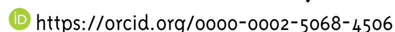
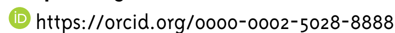
Original article

Judicialization of health in Manaus: analysis of judicial demands between 2013 and 2017

A judicialização da saúde em Manaus: análise das demandas judiciais entre 2013 e 2017

Izabel Cristina de Souza Araújo[a,b]

https://orcid.org/0000-0002-5068-4506
E-mail: izabel.csaraujo@hotmail.com

Felipe Rangel de Souza Machado[c]

https://orcid.org/0000-0002-5028-8888
E-mail: felipe.machado@fiocruz.com.br

[a]Fundação Oswaldo Cruz. Instituto Leônidas & Maria Deane. Manaus, AM, Brasil.

[b]Prefeitura de Manaus. Secretaria Municipal de Saúde. Assessoria de Gabinete. Manaus, AM, Brasil.

[c]Fundação Oswaldo Cruz. Escola Nacional de Saúde Pública Sérgio Arouca. Departamento de Direitos Humanos, Saúde e Diversidade Cultural. Rio de Janeiro, RJ, Brasil.

Abstract

This article analyzes the judicialization of health phenomenon as a means of ensuring access to health technologies (medicine, supplies, specialized medical appointments and procedures, orthoses, prostheses, and special materials) in the health system of Manaus, Brazil. Based on a delimited analysis between 2013 and 2017 of existing lawsuits in the Amazonian first degree jurisdiction, with a referential and critical analysis of similar situations in other Brazilian states found in the literature. Carried out in four stages, the research consisted in identifying all health related resolutions, selection, construction of database with categories from the proceedings, statistical treatment, and data analysis. Results showed the main reasons for the judicialization of health, as the major judicial representation carried out by organs of defense of the public sphere citizenship. Also, justice interference in the flows and procedures of the Brazilian National Health System (SUS), by biased decisions in detriment of the community. There is a need for dialogue between the justice and health agencies, enforcing greater organization of federal entities in the fulfillment of their obligations, and reducing court actions to attain the right to health.
Keywords: Right to Health; Judicialization; Brazilian National Health System.

Correspondence
Felipe Rangel de Souza Machado
Av. Brasil, 4.036, sala 905, Manguinhos. Rio de Janeiro, RJ, Brasil.
CEP 21031-210.

CC BY

Resumo

Este artigo analisa o fenômeno da judicialização da saúde como forma de garantir acesso a tecnologias em saúde (medicamentos, insumos, consultas e procedimentos médicos especializados, órteses, próteses e materiais especiais) no sistema de saúde em Manaus. Partiu-se de uma análise das ações judiciais peticionadas na justiça amazonense de primeiro grau entre 2013 e 2017, com análise referencial e crítica de situações semelhantes encontradas na literatura em outros estados da federação. A pesquisa foi realizada em quatro etapas, que consistiram na identificação de todas as ações relacionadas à saúde, seleção, construção de banco de dados com as categorias retiradas dos processos e tratamento estatístico, e análise dos dados coletados. O resultado demostrou os principais motivos que desencadeiam a judicialização da saúde, entre os quais a majoritária representação judicial realizada por órgãos de defesa da cidadania da esfera pública. Também ficou clara a interferência da justiça nos fluxos e procedimentos do Sistema Único de Saúde, decidindo de forma personalíssima em detrimento da coletividade. Conclui-se pela necessidade de diálogo entre os órgãos de justiça e da saúde, forçando maior organização dos entes federados no cumprimento de suas obrigações e redução de ações na justiça para obtenção do direito à saúde.
Palavras-chave: Direito à Saúde; Judicialização; Sistema Único de Saúde.

Introduction

Among the fundamental rights foreseen in the Brazilian Constitution of 1988, the right to health is perhaps the most demanded by the population. Over the last two decades, many of the problems encountered in health access shaped the “judicialization of health” phenomenon, which express the citizen’s indignation at the possible or actual absence of the State in fulfilling this right, as well as the essence to the full exercise of citizenship, ensured by the legislation and the government’s responsibility. The term “judicialization” designates that a conflict was brought to the judiciary for its resolution, and “essentially involves considering something, in this case, public policies, as a legal process” (Machado; Dain, 2012, p. 1018).

Studies on judicialization of health present a triple aspect, first, because this phenomenon is an alternative to citizens seeking solutions because of the absence or deficiencies of the State in fulfilling services, achieving undeniable advances, such as the historical case of HIV patients who gained the right to have their drugs funded by the government (Brasil, 2005; Gouvêa, 2003).

Second, lawsuits in health directly interfere with health actions and services planning, either because it disregards the technical knowledge involved in epidemiological studies that determine the insertion or not of certain medicine on official lists – such as the National Lists of Essential Medicines (RENAME), State Lists of Essential Medicines (RESME) and Municipal Lists of Essential Medicines (REMUME) –, or for favoring people with better knowledge, financial situation or access to justice. Whatever the level of interference, the result is the impairment of the Health Departments budget, especially municipal ones, which must carry out unforeseen expenses to meet the imposing order of the judiciary.

Third, judicialization ends up revealing judicial conduct excesses, when it surpasses the legal and operational components of the Brazilian National Health System (SUS), responding satisfactorily and immediately to the individual claim but threatening collective principles. Yet, it must be acknowledged that “the judicialization of health is not a problem

[itself], but rather a consequence of several problems built over the last decades" (Machado, 2010, p. 151), especially given the omission of public power in this fundamental area of people's lives.

Also, health lawsuits put in contact two actors who traditionally hold important symbolic powers – using Bourdieu's terminology (2000) – in Brazil: The Physician and the Judge. It is worth considering that the Judge's recognition of the Physician's symbolic power increases the rate of favorable judgment, regardless of medical report, contributing to the expansion of this phenomenon in Brazil.

This article analyzes the phenomenon of judicialization of health to ensure access to health technologies (medicine, supplies, specialized medical appointments and procedures, orthoses, prostheses and special materials) in the health system of Manaus. Thus, a brief discussion of how the literature has addressed this phenomenon in other Brazilian locations is important.

Judicialization of health in Brazil

Initially, it is noteworthy that a single article was found in the search for publications on the subject in the state of Amazonas and the municipality of Manaus. Carvalho e Leite (2014) discuss the therapeutic itinerary for acquiring medicine via the judiciary, showing that judicialization is a unifying factor of user's rights. In this article, besides medicine, all health technologies are also considered to unravel the reasons why the judiciary is used to ensure health access in Manaus.

Nunes and Ramos Junior (2016), evaluating the reality of Ceará, discuss the dimensions and challenges of judicialization and conclude that the judicial route presents itself as a new gateway that amplifies health inequalities. Stamford and Cavalcanti (2012), in Pernambuco, showed that eight pharmaceutical companies manufactured 80% of the requested drugs and that 90% of the Health Department resources for their acquisition were related to seven pharmaceutical laboratories.

Leitão et al. (2016), when studying judicialization in Paraíba, focus on identifying the profile of medicine demands and show the high number of lawsuits filed for standardized drugs by SUS, especially antineoplasics. In Bahia, Lisboa and Souza (2017) tried to identify the reasons that led citizens to petition for insulin in court and found: (1) economic weakness; (2) need to use the medicine; (3) duty and obligation of the State to provide it; (4) difficulties in medicine access caused by administrative and bureaucratic issues. Santos et al. (2018) studied the judicial demand against municipalities in São Paulo for patients diagnosed with diabetes, who seek medicine, supplies or materials for treatment.

In Mato Grosso do Sul, Pinto and Osório-de-Castro (2015) pointed out major deficiencies in the activities related to pharmaceutical services in the municipalities that could be contributing to the increase in lawsuits. In Rio de Janeiro, a research by Pepe et al. (2010) was based on the decisions given by the second degree jurisdiction. The most alleged disease in the appeals was hypertension, followed by diabetes , with a prominence of cases sponsored by the Public Defender's Office. This is a revealing fact, because the Public Defender's Office requires, for service, the declaration of economic weakness. These last five studies highlight that perhaps the Judicial power is not necessarily interfering in the Executive branch, but only guaranteeing a pre-existing right.

Contrary to this perspective, a study by Machado et al. (2011) in Minas Gerais identified that most applicants used the private health system and entered court by hiring private lawyers. Most of the requested drugs did not belong to the official lists of SUS, which led to the conclusion that judicialization is a phenomenon that can harm the execution of planned public policies, given the evasion of resources to meet judicial decisions. Also, in Minas Gerais, Campos Neto et al. (2012) described the relationship between the prescribing physician, lawyer and the pharmaceutical industry, presenting important evidence that judicialization was at the service of the pharmaceutical industry.

From a health economy point of view, there are two important studies that deserve emphasis: Wang et al. (2014) discuss the financial impacts of lawsuits in the city of São Paulo, and Chieffi and Barata (2010) analyze the effects of judicialization in the state. This study brings important conclusions

about public spending, indicating that the volume of resources dispensed with the acquisition of medicines by judicial means makes up a significant part of the pharmaceutical industries profit and serves as a strategy to introduce new medicine and make it possible to market new drugs. Moreover, it also points to the concentration of specific medicines, prescribers and lawyers.

Also, in São Paulo, Vieira and Zucchi (2007) promoted a study on distortions caused by lawsuits against drug policy. The authors concluded that most of the items requested were part of the lists of medicines of SUS programs, indicating possible failures of the Municipal Health Department and the state government in ensuring access to them. Furthermore, the authors identified that most legal representations in search of medicines were carried out by private lawyers (Vieira; Zucchi, 2007). Another important point highlighted by the study is the investigation of factors at odds with SUS and the National Drug Policy guidelines, such as the disregard for the division of responsibilities between state and municipality in different complexity levels, in which the municipality acquires medicines that are the responsibility of the state, or the purchase of medicine absent from the official lists or not registered by ANVISA, or are prescribed by private professionals.

In the Federal District, the analysis of judicial processes for obtaining health care showed different results from the most widespread theses in the Brazilian literature, such as the elitism of judicial processes and costly medicine, without confirming if services or products for the elite were obtained via judicial power (Diniz; Machado; Penalva, 2014). This study brings an important aspect to understand the phenomenon of judicialization, as it shows the prevalence of both lawsuits and medical complaints of public services, which for the authors is a strong indication that elitism is not widespread. The object most required was hospitalization in an intensive care unit - a diverging data from most research, which puts medicine as the main judicial claim.

In fact, the scientific literature points to a significant increase in judicialization, especially since the 1990s, and the clash between health technical knowledge and law has surfaced in thousands of lawsuits throughout the country (Ferraz; Vieira, 2009).

Method

We received from the Court of Justice of the State of Amazonas (TJAM) two spreadsheets with 1,731 lawsuits filed between 1991 and 2017, categorized as pertaining to the health sector. Based on this worksheet, we built a four-step study. First was reading the initial petitions directly on the TJAM website and mapping the complaints, of which 598 were filed against the Municipal Health Department of Manaus (SEMSA) and 1,133 against the State Health Department of Amazonas (SUSAM). Thus, we decided to focus the analysis on only 5 years (from 2013 to 2017).

Second, individual health-related complaints that claimed any type of technology (medicine, procedure, health supplies), filed in the State Court by residents of Manaus against SEMSA and SUSAM were selected. Lawsuits against the Federal government do not appear in this study because they are not in the State Court jurisdiction. The municipality of Manaus was chosen because it concentrates the largest number of complaints in the state, being its capital.

The categories used for analysis correspond to information that singularizes each case and was taken from reading the initial petition, the identity document of the applicant assigned to the file (age and sex) and the magistrates' decisions (interlocutory and final) issued. Other documents present in the file were discarded. To know whether a complaint is within the research criteria, it is necessary to go through all stages of analysis.

Third, the processes were read, selecting those that met the inclusion criteria for the research. The contents were noted within the chosen typification, to form the database itself: defendant body, process number, receipt date, distribution date, number of days for distribution, procedural class, subject, court jurisdiction, procedural situation, date of the last movement, time between distribution and last movement, last movement/type, amount in dispute, plaintiff's age and sex,

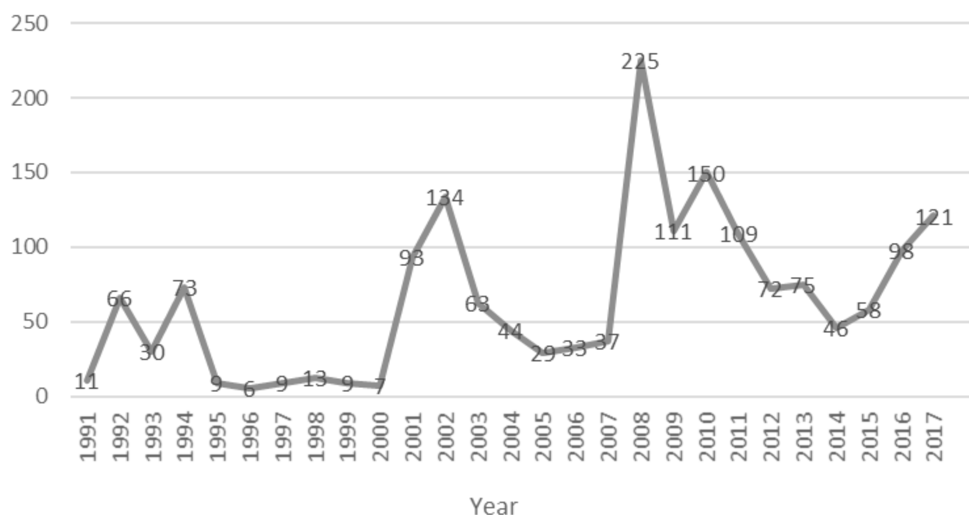
declared neighborhood housing, type of procedural representative (Public Defender's Office, Public Prosecutor's Office or private lawyer), declared disease, identification of the disease according to the International Classification of Diseases (ICD), treatment facility in the public or private network, declared reason for judicialization, request formulated in court, registration of positive or negative anticipatory relief, decision on granting or not anticipatory relief, deadline indicated by the judge for the fulfillment of anticipatory relief, procedural situation, issued judgment, sentence date and time elapsed from distribution to sentence.

To perform the statistical analysis of the variable "declared disease" derived from the ICD classification, which presented a considerable number of categories, a classification by grouping of diseases and/or similar conditions was created, based on information declared in the initial petition, as to convey the most comprehensive and non-individualized result. The fourth stage of the research was dedicated to describing and analyzing the data collected within the established framework, to understand the judicialization of health scenario in Manaus.

Results

Graph 1 shows the distribution of the 1,731 lawsuits filed against SUSAM and SEMSA between 1991 and 2017. Its purpose is to describe the annual distribution of all complaints that make up the database.

Graph 1 – Lawsuits filed against the Municipal Health Department of Manaus and the State Health Department of Amazonas, October 1991 to December 2017



To the time frame established in this article (from 2013 to 2017) and after excluding complaints that did not require health technologies, 106 suits were obtained, of which 104 (98.11%) were individual ones.

When analyzing the sociodemographic profile of the applicants, it was found that most of the plaintiffs were female (50.96%), 53.40% of the actions benefited minors and 47.12% of the applicants reside in the North and East of Manaus. The result of the variable "sex," extracted from the files, shows similarity with the studies by Vieira and Zucchi (2007), Nunes and Ramos Junior (2016) and Machado et al. (2011), which found most lawsuits filed by female plaintiffs. It differs, however, from the result found by Diniz, Machado and Penalva (2014), who obtained most male applicants.

Regarding the applicants' age, Vieira and Zucchi (2007) also analyzed this variable, but making different age groups cuts, stating that more than half of the actions were requested by people between 0 and 19 years. However, it differs from the study by Nunes and Ramos Junior (2016), who obtained a mean age among the applicants of 53.4 years; from Machado et al. (2011), in which 35% of the plaintiffs were aged 60 years or older; and Diniz, Machado and Penalva (2014), in which the majority were between 70 and 79 years old.

The distribution of actions by neighborhood was verified based on the applicant's home address informed in the petition. Most of the actions came from people living in underprivileged areas of the city, being Cidade de Deus and Cidade Nova (North zone), Jorge Teixeira (East zone), Japiim (South zone) and Planalto (Midwest zone) the neighborhoods with the highest number of actions filed - precisely the most populated and peripheral areas of the city. This result brings the judicialization of health in Manaus closer to a perspective that defends this phenomenon as a way of expanding citizenship, differently, for example, from the results found by Nunes and Ramos Junior (2016), in which neighborhoods with greater record of lawsuits were those recognized as inhabited by upper social classes, which would indicate that judicialization operates in the maintenance of social asymmetries, strengthening access to the population wealthiest groups.

Other data extracted from the research material refer to the processes according to the defendant, in which 94.34% of the actions were filed against the State Department. Most judicial representations were performed by organs defending citizenship of the public sphere (85.48%), the predominant type was public civil action (42.45%) and the proceedings were processed mainly in the Child and Juvenile District Court (48.11%), as seen in Table 1.

Thus, 94.34% of the actions against SUSAM are issued because of responsibilities established in SUS, which assigns to the federal state the services and products of medium and high complexity. The system's logic is to plan coverage based on epidemiological criteria, and these responsibilities are defined in ministerial ordinances. Similar result was found by Nunes and Ramos Junior (2016), in which 84.7% of the lawsuits were filed against the state department (the study included the Federal government), and by Leitão et al. (2016), in which 79.3% of the lawsuits were filed against the state.

Table 1 — Lawsuits according to the defendant, type of action, court and procedural situation, filed against the Municipal Health Department of Manaus and the State Health Department of Amazonas in the Court of Justice of Amazonas, 2013 to 2017

Variables	n	%
Defendant		
SEMSA	4	3.77%
SEMSA + SUSAM	2	1.89%
SUSAM	100	94.34%
Representative		
SPD	35	33.02%
FPD	2	1.89%
SPO	43	40.57%
Private	26	24.53%
Class		
Public civil action	45	42.45%
Innominate provisional remedy	5	4.72%
Compliance with sentence	2	1.89%
Writ of mandamus	7	6.60%
Common procedure	18	16.98%
Small-claims court procedure	26	24.53%
Ordinary procedure	3	2.83%
Court		
Child and Juvenile District Court	51	48.11%
Special Tax Court	26	24.53%
1st, 2nd, 3rd and 4th Special Tax Courts and Tax Crime Courts	28	26.41%
Civil Duty Center	1	0.94%

SEMSA: Municipal Health Department of Manaus; SUSAM: State Health Department of Amazonas; SPD: State Public Defender's Office; FPD: Federal Public Defender's Office; SPO: State Prosecution Office.

The legal representation, for the most part, comes from assistance agencies to people who declare themselves unable to afford judicial costs, such as the Federal Public Defender's Office, State Public Defender's Office, Public Prosecution Office and Federal Prosecution Office, which corresponds to 75.47% of the suits.

The result was like the study by Santos et al. (2018), conducted in the countryside of São Paulo, in which 67.7% of the actions were conducted by public judicial institutions. The study of Pinto and Osório-de-Castro (2015) also highlights that most

of the actions were filed by public defenders (62%). There is divergence with the studies of Vieira and Zucchi (2007), Nunes and Ramos Junior (2016), Leitão et al. (2016) and Machado et al. (2011), in which the number of representations made by private lawyers prevailed (54%, 68.4%, 55.17% and 60.3%, respectively). The study by Nunes and Ramos Junior (2016) found greater use of the judicialization strategy in upper classes.

Public civil actions accounted for 42.45% of all suits analyzed. Its use is closely related to most of the actions being proposed by public institutions for rights defense, such as the State and Federal Prosecution Office and the Public Defender's Office. Other studies have not researched this variable.

Regarding the 48.11% of lawsuits filed in the Child and Juvenile District Court, the result was expected, since more than half of the actions surveyed have underage plaintiffs. There are studies that deal specifically with lawsuits involving children and adolescents, such as Medeiros, Diniz and Schwartz (2013), on actions involving medicines for mucopolysaccharidosis, and that of Lopes, Asensi and Silva Junior (2017), which mentions the indirect judicialization of health.

Considering the ICD, tenth revision (ICD-10), of alleged diseases in the initial petitions, 28.57% of the actions refer to neurological disorders and 11.43% to orthopedic disorders (Table 2). Thus, Amazonas differs from other states, in which cancer (Nunes; Ramos Junior, 2016), diabetes (Vieira; Zucchi, 2007) and rheumatoid arthritis (Machado et al., 2011) are the main alleged pathologies in lawsuits.

Analyzing the origin of prescriptions presented in the petitions, 86.54% are by SUS. Similar data were found by Vieira and Zucchi (2007), who obtained 59% of the prescriptions from SUS services and 13% from affiliates, differing, however, from Machado et al. (2011), in which 70.5% of the plaintiffs came from private medical care. It is noteworthy that eight requests (7.69%) have not submitted medical documents supporting the sought desired good in the initial petition. Diniz, Machado and Penalva (2014) also found 1% of suits without request or medical document.

The service network was not researched in the selected studies. Here, most requests originate from large hospitals and emergency rooms (61.54%); and clinics and polyclinics (21.15%).

Table 2 – Alleged diseases regarding the International Classification of Diseases, tenth revision, and origin of prescriptions present in the lawsuits filed against the Municipal Health Department of Manaus and the State Health Department of Amazonas in the Court of Justice of Amazonas, 2013 to 2017

Variables	n	%
Disease		
Neurological disorders	31	29.25%
Orthopedic disorders	12	11.32%
Diabetes and resulting injuries	10	9.43%
Genetic and autoimmune conditions	10	9.43%
Kidney diseases	9	8.49%
Heart diseases	6	5.66%
Liver and digestive tract diseases	6	5.66%
Eye diseases	6	5.66%
Chemical dependence	5	4.72%
Circulatory system diseases	3	2.83%
Cancer	3	2.83%
Respiratory diseases	1	0.94%
Liver diseases	1	0.94%
Otorhinolaryngologic diseases	1	0.94%
Orofacial cleft	1	0.94%
Preterm infants	1	0.94%
SUS prescription		
No	6	5.66%
Yes	90	84.91%
No prescription	10	9.43%
Origin of prescription		
Hospital system	64	60.38%
Clinics and polyclinics	22	20.75%
Maternities	7	6.60%
Other	5	4.72%
No documentation	8	7.55%

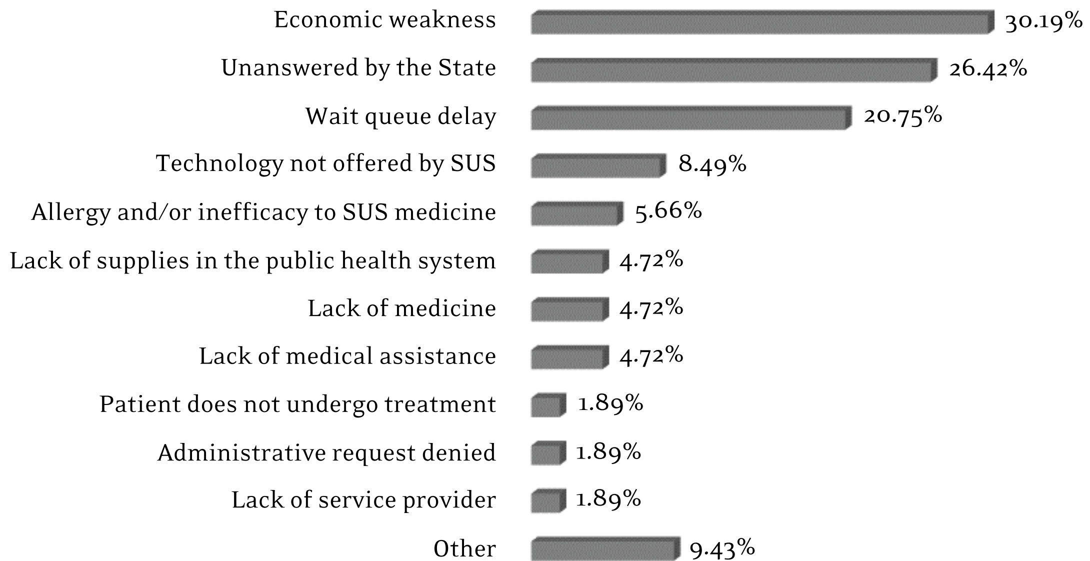
The most alleged reasons for judicialization are economic weakness (30.19%), followed by lack of responses to administrative requests made to the state of Amazonas (26.42%) and the delay of SUS waiting list (20.75%). Other less presented reasons can be seen in Graph 2.

Economic weakness was the main cause of judicialization of health found by Lisboa and Souza (2017), totaling 117 of the 149 actions surveyed in the state of Bahia. Diniz, Machado and Penalva (2014) point to a lack in evidence that judicialization is an elitist movement: in their study, conducted in the Federal District, 95% of the actions declared

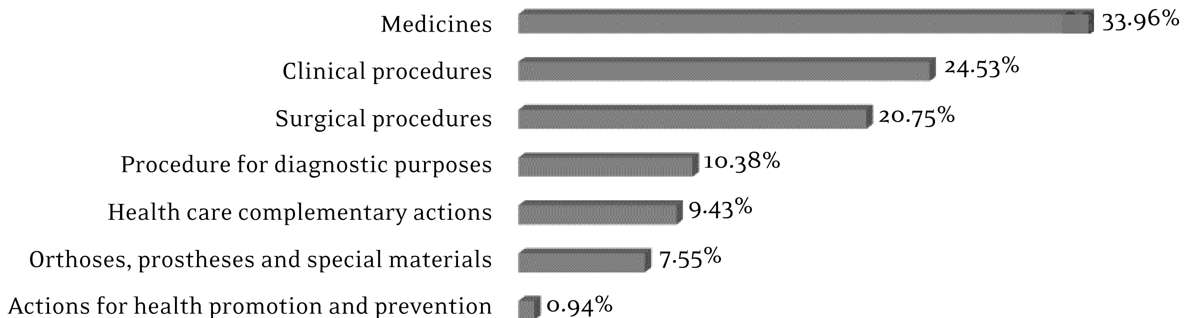
economic weakness indirectly, by the Public Defender's Office, which sponsored the causes. In them, however, the most alleged reason was the right to health (95%).

Of the claims in the initial petition, Graph 3 shows that in 33.96% of the actions requested medicine; in 24.53%, clinical procedures; and in 20.75%, surgical procedures.

Graph 2 — Reasons alleged in initial petitions to justify the search for judicial power in health resolution of disputes



Graph 3 — Claim issued in initial petitions, filed against the Municipal Health Department of Manaus and the State Health Department of Amazonas, according to the group classification of the Management System of the Table of Procedures, Medicines and Orthoses, Prostheses and Special Materials of the Brazilian National Health System, 2013 to 2017



Numerous scientific studies (Machado et al., 2011; Medeiros; Diniz; Schwartz, 2013; Nunes, Ramos Junior, 2016) and data from the National Justice Council (CNJ) point to medicine as the major complaint regarding health. It differs, however, from the study by Diniz, Machado and Penalva (2014), in which medicine was not the main requested item.

In all actions, anticipatory relief was requested, granted in 90.48% of the cases. The deadline for compliance with the court order was 5 or 10 days in 52.63% of the suits. Of the trials, 53.77% were upheld and 22.64% had not yet been sentenced at the time of the collected data analysis.

Regarding the request for anticipatory relief, a similar result was found by Nunes and Ramos Júnior

(2016), who verified a request for it in 99.8% of the cases. About the sentences given, the study bears similarity with Leitão et al. (2016), in which 77.6% of the actions were considered upheld.

Table 3 — Intermediate and final decisions issued in lawsuits against the Municipal Health Department of Manaus and the State Health Department of Amazonas, in the Court of Justice of Amazonas, 2013 to 2017

Variables	n	%
Application for anticipatory relief		
Yes	106	100%
No	0	0.0%
Anticipatory relief granted		
No	11	10.38%
Yes	95	89.62%
Anticipatory relief period		
Immediate	9	9.47%
From 24 to 72 hours	10	10.53%
From 3 to 15 days	68	71.58%
From 30 to 60 days	8	8.42%
Sentence		
Upheld	57	53.77%
No resolution of merit	21	19.81%
Rendered	1	0.94%
Unproved	2	1.89%
Denial of initial petition for illegality	1	0.94%
Not rendered	24	22.64%
Procedural situation		
Remanded	52	49.06%
Pending	22	20.75%
On appeal	11	10.38%
Res judicata	12	11.32%
Unappealable judgment	1	0.94%
Transfer of venue	1	0.94%
Suspended	7	6.60%

Regarding the situation of suits, 50.94% had already been finalized ("remanded," "unappealable judgment" or "transfer of venue"), and 11.32%, although already judged, may still receive an appeal. Although these figures reflect the majority, it should be noted that on appeal (10.38%) and suspended (6.60%) cases can interfere in the percentage of the other categories (Table 3).

The average period between the entry of the petition and its distribution is 3.56 days, with a standard deviation of 18.79 days. The mean period between distribution and last movement was 530.26 days, with a standard deviation of 459.78 days. For rendered actions, the average time to sentence was 389.91 days with a standard deviation of 413.64 days. The average suit value was R$ 15,104.15, with a standard deviation of R$ 34,000. In the period of this study, the highest amount charged in an action was R$ 220,000 and the minimum R$ 100.

In Leitão et al. (2016), the average time between the entry of the case and its sentence was 206 days. The other data were not collected by the parameters studied.

Discussion

This study reveals an important picture of health in the city of Manaus regarding lawsuits filed against SEMSA and SUSAM in the State court between 2013 and 2017. Initially, the number of health-related cases stands out when compared to all cases filed against these entities regarding other matters (only 6%). This result differs from the data registered by the CNJ and the projections contained in its newsletter (Brasil, 2016).

Most of the actions had children or adolescents from 0 to 18 years of age as beneficiaries, suggesting failure in basic coverage regarding this age group and in cases of medium and high complexity, if we include in this analysis that most demands referred to neurological disorders.

Most of the applicants live in the most populated neighborhoods and in recognized peripheral areas, which reinforces the claim of economic weakness as the actual factor to resort to justice in order to meet their needs. It is noteworthy, however, the high percentage of people who turned to the judiciary for not obtaining a response from the state: 26.42% of claimants filed for applications or administrative proceedings, but did not see their request referred or finalized and did not want to wait for a response from the state government. This judicialization causes financial expenses and increases the flow of lawsuits for issues that could have been resolved administratively. This also denotes that people turn to the judiciary for real necessity, both financially and because they lack basic healthcare. These claimants do not intend to broaden the scope of health rights, only to ensure the minimum already established

by law. These data are corroborated by most of SUS prescriptions, both from large hospitals and polyclinics.

We also verified that all suits requested anticipatory relief and that most were granted by the judges. In this case, the judiciary complies with the allegation that the patient' health is critical. The argument of irreparable damage or difficult reparation that may be caused by the delay in judicial provision is the convincing factor of the judiciary. The most likely hypothesis is that the judicial power does not have professionals with knowledge in health or SUS to technically assist in decision-making. Anticipatory relief is given sparingly in other law areas, since, once granted, the initial claim is satisfied, that is, it would be unhelpful to reach the end of the decision and conclude that it was right to assist the other party. The same happens with health, because the resource has already been spent.

Most actions claim medicines, which is the trend throughout Brazil, according to CNJ reports (Brasil, 2016). This datum suggests that the National Drug Policy and the management of pharmaceutical care in Brazil need to be analyzed critically. The judiciary also needs to review its way of ruling, as to meet CNJ legislation and recommendations for this purpose. In a recent decision, the Superior Court of Justice set criteria for the court to grant medicine not listed in SUS (REsp. 1.657.156 April 2018). This decision expands care, but only those regarding medicines not covered by SUS. The set criteria seem to work with the expansion of the official lists carried out by the judiciary.

The changes in the understanding of the Superior Courts, the movement of the CNJ to include evidence-based health in judicial decisions and the creation of the Technical Support Centers for the Judiciary (composed of magistrates, health managers, participants of the legal system and members of the State Health Council) in all states prove the concern with the direction of judicialization in the country, which has crammed the courts with actions that should have been resolved by the state health departments. All these improvements are corroborated by the de-judicialization movement (Marques, 2014) that began in the judiciary, is spreading throughout society and will probably reach health.

Therefore, the picture presented here does not corroborate the believe in the literature of elitism in the judicial process, since most of the plaintiffs are economic weak and represented by public agencies. Also, new technologies are not sought, only the guarantee basic care, which should already be accessible to the population. The study shows that the data obtained from the Court of Justice are important indicators of the access barriers encountered by the Amazonian population to guarantee their health rights. The Amazonas lacks an adequate health policy focused on neurological issues.

There are few statistics related to the magistrate's decision. A study conducted for the National Agency for Supplemental Health in 2015, in São Paulo, concluded that in 92.4% of trials (collegiate decisions) the plaintiff was given reason - only 7.39% of the disputes were unfavorable to the user (Scheffer et al., [2015]). When the judge needs to decide on access to rights that should have already been guaranteed by administrative means and are within the expectation of action of SUS, the judicial decision seems simple, although such decisions point to care gaps. On the other hand, requests that go beyond the standardized performance of SUS are concerning, because in these the courts may be serving as reproductive instruments of social asymmetries that, although present in society, confront the principle of equality of SUS.

For granting anticipatory relief, the judge cites, in all cases, the Federal Constitution and articles 6 and 196 to 200 (Brasil, 1988). This is correct from a legal standpoint, but the issue is also technical and should be discussed from a collective health point of view, or rather, collective health and public policies.

Unlike the pattern of almost automatic granting of health claims, a recent news, published on the Court of Justice of Santa Catarina website, seems to point to a new path: a judge denied a preliminary injunction for the supply of costly medicine non-standardized by SUS. In her decision, the judge states that the intervention of the judiciary in

health is creating inequalities, given that most of the population remains dependent on public policies (Medeiros, 2018). We must consider, however, whether the judge's sentence based on the existence of inequalities would not hurt another principle of SUS, integrality. In fact, this seems to be the biggest issue of the judicialization of health: to oppose fundamental principles of SUS that were thought of as complementary.

Final considerations

Judicial decision can compromise isonomy by not extending to the collective, as occurs with collective decisions of general effects. In recent years, several issues have contributed to the increase in the judicialization of health, such as the strengthening of judicial institutions and the expansion of social rights, both guaranteed by the 1988 Constitution, and the public health failure in providing the patient with the necessary treatment, supplies and medicines.

As such, the judiciary and executive bodies themselves have been seeking a closer approximation between powers, in programs and policies, to establish greater agility, transparency and effectiveness in health actions by the Executive, to reduce judicialization without compromising the constitutional and fundamental right to health established in the Constitution. We should note that there is a movement for change, signaled by the first decisions that will form the new majority jurisprudence of the Supreme Court and favors treatments provided by SUS.

The National Council of Justice itself has been expanding the discussion on the judicialization of health, having constituted the working group that culminated in the approval of several recommendations, giving the courts guidelines regarding judicial claims involving health care and recommending the conclusion of agreements with various agencies for the creation of Technical Support Centers for the Judiciary .

A final aspect related to judicialization deserving of more attention from researchers is that this phenomenon constitutes a reductionist movement regarding health and health rights. The citizens' search for health access through courts focuses on care, finding actions related to material components, examinations, surgeries, in short, the most diverse technologies in health, but no action regarding disease prevention, or causes or conditions related to them. The healing aspect has been well received by the Brazilian courts.

The right to health cannot be restricted to what can be received in the medical facility, it needs to be much more, because it is related to the individual way of life and other basic rights guaranteed by the Federal Constitution.

The data analysis clearly show that the applicants in the actions investigated were looking to secure their basic needs – and it is important to recognize that those who do not have the minimum are not able to see other broader rights. Who thinks about better quality of life when there is no medicine? Who thinks about leisure when they need surgical treatment to feel better?

Finally, we emphasize that this work sheds light on the ambiguity of the phenomenon of judicialization, which, while guaranteeing rights denied by the State, ends up reproducing some privileges (e.g. of access) present in society. Facing the issue of the judicialization of health is only possible from the increasingly necessary affirmation of both the existence of democracy and the role of the State in guaranteeing the right to health. These are two boundaries that should never be called into question.

References

BOURDIEU, P. *O poder simbólico*. 3. ed. Rio de Janeiro: Bertrand Brasil, 2000.

BRASIL. *Constituição*. Brasília, DF: Senado Federal, 1988.

BRASIL. Ministério da Saúde. *O remédio via justiça*: um estudo sobre o acesso a novos medicamentos e exames em HIV/aids no Brasil por meio de ações judiciais. Brasília, DF, 2005. (Série Legislação nº 3).

BRASIL. Conselho Nacional de Justiça. *Justiça em números*. Brasília, DF, 2016. Disponível em: <https://bit.ly/2UyiknM>. Acesso em: 8 ago. 2018.

CAMPOS NETO, O. H. et al. Médicos, advogados e indústria farmacêutica na judicialização da saúde em Minas Gerais, Brasil. *Revista de Saúde Pública*, São Paulo, v. 46, n. 5, p. 784-790, 2012.

CARVALHO, M. N.; LEITE, S. N. Itinerário dos usuários de medicamentos via judicial no estado do Amazonas, Brasil. *Interface: Comunicação, Saúde, Educação*, Botucatu, v. 18, n. 51, p. 737-748, 2014.

CHIEFFI, A. L.; BARATA, R. C. B. Ações judiciais: estratégia da indústria farmacêutica para introdução de novos medicamentos. *Revista de Saúde Pública*, São Paulo, v. 44, n. 3, p. 421-429, 2010.

DINIZ, D.; MACHADO, T. R. C.; PENALVA, J. A judicialização da saúde no Distrito Federal, Brasil. *Ciência & Saúde Coletiva*, Rio de Janeiro, v. 19, n. 2, p. 591-598, 2014.

FERRAZ, O. L. M.; VIEIRA, F. S. Direito à saúde, recursos escassos e equidade: os riscos da interpretação judicial dominante. *Dados*, Rio de Janeiro, v. 52, n. 1, p. 223-251, 2009.

GOUVÊA, M. M. O direito ao fornecimento estatal de medicamentos. *Revista Forense*, Rio de Janeiro, v. 370, p. 103-134, 2003.

LEITÃO, L. C. A. et al. Análise das demandas judiciais para aquisição de medicamentos no estado da Paraíba. *Saúde e Sociedade*, São Paulo, v. 25, n. 3, p. 800-807, 2016.

LISBOA, E. S.; SOUZA, L. E. P. F. Por que as pessoas recorrem ao Judiciário para obter o acesso aos medicamentos? O caso das insulinas análogas na Bahia. *Ciência & Saúde Coletiva*, Rio de Janeiro, v. 22, n. 6, p. 1857-1864, 2017.

LOPES, L. M. N.; ASENSI, F. D.; SILVA JUNIOR, A. G. A judicialização indireta da saúde: um estudo de caso sobre a experiência de Cachoeiro de Itapemirim/ES. *Revista Direito e Práxis*, Rio de Janeiro, v. 8, n. 1, p. 285-320, 2017.

MACHADO, F. R. S. *A judicialização da saúde no Brasil*: cidadanias e assimetrias. 2010. Tese (Doutorado em Saúde Coletiva) – Universidade do Estado do Rio de Janeiro, Rio de Janeiro, 2010.

MACHADO, F. R. S.; DAIN, S. A Audiência Pública da Saúde: questões para a judicialização e para a gestão de saúde no Brasil. *Revista de Administração Pública*, Rio de Janeiro, v. 46, n. 4, p. 1017-1036, 2012.

MACHADO, M. A. Á. et al. Judicialização do acesso a medicamentos no estado de Minas Gerais, Brasil. *Revista de Saúde Pública*, São Paulo, v. 45, n. 3, p. 590-598, 2011.

MARQUES, N. J. F. A desjudicialização como forma de acesso à Justiça. *Âmbito Jurídico*, São Paulo, 1º abr. 2014. Disponível em: <https://bit.ly/2tBKVoz>. Acesso em: 4 fev. 2018.

MEDEIROS, Â. Juíza considera efeitos financeiros da judicialização da saúde em negativa de liminar. *Poder Judiciário de Santa Catarina*, Florianópolis, 30 abr. 2018. Sala de Imprensa. Disponível em: <https://bit.ly/2Uvo4vF>. Acesso em: 25 set. 2018.

MEDEIROS, M.; DINIZ, D.; SCHWARTZ, I. V. D. A tese da judicialização da saúde pelas elites: os medicamentos para mucopolissacaridose. *Ciência & Saúde Coletiva*, Rio de Janeiro, v. 18, n. 4, p. 1089-1098, 2013.

NUNES, C. F. O.; RAMOS JÚNIOR, A. N. Judicialização do direito à saúde na região Nordeste, Brasil: dimensões e desafios. *Cadernos Saúde Coletiva*, Rio de Janeiro, v. 24, n. 2, p. 192-199, 2016.

PEPE, V. L. E. et al. Caracterização de demandas judiciais de fornecimento de medicamentos “essenciais” no estado do Rio de Janeiro, Brasil. *Cadernos de Saúde Pública*, Rio de Janeiro, v. 26, n. 3, p. 461-471, 2010.

PINTO, C. D. B. S.; OSORIO-DE-CASTRO, C. G. S. Gestão da assistência farmacêutica e demandas judiciais em pequenos municípios brasileiros: um estudo em Mato Grosso do Sul. *Saúde em Debate*, Rio de Janeiro, v. 39, p. 171-183, 2015. Número especial.

SANTOS, E. C. B. et al. Judicialização da saúde: acesso ao tratamento de usuários com diabetes mellitus. *Texto & Contexto: Enfermagem*, Florianópolis, v. 27, n. 1, p. 1-7, 2018.

SCHEFFER, M. C. et al. *Judicialização na saúde suplementar*. Rio de Janeiro: ANS, [2015]. Disponível em: <https://bit.ly/3brA5vc>. Acesso em: 25 set. 2018.

STAMFORD, A.; CAVALCANTI, M. Decisões judiciais sobre acesso aos medicamentos em Pernambuco. *Revista de Saúde Pública*, São Paulo, v. 46, n. 5, p. 791-799, 2012.

VIEIRA, F. S.; ZUCCHI, P. Distorções causadas pelas ações judiciais à política de medicamentos no Brasil. *Revista de Saúde Pública*, São Paulo, v. 41, n. 2, p. 214-222, 2007.

WANG, D. W. L. et al. Os impactos da judicialização da saúde no município de São Paulo: gasto público e organização federativa. *Revista de Administração Pública*, Rio de Janeiro, v. 48, n. 5, p. 1191-1206, 2014.

Authors' contribution

Both authors worked together on writing the article.

Received: 03/20/2019
Approved: 12/10/2019