# THEORY OF LAW AND THEME 1.120 OF GENERAL REPERCUSSIONS OF THE SUPREME COURT: ARE THERE NO LAWS FOR THOSE WHO MAKE THE LAWS?

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**Abstract:** The investigation undertaken here proposes to examine the arguments used by the theory of law and the jurisprudence of the Federal Supreme Court to describe the legal nature of the regimental norms. This is an exploratory bibliographic and documentary research. It was possible to describe three distinct currents of positioning to then debate the scientifically fallible points diagnosed, in order to arrive at an argumentative logic of better acceptance. A series of STF decisions on the control of the legislative process were explored, covering judicial manifestations dating from the 1980s, until reaching the jurisprudential novelty of the judgment on the merits of Theme 1,120 of General Repercussion, in June 2021. It is concluded that The theory of law needs to rethink the understanding of the nature of the regulations of the legislative houses, and that the indiscriminate use of the argument of the indiscriminateness of interna corporis acts, without presenting minimum parameters for the possibility of effective judicial control is incompatible with the constitutional principle of inexorability of jurisdiction.

**Keywords:** Theory of Law; Standing Rules; Control; Judicial Power; Legislative Power.

## 1. Introduction

The internal regulations of legislative houses are standards that complement and detail the constitutional rules on the law-producing process. The Constitution established the order for drafting legislative regulations. When a new law enters into force, it enjoys a presumption of legality and constitutionality since it is assumed that the legal procedures required for its elaboration have been duly respected. In short, it is obedience to the creation procedure that ensures the legitimacy of the final product.

However, situations in the daily life of parliaments in which rules of procedure on the law-making process are relativized or, unfortunately, disregarded due to the natural multiplicity

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of interests represented are not rare. As a consequence of the violation of a legal standard, the injured parties activate the Judiciary, which develops its primary attribution of effectively establishing the right in the face of conflicts. However, this is not what occurs in Brazil.

In general, the Federal Supreme Court (STF in Portuguese) adopts a consolidated position of self-restraint, according to which legislative acts related to internal regulations would be insusceptible to judicial control. It is the so-called judicial prohibition of the investigation of *interna corporis* acts, jurisprudence constantly used by the Judiciary to exempt itself from its mister, not effectively controlling the law production process. With such an understanding, the STF lowers the rule of procedure to a legislative subspecies, a right that, if violated, is not amenable to control.

Imagine the situation of a Constitutional Law professor who, in their classes on the title "Fundamental Rights and Guarantees", exploring article 5 of the Constitution, teaches about the principle of the inviolability of jurisdiction, according to which the Judiciary cannot exempt itself from assessing injury or threat to the law. At a particular moment, a student makes an intervention asking why, in case of violations of the internal regulations of the legislative houses, the STF, the highest body of the Brazilian Judiciary, understands that judicial control is not due. Is the rule not a right, or does the STF disrespect the principle of inexorability? There is a sensitive legal problem to be treated under the prism of the theory of law.

In this context, the present study examines the theory of law and the jurisprudence of the Federal Supreme Court to investigate how each directs legal knowledge about the nature of the internal regulations of legislative houses. The research is bibliographic, exploratory, and interpretative, using documentary analysis and a qualitative approach.

We expect to build a logical and legally possible argumentative path that offers an idea of a rule of procedure as a holder of a high degree of legality, with outstanding importance in the functioning of the Democratic State under the Rule of Law based on the data collected and by conducting a critical analysis.

## 2. Theory of law and the legal nature of the rules of procedure

Would the internal rules of the legislative houses be mere manuals that dictate the legislative work of parliaments? Would they be procedural codes with a corporative character with no external effects? Or would they be legal standards of mandatory observance binding the entire process of producing legal standards? Is there any connection between the regulatory texts with the Federal Constitution? These nuances must be addressed to develop the research proposed here.

The Federal Constitution expressly provides[4] to the Federal Legislative Houses

[4] Articles 51, III; 52, XII; and 57, Paragraph 3, II of the Federal Constitution.

(Chamber of Deputies and Federal Senate) the competence for elaborating their respective internal regulations and, jointly, the common regulations of the National Congress. The regiments "have the enormous task of disciplining, in a minute and exhaustive manner, all matters necessary for the pursuit of the legislative mission" (SILVA FILHO, 2003, p. 58, our translation). The rules of procedure, thus, supplement and detail the constitutional rules on the law-making process.

Note that the Constitution established the order for drafting legislative regulations. These instruments are the repository of the rules that guarantee the predictability and legal certainty of the procedures for the creation of law. However, the theory of law contains controversies regarding the nature of its standards to the detriment of the undeniable legal density of internal regulations.

In the first current, there are authors, such as Meirelles (2008, p. 449-450), who deny the existence of legality in the internal regulations of the legislative houses. For the author, such standards are *interna corporis* acts related directly and exclusively to institutional prerogatives or the valuation of matters of private jurisdiction of the "legislative corporation". Legislative acts relating to the formation of laws and manifestations of vetoes fall under this classification.

For the author, such an understanding of the rules of procedure is because their occasional violations and conflicts are not subject to judicial review. In this line, Meirelles (2013, p. 35, our translation), concludes:

> Only the law, regularly voted and enacted, and *interna corporis* acts are not subject to judicial correction of the Legislative Branch. *Interna corporis* acts of the Legislative are those deliberations of the Plenary, Commissions, or Bureau that directly and exclusively address the attributions and prerogatives of the corporation.

This doctrinal position reduces the regulations to a mere internal ordering of legislative corporations, denying their cogent compliance and making it impossible to access the Judiciary in case of violations. Teles (2019, p. 124) justifies that the possibility of jurisdictional intervention of the courts in controlling the regulatory precepts related to parliamentary deliberations is inhibited so that the constitutional postulate of the division of powers is not disrespected. Thus, the theory of *interna corporis* acts tries to find support in the principle of separation of powers, presenting the argument that if the Judiciary comes to control the violation of rules of procedure, it is allegedly interfering unduly with another power.

When developing his position, Teles (2019, p. 124, our translation) considers that admitting the submission of issues of a regulatory nature to judicial review "( ... ) would consecrate the unacceptable nullification of the Legislative Branch". For the author, the *interna corporis* questions should be resolved exclusively in the sphere of action of the legislative institution. With such expressions, the author maintains that the problems involving the internal

regulations of the legislative houses should be solved only within the scope of the respective houses. This is an idealization of the complete autonomy of the Legislative Branch in addressing the public thing, a kind of privatization of the development of the law-production process by legislative corporations.

In contrast, Barbosa (2010, p. 175, our translation) states that rules of procedure are a mere internal ordering of a corporate character; it is "recalcitrance in judicial discourse and in the parliamentary imagination, accustomed to seeing decisions adopted based on legislative regulations protected from any external censorship".

In the author's words, "the regimental regularity of the legislative process cannot be relegated to an internal problem of the parliamentary corporations" (BARBOSA, 2010, p.171). For him, the a priori use of the theory of *interna corporis* acts can lead to risks such as the autonomization of Parliament in relation to the public sphere, with a total absence of control in the treatment of legislative issues and consequent privatization of the legislative process by parliamentary corporations or by interests of political and/or economic groups embedded in political parties.

The Judiciary's refusal to interfere in parliamentary procedures when it is due, under an argument that an autonomous internal law regulates them, can stimulate abuse (BARBOSA, 2010, p. 177). Failure to make it possible to investigate breaches of rules of procedure can dangerously leave the parliament to the discretion of any occasional majority. The impossibility of an a priori analysis of the rules of procedure may lead to the paradoxical situation in which the state body of democratic representation is itself undemocratic.

Pereira (2012, p. 154) criticizes the use of the doctrine of *interna corporis* acts with exacerbated justification in the separation of powers. For him, "the self-control of legislative activity by the legislator is incompatible with the principle of the separation of powers, in the context of the Democratic State under the Rule of Law".

In its principled essence, the so-called separation of powers largely encompasses the notion of cooperation and institutional loyalty. This is basic. The independence between the bodies acting in the three state functions is not absolute. There are mechanisms of checks and balances to prevent possible abuses of powers, according to which one Branch exercises control over the other, thus preserving the harmonious functioning of the State as a whole.

At this point, it is essential to bring the positioning of a second current to the debate, with authors who argue that the standards of the internal regulations of legislative houses have the status of cogent standards of mandatory observance and are hierarchically equated to ordinary legislation. At first, we removed a document with the teaching of Rui Barbosa on the subject from the archives of the National Congress[5]: "there is no essential difference between

[5] Diário do Congresso Nacional de novembro de 1968, with quote from Rui Barbosa in his work "Comentários à

the law under its expression of parliamentary rules of procedure and the law under its expression of a legislative act".

The internal regulations take shape in the legal world through a Resolution, a primary normative species, according to article 59, VII, of the Federal Constitution. The Internal Regulation of the Chamber of Deputies (RICD), in its article 109, III, conceptualizes the instrument mentioned above as one intended to "regulate, with the effectiveness of ordinary law, matters of private competence of the Chamber of Deputies, of a political, procedural, legislative, or administrative nature, or when the Chamber must pronounce in concrete cases (...)" (BRASIL, 1989). In this context, Carneiro, Santos, and Nóbrega Netto (2007, p. 75) affirm that the RICD is a legal standard and, consequently, integrates the Brazilian legal system.

Thus, legislative resolutions differ from ordinary laws only in their field of action. They discipline matters exclusive to legislative work without the participation of the Executive Branch in its edition. Regarding the effectiveness, as expressed above, it is demonstrated that the internal regulations are on the same level as ordinary laws.

In this context, Queiroz Filho (2001, p. 26, our translation) teaches that "the relationship of the regulations with the other laws is not based on the principle of hierarchy of standards but jurisdiction, depending on the material scope the Constitution reserves them". In turn, Barbosa (2010, p. 173) corroborates the idea that there is no difference in hierarchy and effectiveness between Resolutions (Regulations) and Ordinary Laws, but only different thematic fields. It also adds the idea that the legislative regulations integrate the system of sources of law:

> In our constitutional jurisprudence (...), the issue has been resolved in favor of the recognition of a constitutionally guaranteed normative reservation to legislative regulations, which would therefore integrate the system of sources of law.
> The rules of procedure keep, in principle, the same hierarchy as the laws: what differentiates one normative species from the other is its "own material scopes", outlined by the Constitution. (...)

In this line, the correct argumentative path to be followed leads to the recognition that the internal regulations of legislative houses are an integral part of the legal system and, since they are rules of positive law endowed with constitutional foresight, they are cogent standards, of mandatory observance by all their addressees (BARBOSA, 2010, p.174).

The parliamentary rules of procedure constitute the formal source of the legislative drafting process and the constitutional standards related to the legislative process. According to Silva (2006, p. 342, our translation), "this special normativity gives rise to a branch of law called parliamentary law, which has its fundamental object in the legislative process".

As stated at the beginning of this section, the Constitution establishes the order for

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Constituição Federal Brasileira, São Paulo: Saraiva, 1933, v. 2, p. 32-33". Available at: < http://imagem.camara.gov.br/Imagem/d/pdf/DCD09NOV1968.pdf>. Accessed on 14th of Dec., 2021.

elaborating legislative regulations. This fact guarantees a high degree of legality to these normative instruments. In addition, it should be noted that they not only emanate from the constitutional text but also complement it and detail its rules on the process of producing laws. Thus, it is worthy to note the contribution of Godoy (2008, p. 117, our translation):

> The essence of internal regulation is in the constitutional order. However, it preceded it in the assembly's rules of procedure, which were discussed, voted on, and enacted. Therefore, the exceptionally high content of legality of its normative provisions is inherent in its nature. It can be affirmed that this legal rule constitutes the State and, consequently, in its Constitution, becomes the source of the basic foundations to govern the actions of power constituted primarily to generate the law and exercise control.

Given the above, it is demonstrated that part of the doctrine is directed to the recognition of various aspects that characterize the legal nature of parliamentary regulations (such as their status as a legal standard, they integrate the legal system with the effectiveness of ordinary law, they are a formal source of law, and they emanate from the Constitution).

We bring the positioning of a third current to the debate, represented by a specific part of the theory of law, which argues that, because they are primary standards related to the creation of law, the internal regulations are strictly linked to the Constitution, enjoying a different position in the legal system, so that the violation of rules of procedure, in certain circumstances, could mean the violation of the Constitution (BARBOSA, 2010, p. 179). According to this doctrine, the regulations would, therefore, be constitutional standards interposed.

When conceptualizing this category of standards, Canotilho (2003, p. 922-923) teaches that those standards are interposed and that, even lacking a constitutional form, they are presupposed by the Constitution as specific conditions of validity of other normative acts. For the Portuguese jurist, the standards of internal regulations are examples of interposed standards since they can be claimed as a material parameter of the validity of the procedure for forming laws. According to this doctrine, the right placed in a rule of the procedure has parametricity with the constitutional text.

According to the doctrine of interposed constitutional standards, the internal regulations are as binding on the Legislative Branch as the Constitution. In this sense, Barbosa (2010, p. 191, our translation) explains that "despite being located at the infra-constitutional level, the rules of procedure referring to the legislative process function as necessary parameters for measuring compliance with constitutional provisions on the valid production of legal standards".

An interposed constitutional standard that the constituent power has not edited and is not formally in the Constitution can be considered "constitutional" due to its material content. This is the case with internal regulations. Although they are not in the express text of the

Federal Constitution, they complement it to detail the creative activity of law. The Constitution brings the general rules; the regulations bring the detailed operationalization of the legislative process. "Rules of procedure, insofar as they prescribe the form of production of other legal standards, enjoy logical and instrumental superiority over other standards produced according to their prescriptions (MACEDO, 2007, p. 214)".

In short, the doctrine of interposed standards is based on the idea of widening the so-called constitutionality block. Not only formally constitutional standards but also infra-constitutional standards that, due to their content being materially constitutional, should also be considered as members of the aforementioned "block" could be parameters for the control of constitutionality.

In this line, it is also valid to bring the authors' position who consider the rules of procedure as materially constitutional. According to Bernardes Júnior (2009, p. 85), the rules of procedure contain standards that develop the constitutional provisions related to the legislative process since they discipline the institutional functioning of parliaments. For the author, just as there are principles that, although not expressed in the Constitution, can be deduced from it (such as the principle of reasonableness), the provisions of the internal regulations of the legislative houses, as far as the democratic principle is concerned, must be considered as materially constitutional, that is, they must integrate the so-called "constitutionality block".

It is necessary to fix that "a constitutionality block can be understood as a normative set endowed with constitutional materiality that is distant from the constitutional text" (VARGAS, 2007, p. 159, our translation). In other words, a standard considered endowed with constitutional materiality is part of the constitutionality block, even if it is outside the formal text of the Constitution.

Article 5, paragraph 2 of the Federal Constitution, expresses what is doctrinally known as the constitutionality block: "The rights and guarantees expressed in this Constitution do not exclude others arising from the regime and principles adopted by it or from international treaties to which the Federative Republic of Brazil is a party" (BRASIL, 1988, our translation).

The idea that the internal regulations of legislative houses, although not formally Constitutional, are material, thus integrating the so-called constitutionality block, also finds support in the doctrine of Horta (1989, p. 6-7). According to the author, "the 'ritualistic phenomenology' of the regiments incorporates materially constitutional standards, with the regulatory texts exercising the task of complementing the constitutional devices of legislative elaboration".

Given the above, it remains to be shown that the positions in the theory of law on the legal nature of internal regulations are quite controversial. As a first current, some authors deny the existence of legality in such standards, relegating them to the position of mere internal orders of legislative corporations, mere *interna corporis* acts, the occasional violations of which

must be resolved within Parliament. As a second current, some authors consider the rules of procedure as components of the legal order, with binding force, of mandatory observance, which are at a hierarchical level equivalent to that of ordinary laws, differing only in the field of action. Finally, there is also a third minority current according to which the internal regulations enjoy a differentiated position in the system, being materially constitutional interposed standards.

This article is affiliated with it, considering the clarity and argumentative robustness of the second current presented and the undeniable high legal burden of the rules of procedure of the legislative houses. Regiments are breeding standards of other standards. The functioning of the Democratic Rule of Law involves understanding the importance and effective compliance with the internal rules of parliaments.

## 3. The case law of the Federal Supreme Court on the legal nature of the Internal Rules of Procedure: Topic 1.220 of General Repercussion

After demonstrating the existing currents in the theory of law on the legal nature of parliamentary regulations, this section investigates the understanding of the jurisprudence of the Federal Supreme Court, as the Constitutional Court, on the subject. Such investigation necessarily involves the analysis of the position adopted by the Federal Supreme Court on the exercise of judicial control of violations of internal rules of procedure:

a) If it is understood that it is not up to judicial control and such a matter should be resolved within the internal scope of parliaments, the court adopts the first doctrinal current presented here, reducing the legal nature of the regulations to the mere internal organization of legislative corporations, that is, the so-called doctrine of *interna corporis* acts.

b) If, on the other hand, it is understood that it is up to the Judiciary to assess injury or threat to a right established in rules of procedure, then the court adopts the second or third doctrinal currents.

At first, it is already possible to emphasize that the STF adopts the first current. When faced with legal proceedings related to violations of the internal regulations of the legislative houses, the Federal Supreme Court uses an argument of self-restraint, according to which legislative acts related to rules of procedure are insusceptible to judicial control. It is, therefore, the clear adoption of the doctrine of *interna corporis* acts.

The adoption of such a doctrine by the STF has the writ of mandamus 20.247, still from the 80s, as the leading case. Through this process, the rejection by the President of the Federal Senate of a request addressing the annexation of a proposed constitutional amendment (PEC in Portuguese), authored by a parliamentarian, to another PEC, authored by the Executive, was questioned, both addressing an analogous/related issue (direct election to Senators and Governors). The decision stated that "it is a matter of *interna corporis*, which is resolved

exclusively within the scope of the Legislative Branch, and its consideration by the judiciary is prohibited" (STF, 1980, p. 82, our translation).

Other precedents were established in the same decade, following the thesis that rules of procedure are immune from judicial control. One can cite, as an example, Writ of Mandamus 20.471, of which the syllabus thus established: "Matter relating to the interpretation, by the President of the National Congress, of standards of legislative regulations, is immune to judicial criticism, circumscribing itself in the field of *interna corporis*" (STF, 1984, p. 40, our translation).

In the following decades, the Federal Supreme Court reaffirmed the understanding that the Judiciary cannot exercise its duty to establish the right to the concrete case when the standard used as a parameter is a parliamentary regulation. Several examples can be cited: MS 21.754, Rapporteur p/ judgment Min. Francisco Rezek; MS 22.494, Rapporteur Min. Maurício Corrêa; MS 24.356, Rapporteur Min. Carlos Velloso; MS 25.144, Rapporteur Min. Gilmar Mendes; MS 36.662, Rapporteur Min. Alexandre de Moraes, among other precedents.

To the detriment of the majority and consolidated jurisprudence demonstrated here, it is possible to notice isolated and punctual positions of STF ministers presenting counterpoints. They are manifestations that indicate the recognition of the juridicity of the rules of procedure and, consequently, their possible establishment through legal means.

In the analysis of the Writ of Mandamus 22.503, the Rapporteur, Minister Marco Aurélio, understood that the rules of procedure are necessary for the institutionalization and rationalization of power since they are placed to promote the balance between majority and minority. Its precautionary measure, granted in a monocratic manner, was later revoked by the Plenary. However, it represented a step forward in the debate on the stance usually adopted in Court. See (STF, 1996, p. 415, our translation):

> (...) it is not done under jurisdictional immutability, under penalty of reigning within the Legislative Houses, passing the majority to dictate what must be observed for each concrete case. The instrumental standards, whether or not they have constitutional suitability, confer certainty as to the means to be used and emerge as a greater guarantee of parliamentary participation.

Still in the judgment of Writ of Mandamus 22.503, Minister Celso de Mello, in his vote, expressed the understanding that judicial control could also occur in case of violations of rules of procedure on the legislative process (STF, 1996, p. 457-458, our translation):

> The imperative necessity of making the supremacy of the Constitution prevail [...] and the inalienable obligation to make effective the regulatory clauses that provide for the form of legislative elaboration on a mandatory and binding basis fully legitimize the performance of the Judiciary in the process of forming normative acts, to allow, at the level of *judicial review*, the exact measurement of the faithful compliance of the guidelines, principles, and rules inscribed both in the Fundamental Law of the Republic and in the Internal Regulation by the Legislative Branch (...).

In the same wake, Minister Sepúlveda Pertence, in his vote on Writ of Mandamus 24.356, expressed restriction regarding the use of the doctrine of the *interna corporis* acts as excluding the possibility of exercising legal protection. According to his reasoning, it would matter little if the violated standard was constitutional, legal, or regimental, if there is injury or threat of injury, "if there is this right, little is given that it merges into a rule of procedure: provoked, the court will have to decide about it" (STF, 2003, p. 335, our translation).

It is also necessary to bring the manifestations of Minister Luiz Fux, the most prominent magistrate in the counterpoint, to the legal insinuation of the *interna corporis* acts. In the concessional decisions of precautionary measure in Writs of Mandamus 31.816 and 34.530, the Minister expressed that "the regimental provisions constitute, in theory, authentic legal standards and, as such, are endowed with imperative and binding character". The violation of a rule of procedure "enables the prompt and immediate response of the legal system" since "it is inconceivable that there are standards for which compliance cannot be coercively demanded" (STF, 2016, p. 8, our translation).

Minister Fux went to extremes in the tension over the issue. There is no middle ground: "i) either the rules of procedure are truly rules and, therefore, enable their judicialization, (ii) or, strictly speaking, they are not legal rules, but simple recommendations, of optional adherence by their addressees. The latter does not seem to be the case" (STF, 2016, p. 8, our translation).

After this propaedeutic analysis, the most recent jurisprudential novelty on the subject is now presented: On June 14th, 2021, the Federal Supreme Court, by majority vote, Minister Marco Aurélio having won, judged the merit of issue 1.120 of General Repercussion and fixed the following thesis (STF, 2021, p. 2, our translation):

> Concerning the principle of separation of powers, provided for in article 2 of the Federal Constitution, when disrespect for constitutional standards relevant to the legislative process is not characterized, it is forbidden for the Judiciary to exercise judicial control in relation to the interpretation of the meaning and scope of mere rules of procedure of the Legislative Houses as it is an *interna corporis* matter.

Extraordinary Appeal 1,297,884 was the procedural arena in which the demonstrated consolidation of jurisprudence took place. The legal imbroglio on regulatory issues is explained as follows: Law No. 13,654/2018, in its Article 4, repealed item I, of paragraph 2, of Article 157 of the Criminal Code, a provision that provided that the use of a weapon of any type in the crime of theft would cause an increase in the penalty, by a fraction of a third to half. The Special Council of the Court of Justice of the Federal District and territories (TJDFT) incidentally recognized the formal unconstitutionality of such a revoking device (Article 4 of Law No. 13,654/2018), as a result of procedural vice, a regulatory violation in the processing of legislative matters in the Federal Senate. One of the legislative process stages would have been suppressed within the scope of the Justice Constitution Commission when parliamentarians

would not have been allowed to file an appeal for consideration by the Plenary, which violated the rule expressed in article 91 of the Senate's Internal Regulations.

In this context, the TJDFT also considered in force the cause of increased sentence for the crime of robbery with the use of a weapon of any kind (item I, of paragraph 2, of article 157 of the Criminal Code) and increased the sentence of a man convicted of the crime of robbery with the use of a knife. The convict then filed an Extraordinary Appeal to the STF.

In the recent trial, Praetorio Excelso understood that judicial control of the legislative process is possible only when the control parameter is expressed in the Federal Constitution. It is impossible to exercise judicial supervision related to mere rules of procedure of the Legislative Houses. Thus, the Federal Supreme Court overturned the judgment of the TJDFT, where it recognized as unconstitutional article 4 of Law nº 13.654/2018, and determined that the court of origin recalculated the dosimetry of the sentence imposed on the defendant.

Given all the above, it remains to be shown that the jurisprudence of the Federal Supreme Court is in favor of the doctrine of *interna corporis* acts, relegating the internal rules of procedure to an inferior legality position, to a mere domestic matter of parliaments. This understanding triggers a posture of self-restraint, consolidated and majority in the Court since the 80s and recently reaffirmed in a degree of General Repercussion. Such a mechanism allows the established thesis to be applied to all existing processes on the same subject in lower instances throughout the national territory[6] (a kind of automatic application of the doctrine of *interna corporis* acts).

## 4. Conclusion

At first, we concluded that understanding the theory of law on the legal nature of the internal regulations of legislative houses presents controversies, which can be didactically divided into three currents. For the first doctrinal current, the rules of procedure are not endowed with juridicity since they are only domestic ordinances of legislative corporations. Thus, violations of such standards must be resolved exclusively within the internal scope of parliaments according to the doctrine of *interna corporis* acts.

For the second current, through criticism and proposal to overcome the first, the internal regulations of the legislative houses, which have their edition determined by the Constitution, make up the legal order as a primary normative species and at a hierarchical level equivalent to that of ordinary laws. Thus, the rules of procedure for such a portion of the doctrine have binding force, are of mandatory observance, and, therefore, require a competent legal tool to

[6] Art. 985 of the Code of Civil Procedure (Law Nº 13.105/2015): "Art. 985. Once the incident is judged, the legal thesis will be applied: I - to all individual or collective proceedings that address the same question of law and are processed in the area of jurisdiction of the respective court, including those that are processed in the special courts of the respective state or region".

demand their compliance in case of violations coercively.

For the third current, which is a minority and represents a variation of the second, the internal rules are endowed with constitutional materiality since they complement the constitutional provisions referring to the legislative process. In this context, the rules of procedure enjoy a differentiated position in the legal system, according to this doctrine, being materially constitutional interposed rules. Its violation could mean, in certain circumstances, the violation of the Constitution.

Considering that the second doctrinal current presented clarity, logic, and argumentative robustness, both to refute the first current and erect and fix its proposal of understanding, it represents the most reasonable legal parameter. In addition to considering the high legal burden of the rules of procedure of the legislative houses, it is undeniable that rules originate other rules. The functioning of the Democratic Rule of Law involves understanding the importance and effective compliance with the internal rules of parliaments.

In a second moment, an analysis was made on the position adopted by the Federal Supreme Court on the exercise of judicial control of violations of regulations to investigate the direction of the jurisprudence of the STF on the legal nature of the rules of procedure of the legislative houses.

In conclusion, the STF positions itself in favor of the doctrine of *interna corporis* acts. This understanding triggers a posture of self-restraint, consolidated and majority in the court since the 80s, which was recently reaffirmed. On June 14th, 2021, the Federal Supreme Court, by the majority, judged the merit of issue 1.120 of General Repercussion and established a thesis according to which, justifying itself in an a priori argument of respect for the principle of separation of powers, it would be prohibited for the Judiciary to exercise judicial control of cases of disrespect for the rules of procedure of the Legislative Houses.

Specific individual manifestations of some divergent ministers were verified in the research, recognizing that the possible disregard for internal regulations should be subject to judicial control.

Finally, the doctrinal and jurisprudential analyses suggest that the theory of law must rethink the understanding of the nature of the rules of the legislative houses and reflect on the legal consequences of possible violations given the possible impacts that can be caused on the very structure of the Democratic State under the Rule of Law. However, making it impossible to exercise due judicial control over the rules of procedure can leave parliaments hostage to occasional majorities. It would be a paradoxical situation in which the state body of democratic representation is itself undemocratic. It is necessary to carefully monitor these standards so that, in the exercise of their functions, the members of the Legislative Branch, legitimate popular representatives, act among themselves in a democratic and legal form, respecting the minorities.

The Judiciary cannot step aside when called upon to exercise jurisdiction in cases of

injury or threat of injury to law. Internal regulation is law, a right, and a standard of obligatory obedience by those submitted to it. The indiscriminate use of the argument of the prohibition of investigation of *interna corporis* acts without presenting minimum parameters for the possibility of effective judicial control is incompatible with the constitutional principle of non-transferability of jurisdiction.

## References

BARBOSA, Leonardo Augusto de Andrade. **Processo Legislativo e Democracia:** Parlamento, Esfera Pública e Jurisdição Constitucional. Belo Horizonte: Del Rey, 2010. 244 p.

BARRETO, Derly; SILVA FILHO. **Controle dos Atos Parlamentares pelo Poder Judiciário**. São Paulo: Malheiros, 2003. 208 p.

BERNARDES JÚNIOR, José Alcione. **O controle jurisdicional do processo legislativo**. Belo Horizonte: Fórum, 2014. 179 p.

BRASIL. [Constituição (1988)]. **Constituição da República Federativa do Brasil de 1988**. Brasília, DF: Presidência da República, [2016]. Disponível em: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm. Acesso em: 23 nov. 2021.

BRASIL. **Regimento Interno da Câmara dos Deputados**. Disponível em: https://www2.camara.leg.br/atividade-legislativa/legislacao/regimento-interno-da-camara-dos-deputados/arquivos-1/RICD%20atualizado%20ate%20RCD%2021-2021.pdf. Acesso em: 23 nov. 2021.

CANOTILHO, J. J. Gomes. **Direito constitucional e teoria da Constituição**. 7. ed. Coimbra: Almedina, 2003. 1522 p.

CARNEIRO, André Corrêa de Sá; SANTOS, Luiz Claudio Alves dos; NÓBREGA NETTO, Miguel Gerônimo da. **Curso de Regimento Interno da Câmara dos Deputados**. 2. Ed. Brasília: Vestcon, 2007. 523 p.

GODOY, Mayr. **A Câmara Municipal e o seu Regimento Interno**. 5. ed. São Paulo: Livraria e Editora Universitária de Direito Ltda. 2008. 280 p.

HORTA, Raul Machado. O processo legislativo nas Constituições federais brasileiras. **Revista de Informação Legislativa Brasileira**, Brasília, v. 26, n. 101, p. 5-28, jan./mar. 1989.

MACEDO, Cristiane Branco. **A Legitimidade e a Extensão do Controle Judicial sobre o Processo Legislativo no Estado Democrático de Direito**. 2007. 235 f. Dissertação (Mestrado em Direito) – Faculdade de Direito, Universidade de Brasília, Brasília, 2007.

MEIRELLES, Hely Lopes. **Direito municipal brasileiro**. São Paulo: Malheiros, 2008. 688 p.

MEIRELLES, Hely Lopes. **Mandado de Segurança e Ações Constitucionais**. São Paulo: Malheiros, 2013. 960 p.

PEREIRA, Bruno Claudio Penna Amorim. **Jurisdição constitucional do Processo Legislativo**: legitimidade, reinterpretação e remodelagem do sistema no Brasil. Belo Horizonte: Fórum, 2012. 200 p.

QUEIROZ FILHO, Gilvan Correia de. **O controle judicial dos atos do poder legislativo**. Brasília: Brasília Jurídica, 2001. 171 p.

SILVA, José Afonso da. **Processo Constitucional de Formação das Leis**. 2. ed. São Paulo: Malheiros, 2006. 373 p.

STF - Supremo Tribunal Federal. **Mandado de Segurança n. 20.247/DF**, Rel. Min. Moreira

Alves, julgado em 18.9.1980, publicado em 21.11.1980.

STF - Supremo Tribunal Federal. **Mandado de Segurança n. 20.471/DF**, Rel. Min. Francisco Rezek, julgado em 19.12.1984, publicado em 22.2.1985.

STF - Supremo Tribunal Federal**. Mandado de Segurança n. 22.503/DF**, Rel. p/ acórdão Min. Maurício Corrêa, julgado em 8.5.1996, publicado em 6.6.1997.

STF - Supremo Tribunal Federal. **Mandado de Segurança n. 24.356/DF**, Rel. Carlos Velloso, julgado em 13.2.2003, publicado em 12.9.2003.

STF - Supremo Tribunal Federal. **Mandado de Segurança n. 31.816/DF**, Rel. Min. Luiz Fux, julgado em 7.2.2013, publicado em 13.2.2013.

STF - Supremo Tribunal Federal. **Mandado de Segurança n. 34.530/DF**, Rel. Min. Luiz Fux, julgado em 14.12.2016, publicado em 19.12.2016.

STF - Supremo Tribunal Federal. **Repercussão Geral no Recurso Extraordinário n. 1.297.884**, Rel. Min. Dias Toffoli, julgado em 14.06.2021, publicado em 4.8.2021.

TELES, Carlos André Coutinho. **O princípio da deliberação suficiente no processo legislativo brasileiro**. Rio de Janeiro: Ágora21, 2019. 180 p.

VARGAS, Angelo Miguel de Souza. **O bloco de constitucionalidade**: reconhecimento e consequências no sistema constitucional brasileiro. 2007. 209 f. Dissertação (Mestrado em Direito) ─ Faculdade de Direito, Pontifícia Universidade Católica de São Paulo, São Paulo, 2007.