CONTEMPORARY ISSUES OF BRAZILIAN CONSTITUTIONAL DEMOCRACY: JUDICIAL REVIEW OF *INTERNA CORPORIS* ACTS AND THE ELECTION OF THE GOVERNING BOARD OF THE NATIONAL CONGRESS UNDER THE DEMOCRATIC STATE GOVERNED BY THE RULE OF LAW

Lucas César Severino de Carvalho[1]

Abstract: The work discusses the judicialization of the elections of the Directing Board of the National Congress. The objective is to examine the consequences of the judicial review of *interna corporis* acts in light of the role of the Supreme Court in guaranteeing democratic principles and the separation of powers, given the need for justification of Constitutional Jurisdiction. The comprehensive legal methodology critically emphasizes the scope and limitations of judicial control of Legislative Branch acts in the political system and contemporary Brazilian law. The rescue of the doctrine of *interna corporis* acts, in this regard, redefined the relationship between democracy and Constitutional Jurisdiction in Brazil.

Keywords: Constitution; Legislative Branch; Judicial Control; *Interna corporis*; Directing Board of the National Congress.

1 Introduction

The proposed research aims to analyze the recent decision of the Federal Supreme Court on the election of the Directing Board of the National Congress, to understand the role of the judicial control of the acts of the Legislative Branch, in the Brazilian context, set in a delicate composition between the supremacy of the constitution, separation of powers, and Constitutional Jurisdiction based on the framework of democratic constitutionalism (DANTAS; FERNANDES, 2019), and the relationship between Law and the policy developed in the Brazilian Constitution of 1988 (PAULINO, 2018, p. 134).

The election of the leadership of a constituted power, as a typical phenomenon of the self-organization of State powers from their autonomy assured to constitutional powers, is the subject of careful study of constitutionalism, given its possibilities to configure and change the dynamics of the current institutional arrangement (HUQ; GINSBURG, 2018, p.181).

In this context, the leadership of the Brazilian Parliament is a focal point of interaction between the powers. The decision on the election of members of the Directing Board of the National Congress directly mobilizes programmatic interests of the Executive Branch, as it is a means of carrying out government policies through the confluence between members of the Board and the base of support for the government, desirable for ensuring its governability (DAVID, 2018, p. 104).

[1] Bacharel em Direito pela Universidade Federal de Minas Gerais, mestrando em Direito Político pelo Programa de Pós-Graduação em Direito da Universidade Federal de Minas Gerais, advogado e consultor, ORCID iD: 0000-0001-7714-0309, e-mail: lucascscarvalho.ppgdufmg@gmail.com.

Therefore, it is expected that the Executive Branch will have an interest in influencing the election of the Directing Board of the National Congress to ensure the effectiveness of its programs in the specific Brazilian political-institutional system. (ABRANCHES, 1988). The configuration of the Brazilian political system makes it imperative for the federal government to direct the agenda of parliamentary work and ensure the presence of government projects during the legislative session.

Furthermore, it is necessary to integrate this understanding with the growing process of constitutional amendment, raising the constitutionalization of public policies and the constant demand for the formation of majorities aligned with government projects for the realization of constitutional devices oriented to government policies (ARANTES; COUTO, 2019, P.26).

On the dogmatic level, the need to stabilize the expectations of implementing the principle of separation of powers and the independence and autonomy of the Legislative Branch, present in the origins of constitutionalism, and Theory of the State (BONAVIDES, 2019, 2018; ORCHARD, 1995, p. 157), finds refuge in the provisions of the constitution and procedural norms of the Brazilian legal system of the legislative houses, all of which assure procedures to perform this request anonymously, even if limitedly.

Also, from the Constitution of 1988, the distribution of functions of the Brazilian State powers assigned to the Federal Supreme Court significant powers for the control of constitutionality, having expanded the list of actions to invalidate acts of Public Power, with the provision of new instruments legitimized for their proposition.

In the 32 years of the Brazilian Constitution, society and institutions began to live with the exponential intermediation of political and legal issues unresolved among themselves from the pronouncements of the Federal Supreme Court. Therefore, the judicialization of conflicting issues in Parliament regarding its regimental rules was not different. As a result, there was a restrained revision of the doctrine of judicial control *interna corporis* acts of Congress, once seen as hindered from judicial control, demonstrating a judicial behavior that hung between passive self-restraint before the organization of powers (CAMPOS SILVA; SOUZA, 2019, p. 160) and the development of a jurisprudence timid to the implementation of the due legislative process (OLIVEIRA, 2016).

The present work intends to present the problem described from the clipping of the last issues judicialized in the elections of the Directing Board of the National Congress, specifically the 2019-2021 and 2021-2023 elections. Such emphasis was given to the extent that such judgments reflect the reversal of the court's understanding regarding its role in guaranteeing the independence and autonomy of the powers through the constitutionality control of the acts of the Legislative Branch. First, a literature review is developed on the judicial control of the acts of the Legislative Branch and the role of constitutional jurisdiction as a guarantor of constitutional supremacy in defense of the autonomy and independence of powers under the

Constitution.

From this detail, we address a case of judicialization of the Directing Board of the National Congress election of the 2019-2021 biennium, in which the possibility of open election was discussed as a mechanism of transparency and publicity of public acts, opposing the rule of secret ballot as a useful measure to the separation of powers and self-organization of the Legislative Branch. The rejection of any open vote through the imposition of regimental rules in carrying out acts relating to the internal organization of houses reflects the attention of the judges to democratic procedimentality in the face of the separation of powers (BERNARDES JUNIOR, 2009, p. 109). This conclusion results in the relativization of the doctrine of *interna corporis* acts, considered liable to unionization based on compliance with constitutional principles and regimental provisions.

In this unfolding, the election of the Directing Board of the National Congress of the 2021-2023 biennium, as expected, was also guided by a question to be defined by the Federal Supreme Court. This is the hypothesis of reappointment to the same post in the immediately subsequent election, expressly prohibited by the constitutional text and the regimental norms, of which interpretation aroused several criticisms in the face of the possibility of the constitutional jurisdiction to condition the binding norms of the Legislative Branch organization.

In these terms, it was possible to demonstrate that the position adopted by the Court in different situations demonstrates the timeliness of the debates on judicial control of *internal corporis*acts of the Legislative Branch and a tendency that regimental norms are ultimately decided by the Constitutional Jurisdiction.

In conclusion, such movements are located between tensions and approximations, as a phenomenon of alteration of the institutional logic on the separation of powers, of the role of parliaments and courts in Brazilian constitutionalism (VOJVODIC; MACHADO; CARDOSO, 2009, p. 25). The trends raised demonstrate the complex phenomenon of the judicialization of eminently political issues, on the border between the classic concept of the separation of powers and popular sovereignty, between judicial supremacy and constitutional supremacy.

This research deepens discussions on the judicial control of *interna corporis* acts and reinsert theoretical and practical questions about the relationship between constitutional jurisdiction and the autonomy of parliaments, allowing to understand the strength and timeliness of this debate for the Brazilian political system.

2 Separation of powers, Constitutional Jurisdiction, and Judicial Control of acts of the Legislative Branch in Brazil.

Before entering into the specificities of the Brazilian case, it is fundamental to distinguish between the concepts explored here to examine the phenomenon of judicialization of acts of the Legislative Branch from the Brazilian case.

Through a biographical survey of recent conceptions about the institutional design developed by the Constitution of 1988 and the role of the constitutional text in the configuration of the Brazilian political system, it is possible to apply the conclusions obtained to interpret the stage of the interaction of the powers in terms of control of the acts of the Legislative Branch, specifically the *interna corporis* acts.

It is imperative to understand how the Brazilian Constitution organized the powers and functions of the Republic's powers, especially the role of the Federal Supreme Court as guardian of the constitutional text to achieve the assumptions that contextualize the relationship between Constitutional Jurisdiction and the Legislative Branch in Brazil in front of the principle of the separation of powers. To this end, we adopted the studies on the development of the 1988 Constitution, dialogue between the powers, due legislative process, and judicial control of the acts of the Legislative Branch.

The Constitution, as a fundamental norm that guides the relations between the political and the legal, present significant developments in terms of organizing the functions of the national State and distributing attributions among the constituted powers.

In this sense, the constitutional text develops a conception of separation of powers guided by the commandment that powers are harmonic and independent of each other (BRASIL, 1998), discriminating the competencies for each of the powers – or functions – of the State throughout its exposition. However, its configuration made inexorable the interaction and relationship between the powers as a measure of realization of constitutional norms.

Such an understanding is inserted deeply into the theoretical framework of the institutional dialogues mediated by the Constitution (BATEUP, 2006), for which there is an effective interaction between the powers from the functions development of the State functions in contemporary constitutionalism, the breakdown in the structure of the separation of powers and, especially from the allocation of constitutional courts as mediators between the institutions and the provisions of the Constitution. In this sense:

> The argument of institutional dialogues is certainly a powerful strategy of legitimizing Constitutional Jurisdiction in democracy. Its main strength stems from the fact that the metaphor of dialogue not only presents itself as the synthesis of a normative argument capable of facing the common objections made to the compatibility between Constitutional Jurisdiction and democracy but, above all, as a form of explaining a special type of interaction between the Judiciary and Legislative Branches with a great descriptive appeal. Dialogues between the Constitutional Court and Parliament would thus not only be desirable, but would actually occur effectivelly (LEAL, 2019, p. 67-68).

In this context, the role of legitimization of the Constitutional Jurisdiction stands out, such as a commitment to procedural and discursive justification of the control of the validity of Public Power acts, in the face of constitutional precepts and the need for interaction between the

Constitutional Court and representative institutions.

It is imperative to highlight the complexity with which the Brazilian State model developed its constitutional system based on sophisticated arrangements from the structure of the Democratic State of Law, opting for a plural democratic political arrangement and open to interaction between the powers to achieve constitutional objectives (SILVA, 2019, p. 69). The differentiation caused by the constitutional system of 1988 under the Brazilian political system results in a dynamic architecture between the objects of the constitutional text and the actors who remained in charge of its establishment:

> The 1988 Constitution defined a complex constitutional arrangement, according to Lijphart (2003), combining the separation of powers, a bicameral Legislative within the Union, with Senate and House practicing symmetrical powers, a proportional electoral system for the Legislative (except for the Senate, which adopts the majority system, similar to that of elections for the Executive), exacerbated multipartyism, federalism in which subnational units (states and municipalities) have some legislative capacity and maintains their own Constitutions and organic laws, and one of the most comprehensive and accessible systems of constitutional control of laws (ARANTES; COUTO, 2019, p. 36-37).

This configuration is shown, above all, from the incorporation of functions and assignments for independent exercise of powers, with broad performance of the Executive Branch in the conduct of public policies, with the active participation of the Legislative Branch as the implementer of government programs and their interaction necessary to ensure governability.

Such interferences can be properly understood from the concept of “coalition presidentialism”, described by Abranches (1988, p .22) as “the only country that, in addition to combining proportionality, multipartyism, and 'imperial presidentialism', organizes the Executive based on large coalitions.”.

The dimensioning of the relationship between the powers from the 1988 Constitution assumes the outlines of meetings and disagreements between the institutional expectations of the powers and the role assumed by the Federal Supreme Court, to the extent that the Constitutional Court assumes powers to review the acts of the top bodies of the Brazilian State and the final instance of legal, moral, and political issues, inevitably deciding on the issues channelled but not closed in the representative institutions:

> The Federal Constitution of 1988 brought new constitutional actions, expanded the material scope of judicial review, and legitimized new subjects. The growing activism of the court under the pretext of being the “last trench of the citizen” was a reflection of the novelty. However, judicial activism cannot be confused with the judicialization of politics. The institutional design outlined by the 1988 Constitution reserves the "last word" to the Federal Supreme Court in the formal decision-making circuit, which would comprise the deliberation and decision-making procedures provided for by the Constitution (MENDES, 2010, p. 217). Due to this circumstance, the

> legal arena is the scene of resolution of moral, social, and politically relevant issues due to a transfer of power to the Judiciary, today authorized to decide issues outside its competence. Inserted in the worldwide process of adoption or revision of constitutions adopting charters of law and judicial review (HIRSCHL, 2004, p. 1), the 1988 Constitution promotes transfers of power from representative institutions to judicial bodies (KOZICKI; ARAÚJO, 2015, p. 114-115)

The discussion on judicialization is precisely in this context, given that the debate on the topic has reached relative consensus on its characterization in the sense that "Judicialization means that some issues of broad political or social repercussions are being decided by organs of the Judiciary Branch and not by traditional political bodies: the National Congress and the Executive Branch" (BARROSO, 2012, p. 24).

That is to say, the control of constitutionality exercised in the face of acts of other institutions of the Public Power inevitably raises questions about its own pertinence insofar as that judicial activism would assume a position of action in the Brazilian constitutional system "broader and more intense of the Judiciary Branch in the establishments of constitutional values and objectives. Such proactivity leads to interference on spaces hitherto traditionally occupied by the Executive and Legislative Branches." (KOZICK; ARAÚJO, 2015, p. 115).

In this context, the relationships between the Legislative and Judiciary Branches are intensified in the tonic worked, to the extent that the former is in a prestigious position in constitutionalism as an expression of popular sovereignty and a democratic system, while the latter assumes the captaincy of guarding the constitutional text, ensuring the effectiveness of these same principles.

However, in the Brazilian case, the interactions between these powers are conflicting due to the active participation of the STF in the deliberation of issues that would traditionally be answered from the representative institutions of contemporary democracy. When analyzing the judicial behavior of the members of the court to investigate their deliberative action, Diogo Werneck expresses some indications of the phenomenon of the judicialization of politics:

> Among the factors commonly used in the construction of explanations concerning the judicialization of politics we are experiencing in this country are: (i) chanelling fustrated social expectations before insufficiently responsive Legislative and Executive Branches to the Judiciary; (ii) the re-design of the Brazilian system for the control of the constitutionality of the enactment of the 1988 Constitution, extending not only the power of the control of the STF and the channels through which the different political and social actors could otherwise be caused by the actions of the Court; (iii) the "encompassing constitutionalization", with the adoption of a constitutional text at the same time expasive and detailed, paving the way for a variety of issues previously considered policies to be treated as justiciable; (iv) the strategic behavior of political actors that see in the judicial intervention the chance to reverse the unfavorable decisions in the majority decision-making arenas, such as the National Congress; and, finally, (v) the increasing consolidation of democracy in the country, which adds to all of the above factors by mobilizing the citizens in the search for mechanisms to enforce their rights and the strengthen the judiciary as an actor relatively independent

> of the action of the political forces of the time (ARGUELHES, 2014, p. 26).

The evolution of the relationship between the constituted powers in the current paradigm of the Democratic Rule of Law (SANTOS, 2013, p. 12), and the inability of enclosuring the Legislative Branch in disagreement with the principles and fundamentals of the Constitution of the Republic, characterized the pronouncement of the Constitutional Jurisdiction in the sense of investigation of ats reserved to the discretion of the Parliament, even if oscillating before the position of the self-organizing powers.

In this sense, the transition from a restrictive behavior to matters of its competence to a predominant action in matters of a political nature that address the autonomy of the elected powers allowed the Federal Supreme Court, in recent decades, to review its jurisprudence on the jurisdictional control of the acts of the Legislative Branch.

In this sense, the revision of the court's understanding on the judicial control of the acts of the Legislative Branch expresses the development worked, bringing closer the tensions between Constitutional Jurisdiction, supremacy of the Constitution and popular sovereignty, and separation of powers, especially due to the control of *interna corporis* acts of the National Congress.

3 Ways to face the problem of *interna corporis* acts: Due process as a democratic justification for the control of constitutionality of laws and the legislative process

According to Marcelo Andrade Cattoni (2016, p. 84), the Constitution begins to guide a deliberative and procedural process of realization of fundamental rights and the free exercise of powers, democracy, and citizenship in the framework of the Democratic State of Law. In this wake, the due legislative process comes to be understood as a theoretical framework capable of reconciling the mechanisms of state action and the procedures necessary to legitimize the Public Power, “procedural conditions that configure and guarantee, in constitutional terms, a democratic legislative process” before a plural and participatory society.

Thus, the independence and organizational autonomy of the National Congress began to be observed in the light of compliance with the guiding rules of the legitimate exercise of the Legislative Branch, understood as the performance of its powers in compliance with constitutional rules, their normative assumptions, and sets of norms that guide political action in the frameworks of democratic constitutionalism:

> It is clear that, with the advent of the 1988 Constitution, the so-called *harmonic* and *independent* functions between them came to have a communicating vessel that flows into the Judiciary. After 1988, the crystallized defense to the secular mold of separation of "powers" (the quotes serve to remind that the word is loaded with myth - the myth of the powers) is no longer possible in Brazil since there is a way to establish a provocation of supervision when the Legislative (any of the Houses of Parliament) does not comply with the *internal regiment*, which is mere *procedure* fit to comply

> with the *due legislative process*. Otherwise, if this were not possible, we would have a very serious theoretical error which is to leave the constitutional text to the free deliberation of legislators with the greatest guarantee that this *decision* could not be falsified. Thus, the *law* of the legislator would be comfortably immune to the constitutionality control in the legislative process, which would consequently lead the issue to parameters of *illegitimacy* transforming the decision *interna corporis* in the grave of democracy (DEL NEGRI, 2011).

Such an understanding revisits the doctrine of *interna corporis* acts, for which the acts of the Legislative Branch, typical of its constitutional function, and of its forecast of organization are not subject to judicial control insofar as they express the autonomy of the Legislative Branch in its innermost image of self-organization and deliberation on its own matters, under penalty of offense to the principle of separation of powers (QUEIROZ FILHO, 2001, p. 50).

Thus, according to the theoretical framework of the due legislative process, the nuclear issue of *interna corporis* acts and its impact on deliberative democracy for the Democratic State of Law and Constitutional Jurisdiction assumes essential importance since it is at the border of such acts that the understanding of the Constitutional Courts will be verified against the fundamental precept of the Brazilian Republic, understood by the democratic principle that the Constitution of 1988 elects as the foundation of the Constitutional State.

In this sense, Marcelo Catonni warns us of the effects of expanding the concept of *interna corporis* acts as a mechanism for removing constitutional jurisdiction from due control of deliberative democratic processes in the Democratic Rule of Law:

> This formalism is not at all harmless. In this case, as Professor Menelick demonstrates, it contributed to reducing the legislative process to a mere legitimizing rite of decisions already taken within the bureaucracies of the dictatorial State, against the background of an authoritarian understanding of political representation (CARVALHO NETO, 1992, p. 289-290). The question of extending the notion of what is "*interna corporis* matter is no less serious. This extension is revealed through jurisprudential understandings of the Federal Supreme Court according to which the interpretation and application of the Internal Regiment of the Houses of Parliament would be procedures resolved privately within the Houses. In this sense, the judicial control of the regularity of the legislative process could only be exercised if immediately referred to procedural requirements provided directly by the constitutional text (as in the case of the provisions of paragraph 1, of article 47, of the 1967/69 Constitution, and paragraph 4, of article 60, of the 1988 Constitution), and not simply based on said regiments, as stated, in 1980, in MS nº 20257-DF and replicated in MS nº 21642-DF and MS nº 21648-4-DF of 06/06/1997, of which syllabus is as follows: (...) Impetration not known as to the regimental foundations since it is *interna corporis* matter that can only find a solution within the scope of the Legislative Branch, is not subject to the assessment of the Judiciary; knowledge as to the constitutional basis (OLIVEIRA, *In* BAHIA, 2019, p. 9).

Thus, and from the development surveyed, it is necessary to analyze the judicial discussions that occur at the election of the Directing Board of the National Congress for the

2019-2020 binomial, in which the questions about rules of the Internal Regiment of the Legislative Houses energized the debates on the relationships between Law and Politics, Constitutional Jurisdiction, Popular Sovereignty and, finally, the potential of constitutional erosion resulting from the impossibility of controlling the acts of the Legislative Branch.

The main point of dispute in this first case concerns the express rules of the Internal Regiment of both Houses of the National Congress. These are articles 7 and 60, respectively, of the Internal Regiment of the Chamber of Deputies and Federal Senate (BRASIL, 1970, 1989).

These devices have an express indication that the election for each of these boards will be by secret ballot. In the context that anticipated the lawsuit, such a forecast was understood as illegitimate, although it would tarnish the possibility of transparency of parliamentary acts, when, in truth, it is a guarantee of the autonomy and independence of Parliament in choosing its presidency, preventing the interference of other powers.

In this environment, the Writ of Mandamus was filed with precautionary measure nº 36,169/DF, whose objective was to ensure the open vote in the election of the Directing Board of the Federal Senate, in compliance with the principles of publicity. The Minister of the Federal Supreme Court, Marco Aurélio, understands that, before the constitutional principle of publicity, such votes had a public character and should therefore be open.

> The principle of publicity of Senate deliberations is the rule, with exceptions to exceptional situations, strictly specified in the Constitutional Text - article 52, items III, IV, and XI. It is inappropriate to enhance the provisions of the Internal Regiment of the Federal Senate in dissonance with the guarantee of the representatives to exercise constant supervision regarding the performance of the representatives (BRASILl, 2019a).

In defiance of such pronouncement, the precautionary measure was questioned as a stay of writ of mandamus nº 5,272, of Rapporteur of the Minister Dias Toffoli, on the basis that, despite the general rule of publicity, the deliberative decisions of legislative Houses that address the institutional role of these bodies must observe the doctrine of the *internal corporis* matters, scope of organizational freedom and deliberative autonomy of Parliament. Nonetheless, his decision also focused on the express regimental foresight that ensures the secret vote of parliamentarians and their role for the balance between powers. The trial thus allowed the attempt to approximate the need for autonomy of the powers and the requirement of conformity to the Internal Regiments and the Constitution, although recovering a restrictive institute to the judicial pronouncement, such as the *interna corporis* acts. Therefore:

> The choice of the Directing Board matters, in addition to a selection of the administrative director of the House, a definition of political order closely related to the natural expression of the political-ideological forces that make up the legislative houses –which is expressed, for example, in the definition of the work schedules and, therefore, in the list of priorities of the body – directly impacting the relationship of the Legislative Branch with the Executive Branch. Therefore, this action must be protected from any external

> influence, especially from interferences between powers. In the event of any change in the regimental norma, it is necessary to observe the rules relating to the proposals for resolutions amending the internal regiment (BRASIL, 2019b).

Comparatively, the decision paradoxically updated the doctrine of *interna corporis* acts, identifying its specificities for the election of the Directing Board of the National Congress by vetoing contradiction between the Constitution and regimental rules, from arguments that strengthen the freedom of Parliaments, while improving the defense of democratic institutions by the Constitutional Jurisdiction, as a form of democratic improvement and as a mechanism for preventing the separation of powers.

In the end, it is necessary to examine the recent case of a Direct Action of Unconstitutionality, nº 6,524/DF, where the issue is outlined in the scope of the present work is discussed, that is, the re-election of the Directing Board of the National Congress, and the possible unconstitutionality from the article 57, paragraph 4, of the Constitution, which provides for the election of the Directing Board of the National Congress and prohibits "the reappointment to the same position in the elections immediately after."

The action was based on the possibility of reappointment of the members of the Directing Board of the National Congress to the same pos but focused on the literality of the constitutional text, which was interpreted as categorical regarding the prohibition of reappointment to the same post in the immediately subsequent election. Thus, the control of constitutionality of the regimental rules that establish such a prohibition would enable, on the part of the Constitutional Jurisdiction, the opportunity of interpretation according to the Constitution, but in a different sense to the literal expression of the norm.

However, the possibility of a *judicial review* of regimental norms that reproduce the Constitution regarding the prohibition of reappointment to the positions of the Legislative Board in the immediately subsequent election led to disputes concerning the limits of Constitutional Jurisdiction to interpret norms that appear to be clear and expressed as to the imposed delimitations.

In his leading vote, minister Gilmar Mendes raises the possibility of judicial review of this matter to allow the National Congress, through its houses, to legislate on the possibility of reappointment.

For this, we recovered the re-election of *speakers* in contemporary constitutional democracies, such as France, the United States, Mexico, and the United Kingdom, revealing that reappointment is the rule of these models. Subsequently, we contextualized the rule established in the Constitution of 1988 and reproduced in the Internal Regiments from the National Constitutional history, identifying the forecast as an exception in democratic history and located with the imposition of Constitutional Amendment nº 1/69 of the authoritarian period. Finally, it analyzes the feasibility of interpretation according to the Constitution as an

intermediate decision formula to limit the possibility of reappointment, which was rejected by the following grounds:

> Otherwise, the interpretation of article 57, paragraph 4, CF/88 is according to the Brazilian Constitution of 1988, based on the assumption that this provision addresses a matter that had never been considered to be the principle aspect of the Brazilian State, or a normative element central to the maintenance of the democratic order. Neither does it embody the fundamental rights, with a fundamentality reflected in the use by the jurisprudence of this Court, of the expression ' regimental nature' to emphasize that the incidence of the material in article 57, paragraph 4, CF/88, is the internal organization of the House of Laws. (...) Thus, an interpretation of the text of article 57, paragraph 4, which can be considered in accordance with the Constitution of 1988, requires its proper systematic harmonization with the principle of organizational autonomy of the Houses of the National Congress (...) For the present case, this order of ideas means the subject has been placed, and it is up to the Court to decide. However, we will decide on the constitutionality of regimental provisions that address the composition of the Directing Board of the National Congress. We will not decide on who will compose the next Board: for this we require votes in Parliament, and not in the Plenary of this Supreme Federal Court. It is the parliamentary majority that defines who 'speaks for the House' in the election of the Legislative Board, not a judgment (BRASIL, 2020).

The trial, which ended with the confirmation of the unconstitutionality of the reappointment to the same office in the immediately subsequent election, did not end discussions on the limits of Constitutional Jurisdiction, nor on the scope of delimitation of parliamentary activity in light of the Constitution and its Internal Regiments.

However, the votes cast, with emphasis on the Rapporteur's vote, before being categorized as a decision that marks a setback in studies on the interaction between Law and Politics and on the Judiciary versus the Legislative Branches, or on Constitutional Supremacy and Popular Sovereignty, provoke the need for a careful examination on how the mechanisms that allow the independent performance of parliaments can configure the decline of their rules of self-limitation from re-reading their constitutionally established functions.

4 Results and Discussion

The examination of the impacts of controlling the acts of the Legislative Branch through the Constitutional Jurisdiction allows us to understand the meanings of the Brazilian political system when considering the phenomena recorded by the doctrine and jurisprudence in Political Law and the literature on national Parliament in a critical perspective, indicating the stumbles and learning in the paths of realization of the Brazilian constitutional democracy. It was possible to understand that such options, incorporated both by representatives of the national Legislative Branch of judicialization of this matter and by the ministers, in their reasons, as an eminently *interna corporis* issue, proper to the regulation of the Internal Regiment of the Legislative Houses and located in the field of parliamentary organizational autonomy, could mean

movements contrary to the democratic principles of the Constitution, or, antagonistically, increase of the constitutional foundations present in a given Democratic State of Law.

Regarding the specificity of the Brazilian case, it was possible to concatenate the growth of the concept of judicialization of the policy with overcoming the impossibility of judicial review of the *interna corporis* acts, in a movement that decisively brings the STF and the National Congress closer in the process of self-organization of the latter.

It emerges from the analysis that such a situation is a trend, reiterated in events that propitiate the appearance of these discussions, such as when the members of the Directing Board of the National Congress were elected.

The case study illustrated the results arising from the current stage of interaction between the Constitutional Jurisdiction and the Legislative Branch, measured the development of the matter in recent terms, and, above all, identified contradictions between old, recent, and the current understandings of the Court, concerning the role of Regiments (MOURÃO, 2016) and the independence of the constituted powers.

The currentness of the topic is expressed and widely recognized by the Federal Supreme Court, the National Congress, and, above all, by the contemporary constitutional doctrine (SILVA, 2021, p. 604).

In this sense, it is important to highlight that, from the moment in which the reflection on the topic of this work began until its drafting, the Federal Supreme Court affected the discussion on the judicialization of *interna corporis* matters under the systematics of the judgments of General rRpercussion, comprising the constitutional stature, the juridical-social relevance, and, above all, the numerous flow of actions under process in which the matter is discussed.

Thus, in judgment of the merit of Extraordinary Appeal nº 1297884, the STF fixed the Theme of number 1120[2], regarding the separation of powers and judicial control of constitutionality regarding the interpretation of regimental norms of Legislative Houses, including the judicial review of *interna corporis* matters by the judiciary , highlighted especially when the disregard for constitutional norms relevant to the legislative process is characterized (BRASIL, 2021).

Such an understanding, far from meaning the end of the debate about the judicialization of *interna corporis* issues, is significant of its reach, impact, and contemporaneity. Critical remarks should be made, insofar as the Federal Supreme Court limits itself, from this hermeneutics, to the revision only of the acts linked to the legislative process, ignoring a myriad

[2] The theme of General Repercussion, binding to the other organs of the Judiciary, has the following provision: "Regarding the principle of separation of powers, provided for in article 2 of the Federal Constitution, when the disregard to the constitutional norms pertinent to the legislative process is not characterized, it is the responsibility of the Judiciary to exercise judicial control concerning the interpretation of the meaning and reach of merely regimental norms of the Legislative Houses since it concerns *internal corporis* matters".

of private powers of the National Congress that may raise before the disobedience to constitutional and regimental principles, the judicial control of the acts of the Legislative Branch in terms of the due legislative process, and of guaranteeing the democratic principle, political pluralism, and the participation of minorities.

Therefore, it is expected that the debates on the syndication of acts private to the Legislative Branch become increasingly frequent, especially in view of the revisitation of the jurisprudence of the STF on the matter and the strategic action of congressmen in seeking to mediate positions not definitively resolved by the legislative houses. Thus, it is imperative to recognize the actuality of the judicial control of the acts of the Legislative Branch in the Brazilian case, as this issue is in full expansion and under test by the national jurisprudence.

5 Conclusion

This article aimed to understand the phenomenon of judicial control of acts of the Legislative Branch from the National Constitutional Jurisdiction. It was necessary to salvage the existing literature on the relationship between the powers in the Constitution of 1988 and the role of the Constitutional Jurisdiction, and the development of the criminalization of the acts of the Legislative Branch to understand the extent to which the current configuration of the Brazilian political system has led the way so that the judicial review of the acts predominantly internal to the organization, and of the independence of the Legislative to gain space, influence, and membership of the case-law of the constitutional court.

It was possible to conduct a case study on the elections of the Directing Board of the National Congress of the last two bienniums (2019-2021 and 2021-2023) based on these theoretical milestones as a measure to demonstrate the actuality of the topic and the understanding of the Federal Supreme Court regarding judicial control of *interna corporis* acts.

The presence of positions that are restrictive or amplifying the participation of the Constitutional Court in the judicialization of *interna corporis* acts, especially the progressive replacement of the thesis of the impossibility of judicial review of acts of internal organization of the Legislative Branch for the adoption of jurisprudence on the need for control of acts *interna corporis* in the face of constitutional precepts and regimental rules was demonstrated by analyzing the judgments and the understanding of the STF.

These trends made it possible to understand the complex phenomenon of the judicialization of eminently political issues on the border between the classic concept of separation of powers from Popular Sovereignty and Constitutional Supremacy, mediated by the institutional functions of Constitutional Jurisdiction.

However, the precedents created with the discussions mentioned above allow the follow-up of other topics inherent in the relationship between Law and Politics, enabling a critical analysis by which it will be possible to question in what terms the defense of the

autonomy and independence of the powers, especially the Legislative Branch as a space of the popular will, can propitiate the *interna corporis* entrenched from regimental rules and constitutional precepts.

As a result of the research, the evolution and openness for the judicialization of these matters by the Court, with exponential growth of the possibilities of interaction between the Legislative Branch and the Constitutional Jurisdiction, and its reflections in the Brazilian political system was illustrated.

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