension, social assistance, medical assistance and management of administrative, financial and patrimonial assets of entities linked to the Ministry of Social Security (Goncalves, 2007, pp. 4-5).

Finally, with the 1988 Constitution, there was a complete structuring of the social retirement pension, health and social care, unifying these concepts under the modern definition of "social security" (Articles 194 to 204). Thus, the SINPAS was abolished and the Institute of National Social Security - INSS²³ was established, linked to the Ministry of Social Retirement and Welfare (Goncalves, 2007, p. 5). Afterwards, in 1991, the Plan of Organization and Expense of Social Security and Benefit Plan of Social Retirement Pension were created to regulate the Law²⁴ (Goncalves, 2007, p. 41).

¹⁶ Law No. 3807 of 26/08/1960. In Portuguese: Lei Organica da Previdencia Social (LOPS)

¹⁷ In Portuguese: *Fundo de Assistência ao Trabalhador Rural - FUNRURAL*.

¹⁸ Decree-Law No. 72 of 21/11/1966.

¹⁹ In Portuguese: *Instituto Nacional de Previdência Social – INPS*. Today it is known as *INSS (Instituto Nacional de Seguridade Social)*

²⁰ Decree-Laws Nos. 564 and 704, of 01/05/1969 and 24/07/1969.

²¹ See also Complementary Law No. 11 of 25/05/1971, which established the Rural Employee Assistance Program (*Pro-Rural Program*).

²² Law No. 6439.

²³ Law no. 8029, from 12/04/1990

²⁴ respectively Laws Nos. 8212 and 8213, both from 24/07/1991.

Therefore, it could be noted in this section that the Law concerning Public Retirement and Social Security suffered various changes and amendments since its first appearance. This constantly changes provoke then an insecurity and an instability on people's retirement preparation, as it will be studied in the following chapters.

However, let's first analyze the current situation in Brazil, after the 1988 Constitution.

3.3 Current Situation- The Social Security and the Public Retirement Law in the Constitution of 1988

As previously mentioned, in the present constitutional text, the chapter of the social security (articles 194 to 204) is included in the section VIII, named "the social order". In this constitution the legal text aims to ensure to all people the access to health, social insurance and social assistance. In this tripod, whose implementation should involve initiatives of the Public Powers and the society, the main objective is to develop a higher social justice, welfare and improvements in the quality of life of the Brazilian population.

Sergio Pinto Martins defines the social security system:

"It is a combination of principles, rules and institutions, destined to establish a system of Social protection to the individuals, against contingency which prevent them of fulfilling their basic personal needs and of their family, integrated by actions from the initiative of the public powers and the society, aiming to assure the rights relative to health, public retirement pension and social assistance" (*Martins, 2000, p. 43*).

The social security is a social right guaranteed in the article 6 of the Constitutional Law from 1988. The competence to legislate about the social security is private to the Federal Union, as affirmed by the article 22, XXIII, from the Federal Constitution of 1988.

3.3.1 The Social Insurance System

Social insurance is a collective insurance, public, compulsory, destined to establish a social protection system, upon contribution, which aims to provide the necessary means

of subsistence to the insured worker and his family, when there is some possibility for that provided by law (Goncalves, 2007, p. 9).

Wladimir Novaes Martinez provides the concept of social insurance as being:

“the technique of social protection that aims to provide the means necessary for the subsistence of the human person - when it cannot obtain it or is not socially desirable that he receives it personally through work, due to maternity, birth, disability, disability, unemployment, imprisonment, old age, length of service or death – through distinct compulsory contributions, from the society and each of the participants” (Martinez, 1992, p. 99)²⁵.

Social insurance consists thus in a way to ensure the insured worker, based on the principle of solidarity, providing benefits or services when he/she faces one of the situations pre-established by Law. The public retirement pension system using the simple sharing model in which assets contribute to the inactive. So there is solidarity among the participants in the costing of the system, where the amounts collected are for future benefits. The retirement benefits are therefore granted following respective rules regarding among others, the age and the length of contribution (Oliveira & Beltrao, 2001, p. 101), which will be detailed explained in the next sub sections.

According to the Article 201 of the Federal Constitution “the social insurance will be organized in the form of general arrangements, with a contributive character and compulsory membership, subject to the criteria that protect the financial and actuarial balance, under the law, and will attend:

- I. coverage of events of sickness, disability, death and old age;
- II. maternity protection, especially to pregnant women;
- III. protection to workers in involuntary unemployment;
- IV. family- wage and imprisonment- aid for the dependents of low-income insured;

²⁵ My translation.

- V. pension on death of the insured, man or woman, to the spouse or partner and dependents ” (Article 201 of the Brazilian Federal Constitution of 1988 – my translation).

However, as previously mentioned, it was only in 1991 that these new context of social insurance was implemented in Brazil, with the Law No. 8.213/91 (Beltrao, Pinheiro, & de Oliveira, 2004, p. abstract). This Law governs rules that deals with the social insurance benefits and regulates the caput of Article 201 of the Constitution. Moreover, the Law No. 8.212/91 establishes the rules concerning the costs of social insurance. In addition, the Decree No. 3.048/99 also deals with Social Insurance Regulations.

Furthermore, the Constitutional Amendment No. 20 of 15/12/1998, called the Retirement Pension Reform, was an important constitutional reform after the 1988 federal constitution, introducing important changes in the Social Insurance system (Goncalves, 2007, p. 7).

Later on, in 2003, Brazil had another social retirement pension reform, regulated by the Constitutional Amendment No 41 of 31/12/2003. In this reform it was mainly changed the rules of the social retirement regime of the public servants, the RPPS (*Ibid*). Shortly after there was the Constitutional Amendment No. 47/2005, which slighted changed the Article 201 of the Brazilian Federal Constitution.

Besides the Public Social Insurance, it is also worth to mention here the private pension fund, called the complementary retirement pension provided in the article 202 of the 1988 Federal Constitution. It is characterized by a system of complementary insurance to the public one, with voluntary character, and contractual in nature. (Goncalves, 2007, p. 45)

In the following sub-sections, it will be analyzed the rules to obtain the Public Retirement Pension in Brazil. For the purpose of this thesis it will only be analyzed the Public Retirement Pension by age and by length of contribution in the RGPS, since the interviewees were included in this Regime of Public Social Insurance.

The Public Retirement Pension by Age

Public Retirement Pension by age is based on an age limit, “which represents the moment in which the worker should retire from labor activities, due to an old age, and consequently, presumably incapability of working”²⁶ (Netto, 2009, p. 65).²⁷

According to Juliana Presotto Pereira Netto,

“other interesting aspects that can also be raised regarding the retirement by age concerns the increase in the life expectancy and the unemployment. On the one hand, the fact that people are living longer would bring the necessity of increasing the age limit for the retirement. They could work and contribute for a longer period of time, and still take advantage of the benefits for a satisfactory period as well” (Netto, 2009, p. 65)²⁸.

Thus, the Brazilian legislation, concerning the RGPS, defines the standard of 60 years of age for the retirement for women and 65 years for men (Law n. 8213/91, Article 48). Five years less are required for rural workers (55 for women and 60 for men) (Law 8213/91, Article 48, Para. 1), and with additional five years (65 for women and 70 for men), the retirement by age can be required by the employer (and not only the employee), as long as the employee has fulfilled the qualifying period (Law 8213/91, Article 51)²⁹. In this last case it is called “compulsory retirement”.

With exception of the compulsory retirement, the retirement by age does not forbid the employee to continue practicing the same active as previously (Netto, 2009, p. 65). According to Juliana Presotto Pereira Netto, “in many cases, this is even necessary, due to economical reasons [or due to the fact] that the employee still finds himself in full physical, psychological and social capacity, which makes him want to continue practicing a productive activity, remunerated or not”³⁰ (Netto, 2009, pp. 65-66).

²⁶ My Translation.

²⁷ According to Law 10666/03, the non characteristic of insured by the INSS by the time of requesting the Public Pension will not be considered to the concession of the retirement by age, as long as the worker have accomplished the minimum time of contribution required.

²⁸ My Translation

²⁹ The Law 8213 from 24/07/1991 treats the benefit regimes of the Social Insurance as well as provides complementary rules concerning Public Retirement Pension Law.

³⁰ My Translation

Retirement by Length of Contribution

This benefit modality requires the proof of not only the work, but also the proof of the payment of the contributions, stating clearly the insurance character of this Public Retirement Pension (Netto, 2009, p. 67).³¹ The requirement in the RGPS concerning the length of contribution years necessary to obtain the social insurance are 30 years of contribution for women and 35 years for men (Article 201, Para. 7, I of the Brazilian Federal Constitution from 1988).

Once these requirements are met, “the benefit will be calculated based on the average of 80% of the biggest contribution salary of the insured”³² (Netto, 2009, p. 67). In the RGPS, after the average has been calculated, the retirement factor³³ is obtained (*Ibid*), which is a value obtained from a mathematical formula, containing as variables the age of the insured, the expected survival time and his/her time of contribution for the system (*Ibid*). Therefore, in many situations, as it will be further described in the analysis (Chapter 5 of this thesis), this factor makes the employee to continue working for a longer time (*Ibid*, p. 68). Moreover, the final value may not exceed the roof value of benefits of the Social Insurance, which is, since 01/2012, an amount of R\$ 3.916,20³⁴.

It is also important to mention here that in Brazil, like in Argentina and Uruguay, there is a greater flexibility in the collection of contributions, to help people with irregular incomes to contribute to social security schemes. In Brazil, this system of contribution collection is called ‘monotributo’ scheme and “it covers the self-employed workers and small enterprises”. (International Labour Office, 2011b, p. 91)

The Official Labor and Social Insurance Book

It is also relevant for the purpose of this thesis to briefly explain the importance of the official Labour and Social Insurance Book (CTPS)³⁵. This document is obligatory for

³¹ The worker, in this case, need to be insured of the Social Insurance System by the time that he requires the Public Pension to have the right to retire by contribution time

³² My Translation.

³³ Retirement factor here means the value obtained from a mathematical formula, containing as variables the age of the insured, the expected survival time and his/her time of contribution for the system.

³⁴ Brazilian Social Security website <http://www.previdenciasocial.gov.br/conteudoDinamico.php?id=410> (Ministry of Social Security, 2011)

³⁵ In Brazil called Carteira de Trabalho e Previdencia Social (CTPS)

people that will in some way have a registered work in Brazil. This book is one of the only documents that can reproduce, clarify and prove data about the working life of the holder.³⁶ This document guarantees the access to some of the main Labor Rights, and as well to the Social Insurance Benefits.³⁷ According to Irineu Evangelista de Carvalho Filho, the Official labour ad Social Insurance Book “is an individual document where the holder’s lifelong labor history should be registered. Every worker in the formal sector is supposed to have one” (Filho I. E., 2008, pp. 144-footnote 15). Thus, as the Brazilian law requires this signed document in order to the employees to work, if the employee does not have this signed card, he/she can be consider to be an informal worker. According to Fernando de Holanda Barbosa Filho (Filho F. d., 2006), “...another definition used was whether the worker was contributing to the social security system or not. The worker that did not contribute to the social security system was considered informal.”

Therefore, since this document is essential to the employee to be considered a formal worker, which means a worker with full labor and social security protection, the loss or the bad conservation of this official book can create some problems to the citizen. For instance, the worker whose document is not in a good conservation may find difficulties in reviewing and proving former employment registrations, finding a new job and even when it comes to require the Public Retirement Pension³⁸, as it will be more detailed described and analyzed in chapter 5.2.2- The Effects of the Administration Problems in People’s Retirement Planning.

³⁶ The Official Government Website of the Ministry of Labor and Employment <http://www.mte.gov.br/ctps> (Ministry of Labor and Employment, 2011)

³⁷ Information regarding this document can be found in the Official Government Website of the Ministry of Labor and Employment <http://www.mte.gov.br/ctps> (Ministry of Labor and Employment, 2011)

³⁸ The Official Government Website of the Ministry of Labor and Employment <http://www.mte.gov.br/ctps> (Ministry of Labor and Employment, 2011)

4 Theoretical Framework

In this section, the theoretical framework of this thesis are presented and discussed. The theoretical framework of this thesis is centered on the concepts of legal legitimacy and social efficacy, two concepts over which there are significant debates on a sociology of law perspective. This section also presents the Social Security as a fundamental social right in the Brazilian Federal Constitution. Thus, it will be also discussed and evaluated this concept in relation to the theoretical bases presented here, in order to achieve a concluding theoretical framework for the purpose of this thesis.

4.1 Introduction

According to the International Labour Organization, “Social Security systems are one of the most powerful institutional expressions of social solidarity. Promoting social security as Human Right, giving care and social protection, turns out to be a very efficient instrument for the extension of social security coverage through activating the role of civil society and the social partners”. (International Labour Office, 2011a, p. 71)

In the Brazilian constitution, the Social Security is guaranteed as a fundamental social right, which has as a basis the importance of the work, and as objective the welfare state and the social justice. This is the right that allows a better life condition to the less favorable individuals in society, which tries to promote the equality of the inequality social situations (Silva, 2002, p. 289). Therefore, the right to Social Security is seeing as one of the rights that aim to ensure people a life with dignity.

For Ben-Bassat and Dahan, this right is one out of the five social rights that should be included in a Constitution, to ensure the ‘right to live in dignity’. In their words:

“The five social rights are the following: 1. The right to live in dignity. Later on we use the term the right to social security. That right is composed of seven features: insurance for pension, survivors, disability, unemployment, accident, minimum income and sickness.” (Ben-Bassat & Dahan, 2008, p. 105)

This Constitution was established in 1988 with principles such as sovereignty, citizenship, and human dignity, as well as the social values of work, free initiative and

political pluralism (Article 1 of the Brazilian Federal Constitution). Its fundamental objectives are to build a free, fair and caring society, to ensure national development, eradicate poverty and marginalization, to reduce social and regional inequalities and to promote the social welfare, without distinction of race, sex, colour, age, origin and any other forms of discrimination (Articles 1 to 3 of the Brazilian Federal Constitution of 1988). Thus, it can be seen from these first articles that the major concern of the Brazilian Constitution is to guarantee basic principles of social rights and moreover of human dignity.

The right of social security is well connected to the concept of fundamental and social rights, since it provides a social safety net and it promotes, till certain extent, a positive impact on income equality. For the aforementioned authors, “the constitutional right to social security may be regarded as the core of the modern welfare state” (Ben-Bassat & Dahan, 2008, p. 108), in which the Brazilian Constitution bases the formulation of its rights and duties.

4.2 The Concept of Fundamental Social Rights

Before analyzing further the social efficacy and the legitimacy of the fundamental social rights in Brazil, which includes the social security right, it is important to first state the meanings of fundamental rights and social rights.

José Afonso da Silva defines fundamental rights as follows:

“The term fundamental human rights are legal situations, objective and subjective, as defined in the positive law, in favor of dignity, equality and freedom of the individual. (...) These are constitutional rights in extent that they fall within the text of a constitution or even emerge from simple statement solemnly established by the constituent power. These are rights that arise and are based, therefore, in principle of popular sovereignty” (*Silva, 2002, p. 179*)³⁹.

These rights are those considered indispensable to the human being, required to ensure the individuals a life with dignity, freedom and equality. Thus, the fundamental

³⁹ My translation.

rights are the essential ones for the people, and they are usually recognized and guaranteed by a specific legal order.

Paulo Bonavides points out that there are two formal criteria to characterize the fundamental rights (Bonavides, 2000). In the first criteria, the fundamental rights are all the rights or guarantees appointed and specified in the constitutional text (*Ibid*). In the second criteria, the fundamental rights are those that have received a higher degree of guarantee or security by the Federal Constitution, becoming fundamental constitutional rights (*Ibid*). Thus, these last ones have an inviolable and an imperative characteristic (Moraes, 2004, p. 204). The Social Security right in Brazil is inserted in this last criteria of fundamental rights, since this right have a status by the Brazilian Constitution as a fundamental constitutional social right (Title II, Article 6 of the Brazilian Federal Constitution).

A constitutional social right is defined as the right that grants a personal entitlement to monetary transfers (such as the worker's salary, the social insurance and the social assistance), as well as it provides the rights to education, health, and shelter, to therefore promote a more social equality (Moraes, 2004, p. 205). Therefore, the social security right as a whole is included in this definition of constitutional social right. According to Ben-Bassat and Dahan, the social security is composed by seven elements to ensure the fulfillment of the workers' rights: insurance for pension, survivors, disability, unemployment, accident, minimum income and sickness (Ben-Bassat & Dahan, 2008).

Moreover, these aforementioned authors consider the social rights to be included in the third generation of human rights, which means that social rights are relatively a new phenomenon, being inserted in the Constitution of countries that have written theirs more recently (Ben-Bassat & Dahan, 2008). In another classification, Alexandre de Moraes points out that the social rights, as well as the economical and cultural rights, are included in the second generation of fundamental rights (Moraes, 2004, p. 61). Following the same classification perspective, Themistocles Brandão Cavalcanti affirms that these rights were included in declarations and constitutional principles in the beginning of the last century (Cavalcanti, 1966, p. 202). He analyses the social rights as those related to the right to work, social security, subsistence, and moreover to the right to be assisted in case of illness and elderly (*Ibid*).

There is a “considerable variance between countries as regards to the degree of constitutional commitment to social rights, ranging from concrete policy action in some countries to a general statement reflecting a vague commitment in others” (Ben-Bassat & Dahan, 2008).

For the ILO, this vague commitment or non-recognition of the fundamental social rights “implies long-term and possibly larger liabilities in economic, social and developmental terms as opposed to the immediate short-term savings related to the lack of recognition of social rights” (International Labour Office, 2011a, p. 72). Moreover this international organization states that “neglecting social rights generates a productive loss to the economy, a loss in social and human capital, which is borne by entire societies at all levels: the State, communities, voluntary sector, families, enterprises and individual citizens ” (*Ibid*).

In the next sections, it will be described and analyzed the Brazilian commitment to the social right of social security and the way they are implemented and ensured in the country.

The Social Security Right as a fundamental social right in the Brazilian Federal Constitution

As previously mentioned, the fundamental rights are legitimate enshrined in the Constitution of 1988 and, therefore, constitute themselves as a result of social demand. In this Constitution, the term ‘fundamental rights’ is viewed as a general concept, while the specific concept of the fundamental rights are characterized by individual, collective, social, national and political rights.

The section II of this Law presents then the fundamental rights and guarantees, covering the rights and social obligations, individuals and collectives, political rights and political parties, and the right to nationality. Furthermore, the section VIII defines the work as the basis to Social Order, and the welfare and social justice as its objectives. It includes several provisions such as: social security, health, social assistance, education, sport, science and technology, the media, the environment, the family, the child, the adolescent, the elderly and the Indigenous people. Also, besides this section VIII, the social security is also guaranteed as a fundamental right in the article 6 of this Law, as mentioned before.

The Brazilian Constitution then created these *provisional*⁴⁰ rights, which provide several social benefits “in order to promote and ensure a reasonable and dignified level of subsistence” (Moraes, 2004, p. 205)⁴¹, to achieve the social justice. And the context under consideration here basically refers to those fundamental rights of *provisional* character, such as the social rights themselves, which includes the social security right.

In a Democratic State of Law, the society has the power to demand the realization of the fundamental social rights. Therefore, to guarantee this power, the Brazilian Federal Constitution also states that: “the provisions defining the rights and guarantees have an immediate application”⁴². For this immediate application of the fundamental rights to happen, the Constitution also provided then some legal mechanisms to ensure the fulfillment of these rights. (Moraes, 2004, p. 62)

Thus, it can be concluded that there is no longer the need to focus on the production of fundamental social rights in Brazil, such as the social security right. This task has been properly consolidated, as it was explained in this section and detailed described in the chapter 3 (

The evolution of the Social Security and the Retirement Pension System in Brazil). Hence the concern now deepens towards the direction to successfully apply these rights and to achieve their social efficacy.

4.3 The Concepts of Legitimacy and Social Efficacy

To analyze and understand the impact of the Social Security Law and the Retirement system in Brazil on people’s retirement preparations, there is a need to elaborate a theoretical framework within a legal-sociological approach. Therefore, the concepts and theories surrounded by the social efficacy and legitimacy will be elaborated on this section.

⁴⁰ In Brazil this rights are called “direitos prestacionais”, which means that are rights provided by the State to the individuals in a obligatory character.

⁴¹ My translation.

⁴² Article 5, Paragraph 1 of the Brazilian Federal Constitution of 1988- my translation.

4.3.1 Social Efficacy

Regarding the social efficacy and the applicability of the constitutional fundamental rights, José Afonso da Silva affirms that they are strongly dependent on their own subject; once it is a matter of positive Law (Silva, 2002). As mentioned previously, the Constitution is well clear in stating that the rules defining the rights and guarantees have immediate application⁴³ (Moraes, 2004, p. 62). However, this does not solve all issues, since the applicability of these rules, especially those concerning social rights, depends on specific legislations and regulations. According Jose Afonso da Silva, the provisions that define the economical and the social rights in the Constitution tend to be of limited efficacy and indirect applicability, since their rules and regulations are integrated in specific laws (Silva, 2002). These specific laws should thus follow the legal hierarchy, which defines the constitutional rights to be the primary rights, i.e. the most relevant and basic rights for the society. Therefore, in the democratic State, all of the other specific laws and regulations are under the constitutional law, which means that these specific laws should guarantee and enforce the fulfillment of these primary rights, and never be contrary to the principles intrinsic in the Constitution (Silva, 2002, p. 179).

On the other hand, we cannot defend the presumption that the fundamental rights are always being fulfilled with its social efficacy. When analyzing the Constitution, it can be concluded that the constitutional norms provide rights in a broad and general way, as a result of its fundamental legal characteristic (Carvalho, 1982, p. 13). Therefore, it is not sufficient for the State to only formally recognize the fundamental rights. It is also necessary to concretize them in the daily life of the society by the intermediation of efficient and effective regulations and policies.

Thus, the social efficacy of the fundamental rights is not a purely juridical problem, but a pre-judicial and socio-cultural one. The circumstances that produce the inefficacy of these rights resides in the behavior of the legislator itself that should aim for the production of laws that achieve the goals for which they were created. In this effort, the legislator should not only rely on the formal aspects of creation of laws, but also on the merge of these aspects with social, political, economic and other factors. From a legal sociological perspective, it is necessary to analyze then the interrelations between legal

⁴³ See also Article 5, Paragraph 1 of the Brazilian Federal Constitution of 1988..

and social factors and the impact that the law and legal institutions have on social behavior (Friedrichs, 2006, p. 132). According to the ILO, “effective access to social rights, including the right to social security, is part of the vision of what ‘development’ means in the global era and what the basic metric should be to measure its human and social dimensions.” (International Labour Office, 2011a, p. 72)

4.3.2 Legitimacy

Regarding the concept of legitimacy, Arnaldo Vasconcelos (Vasconcelos, 1993) defines legitimacy as a case of value, in which there is a predominance of the philosophical and political subject, which remains in the ideological sphere. He explains that the legitimacy finds the essence of its existence in the beliefs of the social group. According to Tyler, legitimacy is “the degree that people feel a personal obligation to follow social rules and to obey social authorities” (Tyler T. R., 2001, p. 419).

Moreover, “it can be suggested that legal legitimacy depends ultimately on the belief of individual actors that law promotes, within the limits imposed by its ‘essential’ nature as a consistent and comprehensive rational *system* of regulation, what is most fundamental among the actor’s values of justice and order, thought of not merely as procedural elements in law, but *social* values”. (Cotterrell, 1995, p. 157) According to Bo Carlsson, legitimation is linked with “the public acceptance of the justice of the market (and state administration) (Carlsson, 2002, p. 81)

For Roger Cotterrell, legitimacy is seen as acceptance of law, in which the personal values of order and justice play an important role (*Ibid*, p. 316). However, for this author, between these two personal values, the order is the strongest one in determining legitimacy (*Ibid*). Even though he considers both values connected to each other, the order is the one that assures that “one can rely securely in retaining what justice provides; in other words, that conditions of order make the pursuit of justice meaningful” (Cotterrell, 1995, pp. 316-317).

Tom Tyler, in a reference to Easton, states that “legitimacy exists when the members of a society see adequate reason for feeling that they should voluntarily obey the commands of authorities” (Tyler T. R., 2006, p. 25). For this author, people are motivated to comply with the law since this compliance is linked with rewards or punishments associated to the fact of obeying or disobeying the law, which is often

referred as social control (*Ibid*, p. 20). It is important to not confuse here legitimacy with the compliance of law, however both concepts are very much linked, since legitimacy influences the compliance of law (*Ibid*, p. 25). Within this perspective, David O. Friedrichs, in a reference to Tyler, states that “people are found to obey a law if it emanates from a source they regard as legitimate. More specifically, when people view the legal order as using fair procedures, they tend to view as legitimate” (Friedrichs, 2006, p. 261).

Thus, concerning the commitment degree of the population in following the rules and obeying the social authority, there is a clear link between this degree and the level of trust that people have in their governments and public authorities. Hegtvedt and Johnson, for instance, states that “results indicate that citizens who thought that authorities used fair procedures in making decisions and treated them with respect and dignity were more likely to be judged as legitimate, regardless of the actual outcome of the encounter.” Moreover, these authors refer to some other studies in which affirm that there is also a “linkage between procedural justice and legitimacy and the effects of legitimacy on compliance with rules (...) or cooperation more generally” (Hegtvedt & Johnson, 2009). In addition, the non-confidence on courts decision also “increased cynicism about democracy and the rule of law, and increased tolerance for vigilante justice, nearly complete lack of faith in the judiciary ...” Therefore, it can be argued that there is a relation between the outcomes produced by legal and political procedures and institutions and their legitimacy (Tyler T. R., 2006, p. 30).

For David O. Friedrichs, the lacks of trust and believe in the legal system by the people can generate a non-obligation in complying with the law (Friedrichs, 2006, p. 263). This can creates a ‘legitimacy crisis’, which according to this author happens “when a significant percentage of the population no longer regards the legal system as legitimate, or worthy of their respect and obedience” (*ibid*, p. 264). For Roger Cotterrell, a legitimacy crisis involves “ the possibility of mass withdrawal of political loyalty” (p.170).

In this context, Brazil is considered “to be on the verge of serious democratic decay, with the failure of the judiciary a critical factor contributing to the declining faith in the rule of law” (Prillaman, 2000, p. 6), which have a negative impact on the legal legitimacy. The lack of trust in the public Institutions, public Entities and in the Government itself is due to problems associated with to judicial delay, corruption,

nepotism and politicization. As Augusto Zimmermann states, these factors “have hindered the realization of the rule of law by dramatically reducing the level of social confidence in the overall judicial system” (Zimmermann, 2008).

The corruption level in Brazil has then great influence on the people’s trust on the public authorities and public systems, such as the retirement system in Brazil. In relation to the corruption, Keith Rosenn points out the roles of the cultural and historical facts in the Brazilian corruption system. He states that the lack of justice and the corruption in Brazil are problems carried out since the colonial times: “the reputation of the colonial judiciary was one of inefficient venality. Lack of justice was a constant complaint in colonial Brazil even though apparently well-qualified magistrates were dispatched from Portugal to the benches. Justice was regularly bartered like any other commodity, though delivered more slowly” (Rosenn, 1971, p. 514). The same author also affirms in his work that the acceptance of bribes was common in the Brazilian judiciary system during that period, which demonstrates how corruption is present in the legal and political spheres for a very long time. In Keith S Rosenn’s words, “...supervision over notaries and judicial clerks was practically nil. Since these offices were frequently leased or subleased, sometimes for more than position’s salary, the investment in the office was commonly recouped through acceptance of bribes” (Rosenn, 1971, p. 521). As it will be explained in the analysis chapter of this thesis (Chapter 5.3.3), the great level of corruption in Brazil therefore contributes to the lack of trust on the Public system, which affects then the legitimacy of the Public Institutions and authorities, such as the INSS, and of the judiciary system. According to Augusto Zimmermann, “over these last two decades (...) the level of distrust in the Brazilian judiciary has increased” (Zimmermann, 2008, p. 1), being the judicial delay one of the major factors of this popular mistrust (Vargas, 2004, p. 19), contributing then to a possible ‘legitimacy crisis’ in the legal and political systems.

However, regarding the mistrust and lack of legitimacy in the Social Security system in Brazil, it is important to mention that people comply in contributing to the system since it is compulsory and automatically deducted from the salary (subsection Retirement by Length of Contribution in section 3.3.1 of this thesis). Further analysis on the level of mistrust by the Brazilian people on the Social Security system and on people’s behavior in relation to the obligatory aspect of the contribution to social security can be found in chapter 5.3.3 of this thesis.

Given these basic definitions about the social efficacy and legitimacy, and the relation between the legitimacy and the trust on Public authorities with the level of corruption in the country, the next section will provide the final remarks regarding the theoretical framework of this thesis.

4.4 Final Remarks

The fundamental rights in the Constitution of 1988 are structured so that is possible to identify those aimed at individual protection and guarantees (Article 5 of the Brazilian Constitution) and those of *provision* character (such as social rights –Article 6 of the Brazilian Constitution). It is also important to re-state here that the Brazilian Federal Constitution includes the social rights in its enumeration of fundamental rights and guarantees (Brazilian Federal Constitution, Tittle II).

In an effort to provide the social efficacy of the fundamental rights, the State may find several barriers. According to Arnaldo Vasconcelos, the efficacy of a norm is a case of social validity (Vasconcelos, 1993). A norm with efficacy is the one that performs a social function and, therefore, the efficacy is measured by the constancy that a norm is followed and implemented in the society (*Ibid*). According to this author, the concept of the law enforcement is related to the sphere of the legal norm, whereas the concept of efficacy is related to the social sphere, where it is concretized (*Ibid*).

Therefore the social efficacy of the fundamental rights will only be fulfilled when these rights materialize themselves in the social field through public policies, which meet the main and urgent popular demands (Coutinho, 2010, p. 17). The efficacy of fundamental rights is closely linked to the process of elaboration and improvement of the laws, which must be produced to reach the society needs. Thus, the consolidation of the fundamental rights requires an active collaboration of all the components of the social body. However, the level of constitutional commitment for social rights does not necessarily reflect on the social policies implemented to a society. This means that the social rights, such as the social security right, established in a national constitution has often no practical means, which affects its level of social efficacy (Ben-Bassat & Dahan, 2008, p. 118).

The law should be a link between the state and the citizen, considered to create and promote “desirable social values” (Friedrichs, 2006, p. 7). Unfortunately, daily life provides us with evidence that the Brazilian State produces, in many times, unclear and innocuous and imprecise laws. As it was shown in the Historical Background section, the Social Security Law in Brazil changed many times since its first appearance. This results in a feeling of instability and insecurity in the society, which leads to a level of mistrust, as it will be detailed analyzed through the interviews in the next chapter. The ideal is that the legislative would emphasize in the quality of its law production, to create positive impacts in the society and to contribute then to the social efficacy of the constitutional fundamental rights and guarantees.

In Brazil, the social and economical inequality contexts given by the poor income distribution and by the wide regional differences bring a social inefficacy of the fundamental rights, since they are not being fulfilled to the entire population. Laws that regulate these rights need to have a minimum of efficacy, i.e. a minimum of applicability in the factual world. However, the legislation and the administrative processes are considered to be “irrational or regressive- or even neutral, considering the spirit of the Brazilian Constitution” (Coutinho, 2010, p. 17), which the reasons leading to the inefficacy of fundamental rights in the Brazilian society.

Regarding the efficacy and legitimacy of social security, the ILO states the necessity of having a rights-based approach to social security to diffuse a better “rights consciousness” within the society. This would “foster citizens’ mobilization against various forms of discrimination and division and help creates a kind of ”social consensus “on the goal of social security for all” (International Labour Office, 2011a, p. 71). According to the ILO, the non-efficacy of social rights promotes a growth in social inequalities (International Labour Office, 2011a, p. 72). Moreover, this organization states that “denying access to social rights also endangers social sustainability by neglecting social cohesion” (*Ibid*). To the ILO the effective access to social rights, such as the social security right, “therefore is investment in social justice, with a high rate of return, not only in social, but also in economic terms, and constitutes an indispensable solid foundation for sustainable and peaceful development for all ” (*Ibid*)

Finally, it is understood that for the consolidation of the social efficacy of fundamental rights, it is required an active collaboration of all components of the social body and for such a collaboration, there is a necessity of the existence of a strong

juridical sense. Moreover, if there is still the greater prevalence of the poor population over the rich (Coutinho, 2010, p. 12), consequently the fundamental rights of social economic character, such as the social insurance itself, are not being properly effective, creating an obstacle to development. (Coutinho, 2010, p. 17)

In the next section then it will be provided an analysis of how the social fundamental right of social security (with a focus in social insurance) is being effective in Brazil through the qualitative interviews realized for this study. Moreover, it will be analyzed how the Brazilian society is affected by the legislation regarding when one prepares for his/her retirement.

5 The Impact of the Social Insurance Law and Public Retirement System in People's Retirement Preparations

In this section, the empirical data, i.e. the narrative interviews, is analyzed in order to answer the research questions of this thesis. This section begins with a short introduction, followed by an analysis of the aspects of the Social Security, Social Insurance and Public Retirement Systems and Law in Brazil that have a major impact in People's Retirement Preparation, according to the data collected in the qualitative interviews.

5.1 Introduction

Every society is build up by their people, culture, government and, among others, the Law itself. The Legal system influences the juridical structure, the legislations, the policies, the government and the whole legal perspective of a society. As mentioned in Chapter 1 of this thesis (Introduction), the Social Security System is among one of the structures that serves as a basis to create a Social Welfare System, with “a wide range of social policies, such as investments in basic social services, protective labour legislation and the enforcement of basic rights” (International Labour Office, 2001, p. 54). In Brazil, the Social Security System, which encloses the Social Insurance System and therefore the Public Retirement System itself, is regulated by its own legislation, however, due to its relevance in the social welfare State, its fundamental principles and rights are defined in the Brazilian Federal Constitution⁴⁴. Therefore, the Social Security Law and its implementation result on a great influence of the retirement preparation and planning of the workers.

Several aspects influence when one prepares for his/her retirement. During the interviews realized for this thesis, there were, for instance, some people who began their

⁴⁴ The impact of the Brazilian Constitution of 1988 is detailed explained in chapter 3.3-Current Situation-The Social Security and the Public Retirement Law in the Constitution of 1988. Also reference to the hierarchy of the norms in Brazil is made in chapter 3.2- Legal Historical Background.

retirement preparations when they start to work, and others when they start to build their own family, etc. However, an important aspect is the impact of the Law in people's retirement preparation. As it can be noticed from chapter 3.2 (Legal Historical Background), Brazil has been changing for many times the Social Security and Social Insurance Law since its first appearance in the Juridical Order. And these constant changes result in a great level of uncertainty for the retirement planning of the population. This could be noticed when the interviewees were answering the questionnaire.

How the Law impact on the people's retirement plans can bring some general conclusions about the social efficacy of the Brazilian Social Insurance Law in the society, as well as the trust that this society has on the Public Insurance System and on its administrative institution (INSS). Besides this, there is the influence of each personal experience regarding this Law and the System itself, which is considered one of the major factors for the individual's retirement preparation. Together with this, the social and historical background, family, work experience, occupation and even the age and gender are relevant influences for one's personal retirement strategy. During the interviews this could be noticed from all participants. Each one had their own life story influencing their points of view of a future retirement life.

All of these aspects have a great significant impact on everyone's retirement planning. The main analysis that the realized interviews will have here is concerning the impact of the Social Insurance Law, focusing on the Public Retirement Legislation, when a Brazilian is planning his/her retirement. In this aspect it will be discussed in the following sections (5.3.1, 5.3.2, 5.3.3) respectively the Social Efficacy of the Social Insurance Law, with emphasis to the consequences of: 1- the instability of the law and the politics concerning retirement legislations; 2- the popular mistrust on the Public Insurance System; 3- the problems faced by the citizens with the administration aspects of the Social Security System in Brazil.

Another perspective that will be analyzed in section 5.4 is the problem with the society's lack of knowledge about the law and the impact that this might cause in the people's retirement strategies and also in the implementation of the law itself. All of these aspects will be discussed and analyzed based on the interviews realized for this research, with cross-references to the previous chapters about the Brazilian Social Security Legal Background (chapter 3), the Legal Legitimacy and Social Efficacy

(chapter 4), also relating to Previous Research (section 1.4 -Relation to Previous Research).

However, it is important to first describe here a general overview of the participants and their relation to the specific research questions of this thesis.

5.2 General Overview of the Participants and Their Relation to the Research Questions

As mentioned in Chapter 1 (Introduction), in Brazil the Social Insurance System is divided, according to Articles 201 and 202 of the Federal Constitution of 1988, into two regimes: public and private. Moreover, the public regime is subdivided into the General Regime of the Social Insurance (RGPS⁴⁵) and the Regime of Social Security of Public Servants (RPPS⁴⁶). However, as mentioned before, this thesis is focusing on the Public Retirement Pension of the RGPS, and therefore for the interviews realized there were selected only workers who were registered in this regime.

All the participants of the interviews were from the middle class in Brazil, however there were some great differences among their level of income. It was chosen interviewees from this social class working in the formal sector (i.e. registered in the social labor and social insurance book)⁴⁷, to therefore have a clear picture of the ones enjoying the Social Security System in Brazil. Moreover, all the participants stated their aim to retire by length of contribution, which is in the RGPS 30 years for women and 35 years for men⁴⁸. Also, during the interviews, all of them stated their aim to contribute until the age required to obtain the full benefit value of their retirement pension.⁴⁹

Most of the interviewees were contributing to the INSS the equivalent amount related to their salaries, which is automatically deducted from the salary. However,

⁴⁵ In Brazil this is called Regime Geral de Previdência Social with the acronym RGPS

⁴⁶ In Brazil this is called Regime Próprio de Previdência dos Servidores Públicos with the acronym RPPS

⁴⁷ Regarding information on the Social Labor and Social Insurance Book see subsection The Official Labor and Social Insurance Book in chapter 3.3.1 of this thesis)

⁴⁸ See subsection Retirement by Length of Contribution in Chapter 3.3.1.

⁴⁹ The age required to obtain the full benefit value of the retirement pension is subjective to the contributor, and the age is important since it is one of the variables applicable when calculating the Retirement Factor (in this regards, see Chapter 3.3.1 Retirement by Length of Contribution).

there were two interviewees who were contributing to receive the roof amount of the public retirement pension, which is, as stated previously in this thesis, the amount of 3.916,20 reais. They were A.L and U.A., two medical doctors who contribute according to their salary in the hospital and moreover contribute as autonomous workers (their interviews will be further discussed in the next sections). It is important to mention here that even though a worker can contribute to receive the roof of the public retirement pension, usually the reality shows that the life standard after the retirement decrease tremendously in Brazil.

Therefore, it was also asked to the interviewees if they plan to have another source of income besides the public retirement pension. In this question, all of them without an exemption, answered that they will need another source of income to complement their retirement pension and not have a dramatic change of life standard during their elderly age. Some of them stated that they will continue working after the retirement, others were already investing in real states or in a private fund. Some also mentioned their investment in the private retirement pension. Moreover, there were interviewees who mentioned that their plan is to have all of this combined. What is important to state here is that in Brazil there is a great difference of income and a great difference of life standard, and although all participants in the interviews were from the middle social class, there were also a great difference of life standard and income among them.

To select the participants for the interviews, the main considerations made then were their social class and their employment status, to therefore assure that they were included in the social security scheme and that they had a minimum knowledge of the subject to be confronted with the interview questions. Moreover, the interview guide had questions related to the research questions of this thesis (see Appendix 2- Interview Guide). The participants were confronted with questions related to their experience with the public retirement institute and public retirement law.

Thus, the empirical data analyzed in this section reflects on the research questions of this thesis. Regarding the first research question (How the Brazilian Public Retirement Law and its development influences on people's retirement preparations?), it was required to establish a link between the law and its changes with the experience of the interviewees. To answer this question, it was considered what the participants know (or assume they know) about the law and the public retirement system. Thus, the participants' responses about the law and its development does not necessarily represent

a correct picture of the Brazilian retirement law nowadays. In this question it was made then a second level analysis, in which it was used the empirical analysis' results as to lift into a more formal discussion concerning the impact of the law changes and development in the retirement planning.

The second research question (How the trust aspect of the society on the Brazilian judiciary-legal systems and politics influences the people's preparation for their retirement?) is a question related also to the fact of how people act in a second level analysis. In this question it was introduced the term "trust", used as a mediator in the analysis. The participants were directly confronted during the interviews with the question of whether they trust or not the Brazilian legal system, politics and the INSS itself. Thereafter, a second level analysis was made concerning the fact of how people act when they trust or not the system, to therefore analyze the influence of the trust aspect in people's retirement preparation. Thus, the answers from the respondents are not directly link towards the legal system, the politics or the INSS, but they represent a valid material towards how people view these structures, in which may limit them in their actions towards their retirement preparation.

In the third research question (How well informed are the workers about the Retirement and Pension Law? What is the impact of knowledge in the people's retirement strategies?), it can be seen a clear link between the interviewees and the issue of the public retirement system in Brazil. What type of retirement system the participants believe they live in and how they act upon their belief were the main issues used in the analysis and their insights, ideas and knowledge of the law and the retirement system were the main sources to answer this question.

Finally, in the fourth research question (What problems do people face when they are about to retire? How is their view on the Public Retirement Administrative Body?), it was analyzed the challenges that the participants meet before retirement and what these problems might mean for the preparations. That differs depending on contexts, age and gender for instance. Moreover, the samples used in relation to this question were mainly from those approaching their retirement, and the conclusions were based on the participants' experiences, stated during their interviews.

These interviews are therefore to be reflected as impressions of what the Brazilian working class refers to when it comes to public retirement system. They are considered

to be representative of the middle class population working in the private sector, employed as formal workers, and enjoying the benefits of the social security system. The examples stated in this analysis chapter are to be considered then samples representative of this working class in Brazil. The persons here selected reflect the experience that this part of the population faces when preparing for their retirement life. The relevance of this population in relation to the research questions is therefore their professional occupation, their social class and their insertion in the social security system and the analysis made in this chapter are reflections of these small group of participants interviewed for this thesis.

5.3 The Social Efficacy of the Social Insurance Law

Throughout the analysis of the interviews, most of the participants demonstrated disbelief in the Social Insurance Law and in the political context concerning this matter. The several complaints from the interviewees about the administration of the Social Insurance System will be discussed, as well as it will be transcribed some of the narratives about the effects that these administrative problems have had in the participants' retirement planning. Another important aspect that was also noticed during the interviews and that will be analyzed here is how the popular mistrust in the Public Insurance System is linked to the inefficacy of the Law. As we could see in section 3.2 - Legal Historical Background, the constant changes in the Law is a critical issue in the subject, and can be also seen as one of the contributors for this popular disbelief in the System.

5.3.1 The Instability of the Social Insurance Law in Brazil

When participants were asked for their opinion regarding the changes in the Social Insurance Law, different types of answers were given, some gave more general perspectives, while others went into specific details about different changes in the law, and some were even more descriptive regarding these changes. An example of a

common general view of the changes in the Law is seen in participant V.M.'s⁵⁰ statement: "... the Social Insurance System was always viewed, at least in my point of view, as something unstable, as something that will always change." Another general opinion was given by the participant K.F.⁵¹, who is also concerned with her own retirement pension regarding the changes in the Law: "... there has been so many changes in the Law since I started working, that who knows? Until the time I get retired so many things might change and then, who knows if there will be still people contributing?" She here refers to a widespread view of people that the Social Insurance System in Brazil is not self-sustainable. Another answer on this issue is presented by participant V.M.: "... it is a bill that will never stop to increase. There are few people contributing for the System, and a lot of people getting retired, which means that this bill will be harder to be paid in the end..."

Another answer about these changes can be seen in participant O.A.'s⁵² response: "... I believe that the Social Insurance System is almost bankrupt. So, I believe that the government will do something to make it even harder for people to get retired..." Thereafter, he continues by narrating his personal experiences with these Law changes and how these affected his retirement plans: "... in 1998, I did not get retired because I was missing two years of working time, and the law changed again. And here I am, working until today because of these changes." In this last statement he is referring to the Legislation modification in 1998 (already mentioned in Sections 3.2 - Legal Historical Background and 3.3.1 - The Social , sub-section *Retirement by Length of Contribution*), that increased the contribution time from 25 to 35 years of working time (Constitutional Amendment No 20 from 15/12/1998, Art. 9, 2, a).

Regarding the same issue, another participant who also discussed the constant changes in the Law is participant A.L.⁵³. He retired when he was 63 years old, instead of retiring with 65 to receive the maximum amount of the Public Retirement Pension because he was uncertain about the lifetime of the Law itself. "... if not (referring to if

⁵⁰ Participant V.M., is a 54 years old journalist.

⁵¹ Participant K.F. is a 30 years old saleswoman. She has been working and contributing to the INSS for the last 11 years and she started contributing from the first day she started working.

⁵² Participant O.A. is a 53 years old responsible for body work. He has been contributing to the Public Insurance System since 1977, although he is registered since 1972, when he was 15 years old.

⁵³ Participant A.L. is a 65 years old ophthalmologist. He is still working although he started to take out his Public Retirement Pension in 2007. He started to contribute to the INSS around 1973, when he first started working, but has had some interruptions in the contribution period.

not retired in that moment at 63 years) I would wait to retire two and a half years more, and in Brazil the rules change constantly, so, if I would wait two and a half years more, they could change again the correction factor. So, to avoid a new correction factor, I ended up retiring earlier, ok?” When this same participant was asked if he felt prepared for his retirement, he answered: “More a less well prepared, well, in a preparation inside of Brazil, you change it in each, in each government change. And even inside of a government period, the whole planning is also changed.”

By that we can recognize the great uncertainty that the Brazilian people have about the Law and the Government itself. And reaffirming what was previously mentioned in the theoretical part of this thesis, the several changes in the Legislation brings a difficulty of the Law to reach its full legitimacy, which finds the essence of its existence in the beliefs of the social group (Vasconcelos, 1993).

5.3.2 The Effects of the Administration Problems in People’s Retirement Planning

Continuing with the narrative of participant A.L., he points out that he had the intention to retire earlier, with 56-57 years, but the lawyer he hired to do the procedure for him disappeared with his document – the Official Labor and Social Insurance Book (See section 3.3.1 - The Official Labor and Social Insurance Book) – and these were gone for around 6 to 8 years until he was finally able to recover them. Below there is a fragment of his interview in which he explains his experience:

A.L.: “...It was supposed for me to retire by working time with 56, 57 years of age (...) I would retire with approximately 75% of the total amount. But what happened was that I left all my documents with a lawyer and this lawyer required my retirement with these documents in an INSS office here in São Paulo and he disappeared, ok? He had psychiatric problems and he ended up disappearing.”

His documents were found in an Administrative Office of the National Institute of Social Security (INSS) in São Paulo City. This participant’s experience illustrates how disorganized and archaic this Administrative Body is. In his narrative it can be noticed his frustration about the System and its lack of organization. The participant reacted many times during the interview with an ironic laugh, as it is transcribed below,

showing disbelief on the public system and on the same time a feeling of disappointment and frustration.

A.L.: "...And my documents were lost during 6 years (talking and laughing), we were not able to find them. Then, I contacted a lot of people to try to find the lawyer and the documents and I could not find them... All my documents were with him; I didn't have any copies with me... Until the time that a lady was able to find all my documents in an office in Glicerio (short laugh). This after 6 to 8 years trying to find them, I think it was 8 years looking for these documents...(short laugh)"

And this is just one example of a problem that a retired or a person who is requesting his retirement pension can face in Brazil with the administrative procedure. The different problems encountered in the Public Regime's administration are considered to be also one of the causes for the mistrust and disbelief of the population on the System. These are all points that lead to the reaffirmation that there is a lack of social efficacy of the Social Insurance Law since, to achieve the social efficacy of the Law, it is necessary to have a Legal Order which can materialize the Rights into the daily life. (See also 4.3 - The Concepts of Legitimacy and Social Efficacy)

The Situation with Non-Registered Workers

As the Brazilian law rules, the workers must be registered in their 'Official Labor and Social Insurance book'⁵⁴ in order to formally be considered a worker. As stated in Chapter 3.3.1, subsection The Official Labor and Social Insurance Book, the ones who don't follow this requirement are considered to be informal workers (Filho F. d., 2006).

In Brazil different reasons, such as the mistrust in the system, the high employment taxes, the lack of knowledge of the employees about their labor rights and the non-enforcement of the law itself contributes for the non- registration of the workers in this 'book'. This situation leads then to higher the level of workers employed under the conditions of the informal economy in Brazil, which results to in a non-contribution of the employee and employer to the National Social Security System (*INSS*). The ILO in its 'Resolution concerning decent work and the informal economy' defined a clear concept of informal economy. This resolution provides that "the term 'informal

⁵⁴ Details about this in the section 'The Official Labor and Social Insurance Book' of chapter 3.3.1.

economy' refers to all economic activities by workers and economic units that are- in law or in practice- not covered or insufficiently covered by formal arrangements” (General Conference of the International Labour Organization, p. 2 Para. 3; General Conference of the International Labour Organization).

Some of the interviewees experienced this situation during their working life because of different reasons. The Participant V.M (mentioned already before) for instance, started working in 1973 and worked for a long time as freelancer, however he started contributing only two years later, in 1975. Below he responds to the interviewer the reasons why he started contributed for the National Social Security System only after two years of work.

Interviewer: “And when did you started to contribute for the public retirement system?”

V.M: “Ok, hum...in 1973, when I started to work, I was very young and I was not worried about my retirement, and the future was something very far away, and besides this, periodically the Brazilian social retirement situation has always its ups and downs, and always we stay...it always changes, and since that time the situation is like this. So, the concern about the future practically did not exist. So, I started to work, but I was only registered 2 years later, 1975.”

In the case of this participant, firstly the lack of interest about his retirement planning in the beginning of his career was the main causes that affect his non-registration and non-contribution to the Social Security System. However, at a latter stage, he states another period of his working life in which he had not contributed to the Public System. In his narrative he affirms several times his lack of trust in the system, demonstrating that the constantly changes in the law brings a feeling of uncertainty about the future of the public retirement pension, which motivated him, as a autonomous worker in that time, to not contribute to the INSS. In the following passage the participant narrates in details this moment of his working life, mentioning how this non-contribution moment affects his future retirement:

V.M: “(...) this period when I was a micro entrepreneur, I started to pay the INSS, in that time it was INPS, hum, it was more or less in 1990 until 1998, it was not 10 years, it was a little less that I was not registered, then I started to pay the INSS as an independent worker ... but I paid only 1, or 2 years and after that I stopped paying it

...When I started to contribute to the public retirement system again, after some years I went there to check my situation and apparently I will only be able to retire in 10 years, I will only start to receive my public retirement pension in 10 years, approximately”.

Another participant who had work without being registered for a while was G.F.⁵⁵. She has been working for 20 years, however the first 3 years she worked without being registered in her Official Labor and Social Insurance Book. In her case, due to the family financial situation, she had no other option but to accept the employer’s conditions to hire her in her first job.

A similar situation was faced by J.F.⁵⁶. He has been working since he was around 7 years old, but registered only when he was 16 years old, although the first two years he was not registered correctly. In his situation, the very bad financial condition of the family made him to start working even before he reached the proper legal age for it. Bellow there is the passage of his interview in which he narrates briefly his experience:

J.F: ”Hum, I work since I was 7, 9 years old. Since I came from a very humble, very simple family, we (my siblings and I) needed to help our father from a very early age. And my family was quite big. We were 8 siblings, now 7 who are still alive, right? But anyways...as a registered worker I am working since I was 18 years old...”

Even though the Brazilian government states that the rate of informal employment is decreasing in the last years (Portal Brasil, 2011), the ILO in Brazil (OIT- Organização Internacional do Trabalho) affirms in its Labour Panorama that at least 50% of the Brazilian population has an informal job (Organização Internacional do Trabalho, 2012). Moreover, according to the Brazilian Institute of Geography and Statistics (IBGE) the percentage is even higher among of young and elder women. (Brazilian Institute of Geography and Statistics (IBGE), 2010)

Albeit the fact that the workers registration in a job is what it binds the employer and employee’s contribution to the Social Security System, an interesting case was brought by one of the interviewees. The participant O.A., (mentioned already

⁵⁵ G.F. is 36 years old and works as a secretary in a private company in Sao Paulo State. She is married with 2 children, and she has been working on this company for 14 years. She has been contributing for 17 years now, her first three working years were not registered

⁵⁶ J.F. is 52 years old and work as labor security technician in a private company in Sao Paulo State. He is divorced, has two children, who don’t depend on him anymore, but his mother lives with him.

previously) when asked about his registration period as an employee and the period in which he has contributed for the Social Security System, he affirms that there is a gap between those two periods in his paper works. In his case even though he was registered since 1972, he only started contributing to the Social Security System since 1977, and in his response he explains that back then, since he was working in the rural sector, the enforcement of the law was harder to reach those places, which contributed to the employer to not follow the law, and not follow the exact procedures to include this employee in the National Social Security system. Below there is the fragment of his interview in which he describes this experience.

Interviewer: “And how long have you been contributing to the social security system?”

O.A.: “Since 1977...understand? But in my paper work I am registered since 1972, right? That was when my father passed away. And since I am the older brother, the farmer in that time called me to fill out the paper works, for me to replace my father, right? However, the problem was that, in 1972, especially in the agriculture, the law was not enforced, understand? Farmers back then didn't, didn't collect the taxes, right? ...So, I am registered in my paper works since 1972, but only when I moved to São Paulo in 1976... from 1976 until nowadays, then yes, I contributed to INSS” (National Institute of Social Security)

The participant explains that the lack of knowledge and information in the rural areas combined with the farmers bad faith in implementing the law resulted in many violations of the labor's rights, which affected their insurance and retirement pension in the National Social Security System. During his narrative he affirms that “in the agriculture, in the country side, no one is informed about the law, right? Understand, so I mean, I lost 4, 4 years, and why? ...Because the farmer at that time didn't collect taxes...so I lost 4 years, without being registered...do you understand? And when I required my retirement pension, then the INSS sent me a letter explaining that these 4 years were not considered because the farmer didn't collect taxes. So, I lost them. Even though I was registered in my paper works, I lost these 4 years.” By this passage it can be noticed his disappointment with the non-enforcement of the Law and his labor rights.

He states the inconvenience of this missing period of his contribution to the INSS in his retirement planning, since he would be retired for 3 years already if the law was applied to his case since its first employment registration.

It is important to re-state that by that time in 1972, the rural workers were already included in the National Social Security scheme (more details about the changes of the law for rural workers are found in chapter 3.2). However, it was and still is a difficult task for the laws to be covered and implemented the whole country, especially when it comes to the rural areas in Brazil. As mentioned in the previous research (section 1.4-Relation to Previous Research), the cases faced by rural workers are still a challenge for the social security system to fulfill their rights “since workers are dispersed throughout the land, very often performing seasonal occupations, with labor relations including non-monetary exchanges, archaic modes and informal ties”. (Beltrao, Pinheiro, & de Oliveira, 2004, p. 20)

Therefore, as the non-registered workers are not “recognized, registered, regulated or protected under labour legislation and social protection” (General Conference of the International Labour Organization, 2002, p. 3), they face a hard challenge in advocating their social security rights, which leads them to a vulnerability towards the social insurance coverage (*Ibid*). And as a result, the informal workers have a lack of social protection and consequently this leads them to face also a social exclusion (*Ibid*).⁵⁷ Thus, it is necessary either a more efficient inspection to avoid the informal work or the non-registered workers “need to be brought within the protection of labour laws” (*Ibid*), to therefore promote the rights to all workers.

5.3.3 The Popular Mistrust in the Public Insurance System

As mentioned in the previous chapter, the lack of trust in the legal system and government is directly linked with the lack of legitimacy, which compromises the lack of commitment of the population in following the rules and obeying the social authorities (See Chapter 4.3.2- Legitimacy). And one of the reasons for this lack of trust

⁵⁷ *Ibid*.

is based on the level of corruption in a society. As mentioned in section 4.3.2, in a reference to Keith Rosenn, the cultural and historical facts play important roles in the Brazilian corruption system, a problem existent in the country since colonial times. The level of corruption had an even negative impact on courts decisions, creating a lack of justice promoted by the acceptance of bribes by the Brazilian judiciary system (see chapter 4.3.2 –Legitimacy).

Nowadays the corruption is still a problem in the society, which deeply affects the people's trust in the administrative, judicial and legal systems. According to the Corruption Perceptions Index (CPI)⁵⁸ of 2009, published by civil society organization Transparency International, Brazil is ranked with a score of 3,7⁵⁹ in a scale from 0 (zero) - perceived to be highly corrupt to 10 (ten)- perceived to have low levels of corruption.⁶⁰ Thus, all of these results reveal a cultural aspect that plays an important role in the Brazilian society and politics, leading to a corruptive public system. And as a result of that, it creates a lack of trust on the government, Public Entities, and moreover on the Judiciary System.

In fact, people in Brazil usually complain of the uncertainty and injustice of the nation's legal system and politics, as it could be also analyzed after the various opinions of the different interviews realized in this project. Consequently, this general lack of trust in the public system also affects the lack of trust in the Social Security and Social Insurance Systems and their Public Entity (INSS). Even though the interviews were based on a qualitative research, it is important to mention here that only two interviewees out of twenty-one stated that they trust in the INSS and in the social security system as a whole. However, even though these participants affirmed that they trust the system, there were still complains about the benefits received and about the corruption in the public institution. For instance, the participant P.V.G.⁶¹ affirmed that she trusts the social security, but she believes it is in desperate need of a revision and readjustment. She complained that the contributions are too high compared to what is

⁵⁸ This index 'measures the perceived level of public-sector corruption in 180 countries and territories around the world' (http://www.transparency.org/policy_research/surveys_indices/cpi/2009).

⁵⁹ <http://media.transparency.org/imaps/cpi2009/>

⁶⁰ Explanation taken from: <http://blog.transparency.org/2009/11/17/cpi2009/>

⁶¹ P.V.G. is a 33 years-old, autarkic lawyer for the CRM (Regional Medical Council). She has been contributing for the social security for 8 years now, and she also pays a private retirement fund.

paid later. Moreover, she stated that there is a lot of corruption in the system that needs to be stopped.

Therefore, the majority of the answers of the participants when asked if they trust the Brazilian Social Insurance System were negative. For instance, the participant J.F.⁶², when answering this question, affirmed that “no, I don’t trust the Social Security System, I just think that... there will come a time when it will not work anymore, right? Because actually, it is like this... there is a lot of corruption today, in Brazil, in the Social Security System, in the politics...” Another participant showing a similar response to the subject is participant H.D.⁶³: “I think like this, if I retire now, I will still enter a phase that I will be able to get something out of it. Someone that will retire in the future, he should start preparing ... however to really trust? Well I do not trust. I know my rights today (...), but tomorrow, no guarantees.”

Moreover, some of the participants reacted to this question with an ironic behavior, to emphasize their lack of trust in the system. This could be seen, for instance, in the participant O.A.’s response when asked if he trusts the Social Insurance System: “(laugh) At least, I am going to try to trust, I have to trust, right? Let’s see...”

Another example that shows the trust issue in the system can be seen in participant P.C.’s⁶⁴ answer: “I think they change the legislation all the time, but they will never stop supporting the retirees, maybe with a minimum amount or with a higher one, but they will always receive something ”. This example demonstrated the more general view of trust regarding the Public Retirement Pension System in Brazil. Most of the interviewees refer to the lack of trust more from the financial point of view, i.e. most of them believe in the continuation of the System, but they usually show dissatisfaction towards the pension amount received, once they retire. This is very clear in the participant G.C.’s statement regarding the subject: “... it is revolting, I think it is very, very revolting... you work and by the time you get very old, then you don’t have what you were expecting.” The general discontentment of the Public Retirement Pension is

⁶² Participant J.F., is a 52 years old labor security technician. He has been working since he was 7/9 years old, but registered only from 16, although the first 2 years were not registered correctly.

⁶³ Participant H.D. is a 50 years old bank employee. He has been working since 1967.

⁶⁴ Participant P.C. is 37 years old technical mechanic. He has been a registered worker since he was 14 years old in the same company.

related to the disproportionality between the contribution amount and the received pension amount.

By these statements we can see a general attitude from the Brazilian population of a general discontentment towards the Legislation and the Politics in Brazil. However, most of the interviewees did not contest the existing system in a consistent way, with possible solutions and a solid based argument. This behavior of the participants then demonstrates a lack of a legal and juridical sense, which leads also to a lack of social efficacy of the Law. And this shows that there is not only a juridical problem, but also a socio-cultural one (according to what it was discussed in Section 4.3 - The Concepts of Legitimacy and Social Efficacy).

The obligatory aspect of the contributions and people's relation to it

Another aspect on the trust issue in the Brazilian Social Insurance System and its institution (INSS) is a resigned acceptance towards the obligatory aspect of the contribution (as mentioned in Chapter 1 - Introduction). The general lack of trust in the public system also affects the lack of trust in the Social Security System and its Public Entity (INSS), as mentioned in the previously. Consequently, when the participants were asked if they want to contribute for the system or were doing only because of the obligatory aspect of it; almost all of them stated that if they had a choice they would prefer to not contribute to the public system and would prefer to invest the money in some private investment fund. In this context, the interviewees were confronted with the question of: "If it was not obligatory to contribute to the INSS, would you then invest your money in something else?" Moreover, the above-mentioned participants answered unanimously that they would prefer to invest their money elsewhere.

The participant U.A.⁶⁵, for instance, was extremely convinced of his opinion: "I would, I would do this, I would, I would, for sure (laugh), for sure (laugh). Another thing that I also think, not think, this I am sure of, this is a fact: the public retirement pension here in Brazil, the Social Insurance System here in Brazil is a failed institution.... So, I would prefer to invest in other things, because of that." One of the reasons of this conviction on investing his money elsewhere was pointed out by the

⁶⁵ Participant U.A. is a 33 years old biomedician. He has been working for 4 years in his current job and he has worked before that, as well as a registered worker.

participant during the interview. He affirmed that he does not believe that the retirement benefit received is fair and reasonable in comparison with the contribution amount that the workers have to pay. In his statement, he brings examples of retired people he knows and their frustration towards the public retirement pension received.

The participant G.C. also had a similar opinion when asked if she would invest her money elsewhere if there was this option. In her words: “Ah, I would do it... I would do it... I think it would be much more guaranteed than if you contribute to the Public Insurance System. It is something, it is the same thing as you pay a private retirement plan in the bank, and I think it is even better than to pay the INSS...” Following the same perspective, participant J.F. affirms: “Yeah, maybe in another thing, saving account, which I think the profits are very little as well, or in any fund in any bank.” In his later response he summarizes very well the common sense among what was affirmed here before “... I think that we contribute because it is obligatory, it is already deducted from the salary, but I think that a lot of people would not pay, maybe they would pay a private retirement plan, or something like that... I think the Social Security System, in a general way, is a broken institution.”

From these statements it can be confirmed the previously mentioned presumption: one of the main reasons for the dissatisfaction with the Public Insurance System, and its contribution system, is the low pension amount received afterwards and the obligatory aspect of the contribution.

5.4 The Public Retirement Legislation and its Lack of Knowledge by the society

One of the problems verified during the interviews was the lack of knowledge showed by the participants. There are some reasons for that. First of all, as seen in chapter 3.2 (Legal Historical Background), the social retirement law in Brazil has changed several times since its first appearance. This leads to a misunderstanding by the society towards the law, which affect their knowledge of their retirement rights. Even the participant P.V.G. who is an attorney had problems during the interview when she was asked what she knew about the rules regarding the social insurance legislation. In her words: ”So, I know very little, I know very little. I know this, that I have these 2 options, by working

time or by age...that is not integral (laugh)...and that I have the private retirement plan to compliment, since the public one is not so good. That is all that I know about it.” Moreover, she did not even know how much she contributes for the INSS (i.e. if what she pays to the INSS will give her the maximum available retirement amount or not).

In addition, it could be analyzed through the interviews that the lack of knowledge regarding social insurance legislation is also a matter of lack of interest in the subject. For instance, the participant U.A. response when asked about his knowledge on the rules of the social insurance legislation was: ”So, I don’t know much about it. I have doubts, it is not very clear for me. I’ve never had a big interest in this subject.” After this preliminary answer, the participant answered what he believed it was the legislation nowadays and from his response it was clear that he was not sure if he was correct. And moreover, some of his answers were not compatible with the present legislation. His explanation for his lack of knowledge was that “there are a lot rules concerning this subject in Brazil and the legislation changes all the time, creating a misunderstanding by the population”.

Moreover, as previously mentioned by the participant O.A. in the sub-section (The Situation with Non-Registered Workers) the lack of knowledge and information in the rural areas is even bigger, which leads to a lot of employees to work as a non-registered worker, excluding various sectors of the population of their social security rights.

An example of this among the urban workers could also be seen when the administrative assistant T.V.⁶⁶ was interviewed. She has been working registered within the health care system since 2004. During this time she has contributed for the INSS (Brazilian National Institute of Social Security) without knowing that it is the autarky of the Brazilian government responsible for the social insurance and retirement, i.e. she has contributed for 5 years for her public retirement pension without knowing it. In her first answers, when the interviewer asked if she was contributing already for the public retirement system, her answer was: “no, I am not contributing yet”, even though she had been working for 5 years as a registered worker. This led the interviewer to ask several other questions to understand the real situation. Finally the interviewer realized that she did not know that contributing to the Public Retirement System also means

⁶⁶ Participant T.V. is a 23 years old administrative assistant at the Santa Casa Hospital in São Paulo.

contributing to the INSS (the National Institute of Social Security in Brazil). This finding was based on her answer when asked if her current job gave her information about the Brazilian social security system. In her words: “yes, but very little, but about the INSS, regarding the public retirement system they did not really talk about it.” However, even though it was introduced new questions regarding her knowledge on the subject using the acronym INSS, she still showed a lack of knowledge, and moreover a lack of interest on the subject: “No, I don’t know anything about it. It is something that I never read about it, and therefore I really don’t know anything about it. I just know that the employer deduct a part of my salary to contribute to the INSS.” Thus, from her interview it could be concluded that she had very few information about her job, about the retirement system and she did not know what she was paying tax for. As mentioned before, when you contribute for the INSS in Brazil, which is the social security system, you are contributing for the public retirement as well, which is included in the INSS and it is its main purpose of existence.

Thus, the vast social and economic inequalities together with the lack of a strong educational policy that cover the entire population contributes to the lack of information of the population, which also affects their knowledge on their retirement rights. Therefore, from the analysis of the interviews realized for this study, and from the narratives exposure in this section, it can be concluded that the lack of knowledge by the population towards the Social Insurance and Public Retirement Systems have a great negative impact on their retirement preparations.

As a general conclusion of this chapter, it is important to mention a passage stated by the International Labour Organization regarding the Social Security System and the responsibility of the government. According to this organization, the governments must ensure an extended social protection to the entire population. Thus it is necessary to do “more research, accompanied by experimentation and innovation [which] can help to inform policy to achieve progress towards ensuring that all working people and their families enjoy decent social protection” (International Labour Office, 2001, p. 68).

6 Conclusion

This thesis was designed to answer research questions concerning the public retirement system in Brazil and how the people prepare this stage of their lives. The empirical results stated in this final chapter are based on a small group of interviewees working in private companies in São Paulo State. The study is meant to be representative of the working class in Brazil, but of course, due to the small sample, the results have to be considered as tentative and the study as explorative, something which has to be followed up with quantitative methods.

Addressing to the first question (how the Brazilian Public Retirement Law and its development influences on people's retirement preparations?), from the analyses of the interviews and with basis on the theoretical framework and the legal background of this thesis, it can be concluded that the constant changes in the Public Retirement Law create a misunderstanding of the population towards their rights. There are clearly good improvements in the Brazilian legislation since its first appearance in the 1920's, and nowadays the law includes all workers, i.e. urban, rural, domestic and autonomous workers. However, the instability of the Law generates confusion as well as insecurity for the contributor. Thus, it can be recognized an uncertainty that the Brazilian people have about the Social Insurance legislation. Furthermore, the law is lacking in providing a social benefits for the informal workers, which as mentioned, comprise a great number of workers in Brazil.

This answer can also be linked with the second research question (how the trust aspect of the society on the Brazilian judiciary-legal systems and politics influences the people's preparation for their retirement?). In addition, regarding this second question, besides the fact that the constant change in the legislation can create on people a lack of trust in the system, the lack of a strong social efficacy and legitimacy of law can also have a negative impact on the people's retirement planning. Concerning the social efficacy, as mentioned in the Legal Framework chapter (Chapter 4- Theoretical Framework) and in the Analysis chapter (Chapter 5- The Impact of the Social Insurance Law and Public Retirement System in People's Retirement Preparations), an

introduction of efficient social policies concerning Public Retirement is needed in order to implement people's rights. Many of the interviewees complain were in relation to this matter. Furthermore, the corruption level in Brazil increases the lack of trust on the government and on the INSS itself, as it was expressed by several of the interviewees.

Regarding the third question (how well informed are the workers about the Retirement and Pension Law? What is the impact of knowledge in the people's retirement strategies?). It could be seen from the analysis of the interviews (Chapter 5- The Public Retirement Legislation and its Lack of Knowledge by the society), that in general the Brazilian population is not very well informed of the public retirement legislation. This is also due to the constant changes of the law, and moreover, due to the social inequality in the country and of a lack of a strong educational system. Most of the interviewees demonstrated a lack of knowledge of the legislation and an even lack of interest on the subject. Consequently, this lack of knowledge of the workers leads in many cases to an incomplete implementation of their rights. Moreover, based on the empirical data and the document analysis, it can be concluded that this lack of knowledge and information is even greater in the rural areas, which helps increase the informal employment in this sector.

Finally, answering the fourth question (What problems do people face when they are about to retire? How is their view on the Public Retirement Administrative Body?), the participants described some administrative and procedural problems of the Public Retirement System in Brazil during the interviews. And the main problem analyzed was in connection with the necessity of the work registration in the Official Labour and Insurance Book by the employee. As pointed out in Chapter 5.2.2 (The Effects of the Administration Problems in People's Retirement Planning), this adds several problems to the workers when they are approaching their retirement, as it was analyzed from the empirical data. Thus, it can be concluded that another system of registering the workers in the Social Insurance scheme is needed in Brazil, in order to avoid misunderstanding and complications regarding the procedural aspect of the retirement.

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APPENDIX 1 – Information about the study and the interview to the interviewees

Strategies for Retirement

The purpose of this study is to unfold how people in Brazil view retirement, how they prepare for it and what is the role of the social insurance legislation/system in people's planning.

In this study I am going to interview 14-16 persons in several companies/institutions in the Sao Paulo State and Sao Paulo City itself. The results will be used to compare experiences from different contexts. An interview may take some 60-90 minutes.

Taking part in this study is voluntary. It is anonymous and your name and/or anything that may reveal your identity will be kept out of any publications. All material and transcripts are kept separate from identifiable information. As soon as the transcript from our interview is checked by you, your name, address and workplace are erased from all records.

Thank you in advance.

APPENDIX 2 – Interview Guide

The questions in this questionnaire are just examples of possible paths to follow when we meet. They might be good to think through beforehand and possibly extend it by fields you see as crucial for the understanding of your experiences.

Family and social background

- Occupational background and working life experiences
- Age and sex
- Your living conditions/cohabitants
- Educational background

Your future retirement

- 1) When (age) and why are you going to retire?

Your view of a situation as a retiree

- 2) How would you describe and expected structure of a life as retiree concerning the following
 - Finances; earnings, savings, investments, etc.
 - Housing
 - Health and dental care
 - Social services
 - Voluntary work
 - Inheritance
 - More...

- 3) How do you anticipate a possible change in life-style moving from work to retirement? When do you think about it? In what sort of situations does your retirement come into consideration or discussion? What is in focus? In what ways does it affect your plannings/preparation for retirement? Are there any particular persons, groups, organizations, etc that an important role in your picture of retirement?

How do you prepare yourself for your retirement?

- 4) How involved is your family in the planning? In what ways?
- 5) How well do you know the rules around the pension/Social Insurance Legislation? In what ways have you gained this knowledge? What impact has this knowledge in your preparations for the retirement? Do you search for, or receive help concerning information? From whom? And does this legal information have an impact on your preparations for your retirement? Do you trust the Social Insurance System and its administrative structure? If you had the option to not contribute to the Social Insurance System - INSS - (since it is obligatory), would you then invest this money somewhere else?
- 6) Do you have any private insurance/pension plan? Please tell me about the private insurance systems and how you got insured. How far are these different forms of financial and social security an effect of a planned strategy of yours?

And is there anything else you would like to add to this interview regarding the subject?

Thank you very much for your time and participation.