The judicialization of health: the role of the judicial branch in signaling the need for development and implementation of public health policies

A judicialização da saúde: uma atuação da magistratura na sinalização da necessidade de desenvolvimento e de implementação de políticas públicas na área da saúde

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ABSTRACT The present work had the purpose to analyze the limits and possibilities of the magistrate's performance in signaling the need for development and implementation of public health policies in lawsuits involving the health theme. From a sociological and functional perspective, it presents the performance of the magistracy, refining the research to indicate the representativeness of sentences in the 1st District Court of Valença, and, finally, to analyze the profile of the legal subjects that demand judicial protection. It aims, with that, to construct parameters for data analysis and indicators that can be made available as a tool for action by health management institutions and users of the system as a whole, as well as to present improvements in the Court of Justice of the State of Rio de Janeiro. Therefore, the scope is to work the right to health as an example of a fundamental right, from the perspective of Human Rights and, analyzing the municipality of Valença and the judicialization of health that occurs in it, seek to understand and suggest mechanisms for reducing social inequalities and vulnerability of human groups through the provision of services/treatment in the public health network that meet the principles of equality and universality.

KEYWORDS Human rights. Health's judicialization. Public policy. Right to health. Public health.

RESUMO *O presente trabalho teve o propósito de a analisar os limites e as possibilidades de atuação da magistratura na sinalização da necessidade de desenvolvimento e de implementação de políticas públicas em demandas judiciais envolvendo o tema saúde. Sob uma perspectiva sociológica e funcional, é apresentada a atuação da magistratura, afinando-se a pesquisa para indicar a representatividade das sentenças na 1ª Vara da Comarca de Valença e, ao fim, analisar o perfil do sujeito de direito que demanda a tutela jurisdicional. Busca-se, com isso, a construção de parâmetros para análise de dados e indicadores que poderão ser disponibilizados como um ferramental de atuação dos órgãos gestores da saúde e usuários do sistema, além de apresentar pontos de melhoria no sistema do Tribunal de Justiça do Estado do Rio de Janeiro. Assim, o escopo é trabalhar o direito à saúde como exemplo de direito fundamental, sob a perspectiva dos direitos humanos e, analisando o município de Valença e a judicialização da saúde que nele ocorre, buscar entender e sugerir mecanismos para a redução das desigualdades sociais e vulnerabilidade dos grupos humanos, por meio da prestação de serviços/tratamento na rede pública de saúde que atendam aos princípios da igualdade e universalidade.*

PALAVRAS-CHAVE *Direitos humanos. Judicialização da saúde. Política pública. Direito à saúde. Saúde pública.*

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Introduction

Brazilian society has been experiencing the most heated debates about the performance of the Judicial Branch in the process called judicialization of health protection. Issues involving medicalization, hospitalizations, and implementation of health projects by the Executive Branch, while presenting a *quid pro quo* policy, were, to some extent, addressed to the Judicial Branch.

In situations such as these, the magistrate is faced with issues that require not only very technical knowledge of the legal field but also the balancing of interests, analysis of fundamental rights and the public budget and, in the last resort, the very justice of the decision, especially in considering the macro aspect of the *decisum* and its effects on those who have not entered the Judiciary, but are waiting in line for service.

For that matter, the discussion, rather than affecting the analysis of the political sciences, also acquires very intense ethical and moral background, demanding from the magistrate a critical reflection and a real understanding of the diseases discussed, of the functioning of the Unified Health System (SUS)[1] and its consolidation. This is because, from the court decision, there is a direct reflection on the promotion of population health and the safeguarding of fundamental rights related to health (human rights), providing reduction of social inequalities and vulnerability of human groups (for example, child, adolescent, elderly, people with disabilities).

In this tone, it is worth noting that the Constitution of the Federative Republic of Brazil (CRFB)[2], in the light of the ideals of Health Reform, has established a health system of wide care to the population. According to its art. 196, health is consecrated as a right of all and the duty of the State, of universal and equal access.

From the promulgation of the current Political Charter, therefore, the Country has broken with the previously interconnectedness between its health system and social security, since, previously, it was necessary, as a rule, a formal employment bond to access care. Indeed, the establishment of a universal and egalitarian health system, with a retributivist bias, gives rise to a public subjective right of the population, which must be met through public and economic policies directed at its promotion, protection and recovery.

In the contemporary democratic context, the phenomenon of health judicialization expresses legitimate claims and modes of action of citizens and institutions, for the guarantee and promotion of citizenship rights widely affirmed in international and national laws[3]. The phenomenon involves political, social, ethical and sanitary aspects, which go far beyond its legal and public service management component.

Furthermore, the SUS, despite being organized through participatory inflows from all entities of the federation, does not create impenetrable and exclusive responsibilities, so that, from the principle of solidarity, all spheres of government (Union, states, Federal District and municipalities) may be sued in matters related to health, according to pacified case law of the Superior Court of Justice (STJ). Thus, the omission of the public administration in the organization of an efficient health system, therefore, can be remedied by the Judiciary, as the Constitution does not constitute a mere letter of intent.

Thus, given the prominent range of social rights enshrined in the 1988 Constitution[2], including, for our purposes, universal and equal access to health, it is too predictable that judicialization is a fairly common phenomenon, given so many complaints, as the insufficiency and even the absence of public policies offered by state entities or even the embarrassment in their management.

This article, therefore, falls into such a debate, from a critical perspective to the judicialization of public policies, fundamentally discussing the representativeness of these demands in the District of Valença. With this,

aware that the judicial decisions impact the public management, including budget, it seeks to arouse the public administrator's gaze to the most common claims of the population, indicating points of adjustment that were found to be pertinent.

Methodology

This is a descriptive exploratory study, through case study, following a qualitative research approach[4] involving the municipality of Valença (RJ).

For the production of data, official documents and semi-structured interviews with members of the municipal management (Health Secretariat and Public Prosecutor's Office of the Municipality of Valença) were used as sources of evidence. Therefore, in the analysis of the judicialization of health, it was based on the full regular calendar year from 2015 to 2018.

The investigation was directed from three delimitative approaches.

The first approach has as its sample the legal demands brought in the 1st and 2nd Courts of the District of Valença; and its objective was to identify the extension of the filing of lawsuits that have some relevance to the health theme in the referred municipality.

The second approach has as its sample the judicialized demands in the 1st District Court of Valença; and its objective was to reveal the number of decisions and sentences issued in the period, identifying how many were related to the health theme in the reference municipality, identifying the workload that the health demand represents for the magistrate.

The third approach presents the profile of the legal persons who filed lawsuits distributed to the 1st District Court of Valença to see their right to health care and the peculiarities of specific cases submitted to the Judicial Branch.

Thus, by analyzing the class and subject by which the lawsuits were registered in the District of Valença from 2015 to 2018, it was possible to quantify the actions in the area of health, which were the object of this research. Similarly, it was possible to obtain the process numbers for procedural consultation, through the generation of analytical reports.

Health claims against health plans and insurance were not taken into account, since, in the end, what is wanted is to measure public demand, not private health demand. Nor were any possible collective demands considered, since it is intended to verify the individual profile of the plaintiff.

This study was approved by the Research Ethics Committee of the Sergio Arouca National School of Public Health (Ensp)/ Oswaldo Cruz Foundation (Fiocruz), in compliance with Resolution CNS (National Health Council) nº 510/2016.

Finally, the work was limited to the formulation of suggestions in the ambit of the Judiciary, with the aim of improving the processing of health-related deeds.

Results and discussions

Characteristics of the study site – municipality of Valença

The municipality of Valença is located in the Sul Fluminense Mesoregion of the state of Rio de Janeiro. According to data from the Brazilian Institute of Geography and Statistics (IBGE), Valença has a territorial extension of 1.300,767 km² and, therefore, is the 2nd largest municipality in the state of Rio de Janeiro, with a population of approximately 76,163 people in the year of 2018. After demographic census, IBGE still reports, with data from 2010, that the demographic density of the municipality was 55,06 inhab./km².

Considering the indicator called Municipal Human Development Index (MHDI) – indicator responsible for gauging the longevity, education and income of each Municipality – Valença was assigned the index of 0,738 in 2010, which places the municipality in the range called High Human Development, largely due to the longevity factor. Thus, Valença occupies the 823rd place, tied with some other municipalities of São Paulo, Paraná, Santa Catarina and Rio Grande do Sul[6,7].

The municipality has 72.3% of households with adequate sanitary exhaustion, 47.7% of urban households on public roads with afforestation and 32.1% of urban households on public roads with adequate urbanization (manhole, sidewalk, paving and curb). Thus, when compared with the other municipalities of the state, Valença holds the position 52 of 92, 64 of 92 and 63 of 92 respectively. Moreover, when compared to other cities in Brazil, its position is 1,292 of 5,570, 4,212 of 5,570 and 1,111 of 5,570 respectively.

Of the representativeness of the initial actions involving the health theme in the District of Valença

While public policy is the instrument of action of governments, the judicial decision (broadly speaking, encompassing interlocutory decisions and judgments) is the instrument of action of the Judicial Branch, and may result in the imposition of obligations on the parties to the process.

Judicial decisions in the health field have, more specifically, a political impact, as they imply an obligation to provide public health care, which is, for the most part, not included in public policies already outlined and are imposed under penalty of fine or crime of disobedience. Such interference may generate systemic effects for SUS and for political entities, such as changes in vacancies, budget reallocations, and unforeseen expenses.

From a joint reading of arts. 1, I; 3, I and II and 170, all of CRFB[2], it is clear that our Constitution is based on what can be called the Tripod of a Compromise Economic Order, which ensures sovereignty as one of the foundations of the Federative Republic of Brazil, whose independence must not neglect the protection of human rights (art. 4, I and II of CRFB[2]), to ensure the development of the nation with social justice, eradicating poverty and marginalization and reducing social inequalities.

Our Magna Charta[2], however, dates from 1988; and the violation of human rights, the difficulty in implementing social justice, poverty, marginalization and social inequalities are still problems that, up to now, plague our country. For this reason, the criticism made by Achille Mbembe[8] in dealing with sovereignty is imperative.

Starting from Foucault's concept of biopolitics[9], in his book 'Necropolitics', which deals with the domain of life over which power establishes control, the author brings a reflection on state sovereignty and the judgment exercised over life and death:

> This essay assumes that the ultimate expression of sovereignty lies, to a great extent, in the power and ability to dictate who can live and who must die. Therefore, killing or letting live constitute the limits of sovereignty, its fundamental attributes. To be sovereign is to exercise control over mortality and to define life as the implantation and manifestation of power[9(62)].

A reflection is brought into existence: is not the formulation of public policies in the health area a form of biopower exercise under this dual perspective of life and death?

If the majority of the population depends on the public health service, to all evidence, it seems to us that the answer is yes.

When, for budgetary reasons, one does not invest in public policies for the treatment of rare diseases, given an analysis of their high cost versus the low number of

people affected, one is saying who should live and who should die.

When public prosecutors' offices usually contest health claims in the health area by arguing the reserve for contingencies, there is a clear example of the condition of acceptability of making die.

It is true that resources are scarce and demands tend to infinity. However, if the claims of the population are always the same and there is no change to remedy the ills that affect public health, the exercise of necropolitics is evident.

If intentional, then we will have legitimate strategies and social practices in the face of the invisibility of certain individuals, and the question becomes structural, so that only political renewal and greater popular participation in health management can lead to satisfactory solutions.

If unintentional, sometimes, the systematization of problems can be the missing instrument for reversing this situation, allowing the public manager to perform efficiently in health. For this reason, the present work was in deep analysis on the judicialized demands in the area of health in the District of Valença, for the years 2015 to 2018.

For each service (1st and 2nd Courts of the District of Valença), for each month from 2015 to 2018, were considered, by subject, the lawsuits classified under the competence of Accident at Work, Civil and Public Treasury that had health as their theme.

1st District Court of Valencia

In the 1st District Court of Valença, by competence: occupational accident, civil and Public Treasury and by subject, in 2015, 10.42% of the distributed cases were health theme related.

In 2016, this amount decreased, so that, of all new lawsuits, 9.34% were health related.

In 2017, this percentage pointed to an increase, with the judicialization of health representing 14.80% of new overruled lawsuits in the 1st Court.

In 2018, the judicialization of health totaled 12.42% of the entire distribution of the 1st District Court of Valença.

2nd District Court of Valencia

In the 2nd District Court of Valença, by competence: occupational accident, civil and Public Treasury and by subject, in 2015, 10.36% of the distributed cases were correlated with the health theme.

In 2016, for the same competence reference, this amount decreased, so that, of all new lawsuits, 8.49% were related to health.

In 2017, this percentage showed an increase, with the judicialization of health representing 15.06% of new demands.

In 2018, the judicialization of health reached a total of 14.44% of the entire distribution of the 2nd District Court of Valença.

Of the representativeness of decisions and sentences involving the health theme in the 1st District Court of Valença

This topic, supported by the competences and issues previously considered, brings up the relevance of the health theme within the jurisdictional performance of the 1st District Court of Valença.

For this analysis, it was sought in the Process Distribution and Control System (DCP) the document called 'Statistical Bulletin of the Judge'. This document translates into a more refined consultation, as it allows to identify the numbering of the case, as well as, whether in that month, decisions or judgments were made and their nature.

It is emphasized that, on July 19, 2016, the Active Debt Center through Provision CGJ (General Court of Justice) nº 59/2016 was created, segregating the related matter for its own use: the Center for Active Debt.

Thus, so that there was symmetry between the data considered for the years 2015 to 2017 and so that there were no

distortions in the impact of the matter 'health' over the years analyzed – because, the greater the number of jurisdictional provisions unrelated to the health theme, the lower its percentage share on the whole – we exclude from the total amount of dispatches and conclusions made regarding the municipal, state and federal active debt. Thus, for the years 2015 to 2017, the following representativeness of health in the jurisdictional provisions (decisions and sentences) can be seen, as shown in *chart 1*.

Chart 1. Worksheet with the representation of jurisdictional acts, Valença, Rio de Janeiro, 2015-2017

Year/ Month	January	February	March	April	May	June	July	August	September	October	November	December	Average
Decisions													
2015	13.725%	18.605%	18.491%	27.317%	20.896%	8.000%	19.278%	11.278%	12.687%	14.884%	10.920%	18.627%	16.217%
2016	10.945%	13.125%	16.892%	10.435%	14.198%	12.717%	11.399%	14.063%	15.842%	5.109%	10.407%	7.874%	11.917%
2017	23.308%	11.200%	14.851%	11.429%	17.814%	13.393%	19.333%	22.105%	23.770%	29.144%	16.814%	29.108%	19.356%
Judgments on merits													
2015	0.000%	1.266%	6.207%	5.357%	5.882%	9.091%	9.375%	9.375%	1.869%	4.673%	3.883%	10.448%	5.619%
2016	13.846%	10.345%	10.526%	13.542%	6.897%	6.604%	9.375%	11.864%	6.316%	6.818%	8.434%	5.660%	9.186%
2017	11.429%	2.985%	9.859%	15.942%	10.145%	4.301%	8.333%	12.500%	16.190%	4.902%	8.434%	4.225%	9.104%
Judgments without merits													
2015	0.000%	0.000%	0.690%	0.000%	0.980%	0.000%	0.000%	3.125%	0.935%	0.935%	0.000%	2.986%	0.804%
2016	0.000%	0.000%	0.000%	0.000%	1.149%	1.887%	3.125%	10.169%	1.053%	0.000%	1.205%	0.000%	1.549%
2017	1.429%	1.493%	4.225%	1.449%	2.899%	1.075%	0.000%	1.923%	0.952%	2.941%	3.614%	4.225%	2.185%
Total acts, excluding orders													
2015	13.725%	19.871%	25.388%	32.674%	27.758%	17.091%	28.548%	23.778%	15.491%	20.492%	14.803%	32.060%	22.640%
2016	24.791%	23.470%	27.418%	23.977%	22.244%	21.208%	23.299%	36.096%	23.211%	11.927%	20.046%	13.534%	22.652%
2017	36.166%	15.678%	28.935%	28.820%	30.858%	18.769%	27.666%	36.528%	40.912%	36.987%	28.862%	37.558%	30.645%

It was verified, therefore, that there has been an increase in jurisdictional acts on health-related issues over these three years.

Likewise, considering the urgency that health demands usually impose, the proportion of judicial acts practiced is much higher than the distribution of related cases. There are many conclusions and it is common for the magistrate to look into the same process more than once a month. One cannot omit highlighting that these demands make the judicial machine spin in a more than double proportion.

Of the analysis of the holders of rights and the concrete cases proposed

Lawsuits are not heap of paper or data electronically stored. On the contrary, each process narrates a story. Therefore, we analyze the processes distributed in the 1st District Court of Valença in the period from 2015 to 2018, to understand the vocalization of health demands counted by the own population, through the initial petitions.

Analyzing the General Acquis of the Registry in 2018, efforts focused on identifying

not only the profile of the plaintiff, but also the procedural gait, as well as the indication of the taxpayer, in order to analyze any inconsistencies in the classification of claims that, because they are conveyed in the face of entities with legal personality governed by public law, they were placed in the Civil division, when the correct would be Public Treasury.

It is noteworthy that the delineation of the profile of the plaintiffs in the judicial proceedings was not based on a knowledge subject given definitively, but rather from a Foucauldian matrix, that is, considering

> the historical constitution of a subject of knowledge through a discourse taken as a set of strategies that are part of social practices[10(23-27)].

If, as we have seen, the demands (issues) in the Judicial Branch are repeated, this theoretical framework helps us to understand the relations of struggle and power, which, as well as paraphrasing the work of Mbembe[8], previously mentioned, permeate the issues inherent in the judicialization of health.

According to Foucault[10], the power relations, the economic conditions, the social relations are not previously given to the individual, but they are underlying factors, that constitute the subject of knowledge of a given historical period, forged from power relations and political relations in society.

Thus, factors such as age and gender are relevant to the definition of the health-disease process. However, there are also important external factors, such as income and place of residence, which ultimately derive from the political direction given to relevant issues such as education – which later on in the life of the individual unfolds in insertion in the labor market – sanitation, existence of health posts, hospitals, family doctors in the locality.

In this sense, as Foucault[10] affirms:

> What I intend to show in these conferences is how, in fact, the political, economic conditions of existence are not a veil or an obstacle to the subject of knowledge, but that by which the subjects of knowledge are formed and, thus, the real relationships. There can only be certain domains of knowledge from the political conditions that are the ground in which the subject is formed, the domains of knowledge and the relations with truth[10(47)].

This decomposition of the distributed actions into their multiple peculiarities allows us to affirm that any totality is made of heterogeneity, and its component parts reveal in the process a little of their living condition.

In this process, therefore, is that the construction of knowledge materialized in this work was based not on a subject abstractly considered as author, as plaintiff in a lawsuit, but considered the subject of law, individualized by various circumstances, among which we selected: age, sex, income and domicile, since they are information contained in exordial.

Additionally, the immense diversity of social experiences revealed by this analysis, case by case of the judicialization of health, allows us to identify a profile of individuals who, dissatisfied with the health service provided, demand in the Judicial Branch.

In this respect, regarding the reasons why users of the public health service demand the Judiciary, it is necessary to make an incursion into the concepts of sociology of absences and sociology of emergencies – both treated by Boaventura de Souza Santos[11].

Boaventura[11] points out that there is non-existence production whenever an entity is disqualified and made invisible, unintelligible or irreversibly disposable. The consequence of identifying these absences and making them present is to avoid wasting experience and to consider such absences as alternatives to hegemonic experiences, so that they may have their credibility discussed, argued and may be the object of political dispute.

According to the author, one of the modes of production of non-existence is the Logic

of Social Classification, according to which there is a monoculture of the naturalization of differences, which distributes the population into categories that naturalize hierarchies.

For this reason it is important to investigate case-by-case, in order to bring into existence hitherto undersized needs, demands whose vocalization was only heard after judicialization.

After detailing the legal demands, this study was able to identify that the judicialization of health in the municipality of Valença affects men and women subjects, in the same proportion, and there is no more affected group.

It was found that countless neighborhoods were represented in this judicialization of health: Água Fria, Alicácio, Aparecida, Bairro de Fátima, Barão de Juparanã, Barroso, Benfica, Belo Horizonte, Biquinha, Canteiro, Cambota, Carambita, Centro, Chacrinha, Conservatória, Cruzeiro, Hidelbrando Lopes, Jardim Novo Horizonte, Jardim Valença, João Bonito, João Dias, Laranjeiras, Monte Belo, Monte D'Ouro, Osório, Parapeúna, Parque Pentagna, Pentagna, Ponte Funda, Quirino, Santa Cruz, Santa Inácia, Santa Isabel do Rio Preto, Santa Luzia, São Francisco, São José das Palmeiras, Santa Rosa, Santa Terezinha, Serra da Glória, Spalla II, Torres Home, Vale Verde, Varginha.

It was possible to identify, that much, that claimants' incomes, in their vast majority, do not exceed the minimum wage. In fact, in some cases, their earnings do not even represent a minimum wage. Moreover, here is a caveat: to the extent that the minimum wage is considered as the minimum subsistence allowance, many of the claimants do not earn the income necessary to guarantee them the minimum living allowance.

If that were not enough, there are many cases of unemployed people and others who claim to be self-employed because they do part time jobs as bricklayer, salesman, cleaning lady etc., with no fixed income.

There were cases where income ranged from R$ 1.000 to R$ 1.935,13. Less than 10 plaintiffs exceeded income of R$ 2.000.00.

Thus, according to the idea of the new social question developed by Patorini[12], there is the pauperization of classes that, until then, enjoyed better social conditions. Increasingly, we see the increase in the judicialization of health by the hitherto middle class.

Among the predominant reasons for filing the lawsuits, the authors, regarding the benefits of illness aid and disability retirement, complained about the administrative expertise performed by the physicians of the National Institute of Social Security (INSS). Concerning the Continued Social Assistance Benefits of the Organic Law of Social Assistance (BPC/Loas), the problem was the use, without analysis of the specific case, of the one quarter of family income factor as a requirement to exclude the benefit. In the hypotheses of demand for medication, exams and surgery and hospitalization, the largest complaints represented misinformation of the population and administrative resistance.

Overcoming this logic of non-existence is what Bonaventure calls the Ecology of Recognition, proposing a new articulation between the principles of equality and difference.

According to the author, "Reality cannot be reduced to what exists"[10(14)]. In fact, this is why this article is intended to reveal what was perhaps silenced or unseen, contrary to suppression and marginalization. The field of social experiences already available is broadened.

Having verified the profile of the subject of the plaintiff law, we now highlight the peculiarities of the concrete cases analyzed, especially those that generated greater uncertainties.

It was found that some lawsuits, especially those related to 'medical error', 'medicines – others', were inadequately classified under the civil jurisdiction when it would be appropriate to fit them into the finance competence, usually because they have an entity of direct administration in the passive pole of demand.

In the same vein, those achievements in progress classified as Special Retirement arts. 57/58 – Benefits in Kind, under the authority of the Public Treasury, were all related to retirement by time of contribution and, therefore, outside the thematic cut, as they do not represent discussion about possible health problems of the plaintiff.

Many of the cases classified as Accidental Disability Retirement/Benefit in Kind they dealt with, in fact, sickness insurance and were, therefore, incorrectly classified.

Also the achievements classified as assistance Benefit – Benefits in Species, under the civil jurisdiction, in spite of the fact that they have the INSS in the passive pole of the claim, did not always concern the health problems of the plaintiff. Some achievements were about granting reclusion aid.

We found that the ongoing achievements whose subject was 'social assistance' sometimes did not address the issue of health and sometimes correlated with support for persons with disabilities, as in the case of an applicant with Autistic Spectrum Disorder (ASD), that required indefinite multidisciplinary follow-up (speech therapist and occupational therapy), as well as medicines for continuous use.

By contrast, all proceedings under way classified as 'supply of inputs – others' involved claims for the health of the plaintiffs, such as hearing aid supply and air cylinder supply.

That done, we analyzed the objections of public entities. Once the cases often repeat, we realize that the locking parts also follow a more or less previously structured model.

However, in order to clarify the issue of adopting a mass response system, we can bring to light Extraordinary Appeal (RE) 631240/MG. Regarding the analysis of the conditions of the lawsuit, the non-fulfillment of which leads to a revocation sentence without merit, it is emphasized the vote:

> The 'need', finally, is the demonstration that the performance of the Legal State is essential for the satisfaction of the plaintiffs' claim. Accordingly, a person who needs a medicine has no 'interest' in bringing action if it is distributed for free[13].

It happens that, normally, the arguments formulated by the Municipal and State Attorney's Offices – in this case when there is a passive joinder – are not accompanied by this information – which ends up leading to a condemnatory decree for the granting of the medicine and condemnation in the attorney's fees borne by the losing party.

Moreover, it was found that, although all the deeds were being processed on a regular basis, a faster jurisdiction could be handed over to the plaintiff if it were not for the extreme shortage of specialized medical experts attending the interior of the state of Rio de Janeiro.

Many experts decline to perform the service on the grounds that it is difficult to move countryside or that they are overworked (it is not possible to affirm whether it is because of the work normally already carried out, because of the expert work carried out in other deeds or given the low remuneration attractiveness).

It is quite true that, in many of these cases, the author enjoys the benefit of free justice, so the payment made to the expert ends up being subsidized with appeals from the Court (TJ or Federal Regional Court – TRF). We believe that low pay is not attractive to medical experts to accept their *munus*. In any case, such a situation causes several (re)appointments along the way – which implies an inevitable delay in the final judgment of the process.

Final considerations

From an international perspective, right to health is one of human rights; and, internally, it can be said to be a fundamental right, as it is embodied in the Constitution. It is classified as a second-dimension right, given its loan nature, and of such relevance, that constitutional protection also extends to the infraconstitutional order.

Health is a public service, to the extent that it delivers services expressed in usefulness or material commodities made available to the public, by the public administration in a subjective sense or by private delegates, under public law.

We were interested in the health provided by the political entities (entities of direct administration: Union, states, Federal District and municipalities) in a centralized manner, by their bodies, due to the phenomenon of deconcentration or decentralized by entities of indirect administration, notably municipalities and public foundations.

We deepened the study based on the municipality of Valença and considered that the judicialization of health, that is, the filing of lawsuits involving this theme would be an excellent indicator, not only to evaluate this public service, but also to identify needs or the absence public health policies that meet the most constant claims of the population.

Similarly, we contacted by letter, e-mails and telephone many agencies of the Municipal Public Administration, such as the Department of Health, the Prosecutor's Office of the Municipality, the Secretariat of Administration and the Secretariat of Public Works. In addition, although we have always made clear the purpose of the research and our intention to contribute to improving local health, in all cases we either take months to get a response, or have not even obtained it.

We perceive a difficult interlocution between the Secretariats and even between such bodies and the Prosecutor's Office, which needs to be immediately revised so that there is an efficient exchange of information between the sectors, in order to drive the commands and procedures that need to be implemented.

Moreover, within the bodies themselves, much information was supposed to be held with one person. On this occasion, when, for whatever reason, that person was not present (for vacation, leave of absence, or any other personal matter), no other agent in the same industry was able to answer the questions or consult the data in their systems, as basic as they were. We cite as an example the enumeration of the quantity and name of the component neighborhoods of the municipality of Valença, indicating which would belong to the urban area and which would belong to the rural area.

This shows a blatant and improper concentration of data and consequent interruption in the continuity of the provision of administrative activity. In attention to art. 37, *caput* of CRFB and art. 2 of Law nº 9.784/99, it is necessary for all public agents to be able to consult their databases and to be fully aware of routines, procedures and activities developed by the sector in which they work. Also, the telephone made available to the public must work and be answered at all times during working hours.

The high rate of social security actions narrating the population's illness is a relevant factor to be considered, mainly because these individuals not only fail to produce and circulate wealth in the municipality, but consume social security resources.

In addition, the research observed the mistake in registering the achievements, regarding the correct framing of the competence; the lack of further detail of the nomenclature of the object of the demand and the failure to indicate in the report 'Statistics of Processes Distributed by Competence/Subject', the numbering assigned to the process after distribution.

Such facts generate in the observer (researcher and user of the system) reasonable doubt about the nature of the subjects thrown to the processes, and the absence of numbering hinders the consultation of the done by the number, in order to discover its real nature.

Additionally, while the 1st and 2nd District Courts share the same competence,

the incorrect classification of the competence of the distributed achievements does not affect the conduct of the processes, insofar as the urgency is not measured in the beginning by the processor when the new action and analysis of the subject are distributed.

However, the search for efficiency in the treatment of judicial demands follows the specialization of judicial services, which may lead to the division of some matters for the 1st Court and others for the 2nd District Court. If this happens, the classification of a feat as Civil, when it should be a Public Treasury or vice versa, may lead to distribution to one of the courts without competence for its processing. This will imply a decision to decline jurisdiction for proper judicial assistance, further extending the course of the claim.

Furthermore, with the progress of the use of computerization, in order to make electronic the collection of utilities in Valencia, since May 2016, distributions, except for criminal acts, began to be made electronically by lawyers, Public Prosecutor's Office and public defenders, who also started to classify the processes according to their subject and competence. As a result, there was an increase in incorrect or generically classified demands, which may be an obstacle to research and the development of management and control tools for the acquis of the service.

This way, we believe that the elaboration of booklets in a joint action between the Brazilian Bar Association/RJ, the Public Prosecution's Office/RJ, the Public Defender's Office/RJ and the State Court of Justice of Rio de Janeiro can better guide the users of the service, highlighting the importance of a fulfillment consistent with the characteristics of the process, and solving any existing doubts.

Furthermore, it is mentioned as a suggestion to improve the tools available in the DCP System, which, for better control and management of distributed processes and, mainly, as a transparency measure, the statistical bulletin called 'Statistics of Processes Distributed by Competence/Subject' should indicate the number that was assigned to the achievement with its distribution. Such information would allow access to the content of the application and dispel any doubt on the subject.

Then, we reveal in the work the ammount of interlocutory decisions and judgments given in the period from 2015 to 2017, showing how many were related to the health theme in the 1st District Court of Valença. From this analysis, we conclude that every health-related feat impacts more than twice on the workload of the judicial branch. This is without considering the notary acts practiced and the orders issued because there is no way to identify the quantity by competence and subject.

A point of improvement, therefore, would be the creation of a tool that would also individualize the orders issued, by competence, indicating the number of the case, subject and type of the act performed, as with the decisions and sentences.

Finally, we have identified the sociodemographic profile of the users of the Judicial Branch in the health demands and have inquired, after addressing the lawsuits in progress in the 1st District Court of Valença, the difficulties experienced by the authors of the demands that made them seek the Judiciary to protect their right to health.

The demands are proposed by men and women in similar proportion. They involve people from the poorer classes of the population, but there is already an increase in judicial demand by the middle class. We also exposed the most frequent causes of health judicialization. All these data, therefore, are available to the administrator to verify the need for the development and implementation of public policies in the health sector.

It was verified, furthermore, difficult to appoint expert physicians to the Districts of the interior of Rio de Janeiro, often, given the distance they must travel from large urban centers to the countryside.

Therefore, it is suggested to make different payout schedule, considering the peculiarities

of each location, such as access, distance and complexity of expertise, as a way to stimulate the acceptance of *munus* by these professionals – a fact that would allow the resolution of processes without so many dismissals due to the demand for physicians who can attend judicial appointments. We also suggest the formation of partnerships with universities in order to broaden the spectrum of professionals working in the cases, with the exception of the appointment of those who may be physicians of the patient, since there would be an ethical impediment to the appointment.

Accordingly, what is expected to have arisen from the present research is the awareness that the 'truth of processes, health decisions should not be constructed on a monologic basis. On the contrary, there must be an intersubjective and interinstitutional pragmatics, subject to the rules, recognition, and duties of the arguers, the agents involved.

Therefore, if the mapping done in the present study can, to some extent, clarify this horizon, paving the way for the identification of factors linked to the health-disease process, as well as for the identification of recurrent vicissitudes in the provision of public health services, for the definition of principles of action and reformulation of some public policies to be more in line with popular aspirations (field of possible social expectations); then we will be facing the sociology of emergencies.

That is to say: we will be facing a future of plural and concrete possibilities, simultaneously utopian and realistic that build the present through care activities; that is, a care of the public manager with its population, a care of the Judicial Branch with its jurisdictional.

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Collaborators

Bastos SP (0000-0003-0206-6831)* contributed to the research, analysis and interpretation of data and the elaboration of the text. Ferreira AP (0000-0002-7122-5042)* contributed to the conception, planning, analysis and interpretation of data; critical review of the content; and approval of the final version of the manuscript. ■

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