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A CRISE DA COVID-19 NO BRASIL E SEUS REFLEXOS



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PARLIAMENTARY INQUIRY COMMITTEE (CPI) ON COVID-19 PANDEMIC IN BRAZIL AND THE DEFENSE OF DEMOCRACY IN CRISIS

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ABSTRACT

The Brazilian legislative process is an important tool for public policy and new legislation propositions creation. The Parliamentary Inquiry Committee (CPI) on the Covid-19 pandemic installed in 2021 exposed the Brazilian government's failures in dealing with the global pandemic, accumulating over 600 thousand deaths. To clarify what is the role of the CPI and what it means for Brazilian democracy, this paper aims to describe the legislative procedure law on the creation of this CPI, explaining their legal competence and their impacts on the political sphere, and demonstrating how it becomes an important tool for the Brazilian democracy in crisis.

Keywords: CPI; Parliamentary Inquiry Committee; Covid-19; Brazil; democracy.

1 INTRODUCTION

The Brazilian legislative process as a tool for public policy has a complex number of rules and procedures. Part of it is oriented to the parliamentary committee's function, which is responsible for constructing national rules of law and public policy more rationally and technically. In that view, those committees are places where civil society – as a Brazilian democracy - can hold discussions on crucial topics concerning the national public agenda as well as exercise their

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democratic right through social participation. Seeing as the main directions of Brazilian public policy and all the legislative decision-making processes are made within those committees, such as the government budget issue, some of those committees can also play an auditing and inspection role as the Parliamentary Inquiry Committee (CPI). This type of collegial body is a specific type within the Brazilian legislative process that has the purpose of investigating public authorities and forwarding their conclusions to the judiciary power for the execution of civil or criminal charges. This type of CPI has increasingly gained attention worldwide during the Covid-19 pandemic and the Brazilian political institution crisis. To clarify what the role of the CPI is and what it means for the Brazilian democracy, this paper aims to describe the legislative procedure law for the creation of this CPI, by explaining their legal competence and their impacts on the political sphere and demonstrating how it has become an important tool for a Brazilian democracy in crisis.

2 CONCEPT OF PARLIAMENTARY COMMITTEE

The decision-making process within the Brazilian legislative power has various levels of decision so that it is quicker and more effective. seeing the need for deliberative rationalization inside legislative bodies in the National Congress bicameral system, the Brazilian Federal Constitution of 1988 established institutional mechanisms to develop public policy and law. Thereafter, the parliamentary committees started being defined as collegial bodies to promote discussions, voting, presentations, and deliberations of legal propositions and relevant themes or events to society.

In this view, the parliament committees came about to strengthen the Brazilian democratic participation, seen as they promote smaller political groups of discussion for a reduced number of congressmen in the decision-making process on a certain proposed subject, just as established in many other countries such as the United States and Germany. At that, the enormous number of themes to be deliberated are structured in a more cohesive form, as it provides space for congressmen to participate in several areas accordingly with their agendas and main political areas of interest.

In terms of definition, Casseb (2008) sets the parliamentary committee's concept as a congressmen reunion, in a reduced setting, to act jointly on a specific matter. Sharing a similar view, Andrade and Coutinho (2016) describe those committees as bodies that aim to examine and vote for legal propositions in a decisive sphere with a reduced number of congressmen. To Coelho (2007), the parliamentary committees aim to discuss and vote for draft legislations and are part of the internal delegation process of each house of the National Congress to simplify the legislative process and diminish the excess of matters destined to the Congress plenary⁴.

The Brazilian Federal Constitution on its article n^o. 58 covers the committee's creation in the National Congress and it can be divided into two types: permanent and temporary committees, which is the most common classification criteria. It is also important to stress out that those committees can be formed by congressmen of the two houses, called Joint Committees, or be formed by members of each house, either representatives-only or senators-only. The Permanent Committees are collegial bodies that do not have a predetermined time for closure and are fixed in the Internal Regiments of the House of Representatives, the Senate, or the National Congress as a whole.

They are part of the administrative structure that analyzes technically legal propositions, following up the government plans and programs, and supervising actions of the Executive power. Examples of this kind of committee are the Agriculture, Livestock, Supply and Rural Development Committee (CAPADR); Constitution, Justice and Citizenship Committee (CCJC); Finance and Taxation Committee (CFT) and Foreign Affairs and National Defense Committee (CREDN) on the House of Representatives, and the Economic Affairs Committee (CAE), Social Affairs Committee (CAS) and Constitution, Justice and Citizenship Committee (CCJ) in the Senate.

On the other hand, the temporary committees have a predetermined time for closure. They are responsible for technically analyzing a specific matter, and can be

⁴ The maximum deliberative body inside each National Congress house - the House of Representatives and the Senate - that has sovereignty on its decision-making and integrates all the congressmen or senators on the same reunion called Plenary Sessions.

classified on Special Temporary Committees, External Committees, Parliamentary Inquiry Committees (CPI), and working groups as stated by the article n° 33 of the Internal Regiment of the House of Representatives (RICD) and by the article n° 74 of the Internal Regiment of the Senate (RISF). The Special Committees are deliberative bodies to analyze Constitutional Amendment Propositions, Legal Code Projects, and Law Propositions (Complementary and Ordinary law, according to the Brazilian legal classification). The External Committees deal with Congress external affairs such as the External Committee for the Combat of Covid-19.

The Parliament Inquiry Committee (CPI), which is the subject of this paper, aims to inquire about a relevant matter or fact in public life that is susceptible to Legislative power inspection, legislation, and control. They are also an important tool for public representation when society can evaluate the actions of the public administration. During its period of operation, the collegial bodies can carry out witness questioning, suspects hearings, authorities' testimonies, require documents or breach of financial and fiscal secrecy, and also have police powers to request for arrest *in flagrante delicto*. Their final report, approved at the end of the CPI, must be forwarded to the Judiciary power by the Federal Public Prosecutor's Office (MPF) or the Federal Attorney General's Office (AGU) for public responsibility and judicial measures⁵.

3 THE CPI'S COMPOSITION AND COMPETENCE

The Parliament Inquiry Committee (CPI) is set to investigate facts related to the actions of the public administration to change specific legislation or actions concerning public power. They can be created by the House of Representatives, the Senate, or by both houses composed of senators and congressmen alike when a requirement signed by at least $\frac{1}{3}$ of its members is presented to the house or the Congress Presiding Office for the creation and establishment of the CPI when the minimal requirements are attended.

⁵ “The Parliamentary Inquiry Committee, which will have judiciary authorities investigation powers of its own besides others foreseen on the regiment of each [legislative] Houses, will be created by the House of Representatives and by the Senate, jointly or separately, on one-third of its members request to verify a determined fact and an on certain time with its conclusion, if applicable, forwarded to Federal Prosecutor's Office to promote civil or criminal responsibility to violators.” Article 58, the third paragraph of the Brazilian Federal Constitution.

Besides the minimal quorum of $\frac{1}{3}$, those requirements are verifying the veracity of the fact and its opportune temporality (Article 35 of the House of Representatives Internal Regiment - RICD). The CPIs have their function based on the Law n° 1579 of 1952 and additionally by the Decree-Law n° 2848/1940 of the Criminal Code; Decree-Law n° 3689/1941 of the Criminal Process Code; Law n° 9296/1996 on interception of phone, computer, and telecommunications; Law n° 10001/2000 that determines the priority in the procedures to be adopted by the Federal Prosecutor's Office and other offices based on the CPI's conclusions; Complementary Law n° 105/2001 on financial operations breach of secrecy; and the Federal Supreme Court jurisprudence. The CPI is considered among the other committees the one with a greater level of urgency, which can be installed even during the congressional recess. The CPI has 120 days to complete its work and can be extended up to 60 days with no fixed number of extensions within a legislature period⁶.

As stated before in this article, the CPI has investigation power as that of the judiciary authority but is limited only to the case files instructions which include the accused interrogation, witness testimony, documents requirement, and technical expertise or diligence to clarify important issues (Silva, 2009 apud Andrade and Coutinho, 2016). According to article 36 of the House of Representatives Internal Regiment (RICD), the CPI can carry out a few actions to investigate facts and to elaborate its report:

“Observing specific legislation, the Parliamentary Inquiry Committee can:

1. Require the House of Representatives administrative service employees as those coming from any office or public direct, indirect, or foundational administrative entity, or the Judiciary power, necessary to the execution of its work.
2. Determine diligences, hear suspects, inquiry witnesses under oath, require from public administration pieces of information and documents, require an audience with congressmen and state ministers, take federal, state, and

⁶ Period of time that comprehends the congressmen's regular mandate in a total of four years.

- municipal authorities' testimony, and require services from any authority including the police.
3. Assign any of its members or required employees from the House administrative services to conduct inquiry or diligence process needed with the previous consent of the House Presiding Office.
 4. Move to any point of the national territory to perform investigation and public hearings.
 5. Stipulate a deadline to meet any providence or to execute any diligence under the law's penalty, except when it is under the judiciary authority.
 6. Discuss the inquired object-related facts separately if those are diverse, even before the end of the other facts investigation.
 7. *Single paragraph.* The Parliamentary Inquiry Committees will additionally resort from norms of the Criminal Process Code.⁷⁷

Thus, according to Andrade and Coutinho (2016), the CPI has the same powers of instruction as the magistrates but not the judicial power, seeing as the verification and penalty is the Judiciary's exclusive competence. In addition, the Brazilian Federal Supreme Court monitors the CPI's work to prevent any authority abuse, illegal conduct, or offense to the constitutional law.

In the case of public hearings and witnesses, suspects, or culprits' hearings those are invited or present themselves (in the case of public hearing) or summoned to testify. An invitation can be refused, but a summoned person needs to justify their absence that will only be permitted under judicial review to ensure a habeas-corpus or the constitutional right to be silent. A situation such as this is often judged by the Federal Supreme Court. If the justification is not acceptable or the absence has no justification, the CPI can require the Federal Police for coercive conduction of the person under investigation.

In addition to that, the CPI can also carry out search and apprehension procedures as long as they are justified to obtain proof, apprehend culprits or any kind of object obtained by illicit practice, and require a breach of personal information or communications secrecy. The CPI cannot disclose any confidential

⁷ Free translation of Article 36 of the House of Representatives Internal Regiment done by the authors.

information required to the process, which must be available only to the CPI members, those being investigated, and their defendants (Andrade and Coutinho, 2016).

Although the CPI does not have a penalty and coercive powers, it can determine an arrest *in flagrante delicto* as stated by the Law nº 2848/1940 of the Criminal Code under the justification of public service legal order disobedience; defiance; active corruption; resistance by violence, threat or violent obstruction of the CPI's attributions; and false testimony (this includes the continuous spreading of fake news).

4 THE FINAL REPORT AND THE IMPORTANT ROLE OF THE CPI'S RAPPORTEUR

At the end of the CPI's work period, a final thorough report containing all the collegial bodies inquiry working roadmap, presented requirements, public hearing presented, testimonies, diligence, main document analysis, conclusions, and judiciary forwarding are approved (Andrade and Coutinho, 2016). The CPI members can reject a report proposition and can suggest alterations but not amendments since this kind of report does not accept this kind of adjustment. The CPI can also produce partial reports when there are various related facts. Usually, the CPI has only one rapporteur, however, if the case is based on a complex number of facts, partial rapporteurs can be indicated to provide aid to the draft of a single report.

The rapporteur is a key figure in a parliamentary committee. He or she is nominated by the committee's president according to his/her attributions, as stated in article 41 item VI of the RICD. The rapporteur's function is to foster a thorough study on the proposed matter and present conclusions upon which decisions should be made by the committee. The selection criteria are generally by the party proportion principle, to which the rapporteur is indicated based on negotiations between the political groups or blocs (FEDERAL SENATE, 2021). In the House of Representatives case, following this principle is not clearly stated in its internal regiment, besides the guarantee of free choice independent of any political leadership, but the negotiations on this indication common practice surround this representation proportion principle (De Oliveira, 2015). There is the possibility of a

previous rapporteur nomination to speed the CPI's work after analysis of those interested congressmen according to the internal regiment norms. In special cases, the committees' president can also become a rapporteur when there are various issues in the committee to be dealt with. A proposition author can never be its rapporteur. Typically, temporary committees like the CPI have only one rapporteur.

After the matter is distributed by the committee's secretary to the rapporteur, he/she will collect information on that area. All the presented information must have its technical foundation and relevance properly justified avoiding errors and misunderstandings. This data can be brought forward by specialized consulting, public hearings, or civil society participation represented by organized entities or any Brazilian citizen. In this process, the rapporteur works as a channel by receiving information from society and groups of interest. The study and examination of data period are equal to half of the committee's term, and it can be extended to the same amount of time, except urgent cases (article 52 1st paragraph of RICD). After finalizing the initial report, the committee's members will discuss the points brought by the rapporteur and then deliberate to approve the document.

In the deliberation phase, the voting to approve the rapporteur's conclusions occurs, entirely or partially; and not the judgment of the matter itself. In the total approval of the report text, all committee members agree with the information and arguments presented; otherwise, in a partial approval scenario, congressmen will suggest additions or alterations to the report which can or cannot be accepted by the rapporteur. In the case of a tie, the rapporteur should cast the decisive vote. In other situations, in which the report is not approved, or the demanding alterations are denied by the rapporteur, the committee's president can indicate a new rapporteur, although this is very rare to happen. When the report is finally approved, it is forwarded to the next committee or the Plenary's voting. In the case of the CPI after the report conclusion and approval, it is published and forwarded to the Congress Plenary for its competent providences; to the Federal Public Prosecutor's Office (MPF); to the Union General-Defense Office (AGU), or the Union General-Attorney's Office (PGR); to the Executive power for administrative providence implementation; to the permanent committee with greater links with the report subject; to the Union Accounting Court (TCU); and the Congress Joint Permanent

Committee to inspect financial accounting and governmental programs and plans. The CPI can also submit legislative proposals, decrees, and resolutions propositions that will go through the legislative process.

Considering that, the rapporteur's figure is fundamental to the parliamentary appreciation of society's great interest issues, for it is through him/her that information on a specific subject is made available to the committee and social participation is exercised. Aside from that, the proposition direction intimately depends on the rapporteur's bond with the matter and his/her disposition to carry it out along the committees' terms and approvals. He/she is also the link between groups of interest, the organized civil society, the government, and several economic sectors.

5 IMPACTS OF THE CPI ON THE BRAZILIAN POLITICAL SPHERE AND DEMOCRACY IN TIMES OF CRISIS

The Covid-19 Pandemic Parliamentary Inquiry Committee was installed on April 27th of 2021 under the requirement of Senator Randolffe Rodrigues from the state of Amapá moved by his preoccupation with public administration actions in Manaus, which had a catastrophic pivot of Covid-19 infections and hospital admissions at the beginning of 2021, and where several people died due to the lack of air respirators. Thus, the CPI's main objective was to discuss the federal government action on the fight against Covid-19, analyzing Jair Bolsonaro's administration approach on sanitary measures, such as obligatory use of facial masks, social distancing, delay in the purchasing of vaccines, and promotion and defense of the use of Covid-19 medical treatments with no scientific evidence, such as hydroxychloroquine, chloroquine, and ivermectin. In addition to that, it is also inquired the reason behind the constant changes to the head of the Minister of Health during the pandemic, the lack of respirators in Manaus, the irregular acquisitions of Covaxin vaccines produced by Bharat Biotech (India), and the supposed negligence on Pfizer and Jansen's vaccines acquisition when the government did not reply to at least 81 e-mails concerning the acquisition contract of those vaccines.

Seeing this scenario, the Covid-19 Pandemic CPI had two main lines of investigation: the adoption of herd immunity strategy adopted by the Bolsonaro's

government and its allegedly “parallel cabinet”⁸ to combat the pandemic, and the supposed corruption and prevarication infractions on hospital utensils and vaccines acquisition by the government and private companies. Among the several authorities heard at the CPI’s hearings were all the previous Ministers of Health in Jair Bolsonaro’s administration: Luis Henrique Mandetta, Nelson Teich, and Eduardo Pazuello; the former Minister of Foreign Affairs, Ernesto Araújo; the State Governor of Amazonas, Wilson Lima; Prevent Senior⁹’s director, Pedro Benedito Batista Junior; and the current Minister of Health, Marcelo Queiroga.

The government reactions to the CPI inquiry by president Bolsonaro himself and his supporters inside and outside the government deepened the longstanding political-institutional crisis. The president’s participation in the corruption on Covaxin vaccines acquisition was mentioned by two witnesses, Luis Miranda, and Luís Ricardo Miranda, that confirmed Bolsonaro’s previous consent to the whole corruption scheme. His response was to diminish and attack the CPI’s work and its members, especially the committee rapporteur Senator Renan Calheiros. The Armed Forces, a strong pillar of the current government political structure, have also allegedly tried to intimidate the CPI collegial bodies by releasing a threatening toned press note on responding to CPI’s accusations.

On October 20th, the report was submitted by the rapporteur Senator Renan Calheiros which contemplated all the information dealt with during the five months of inquiry and indicted 65 people and 2 private companies, Prevent Senior and VTC logistic company. Among those investigated are the last and the current Minister of Health, Eduardo Pazuello and Marcelo Queiroga, respectively; the former Minister of Foreign Affairs, Ernesto Araújo; the former advisor of the Presidency, Arthur Weintraub; two of Bolsonaro’s sons, Congressman Eduardo Bolsonaro and Senator Flávio Bolsonaro; and the President Jair Bolsonaro himself. The crimes attributed to the President totaled 29 types such as epidemic crime; quackery; sanitary measure violation; active corruption; fraudulent misrepresentation; incitement to crime;

⁸ Alleged group formed by government authorities close to President Jair Bolsonaro that acted as a private administrative council in a parallel way to the norms of the Brazilian state of law.

⁹ Health Insurance Company accused of carrying out illegal tests on its patients, mostly elders, with the “Covid Kit” which contained medications without scientific evidence proven efficacy, such as hydroxychloroquine, chloroquine, azithromycin, and ivermectin.

private documents fraud; irregular employment of public funds; prevarication; crimes against humanity as extermination, persecution, and inhuman acts to cause intentional suffering; and liability crimes.

6 CONCLUSIONS

The Parliamentary Committees are the mechanism by which social participation can be exercised on the main themes of public interest contemplation. The legislative process guarantees the thorough appreciation of legal propositions aiming at the economic, social, and political spheres as a means of transparency on the legislative proposals and the public policies development process, respecting the Brazilian Federal Constitution. The Parliamentary Inquiry Committee is nonetheless a political response to the institutional crisis provoked by the Covid-19 pandemic. Their results and the whole process of inquiring the witnesses and investigating authorities had an enormous impact on Brazilian economic and political spheres, which affected the institutional crisis and increased economic vulnerability such as the rise of investments risk and state institutional insecurity. Although the work of the Covid-19 Pandemic CPI has been a significant measure to Brazilian politics, especially against corruption and democracy deterioration happening in Brazil due to the intense political polarization, it cannot fully guarantee the judiciary inquiry expected outcomes, or even promote a great stability sensation, but it is surely the beginning.

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