The Chamber of Deputies' Resolution No. 21/2021 and the reduction of the dissenting role in parliament: impacts of changing the rules of legislative procedure

A Resolução n.° 21/2021 da Câmara dos Deputados e a redução do papel do dissenso no parlamento: impactos da alteração de regras de procedimento legislativo

La Resolución n° 21/2021 de la Cámara de Diputados y la reducción del papel disidente en el parlamento: impactos de la modificación de las reglas de procedimiento legislativo

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Abstract

In the light of neoinstitutionalist theory, this text discusses how changing procedural rules endogenous to the legislative process, such as the institution of Resolution No. 21/2021 of the Chamber of Deputies, inserted in a context of remote parliament, can act directly on the exercise of parliamentary activity, mitigate the power of obstruction of political minorities and the quality of representation. From the quantitative research, it was intended to make a comparison of the approval rate of propositions authored by the Executive Branch (provisional measures) by the Chamber of Deputies in the 56th Legislature to argue that the institution of this Resolution, by abolishing several mechanisms of parliamentary obstructionist action it concentrated, even more, agenda power in the hands of party leaders and the Presidency of the Legislative House, thus favoring the legislative agenda of the Executive Branch after its approval. Finally, a debate is outlined around what is raised by the literature on political representation and accountability to reflect what impacts the changes promoted may inflict on the quality of representation, on the principles of the proportional system and the deepening of so-called crisis of democracy.

Keywords: neoinstitucionalism; remote parliament; Resolution No. 21/2021; emergency legislative process; accountability.

Resumo

À luz da teoria neoinstitucionalista, o presente texto discute como a alteração de regras de procedimento endógenas ao processo legislativo, como a instituição da Resolução n.º 21/2021 da Câmara dos Deputados, inseridas em um contexto de parlamento remoto, poderão agir diretamente sobre o exercício da atividade parlamentar, mitigar o poderio de obstrução de minorias políticas e a qualidade da representação. A partir da pesquisa quantitativa, foi feito um comparativo do índice de aprovação de proposições de autoria do Poder Executivo (medidas provisórias) pela Câmara dos Deputados na 56.ª Legislatura com o intuito de averiguar o impacto da instituição desta Resolução, ao abolir diversos mecanismos de atuação obstrucionista parlamentar. Como resultado, verificou-se que a inovação legislativa concentrou, ainda mais, poder de agenda nas mãos dos líderes partidários e da Presidência da Casa Legislativa, favorecendo assim a agenda legislativa do Poder Executivo após a sua aprovação. Por fim, traça-se um debate em torno do levantado pela literatura sobre representação política e *accountability* para refletir quais impactos as alterações promovidas poderão infligir sobre a qualidade da representação, os princípios do sistema proporcional e o aprofundamento da chamada crise da democracia.

Palavras-chave: neoinstitucionalismo; parlamento remoto; Resolução n.º 21/2021; processo legislativo de emergência; *accountability*.

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Resumen

A la luz de la teoría neoinstitucionalista, este texto discute cómo la modificación de reglas procesales endógenas al proceso legislativo, como la institución de la Resolución nº 21/2021 de la Cámara de Diputados, inserta en un contexto de parlamento a distancia, puede actuar directamente el ejercicio de la actividad parlamentaria, aplacar el poder de obstrucción de las minorías políticas y la calidad de la representación. A partir de la investigación cuantitativa, se pretendió hacer una comparación de la tasa de aprobación de las proposiciones del Poder Ejecutivo (medidas provisionales) por la Cámara de Diputados en la 56ª Legislatura para argumentar que la institución de esta Resolución, al derogar varios mecanismos de acción obstruccionista parlamentaria concentró, aún más, el poder de agenda en manos de los dirigentes partidarios y de la Presidencia de la Cámara Legislativa, favoreciendo así la agenda legislativa del Poder Ejecutivo luego de su aprobación. Finalmente, se traza un debate en torno a lo que plantea la literatura sobre representación política y *accountability* para reflexionar qué impactos pueden tener los cambios que se promueven sobre la calidad de la representación, los principios del sistema proporcional y la profundización de la llamada crisis de la democracia.

Palabras clave: neoinstitucionalismo; parlamento remoto; Resolución nº 21/2021; proceso legislativo de emergencia; *accountability*.

1 Introduction

In the related literature and in the history of Brazilian Political Science, it can be seen how the political system and forms consolidated in the 1988 Constitution have been the subject of debates about their viability and governmental stability throughout Brazil's recent democratic history and of actions by the Legislative Branch to mitigate their effects (Abranches, 1988). However, little is said about the possible impact on the quality of political representation that the alteration of rules of procedure, especially within parliament, can have (Santos, 2003).

When you look at the spectrum from a micro perspective, some rule changes within parliament have collapsed directly under the power of political minorities. It was then that, during the Covid-19 pandemic, a pioneering system worldwide was implemented within the Chamber of Deputies, the Remote Deliberation System (Sistema de Deliberação Remota – SDR), to allow the continuity of legislative work and the deliberation of priority proposals to combat the pandemic in a scenario of the need to virtualize parliament with social isolation measures (Santos; Castro; Hoffmann, 2021; Mello, 2022).

The SDR, responsible for making parliament viable at a time of crisis and established in a context of an emergency legislative process, acted heavily on parliamentary action during its period in force, in particular by speeding up the legislative process through urgency as a method of parliamentary deliberation and suspending the activities of standing committees (Nascimento, 2020; Barbosa; Gershon, 2021).

In this context, several proposals passed through the plenary of the Chamber of Deputies abruptly, including Resolution No. 21/2021. Provided for in Resolution No. 14/2020, which established the SDR, the changes promoted in the Resolution in question came in the midst of the belief that the obstructionist procedural prerogatives of political minorities in parliament were often exacerbated, and made the legislative process slow and tiresome, dragging out sessions and votes for hours and hindering the will of the parliamentary majority (Nascimento, 2021).

Obstruction mechanisms, understood here as "all the ways, regimented or not, of preventing the bill from being approved by majorities" (Nascimento, 2021, p. 60, our translation) are often the only means that parliamentary minorities and the opposition to the government of the moment have to make themselves heard and contribute to the legislative outcome of more controversial votes moving towards the center of the debate, in the search for consensus. On the other hand, the process becomes more complex and, therefore, requires more time and debate.

All this comes against a backdrop of growing attention to the debate on political reforms, the existence of a performance clause in the last elections, and the growth of authoritarianism and political extremism in the country, where it is necessary to understand more clearly the dynamics of political representation influenced by micro and macro rules in the political system.

In a country with a well-known, highly fragmented party system, the institute of the "barrier clause" and the changes to the Rules of Procedure of the Chamber of Deputies (Regimento Interno da Câmara dos Deputados – RICD) aims to speed up the political process; however, they should not obscure the debate on their benefits and impacts for political representation and the democratic regime.

Nevertheless, with the advent of contemporary times and the greater complexity of political, economic, and social institutions, as well as their undeniable role and importance in political and economic systems, the study and analysis of the impact and behavior of institutions have become paramount. Thus, the neo-institutionalist approach seems to have become the majority prism in Brazilian Political Science studies for analyzing the actions and the behavior of parliamentarians and institutions (Vieira, 2018).

According to Vieira (2018), the neoinstitutionalist approach sees legislators as rational individuals who maximize their preferences, while seeing institutions — formal and informal — as inducing balance and stability in collective decisions, producing benefits and constraints that contain the impulses of individual and personalistic actions, while promoting cooperation.

Certainly, this approach, when subdivided into three other main theories — partisan, distributist and informational — promotes explanatory strands on the functioning of institutions — not mutually exclusive and sometimes complementary —, increasing understanding of parliamentary behavior and legislative decisions, which necessarily involve understanding the rules that organize parliament and its legislative process (Vieira, 2018).

In this sense, this paper aims to analyze, from the perspective of democratic theory and, in particular, the neoinstitutionalist approach, how the amendment of the rules of procedure by actors with agenda-setting powers, distributed by the House's own procedural rules, altered the balance of power so as not only to mitigate the power of the political minorities within parliament, but also to influence parliamentary practice and the quality of political representation.

Initially, data was collected from the Legislative Information System of the Chamber of Deputies (Sileg), as well as from the Open Data Portal of the Chamber and the National Congress, from legislative documents published in the Chamber of Deputies Diary or archived at the Documentation and Information Center of the Chamber of Deputies (Cedi), from minutes of meetings and shorthand notes of plenary sessions of the Chamber and the National Congress, as well as their joint committees, in addition to data extracted from the Federal Official Gazette of Brazil (Diário Oficial da União – DOU).

In turn, using quantitative research, the data obtained on the number of provisional measures (*medidas provisórias* – MPVs) was used to draw a comparison of the presentation and approval/rejection of proposals authored by the Executive Branch during the 56th Legislature based on a central condition: before and after the institution of Resolution No. 21/2021 of the Chamber of Deputies. We also went through mechanisms such as the establishment of the SDR and the approval of the so-called "secret budget", the rapporteur's amendments (RP9s), by the National Congress, in order to try to draw up an argument about the increase in the Executive Branch's agenda power following the approval of the aforementioned Resolution, bearing in mind the various variables of the period in which it was approved.

As for the methodology, we used the theory-driven evaluation method, which means that the theoretical framework adopted conditions for the research questions and the choice of methodological tools applied (Chen, 2005 *apud* Villas Bôas; Martins; Soares Neto, 2019). Based on this methodological model and theoretical framework, the main questions are chosen, and the aim is to prove the theoretical premises by observing the phenomenon studied. Based on this, the objectives of this research were: a) to identify and describe the changes to the legislative process made by the SDR and Resolution No. 21 of the Chamber of Deputies; b) evaluate the impact of the change on the previous power to obstruct and intervene by minorities; c) compare the power of the minority before and after the new procedures; and d) describe how the relationship between the Legislative Branch and the Executive Branch remained after the procedures.

This work is justified by the need to debate the means and rites that gave rise to the so-called emergency legislative process used during the Covid-19 pandemic, which resulted in various mechanisms to combat the crisis that plagued the country and the world. However, the theoretical concern as a whole has not been focusing due attention on the means of the process, but only on the ends, as Nascimento (2020) rightly pointed out. There is a justified concern as to whether the process for this has necessarily produced forms of democratic participation and transparency in the due legislative process, even in a period of crisis, without there being any constitutional change to this effect, due to the impact that changes to the rules that dictate the legislative process have, due to their importance (Nascimento, 2020).

In this way, the article first discusses how the remote parliament, through the establishment of the SDR within the Chamber of Deputies, as a method of continuing legislative work in the midst of the covid-19 pandemic, and the approval of Resolution No. 21/2021 of the Chamber of Deputies have had a significant impact on legislative praxis, changing the game of forces and the power of the agenda of stakeholders, reducing the power of minority political obstruction and further increasing the concentration of power in the hands of the Presidency of the Chamber, party leaders and, above all, the Executive Branch. Finally, we seek to reflect on the impact that these changes have had on the exercise and quality of political representation, where the reduction in the power of parliamentary minorities may have had a major impact on the very principles of the proportional system and the deepening of the so-called crisis of democracy.

2 Resolution No. 21/2021 of the Chamber of Deputies, the remote parliament and the impacts on the legislative process

2.1 The remote parliament

During the pandemic and in a context in which society expected agility in the fight against Covid-19 and alternatives from the public authorities to the crisis, the Chamber of Deputies, a pioneer in the world, established the SDR on March 17th, 2020, to allow the continuity of legislative work at a crucial time for the country[1]. The measure, regulated *a posteriori* by an act of the Bureau, came as a response to two major challenges: the need to speed up the legislative process to combat the crisis *versus* not interrupting parliament's work in the face of social distancing measures (Nascimento, 2020).

However, the institution of the SDR was also criticized for its limitations. While the Bureau of the Chamber of Deputies controls, through the SDR, the granting of words to parliamentarians, they felt prevented from exercising their right to protest, discuss the matter, or even obstruct votes (Mello, 2022). It is with the advent of the SDR that, in addition to the numerous prerogatives of the Speaker of the House (Vieira, 2011), it is up to him to cut off the parliamentarian's speech at any time. The system was also criticized for its use to vote on matters that were not considered urgent in a pandemic context, or that had no thematic relevance to combating the pandemic (Nascimento, 2020).

In turn, given that at the beginning of the crisis the sessions were concentrated exclusively remotely, the release of the parliamentarian's speech depended on the Bureau. This prerogative was reinforced *a posteriori* by Resolution No. 21/2021, in which the Bureau was given the prerogative to cut off the speech, at any time and at his discretion, if the parliamentarian spoke in a direction contrary to that in which he had signed up to discuss the matter[2].

The measure is a way of speeding up and intensifying work, and was reinforced during

1 The SDR was established by Resolution No. 14, of March 17th, 2020 (available at https://www2.camara.leg.br/legin/fed/rescad/2020/resolucaodacamaradosdeputados-14-17-marco-2020-789854-publicacaooriginal-160143-pl.html), and regulated by Bureau Act No. 123/2020 (available at https://www2.camara.leg.br/legin/int/atomes/2020/atodamesa-123-20-marco-2020-789867-norma-cd-mesa.html).

2 It is important to note that extraordinary sessions — which have been customary throughout the Covid-19 pandemic — are not only called by the President of the House, but are also his prerogative, do not have express periods for debates and leadership communications (as in ordinary sessions after 1988 or even sessions convened just for this purpose), such as the small and large sessions, except for the debate reserved for discussion of the matters on the Agenda (Vieira, 2011).

the pandemic by the publication of Bureau Act No. 123/2020, which regulated the SDR and which, in art. 5th, clearly stated that there would be no period set aside for debate in plenary sessions during the pandemic (Brasil, 2020)[3].

Certainly, not only did this further concentrate the power of the agenda in the hands of party leaders and the President of the Chamber during the period of public calamity, but the Bureau Act No. 123/2020, in its art. 3rd, established the construction of the plenary agenda by means of

> I - Matters that have the favorable manifestation of Leaders representing **two-thirds of the members of the House** and the Leaderships of the Government, the Majority, the Minority, and the Opposition, upon request, **which will already be included in the urgent regime referred to in art. 155 of the Rules of Procedure, which shall not be subject to requests for removal from the agenda, postponement of discussion or voting, discussion or voting in installments or by a specific procedure, requests for simple highlighting or breaking the interstice for a request to verify a symbolic vote, with the right to present requests for bench highlighting and plenary amendments being ensured**, subject to art. 120th, paragraph 4, of the Rules of Procedure of the Chamber of Deputies (Brasil, 2020, art. 3.º, emphasis added, our translation).

This led to the changes to the rules of procedure that were subsequently implemented through the approval of Resolution No. 21/2021, which removed legitimate obstruction mechanisms on the grounds of speeding up the legislative process. The urgent procedure itself is an exceptional measure for speeding up a proposal in the legislative House, since it dispenses with various stages in the ordinary processing of the proposal, including individual analysis by the committees[4]. In this sense, the SDR ushered in two substantial changes in parliament: the drastic acceleration in the processing of proposals through the exclusive concentration of deliberation of proposals in plenary and the suspension of the activities of the standing committees (Barbosa; Gershon, 2021).

It is essential to point out that, despite the fact that there is sufficient technology to hold meetings via videoconferencing, the SDR, by providing for the interruption of the functioning of standing, special, and inquiry committees, represented a significant change in the legislative *modus operandi*. As a result, deliberations have been concentrated exclusively in the plenary, where the President of the House and the leaders almost exclusively determine the decision-making process (Nascimento, 2020). Given that in the plenary, the agenda is set by means of urgencies, where the individual opinions of the committees are discussed and a rapporteur is chosen by the Speaker of the House to deliver the opinion for all of them, the process becomes essentially faster[5] (Santos; Gershon, 2021).

However, since civil society lost a direct channel for dialogue and intervention with the National Congress, and was also prevented from taking to the streets or attending the galleries of the House due to the necessary social isolation measures, the virtualization of the process was responsible for a drastic reduction in social participation, transparency in the debate and the construction and improvement of public policies in the country (Santos; Gershon, 2021). The existence of committees in the legislative process guarantees not only the division of powers, but also the informational capacity of these collegiate bodies, and the specialization of parliamentary debate greatly enriches the process, as well as increasing the mechanisms of societal accountability (Vieira, 2018; Nascimento, 2020). It should be remembered that, with the work of the

3 As the sessions progressed during the pandemic and parliamentarians needed to communicate with their constituencies, Bureau Act No. 208/2021 was published, which, among other things, amended art. 5th of the aforementioned act to provide for the period of brief communications until the start of the sitting's Agenda (Nascimento, 2020).

4 Arts. 153rd to 157th of the RICD, especially in this case art. 155th, which deals with the so-called "urgent urgency".

5 During the pandemic and prior to the amendment made by Resolution No. 21/2021, this mechanism was exacerbated by art. 3rd of Bureau Act No. 123/2020, which regulated the SDR.

committees suspended, including the parliamentary committees of inquiry, the parliamentary activity of overseeing government acts was also compromised in this process (Santos; Gershon, 2021).

It is not the place here to describe the SDR as a strictly negative measure, but rather to criticize its adverse effects in the context of the "legislative process of crises", where there have been significant changes to the rites of the legislative process without, however, any constitutional changes to this effect (Nascimento, 2020). It is clear that its establishment was essential for the continuity of legislative work and the role of parliament, especially when compared to other experiences in the world, where the closure of parliament gave way to excessive legislative capacities of the Executive Branch in combating the pandemic (Nascimento, 2020; Assumpção, 2021; Mello, 2022). However, the extraordinary period in which various changes have taken place cannot serve as an excuse for broad and permanent changes with direct impacts on the quality of representation, the democratic level of decisions, and the principles of the proportional system.

The SDR, as it is commonly known, represented the most emblematic measure under parliament's *modus operandi* for passing laws in a period of crisis (Santos; Castro; Hoffmann, 2021; Mello, 2022). However, it was not the only one: several changes were implemented by parliament during this period, including

> **the abbreviated processing of provisional measures**, the separation of the joint sessions of the National Congress, the absence of locking the agenda of the latter, **the way the agenda is constructed**, the alteration in the quorum count, in the voting dynamics and **the suppression of special, permanent and temporary committees** (Nascimento, 2020, p. 390, emphasis added, our translation).

Despite the importance of the other changes made during the period under review, two of them will be analyzed more closely for the purposes of this paper: the establishment of the SDR, as shown above, and the changes made to the processing of MPVs through Joint Bureau Act No. 1/2020, which will be discussed below. These are directly related to the object outlined here: the changes promoted by Resolution No. 21/2021 of the Chamber of Deputies for the exercise of parliamentary action and the power of political minorities in this Legislative House.

Lastly, but essentially important, was the publication of the Joint Act of the Bureaus of the National Congress No. 1/2020, which provided for an extraordinary regime for the processing of MPVs for the duration of the pandemic (Nascimento, 2020). As will be shown below, this act essentially altered the processing of MPVs, speeding up the process of analyzing them and even dispensing with the joint committees' competence to analyze the text — a decision that has already been deemed unconstitutional by the Federal Supreme Court[6] —, despite even the possibility of holding meetings through the SDR— which did not take place — undermining the quality and democratic participation in the debate (Nascimento, 2020).

The suppression promoted by the Joint Bureau Act greatly strengthened the power of the rapporteur appointed in the plenary and, consequently, the power of the presidents of the Legislative Houses over the matter. The short deadlines also speeded up the decision-making process — without, however, acting on the expiry of MPVs, since they could not override the constitutional deadlines —, which made democratic participation in the process more difficult. In short, in relation to the processing of MPVs, the Legislative Branch seems to have acted quickly to offer an alternative that would provide legal certainty in the face of the possibility of judicialization of acts concerning the outcome of the emergency legislative process in force (Nascimento, 2020).

2.2 The Chamber of Deputies Resolution and its impact on the legislative process

Along with the trend towards the gradual reduction of political parties in the Chamber of Deputies, instituted by Constitutional Amendment No. 97/2017 — and which promises to

6 ADI No. 4.029, Rel. Min. Luiz Fux, Full Court, judged on 03/08/2012, published on 06/27/2012.

intensify in the next legislature — important changes to electoral and party rules have been instituted in recent years in the light of the debate around political reforms, with the aim of producing greater stability in the political system and improving the gears of "coalition presidentialism".

Given this situation, it was to be expected that it would be impossible to form successful governing coalitions and the consequent success of the Executive's agenda, which, after 30 years, is not what we see empirically. Despite the intense and growing fragmentation of the Brazilian party system, governments do not seem to have major difficulties in governing, given the legislative majorities obtained by recent governments at the national level (Carreirão, 2014). In this way, the argument based on the relationship between the very high level of party fragmentation in Brazil and the impossibility of the Executive forming government coalitions is weakened. The real problem seems to be something else: the transaction costs and mishaps of accountability in a system of exacerbated fragmentation (Kinzo, 1993; Nicolau, 2008; Carreirão, 2014).

On the other hand, the changes that we intend to study here — within the scope of the RICD— produce another series of effects for the stability of decisions, the exercise of parliamentary action and, consequently, the quality of political representation (Santos, 2003). During the pandemic and due to the establishment of the SDR, through the institution of Resolution No. 21/2021, several points of the RICD were changed, among them most notably the mechanisms of parliamentary obstruction, with the excuse of allowing the legislative process to speed up. There were several changes, but some of the most symptomatic were: the removal of the limit on the duration of ordinary sessions and the Order of the Day (art. 66th, RICD); the difficulty of presenting agglutinative amendments (art. 122nd, RICD); the impediment of removing from the agenda a project with an approved urgency in the same session (art. 155th, RICD); or the prejudicial nature of requests (art. 161st, RICD), among others, removing fundamental instruments for minority political action.

Figure 1 lists the main changes introduced by Resolution No. 21/2021, as well as the situation prior to its establishment. For the purposes of this study, the amendments were divided into two thematic areas: speeding up the legislative process and obstructionist requests. Although, they are not mutually exclusive since the amendment to the obstruction motion itself was aimed at the same objective as the first: speeding up the legislative process. The first part organizes regulatory changes that deal mainly with the duration and suspension of sessions, with a view to speeding them up — since the closure and convening of a new one was also used as an obstructionist mechanism by political minorities. The second part presents the main obstructionist requests for parliamentary action.

Figure 1 – Main changes introduced by Resolution No. 21/2021

(continued)

Theme	Rules of Procedure – RICD/1989	Resolution No. 21/2021 of the Chamber of Deputies	Previously
Speeding up the legislative process			
Suspension of meeting/session	Art. 41st, XXIV, and Art. 70th	The chairman of the committee or the Speaker may suspend the meeting/session once, for a maximum of 1 hour. In the case of the plenary, the session will be closed after this deadline.	There were no limitations.

Figure 1 – Main changes introduced by Resolution No. 21/2021

(continued)

Theme	Rules of Procedure – RICD/1989	Resolution No. 21/2021 of the Chamber of Deputies	Previously
Duration of sessions	Arts. 65th, 66th and 67th	Debate sessions: 5 hours; formal sessions: 4 hours; ordinary and extraordinary sessions: no limit.	With regard to debate sessions, the text allowed the Speaker of the House to set the time that would correspond to the Order of the Day. The formal sittings were not timed. Ordinary and extraordinary sessions were expected to last 5 hours and 4 hours respectively.
Leadership communications	Art. 89th	The Government, Minority, Opposition, and Majority leaders will each have 8 minutes.	The previous text established that the Government Leadership's time would be the average of the time allocated to the Majority and Minority representations.
Forwarding requests	Art. 117th	Requests subject to plenary consideration will be submitted by the author and one opposing speaker for 3 minutes each.	The previous text allowed the author and leaders to speak for 5 minutes each.
Discussion and vote	Arts. 157th and 192nd	Only the author, the rapporteur, and registered deputies may speak for 3 minutes each, alternating as much as possible between speakers in favor and against.	The floor was used for half the time allowed for matters in normal procedure.
Speaking during the discussion of a proposal	Art. 175th	It prevents a member of parliament who speaks on a proposal under discussion from speaking in a different sense to the one for which they have signed up. In practice, the chair can cut off the deputy's speech if, at their discretion, they consider that they are not talking about the subject of the proposal.	There was no such forecast.
Forwarding the vote	Arts. 178th and 192nd	The vote will be allowed to proceed for 3 minutes, with one speaker against and one in favor.	The previous text set a time limit of 5 minutes each.
Bench orientation	Art. 192nd	It shall take place without prejudice to the start of the roll-call vote, for one minute.	The start of the roll-call vote, however, could only take place after the leadership guidelines.

Figure 1 – Main changes introduced by Resolution No. 21/2021

(continued)

Theme	Rules of Procedure – RICD/1989	Resolution No. 21/2021 of the Chamber of Deputies	Previously
Forwarding the vote on highlights	Art. 192nd	Only 1 speaker in favor and 1 against can speak.	In the previous text, when voting on a seconded amendment, it was possible to include the first signatory, the author of the seconded amendment and the rapporteur. In the case of more than one request to highlight the same amendment, the author of the request presented first was given the floor.
Obstructionist requests			
Agglutinative amendments	Arts. 118th, § 3rd, and 122nd	They will only be admitted if presented by leaders representing the support of an absolute majority of the members of the House (257 deputies).	They were offered by the authors of the original amendments, by 1/10 of the members of the House or by leaders representing that number.
Urgent request (urgent urgency)	Art. 155th	Approval of the urgency prevents a request for withdrawal from the agenda from being presented at the same session, prevents a request for postponement of discussion from being presented, or implies that it is prejudicial if the matter is accompanied by all the opinions.	There was no such provision.
Request to close the discussion and move on to the vote	Art. 157th	It will only be admitted after 12 deputies have spoken, 6 in favor and 6 opposed. A request by an absolute majority of the House committee or by leaders representing that number to close the discussion and move the vote forward shall be admissible.	The previous text established that 6 deputies could speak.
Approval of the request to close the discussion and move to a vote on an urgent matter	Art. 157th	It prevents the presentation or implies the prejudicial nature, in the same session, of requests to postpone the vote and other incompatible requests, unless the rapporteur, when examining the amendments, makes changes to the text to be submitted to the plenary.	There was no such provision.
Individual highlight	Art. 161st	It will only be submitted to the plenary for deliberation if it has the unanimous written consent of the leaders.	There was no time limit for submissions; in practice, they were voted on as a whole.

Figure 1 – Main changes introduced by Resolution No. 21/2021

(continued)

Theme	Rules of Procedure – RICD/1989	Resolution No. 21/2021 of the Chamber of Deputies	Previously
Prejudiciality of requests	Art. 163rd	The adjournment of the discussion or vote is prejudicial when it follows the rejection of a request to withdraw a proposal from the Agenda.	There was no such provision in the text.
Postponement of discussion and vote	Arts. 177th and 193rd	It can be postponed for 1 session for urgent proposals; 3 sessions for priority proposals; 5 sessions for ordinary proposals.	The previous text allowed discussion to be postponed for up to 10 sessions and voting for up to 5 sessions.
End of discussion	Art. 178th	It shall be put to the vote by the President, provided that the request is signed by 5/100 of the members of the House or leaders representing that number, and the proposal has been discussed by at least 12 speakers, 6 in favor and 6 opposed, each for 3 minutes.	The previous text established 4 speakers and a speaking time of 5 minutes for each one.
Prejudiciality of a request to postpone a vote	Art. 178th	Approval of the request to adjourn the debate prevents the presentation or implies the prejudice, in the same session, of a request to adjourn the vote, unless the rapporteur redrafts the opinion to make changes on the merits.	There was no such provision.
Support for roll-call votes	Art. 185th	It must be expressed in each vote, with the exception of pre-veto support and reciprocal support agreements between caucuses.	There was no need for leadership support as a prerequisite for the verification request. There was the possibility of a written request to verify the vote.
Breaking the interstice	Art. 185th	It must be oral and can only be submitted to the Bureau after the result of the symbolic vote to be verified has been announced. It is worth clarifying that this request will be submitted to a symbolic vote, obligatorily, without a vote being forwarded or being guided by a caucus.	Previously, it was possible to submit a written request to this effect.
Nominal process	Art. 186th	It shall be used when it proves necessary immediately, in the judgment of the President or by decision of the plenary, at the request of any Member.	The previous text allowed such a request to be used by the plenary, at the request of any deputy.

Source: Own elaboration (2023), based on data from a technical note by the PDT Leadership in the Chamber of Deputies, the Resolution No. 21/2021 of the Chamber of Deputies and the RICD

Prior to the Resolution, when a session was closed, the convening of a new one involved not only all the leaders speaking again and a new quorum, but also the same range of procedural requests, the result of strategies by the minority to obstruct the vote, gaining time for the political opposition, while delaying the voting process on some matters considered controversial.

As can be seen in Figure 1, there have been several changes to the rules that dictate the legislative process, especially in a period of crisis. From a theoretical point of view, it is believed that institutions are important because, through constraints, models condition individual behavior, bringing greater predictability to the system. In this sense, what is of interest here, among the various approaches within neoinstitutionalism, is its strand based on rational choice, especially its endogenous and partisan variant, which assumes that institutions are rules.

> Institutions, from the perspective of rational choice, are designed to overcome identifiable difficulties in the market or in the political system, as a means of producing desirable collective results. Thus, **a good institution is one that performs this task well and efficiently, while generally maintaining a commitment to other powerful norms such as democracy** (Peters, 1999 *apud* Vieira, 2018, p. 52, emphasis added, our translation).

In other words, this means that collective results within an institution are outcomes directly linked to the modeling it produces under the agglomerated individual preferences of rational actors. Or, as Vieira (2018, p. 149, our translation) rightly argues, this

> approach starts from the individual legislator and their preferences, but also takes into account the constraints and incentives that institutions offer in order to mediate the aggregation of personal choices into collective decisions governed by majority rule, as occurs notably in parliaments.

Based on this approach, we can therefore understand the RICD as an institution capable of avoiding legislative chaos, bringing a certain foresight, coherence and agreement to legislative action within parliament, being essential for understanding parliamentary actions and behavior, as well as its relations with society (Vieira, 2018).

The rules of legislative procedure, such as those represented by the RICD, are broadly based on the regulation of parliament's legislative activity, situated above all on the basis of a need for institutionalization arising from the post-1988 Constitution and belonging to a broader phenomenon following redemocratizations throughout Latin America and Europe in recent decades. In this context, the so-called neo-institutionalism is inserted, which, while not abandoning the belief in the rationality of individuals, denies that its behavior is based on exclusively exogenous stimuli; they believe that political and parliamentary institutions greatly influence individuals' behavior and actions. This brings more stability and predictability to their actions, as well as producing an obvious sharing of values (Peters, 1999 *apud* Vieira, 2018).

In view of all the above, the question is precisely the consequences that the RICD and its amendments — notably the rules that dictate the decision-making and legislative process within the Chamber of Deputies — have on strengthening or weakening the institution of parliament and democracy itself (Vieira, 2018). In this specific case, the change comes in the rules of the Legislative Houses' own endogenous decision-making process to ensure greater governability and stability in decisions, making the legislative process faster, even if this happens abruptly in a period of crisis.

Now, if the political parties are weak in the electoral arena and strong in the legislative arena (Pereira; Mueller, 2003), where the Presidency of the Legislative House often belongs to the bloc or party group with the greatest representation, it follows that they have the power of agenda, where the legislative process — despite the principle of party proportionality — moves towards operating in favor of the majority, controlling the rules of procedure, the agenda and political agreements (Vieira, 2018). Thus, the rules of procedure endogenous to the Chamber of Deputies concentrate the power of the agenda in the hands of party leaders and the President of the House, as well as other actors (Cox; McCubbins, 1993 *apud* Vieira, 2018).

Thus, when one analyzes all the changes to the RICD promoted by the Resolution in question, one can see that one of its main objectives was to speed up the work process as a measure to speed up the legislative process. In the context in which it was instituted, amid expectations of a swift fight by the public authorities against the Covid-19 pandemic, and even though there have been changes to increase the number of speakers on certain issues, it is essential to note that these were promoted by pressure in plenary[7] (Soares, 2021). In this way, all of the changes were aimed at restricting the speaking time of parliamentarians, acting directly on the obstructionist parliamentary exercise and the quality of political representation, whether by reducing the time for discussion and referral of matters (arts. 178th and 192nd); the beginning of caucus orientation (art. 192nd); the prejudicial nature of requests (arts. 157th, 163rd and 178th) or even the duration of sessions (arts. 65th, 66th and 67th), among others.

The tactic of obstruction, despite making the process more time-consuming and costly, is unlikely to prevent a vote on a proposal when it is in the interests of the majority, especially in a coalition presidentialism that has not placed major obstacles in the way of the formation of ruling majorities for the Executive Branch since 1988 (Carreirão, 2014). However, its existence is essential to democratic regimes, since it improves the legislative process itself, forcing the government — or the majority of the moment — to sit down at the table and negotiate, making concessions and agreements (Hiroi; Rennó, 2014), while incorporating dissent into the legislative process, a basic characteristic of representative democracies due to the pluralism of the social environment (Soares; Santos, 2019). On the other hand, when the obstructionist right of political minorities is made very difficult, time and agility can be gained in the legislative process, but the quality of the debate and the improvement of public policies are harmed (Soares, 2021).

It is in this context that the President of the Republic's broad legislative initiative comes into play since the proposals they have authored have a designated urgency on the agenda, either by request or by nature, such as the MPVs, which overlap the agenda with other proposals. Corroborating this argument, Vieira (2011, p. 110, emphasis added, our translation) points out that

> the high incidence of matters being included on the Chamber's Agenda under the urgency regime, **mainly due to provisional measures which, as a rule, have their rapporteurs appointed in Plenary by the President of the Chamber of Deputies. According to records from the General Secretariat of the Chamber, up until 2008, with more than 450 provisional measures published, on less than ten occasions, the rapporteurs were not appointed by the President of the Chamber**.

Thus, it is clear that the agenda-setting power of the Speaker of the House, aligned with the Presidency of the Republic, is essential for the latter. Because after 1989, he was in charge of centralizing legislative work, such as governing the work of the College of Leaders[8], the choice of rapporteurs for proposals of interest to or authored by the government and even conducting the work on votes that are dear to the Presidency of the Republic, such as the impeachment processes (Vieira, 2011).

2.2.1 Agenda and veto power in Parliament: Conditioning factors in the decision-making process

It seems obvious to say that the choice of Speaker of the House has a strong correlation with the power of the agenda dictated by the Executive Branch or that it is of essential importance to the process of forming parliamentary majorities in coalition presidentialism. Since decision-making within the House is strongly marked by the action of party leaders and the Presidency of the Chamber, the latter being formally occupied by the party or parliamentary bloc

7 An example of this is the change made to the presentation of a request to close discussion and move on to a vote (art. 157th of the RICD). In the new text, the request could be presented with the support of an absolute majority of the House, after 12 deputies had spoken, 6 in favor and 6 opposed. The previous text established that 6 deputies could speak.

8 This task is not expressly provided for in the RICD, but is a custom of the House. For more, see Vieira (2011).

with the largest bench and inserted in the context of the formation of parliamentary coalitions for its election, the importance of the position and its power of agenda in defining legislative work becomes clear (Vieira, 2011, 2018).

This correlation also seems to rely on a strong political bargaining mechanism: the release of budget amendments in exchange for political support for votes in the legislative houses. With the advent of the so-called rapporteur's amendments (RP9s), the leading role that parliament has created vis-à-vis the executive branch seems to have reorganized the power game of coalition presidentialism, unbalancing the relationship in parliament's favor. In this way, it is crystal clear how the agenda-setting power not only of the President of the Republic, but also of the Speaker of the House and its leaders — which is mainly determined by the House's internal decision-making rules —, influences the legislative process and outcome.

When it comes to governing the work of the College of Leaders, the Speaker of the House has such power over the agenda that — even though it's not his legal prerogative — when he doesn't call the collegiate meetings, they don't take place (Vieira, 2011). Furthermore, the innovation brought about by the RICD in 1989, in relation to the history of the Chamber of Deputies' rules of procedure in Brazil, was precisely to divide the power of the Speaker of the House to designate the agenda with the College of Leaders. However, in practice, this determination has not been made, and what has been observed empirically is the definition by agreement under the rule of the Speaker (Vieira, 2018).

Thus, the power of the Speaker of the House stands out, even over the leaders themselves which, by the way, already concentrate a large part of their regimental prerogatives. The Presidency's power of agenda is only balanced by the leaders' regimental prerogatives in plenary, such as their power to obstruct a matter or agenda or their ability to remove a certain proposal from the agenda — in other words, their power of veto[9] (Vieira, 2011, 2018).

The empirical non-use of the regimental provision that gives the College of Leaders great agenda-setting power in the plenary agenda, due to the historical practice of setting the agenda by agreement after 1988, would in itself presume an informal rule of total agreement between the members of the collegiate body on the agenda (Vieira, 2018). However, if coupled with the changes promoted by Resolution No. 21/2021, it exposes the diminished veto power of political minorities, without a seat at the table in the body or even the little incidence or speech of minority parties that do not represent obstructionist risks to the parliamentary agenda of the majority when this is in the interest not only of the Presidency of the Republic, but of the majority parties and the Presidency of the House[10].

It is undeniable that in parliament, due to the rules that dictate the decision-making process, there is a strong concentration of power in the hands of party leaders, to the detriment of individual parliamentary action (Figueiredo; Limongi, 1995 *apud* Vieira, 2011). It is the party leaders who, sitting at the table in the College of Leaders, define the agenda together with the Speaker of the Chamber of Deputies. Logically speaking, the larger parties have more power over the agenda than the smaller ones because they have more MPs in their caucus.

In turn, another characteristic of this concentration of power, dictated mainly by rules endogenous to parliament, is the power of veto. By this we mean the definition given by Tsebelis (1995, 2009), as the ability of certain individual or collective actors to block changes to the *status quo*. In other words, without their agreement, there can be no political change.

In this sense, Resolution No. 21/2021 of the Chamber of Deputies has greatly reduced

9 Arts. 117th, IV, and 82nd, § 6th, of the RICD.

10 As a rule, the choice of proposals to be voted on goes through prior consultation with the College of Leaders, in accordance with the guidelines set out in the rules of procedure. The aim of this consultation is to reach an agreement so that the proposal can be put to the vote in the House plenary, so that only those proposals that enjoy consensus among the leaders' benches will appear on the voting agenda, which does not imply that the proposal will be approved. This agreement, although authorized by the RICD, runs counter to other provisions of the rules of procedure, such as those that specify the time limit for processing matters and the conditions under which matters must be put to the vote. In addition, the construction of these agreements, as a rule, leads to other divergences from the formal rules stipulated in the Rules of Procedure, such as changing the start time of the Agenda in art. 66th and calling extraordinary sessions on the same day and time as ordinary sessions, contrary to art. 65th of the RICD (Aguiar, 2015).

the power of veto of the political opposition in the Chamber, especially for the smaller parties, which, since its establishment, have been forced — even more — to have the agreement and support of the largest opposition benches, especially the Workers' Party (PT), in order not only to block proposals considered harmful (power of veto) in the College of Leaders, but also to act in the Plenary of the House, since the obstructionist devices have been greatly reduced.

Thus, the significant number of parties with representation in the Chamber and the capacity for obstruction prior to Resolution No. 21/2021 practiced a certain decisional stability, which prevented decisions from tending towards any "extreme," always remaining at the center of the debate, since the concept of decision-making stability in Tsebelis (2009) presupposes a necessary agreement between the different veto players to change the *status quo*.

In this way, it can be understood that, with regard to the internal rules of the Chamber of Deputies' decision-making process, in addition to the already numerous attributions and prerogatives of the President of the Chamber (Vieira, 2011), both the SDR and Resolution No. 21/2021 concentrated power even more in the hands of the leaders and the President of the House, while removing prerogatives from individual parliamentary action[11], increasing the power of the Executive Branch's agenda. The latter even consolidates the changes promoted elsewhere by the SDR in a period of crisis, where exceptionality should not become the rule. Thus, if seen from the point of view of neoinstitutionalist theory, these effects move towards a partisan logic based on the centralization of political parties and the ruling coalition in controlling the agenda of the Chamber of Deputies(Vieira, 2018).

In view of all the above, when we look at the period prior to Resolution No. 21/2021 of the Chamber of Deputies, the smaller parties still had a strong mechanism that reinforced their ability to veto player: the power of obstructionism. The major parties were forced to "sit down at the table" with the opposition parties, listen to their demands, negotiate, and reach an agreement that tended towards the center of the debate, with concessions from both sides. It's not that it's impossible today to oppose or obstruct votes in the interests of the majority, but with the reduction of the obstructionist prerogatives that are a significant part of the veto power of minorities in parliament, the majority is not obliged to "sit at the table", making it much more difficult for minorities to act in parliament and to exercise political representation for those who voted for them.

In short, since various obstructionist mechanisms or the presentation of procedural requests require support (i.e. they depend on a minimum amount of signatures/support from parliamentarians), the size of the party's caucus matters — a lot — for its performance in parliament[12], as well as for balancing the power of the House Presidency's agenda. If the smaller parties are in opposition to the Executive Branch, they have less power within the legislature, exacerbated by the parliament's internal procedural rules, thus increasing the government's governability (Vieira, 2011).

2.2.2 The Executive Branch's power of agenda: the assessment of MPVs

The consensus of the immense power of the agenda given to the President of the Republic by the 1988 Federal Constitution (Constituição Federal de 1988 – CF) is common throughout Political Science (Abranches, 1988; Figueiredo; Limongi, 1999; Pereira; Mueller, 2000; Vieira, 2018; Guimarães, 2020), above all for his broad legislative initiatives, such as the issuing of MPVs (art. 62nd of the CF) and requests for urgency for proposals of his authorship (art. 64th of the CF) (Pereira; Mueller, 2000).

Today, this power has been greatly delimited by decisions endogenous to the parliament,

11 This was the case with the amendment to art. 161st of the RICD on the possibility of individual highlights to the text. Before the resolution, it was possible to present individual highlights, which were empirically voted on as a whole, but nowadays, they will only be submitted for deliberation by the plenary if they have the unanimous consent of the leaders in writing.

12 This argument can be reinforced when we look at the presentation of Caucus Highlights, where the size of the caucus matters greatly to the number of devices presented, which are often used in the use of "kits obstruction" in Plenary (art. 161st, § 2nd, of the RICD).

such as Question of Order No. 411/2009[13] by the then President of the Chamber of Deputies, Michel Temer, who, by deciding to drastically reduce the overriding of the agenda by matters authored by the Executive Branch with constitutional urgencies (Vieira, 2018), has greatly reorganized the game of forces of coalition presidentialism in favor of parliament, giving it greater autonomy over the agenda dictated by the Presidency of the Republic.

In the president's ruling, he understood that the

> suspension of legislative deliberations provided for in § 6th of art. 62nd of CF/1988 (BRASIL, 1988a) **only applies to ordinary bills whose content could be conveyed by a provisional measure**. Therefore, Proposed Amendments to the Constitution (PEC), Legislative Decree Bills (PDC), Resolution Bills (PRC), and Complementary Law Bills (PLP) would not be held up by provisional measures. On the other hand, Bills of Law (PL) would only be placed on hold when they dealt with a matter that was not prohibited from being enacted as a provisional measure (Faria, 2017, p. 36, emphasis added, our translation).

This decision took place in a scenario in which parliament found itself an actual hostage of the Executive Branch, with its agenda entirely "locked" for the analysis of MPVs or projects with urgent requests, after the 45-day overlap period had elapsed. After the Speaker's decision, which was later upheld by the Supreme Court, parliament was given greater freedom to prioritize its political agenda, prioritizing an agenda parallel to that dictated by the Executive Branch (Faria, 2017).

With the new rules, there was an increase in parliamentary legislative production which, however, failed to override the supremacy of the Executive Branch's legislative agenda (Faria, 2017). Thus, greater control of the agenda or the incidence of proposals authored by the Executive Branch could not be explained solely as a direct result of constitutional rules (Faria, 2017; Vieira, 2018). Its greater incidence on the agenda and its approval were due to other factors, as analyzed in this paper, under the possible effects that legislative procedural rules internal to parliament produce on the process and outcome of votes, as well as on parliamentary behavior.

In this sense, it is essential to note that, until 2001, MPVs could be reissued in the same legislative session, which became common practice for the Executive Branch. The measure exponentially increased its legislative action, until it was modified by the Congress by means of Constitutional Amendment (Emenda Constitucional – EC) No. 32/2001 which, among other things, amended art. 62nd of the Constitutional Text to prohibit the reissue in the same legislative session of an MPV already deliberated by Congress and which has been rejected or has lost its effectiveness due to the expiry of the deadline. The measure was a central milestone in the processing and validity of MPVs, since it placed limits on the Executive Branch's power of agenda, as well as changing the deadlines for processing and overriding the agenda in the Houses of Congress (Vieira, 2018).

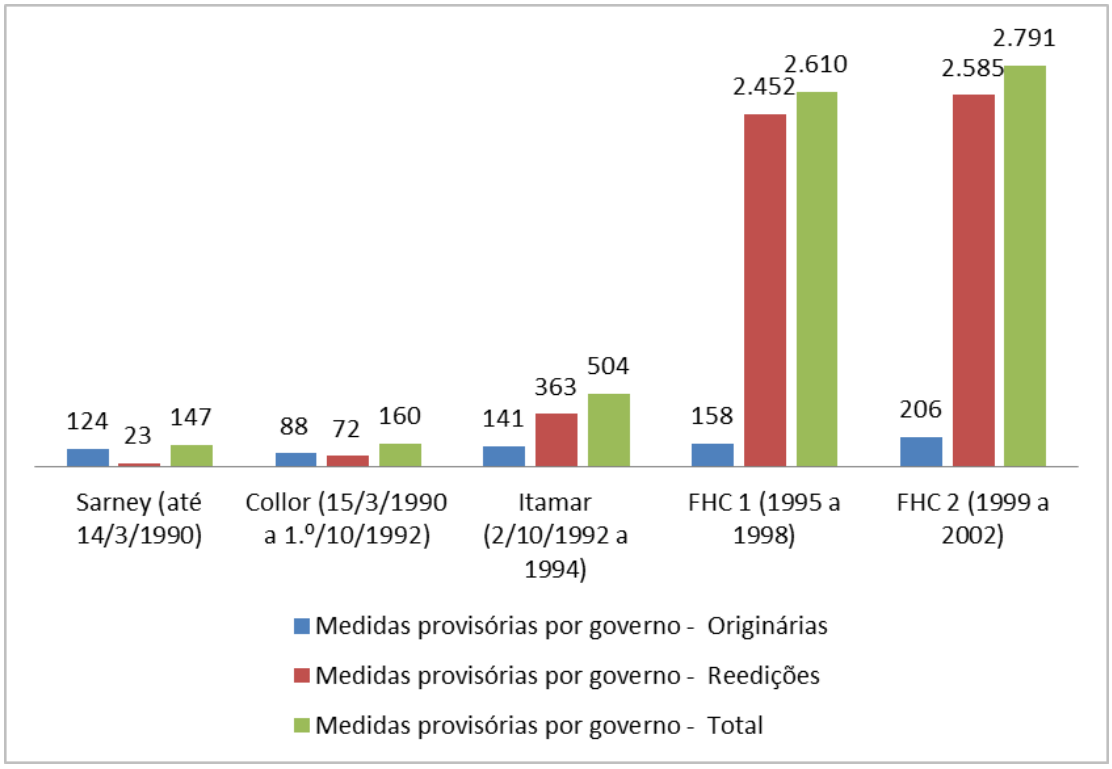
As can be seen in Figure 2, the number of MPVs in each legislature has increased considerably since the Sarney government in 1990, reaching its peak during the Fernando Henrique Cardoso administration.

After the enactment of EC No. 32/2001, it decreased considerably during the administration of former president Dilma Rousseff and increased again, reaching the mark of 284 measures under Jair Bolsonaro's government, the highest number of provisional measures issued by a government in the last two decades, as illustrated in Figure 3. This may be direct evidence of the Executive Branch's intention to ensure the effectiveness of its agenda even in a period of low political and congressional support (Barbosa; Gershon, 2021).

What is of interest to this paper, given the number of MPVs issued in the 56th Legislature, is the increase in parliamentary approval of government-authored proposals after several central conditioning factors, such as the establishment of the SDR, the entry into force of the RP9s and, in particular, the approval of Resolution No. 21/2021 on May 12, 2021. In this

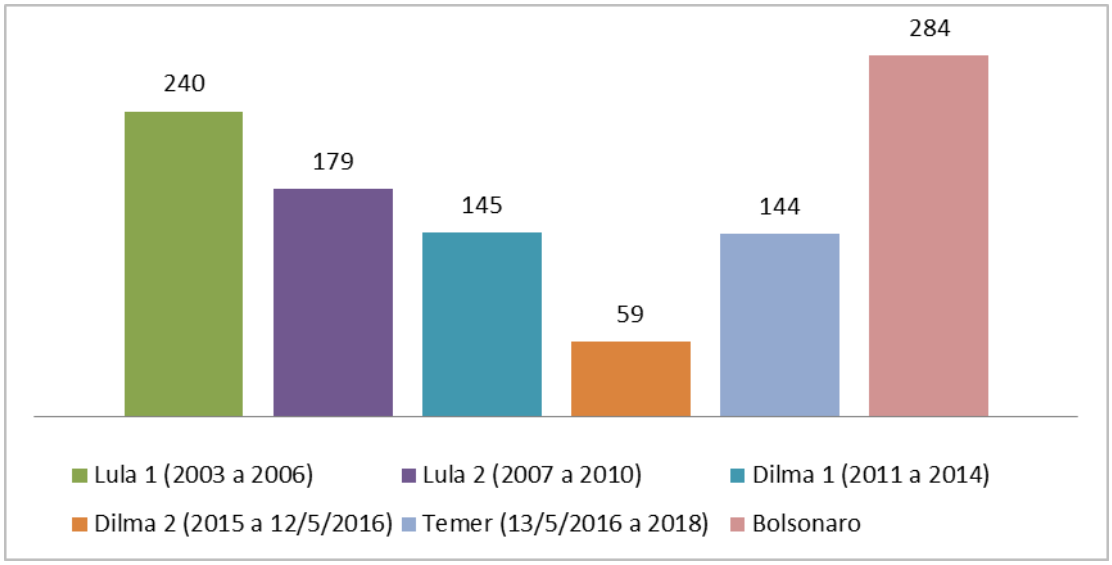
13 Available at https://www.camara.leg.br/v-busca-qordem?numero=411&ano=2009.

Figure 2 – Provisional measures by government (before EC No. 32/2001)



Source: Own elaboration (2023), based on data and information from the Open Data Portal of the Chamber of Deputies and the National Congress, the Legislative Information System of the Chamber of Deputies, and the Documentation and Information Center of the Chamber of Deputies
Note:
Medidas provisórias por governo – Originárias: Provisional measures by government – Original
Medidas provisórias por governo – Reedições: Provisional measures by government – Reissues
Medidas provisórias por governo – Total: Provisional measures by government – Total

Figure 3 – Provisional measures by government (after EC No. 32/2001)



Source: Own elaboration (2023), based on data and information from the Open Data Portal of the Chamber of Deputies and the National Congress, the Legislative Information System of the Chamber of Deputies, and the Documentation and Information Center of the Chamber of Deputies

paper's hypothesis, this led to a deliberate increase in the Executive Branch's power of agenda in parliament, since it removed obstructionist mechanisms from the parliamentary political minority, even in a scenario of weak political articulation by the Executive Branch and in which the rapporteur's amendments represented an alternative to the decision of the Presidency of the Republic not to form a formal coalition within the legislature (Santos; Castro; Hoffmann, 2021).

It is also important to note that the RP9s were included for the first time in the 2020 Budget Guidelines Law (Lei de Diretrizes Orçamentárias – LDO), through the approval of the Bill of National Congress (Projeto de Lei do Congresso Nacional – PLN) No. 5/2019. The LDO 2020 was sanctioned by the President of the Republic with a veto on the part that provided for mandatory compliance, just as it did in 2022. At the time, the veto was upheld by Congress, but after an agreement, the government sent PLNs that maintained the imposition, such as PLN No. 51/2019, which restored the RP9s to the text of the 2020 LDO. Only in the 2021 LDO did the President of the Republic veto the text, and Congress overturned the presidential veto, keeping the original text. In other words, for what matters here, the date on which the proposal that returned the rapporteur's amendments to the 2020 LDO (PLN No. 51/2019) was approved will be used, which is 12/18/2019, generating Law No. 13.957/2019[14].

Given the variations in the period of crisis that led to the creation of rules such as those mentioned above, and despite the number of MPVs that lost their effectiveness during the period, as can be seen in Figure 4, the loss of effectiveness of an MPV can directly mean a lack of political articulation or control of its parliamentary base by the Executive Branch (Vieira, 2018). This was observed in 2019 (Figure 4), when the number of measures that lost their effectiveness reached the impressive mark of 50% of the total proposals presented by the Executive Branch that year.

On the other hand, in 2020, when more than half of the measures were presented, the phenomenon can be explained above all by the greater legislative action by the public authorities during the pandemic period on issues closely linked to combating the crisis, such as MPVs opening extraordinary credit.

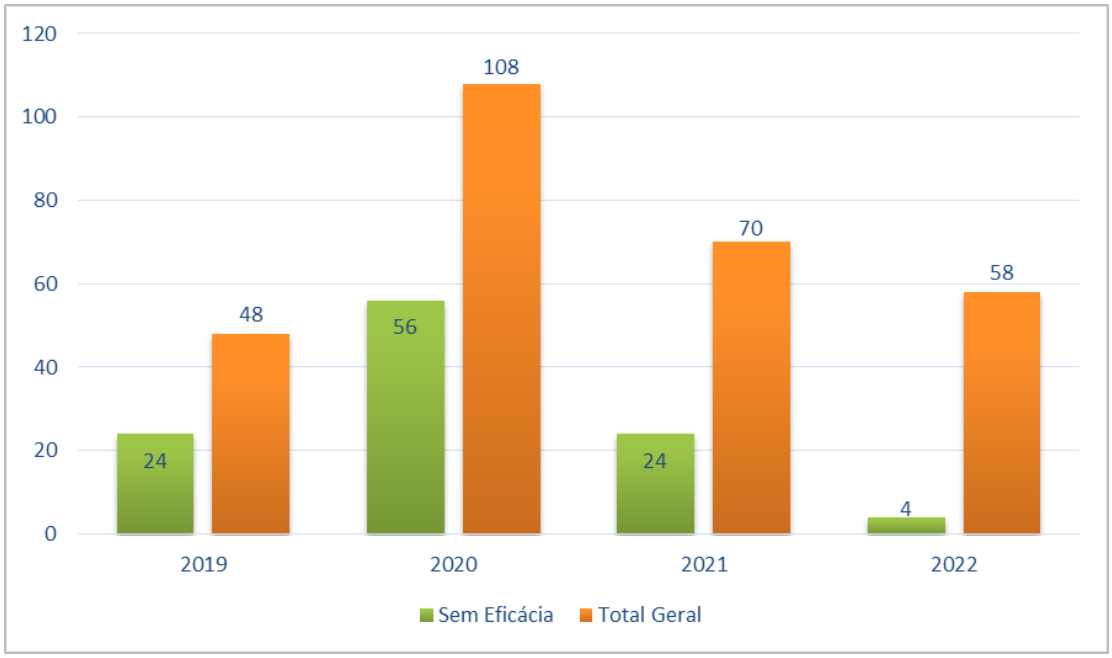
By way of comparison, before Question of Order No. 411/2009, which substantially changed the scope of MPVs, deciding that the 45-day hold on the agenda only applied to proposals on topics related to the provisions of MPVs, the average hold on the agenda was 2 MPVs per year. After 2009, this rate rose to 8 by 2012 and to 11 cases by 2016. Under Jair Bolsonaro (PL/RJ), this average rose to 28.5 out of a total of 114 MPVs. As a result, around 40.14% of the MPVs issued by the President of the Republic between 2019 and 2022 lost their effectiveness, having reached a rate of 50% only in his first year in office, a period considered by related literature to be the strongest for the Executive Branch.

Despite the exacerbated legislative action of the Executive Branch in issuing MPVs year after year since 1988, there has been, in contrast, a high rate of proposals with a loss of effectiveness during the 56th Legislature, which may be a symptom of his low political articulation with the National Congress (Vieira, 2018). What can be seen during the period analyzed, there has been a deliberate increase in the percentage of approval of proposals of interest to the government, year after year, especially MPVs. As can be seen in Figure 5, the percentage of MPVs approved by the Chamber of Deputies rose from 45.8% in 2019 to 75.6% in 2022 in relation to the total number of measures presented by the Executive Branch.

If, in turn, we compare only the period prior to the approval of Resolution No. 21/2021 of the Chamber of Deputies with the one immediately after, there was also an increase in the MPVs approval rate from 45,9% to 68%, respectively, as shown in Figure 6. All in all, this means an increase of 27% in the approval of provisional measures in the period analyzed, after the approval of the aforementioned Resolution. When these figures are compared with those shown above (Figure 4), which showed a significant loss of effectiveness of provisional measures in the first two years (2019-2020), followed by a profound reduction in the last two years of the Legislature, this percentage becomes even more significant.

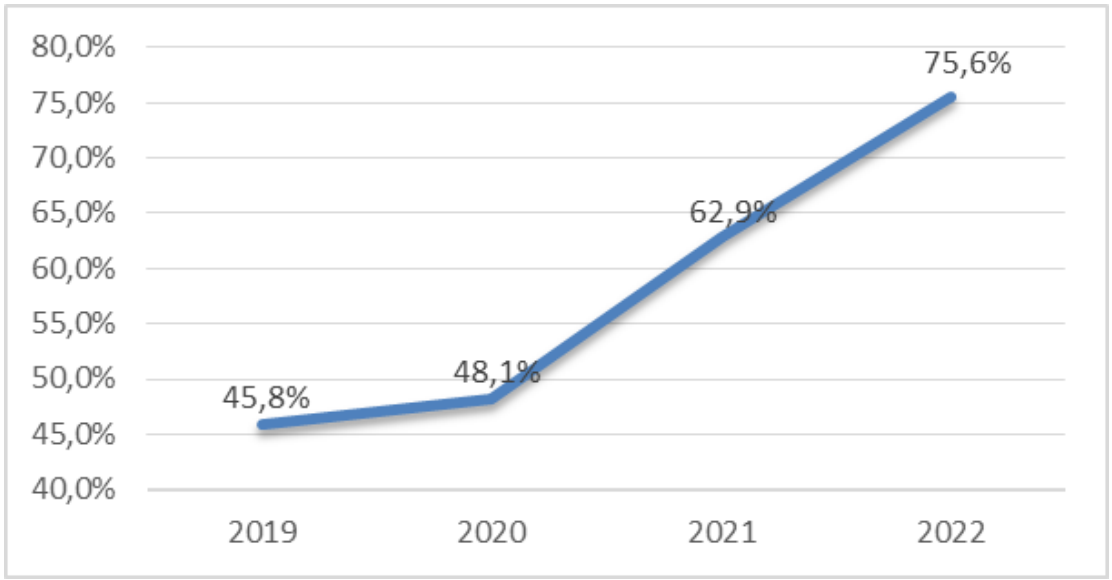
14 Available at https://www.congressonacional.leg.br/materias/pesquisa/-/materia/140045.

Figure 4 – Provisional measures from 2019 to 2022



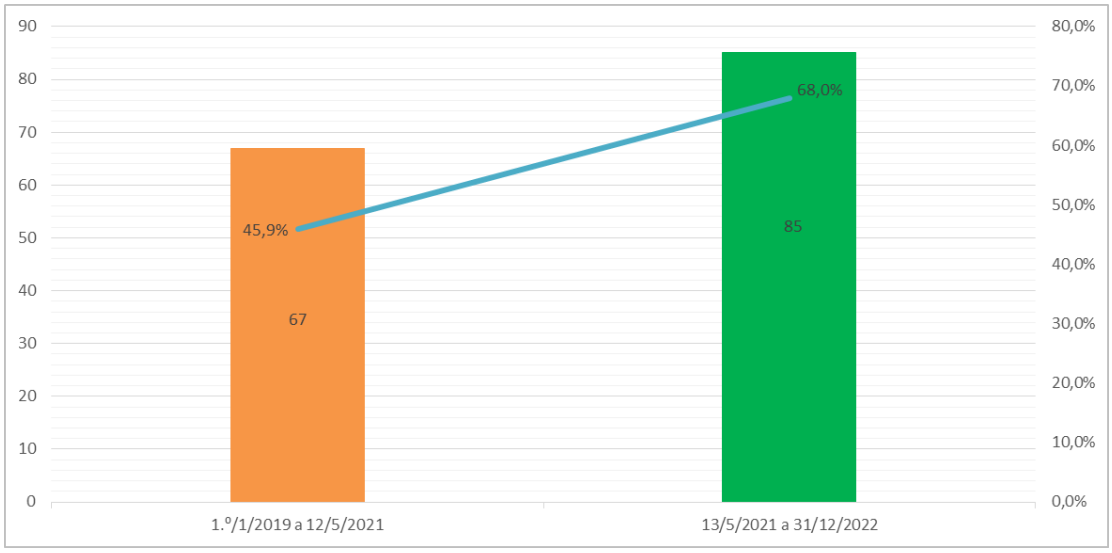
Source: Own elaboration (2023), based on data and information from the Open Data Portal of the Chamber of Deputies and the National Congress, the Legislative Information System of the Chamber of Deputies, and the Documentation and Information Center of the Chamber of Deputies
Note:
Sem Eficácia: Not effective
Total Geral: Grand Total

Figure 5 – Percentage of provisional measures approved in relation to the annual total from 2019 to 2022



Source: Own elaboration (2023), based on data and information from the Open Data Portal of the Chamber of Deputies and the National Congress, the Legislative Information System of the Chamber of Deputies, and the Documentation and Information Center of the Chamber of Deputies

Figure 6 – Percentage of provisional measures approved before and after the approval of the Resolution No. 21/2021 of the Chamber of Deputies



Source: Own elaboration (2023), based on data and information from the Open Data Portal of the Chamber of Deputies and the National Congress, the Legislative Information System of the Chamber of Deputies, and the Documentation and Information Center of the Chamber of Deputies

Nevertheless, it should be borne in mind that, during the period analyzed, the National Congress published Joint Act No. 1/2020, which provided for an extraordinary regime for the processing of MPVs during the period of public calamity (Nascimento, 2020). Although this Act did not affect the duration of the rule, it acted directly on the legislative process, altering it significantly, especially in the deliberate reduction of deadlines.

As an example, the parliamentarians who, before its publication, had six days to present amendments to the MPVs, now have only two working days to present amendments before the joint committee. According to the Act, after this, the Chamber of Deputies has until the 9th day of the rule's validity to deliberate on it, while the Federal Senate has until the 14th day to analyze it, with the initiating House having two more days to analyze the amendments promoted by the Federal Senate. In fact, as Nascimento (2020) rightly pointed out, not even the deadlines previously set by the Act of the Bureau were strictly respected, with the legislative practice of deliberating on MPVs within the limits of the constitutional time limit of 120 days.

In addition, by exceptionally removing the mixed committee's ability to issue an opinion on the proposal, transferring its competence to the plenary — including its opinions on relevance and urgency and financial and budgetary adequacy, in accordance with article 62nd of the CF —, there was an acceleration of its processing, while providing for a mechanism already considered unconstitutional by the Supreme Court: the waiver of the mixed committee's analysis of MPVs in favor of a single rapporteur appointed in plenary[15]. In the absence of joint committees to analyze the proposal, power was taken out of the hands of party leaders, while the choice of rapporteur by the Speaker of the House concentrated even more power in his hands.

However, it should also be noted that, given the possibility of videoconferencing by the SDR, this would not pose any obstacle to holding meetings of the joint committees (Nascimento, 2020).The institution of this Joint Act served to deliberately concentrate the power of the agenda in the hands of the presidents of the legislative houses when MPVs were being processed.

If the Speaker of the House is responsible for appointing the rapporteur in plenary for MPVs without an opinion, while their discussion and deliberation has been concentrated in plenary, there has been a significant increase in the power of the leaders and the Speaker of the House over the deliberative process. This further underlines the power of the Executive Branch's

15 ADI No. 4.029, Rel. Min. Luiz Fux, Full Court, judged on 03/08/2012, published on 06/27/2012.

agenda on matters it authored in the House (Vieira, 2011), which may have been essential to the approval rate of the government's agenda in parliament.

Taking President Jair Bolsonaro's (PL/RJ) first year in office as a basis for analysis, before the rapprochement with the so-called "*Centrão*" political parties and the advent of the RP9s, which gave him a more stable base in the House, the low approval rate of his legislative agenda in the House was notorious. After the events that followed, with special emphasis on the support of the Speaker of the House, Arthur Lira (PP/AL), the main leader of the supra-party-political bloc in question and direct guarantor of the changes now promoted in the internal rules of the decision-making process such as Resolution No. 21/2021, there was a significant increase in the approval of the Executive Branch's parliamentary agenda.

In short, all the data mentioned above points to an excessive power of the Executive Branch to dictate the legislative agenda and approve it during the current Legislature, after the approval of a Resolution that accelerated the legislative process and removed mechanisms for political minorities to act on the process. Considering the Bolsonaro administration's known low level of political articulation, the daily political crises, the lack of a formal parliamentary coalition at first, and the high rate of loss of effectiveness of MPVs during the 2019-2022 quadrennium, the rate of approval of MPVs becomes even more significant.

3 Political representation and accountability: the post-pandemic scenario

In the light of contemporary democratic theory, studies on political representation point to an open debate, which began in the seminal studies of Pitkin (1967) on the issue. In these studies, representation is based on a paradox of simultaneity between absence and presence, expressed between standing for (being present) and action for (making the represented present), so that the paradoxical requirement of the concept of representation is directly linked to the unavoidable mandate-independence conflict (Feres Júnior; Pogrebinschi, 2010).

Given the irremediability of representation in contemporary times and the incongruity of its very concept, the inflection point resurfaces in the debate in Political Science on how to make it as democratic as possible (Miguel, 2005; Urbinati, 2006; Vitullo, 2009; Feres Júnior; Pogrebinschi, 2010). When you look at it from this angle, the possibilities in political theory are diverse and endless.

If, in Urbinati (2006) and other political theorists, the way to think about representation necessarily involves deepening it, including the possibility of including participatory mechanisms (Miguel, 2005; Feres Júnior; Pogrebinschi, 2010 *apud* Vieira, 2018), according to Vieira (2018, p. 39, emphasis added, our translation), when thinking about democracy endogenous to parliament, between

> of the elements pointed out by these and other authors as necessary for strengthening democracy through participation, we can highlight the following for the purposes of our analysis: **the individual engagement of decision-makers; the absence of intermediation; the search for consensus that replaces majority rule and the coordinated association of individuals for collective action**. Barber's postulation that strong democracy presupposes the ability of **individuals to overcome conflicts through cooperation** is also worth mentioning.

It is, therefore, essential that, when we look inside parliament, the political representation authorized by the electorate is exercised to the full. Of course, these relationships will never be entirely equitable; however, we should aim for the balance to be as high as possible, and for decisions within legislative houses, despite following the majority principle, not to annul the rights of parliamentary minorities, at the risk of compromising the democratic legitimacy of their decisions (Vieira, 2018; Soares; Santos, 2019; Soares, 2021). In this sense, we will analyze Resolution No. 21/2021 of the Chamber of Deputies and its possible effects on the exercise of representation:

> It is interesting to note here **how a legislative procedural rule can be inserted into the broader context of the functioning of democracy**

> **itself, producing effects in a certain direction or at least favoring one side of the equation** that seeks to balance the popular will with the need for effective government action, especially when we consider that this rule was approved by Parliament itself. (Vieira, 2018, p. 42, emphasis added, our translation).

Since, according to neoinstitutionalist theory, institutional designs have a direct effect on the results achieved by institutions, they can and should be used strategically to improve institutions (Soares; Santos, 2019), especially in bringing them closer to their core business, which, in the case of the Legislative Branch — with the changes analyzed here in the rules that guide parliament's internal decision-making process — raises the question: the institution of Resolution No. 21/2021 of the Chamber of Deputies contributes to or detracts from increasing popular participation in public debate and the democratic legitimacy of parliament?

Of course, the legitimacy of parliamentary decisions is an ever-present theme in the debate on representation and representative government. Thus, the legislative process must follow principles that give it legitimacy, which can be exemplified in seven basic principles: i) the idea of legislation; ii) a duty of care ; iii) the principle of representation; iv) respect for dissent; v) the principle of responsive deliberation; vi) the principle of legislative formality; and vii) political equality and majority decision (Waldron, 2016 *apud* Soares; Santos, 2019). Based on these principles, it can be said that the deliberate reduction of minority participation in the internal decision-making process through the abolition of obstructionist mechanisms goes directly against some basic principles of the legislative process, including the principle of respect for dissent (which presupposes, as does the principle of representation, diversity in the representation of interests), which allow not only the public expression of the pluralism of ideas, but also the guarantee of the structure and possibility of minority and opposition political action in parliament. In turn, the principle of political equality and majority decision, which, in itself, presupposes equal treatment between representatives, was, with the institution of Resolution No. 21/2021 of the Chamber of Deputies, frontally violated[16].

It can also be said that the reduction in the possibility of incorporating dissent into the deliberations of the legislative process is directly responsible for the democratic loss of the resulting decisions and the legitimacy of parliament. Dissent, understood here as a basic capacity of representative democracies, is a condition *sine qua non* of the proportional system, as well as a direct result of Brazilian social pluralism, alluded to in Abranches (1988), to translate the specificities of institutional choices in this country. Therefore, it should be celebrated and institutionally included in the legislative process, despite making the process much more complex, and not extinguished with the excuse of speeding up the process (Soares; Santos, 2019; Santos; Castro; Hoffmann, 2021).

All of this is essential if we are to achieve the ideal of "representation by advocacy", in which dissent is a fundamental condition for building cooperative political representation with society as a whole, which is not static, but mobile and under construction, constantly exchanging and moving with civil society, contributing directly to the process of building public policies and strengthening democracy (Urbinati, 2010 *apud* Soares; Santos, 2019).

According to this view, the representative and representation are means, not an end, for channeling social demands that are brought to the whole (the assembly) as a way of enriching the decision-making process. Representation is therefore understood as recognizing conflict/dissent as intrinsic parts of the process, while refusing to eliminate them. When, in turn, the institutional design acts directly to build false majorities of consensus, an authoritarian political order is imposed that acts directly contrary to the very specific nature of political representation (Urbinati, 2010 *apud* Soares; Santos, 2019).

If parliament is the "People's House," the content and the process of making its decisions interest the rest of society, and the fruit of its actions should be as democratic as possible. In this

16 The issue of legitimacy and the protection of minority rights can also be exemplified in the general principles of the legislative process set out, in particular, in sections I and VII of article 412nd of the Rules of Procedure of the Federal Senate (Regimento Interno do Senado Federal – RISF).

way, it can even be said that the imbalance of forces within parliament affects the accountability of those in power, as well as accentuating the symptoms of the crisis of representativeness[17]. If, in turn, the situation of democracy is summarized as a broad phenomenon based above all on the breakdown of the link between the governors and the governed (Miguel, 2005; Santos; Castro; Hoffmann, 2021), changing the rules of legislative procedure that act directly on the imbalance of power within the assembly, concentrating greater power of agenda and veto in the hands of some individuals and groups, directly influences the democracy of parliamentary decisions (Vieira, 2018) and can, to some degree, further aggravate the crisis of representativeness that plagues Brazil and the world today.

In other words, in a context where citizens are affected by a generalized discredit in institutions (Miguel, 2005), the weakening of the responsiveness of their representatives towards them (for a simplistic explanation of what "accountability" is) will act strongly on the crisis of representation (Kinzo, 1980). In turn, if every idea of representation is intimately linked to the notion of authorization (Kinzo, 1980), how can the effectiveness of the popular will through the vote be ensured based on the effectiveness of the exercise of parliamentary representation? It is in this sense that the imbalance of forces within parliament, driven notably by the rules that govern the decision-making process, acts directly against the basic principle of one man, one vote, giving each parliamentarian different weights in the decision-making process (Nascimento, 2020; Soares; Santos, 2019).

Since the representative elected by a portion of the population doesn't have the same ability to act within the House as another parliamentarian directly linked to the government of the moment, how can we guarantee the democracy of the House's decisions and, to a certain degree, the responsibility of the representatives towards their voters? (Soares; Santos, 2019). In this way, it can also be argued that the excessive control of the agenda by some people and groups, as denoted in this work, combined with other factors, such as the complexity of public issues and the weak incentive for political qualification, act directly on the reduction of space for popular sovereignty and effective control through accountability (Miguel, 2005).

4 Conclusions and final considerations

In view of all the above, it can be concluded that the gears of the legislative process are not clear to the parliamentarians themselves, or even to the rest of society. The lack of intelligibility of the system, when combined with the excessive concentration of power in the hands of party leaders and the Presidency of the Chamber of Deputies, to the detriment of minority or individual parliamentary political action, directly affects social control, as well as the democratic level of internal parliamentary decisions (Vieira, 2018; Nascimento, 2020). In other words, the weakening of individual parliamentary action or even the impossibility of altering and influencing the outcome of final policies calls into question the democratic level of the decisions taken by the Chamber of Deputies (Vieira, 2018; Soares, 2021; Soares; Santos, 2019).

On the one hand, changes such as the end of electoral coalitions in proportional elections, instituted by Constitutional Amendment No. 97/2017, act on the principle of proportional representation to make the system more intelligible and easier to govern by reducing party fragmentation — among other points — are beneficial (Alves, 2019). On the other hand, any changes to the rules of procedure, or even electoral rules, that may occur in the course of the political process without proper debate and study of their consequences, become extremely dangerous to the democratic regime, since today's parliamentary minority will not necessarily be a reflection of tomorrow's minority.

17 It is important to point out that, without abandoning critical theory (Vitullo, 2009), representation has its undeniable benefits in contemporary times and represents the best-known model ever tried (Urbinati, 2006; Castells, 2018). However, it needs to be improved, not by denying and rejecting the logic of parties and representation itself, but by using participatory mechanisms to improve it (Urbinati, 2006) inside and outside parliament. The crisis of representation, or the widespread feeling of dissatisfaction with the establishment, is part of a broader and deeper phenomenon that affects various spheres of everyday life, has deep roots in society and the economy, is far from over, and has no trace of its conclusion on the near horizon (Przeworski, 2020; Santos; Castro; Hoffmann, 2021).

However, in a context of coalition presidentialism, it is worth noting that, associated with this, the symbolism of the adoption of the SDR by the Legislative Houses with intense speed in the first days of the pandemic was a watershed in the role of parliament that began a new chapter in the debate on Political Science in which the National Congress assumes a new institutional dynamic in the process of shaping public policies in Brazil, no longer relegated to merely following the parliamentary agenda dictated by the Presidency of the Republic (Almeida, 2018; Batista; Santos, 2021)[18]. In turn, considering the context of the crisis of democracy and the decline in public confidence in democratic institutions, especially at a time of the rise of far-right populist leaders who challenge republican values, this becomes even more positive (Assumpção, 2021).

However, when looking at the totality of changes to the rules of the decision-making process during the period that has been called the emergency legislative process, it can be said that the mechanisms approved by the Plenary of the Chamber, in particular Resolution No. 21/2021, deepened in the context of the use of the SDR during the Covid-19 pandemic, could directly weaken the power of the opposition and the quality of legislative debate, as well as political representation[19]. Historically, the RICD — or any other internal regulation — is a mechanism for protecting legislative minorities against the force of the majority of the moment (Soares; Santos, 2019). Changing it in the course of the political process without the necessary debate and with new rules already in force as of the publication of the act, disconfigures the very logic of the proportional system and attenuates minority political power, weakening the quality of representation and democracy itself (Mello, 2022).

Despite the importance of the SDR for the virtualization of parliamentary debate and the maintenance of legislative work in a period of crisis, it acted strongly on the legislative *modus operandi* especially in the functioning of the standing committees and the acceleration of the legislative process based on the extraordinary urgency regime (Nascimento, 2020). In this sense, we can take as an example that, during the pandemic, the search for consensus in the construction of an agenda based on the support of two-thirds of the House for the inclusion of an urgent matter on the agenda was an extremely meritorious measure, but it was accompanied by the legislator's desire to speed up the process excessively. Now, when the possibility of dissent is greatly weakened, as denoted by the changes made to the RICD by means of the aforementioned Resolution, the ability of social pluralism — *sine qua non* condition for the expression of popular sovereignty — to contribute to the improvement of the legislative process and the democratic deepening of parliamentary decisions is lost (Soares; Santos, 2019).

Thus, by reducing minority political participation in the process, there is a direct weakening of the legitimacy of the process, as well as of the debate and improvement of public policies, to the extent that the lack of transparency is exacerbated by the absence of direct participation and intervention of organized civil society in the political process (Nascimento, 2020; Barbosa; Gershon, 2021).

Regarding the suspension of the functioning of the standing committees, it should be borne in mind that, in addition to the various benefits of the functioning of these legislative bodies in their decentralizing, informational, and specialized dimension, the debate held in these spaces often informs and promotes the opportunity for effective intervention by civil society in the political process. On the other hand, its suspension directly affected one of the pillars of the legislative process, at the same time, it strengthened the agenda-setting power of party leaders and the Presidencies of the Legislative Houses (Santos; Gershon, 2021). Thus, it is essential that, with the possible post-pandemic inclusion of mechanisms such as the SDR in legislative praxis, its benefits must be borne in mind, but attention must also be paid to ways of guaranteeing

18 With special reservations to the greater balance of forces established by EC No. 32/2001, which was decisive in the greater independence of the Legislative Branch in relation to the Executive Branch, in the formation of its agenda (Vieira, 2018).

19 Whether it's the fall of the military regime, the two recent presidential impeachments, or the 2018 elections, what history and literature show is that during serious (and economic) crises, democratic values are set aside; Within parliament, this is no different (Levitsky; Ziblatt, 2018; Santos; Castro; Hoffmann, 2021; Aliaga; Ázara, 2022).

popular participation and transparency in the decision-making process (Nascimento, 2020).

With regard to the main objectives of this study, as can be seen from the data pointed out above, the significant approval of provisional measures in the period analyzed, even in a period of crisis and after several MPVs had not been approved by parliament, denotes a new game of forces in parliament, where the Executive Branch was favored in its power of agenda and a time when the Chamber of Deputies had to act in a "legislative process of crises" (Nascimento, 2020, p. 389).

Thus, it can be said that the combination of exogenous rules, the approval of a Resolution that removed various powers from parliamentary minorities, combined with the establishment of the SDR — which significantly increased the quorum for deliberations and the power of the Speaker of the House —, reorganizing the game of forces within parliament, was fundamental to the easier approval of controversial proposals which, at other times, would have filled the streets and the galleries of the Ulysses Guimarães Plenary and would have involved hours of discussion and countless "kits obstructions" in the House.

In this context, the very right of political minorities is curtailed, while the quality of political representation is lost, which is so essential and dear to the inherent logic of the proportional representation system and representative liberal democracies (Mello, 2022). Therefore, it is essential to think about institutional engineering mechanisms and reforms to the rules governing the decision-making process to strengthen, rather than diminish, the power of minorities, emphasizing the proportionality of parliament and deepening democracy (Vieira, 2018).

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Author contributions

Douglas Souza Alves: Project administration, Formal analysis, Conceptualization, Data curation, Writing – original draft, Writing – review and editing, Investigation, Methodology; **Fabiana de Menezes Soares**: Methodology, Investigation.