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A INTERVENÇÃO DO PODER JUDICIÁRIO DIANTE DA OMISSÃO ESTATAL NA GARANTIA DO DIREITO À SAÚDE: A JUDICIALIZAÇÃO DA SAÚDE

THE INTERVENTION OF THE JUDICIAL POWER BEFORE THE STATE OMISSION IN THE GUARANTEE OF THE RIGHT TO HEALTH: THE JUDICIALIZATION OF HEALTH

LA INTERVENCIÓN DEL PODER JUDICIAL ANTE EL ESTADO OMISIÓN EN LA GARANTÍA DEL DERECHO A LA SALUD: LA JUDICIALIZACIÓN DE LA SALUD

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RESUMO

Introdução: Este artigo ressalta a Intervenção do Poder Judiciário diante da omissão estatal na garantia do direito à saúde: a judicialização da saúde, é o tema do presente artigo, resultante de pesquisa explicativa crítico dialética aplicada na saúde pública brasileira.
Objetivos: O objetivo geral visa avaliar a importância e a eficácia da tutela de urgência na garantia do direito à saúde; Identificar as causas que levam à omissão estatal na garantia do direito à saúde; Analisar de forma crítica a judicialização da saúde; Desmistificar a função do Poder Judiciário diante da inércia dos entes federados; Relacionar a teoria material com a prática, com o intuito de apresentar essa dicotomia e propor que a mesma ser superada.
Métodos: Trata-se de uma pesquisa bibliografia, indutiva – dedutiva, com o intuito de demonstrar os requisitos de concessão da tutela provisória, sua importância no cenário da política de saúde, além de analisar de forma crítica a judicialização da saúde no Estado de Goiás.
Resultados: A judicialização ainda é problema que precisa ser revisto, entre os três poderes, já que as atitudes adversas em relação às concessões de medicamentos estão sendo inconstitucionais, uma vez que a própria Constituição traz na letra da lei as competências de cada poder, e neste contexto o que estamos vivenciando ao longo dos anos é exatamente uma inversão de papéis, uma vez que a responsabilidade de execução do serviço e do medicamento é do poder executivo, sendo que o judiciário muitas vezes deixa de exercer seu papel para fazer o papel do poder executivo.
Conclusão: O direito à vida, à saúde e à dignidade da pessoa humana estão intimamente ligados, visto que na falta de um, não há possibilidade de exercer os outros. Neste contexto e para finalizar esta análise, de acordo com as fontes do direito, é preciso definir de forma precisa o que tem mais força junto ao ordenamento jurídico: princípios, as leis, as jurisprudências, os costumes.

Palavras-chave: saúde; judicialização; omissão estatal; direitos

ABSTRACT

Introduction: This article highlights the Intervention of the Judiciary Power in the face of state omission in guaranteeing the right to health: the judicialization of health, is the theme of this article, resulting from critical dialectical explanatory research applied in Brazilian public health.
Objectives: To evaluate the importance and effectiveness of urgent protection in guaranteeing the right to health; To identify the causes that lead to state omission in guaranteeing the right to health; Critically analyzing the judicialization of health; Demystifying the role of the Judiciary in the face of the inertia of federated entities; To relate material theory with practice, in order to present this dichotomy and overcome it.
Methods: This is a bibliographic, inductive - deductive research, in order to demonstrate the requirements for granting provisional guardianship, its importance in the health policy scenario, in addition to critically analyzing the judicialization of health in the State of Goiás.
Results: Judicialization is still a problem that needs to be reviewed, among the three branches of government, since adverse attitudes towards drug concessions are being unconstitutional, since the Constitution itself provides the powers of each power in the letter of the law, and In this context, what we are experiencing over the years is exactly a reversal of roles, since the responsibility for executing the service and the medication lies with the executive, and the judiciary often fails to exercise its role to play the role of executive power.
Conclusion: The right to life, health and the dignity of the human person are closely linked, since in the absence of one, there is no possibility of exercising the others. In this context and to conclude this analysis, according to the sources of the law, it is necessary to define precisely what has more strength in the legal system: principles, laws, jurisprudence, customs.

Keywords: health; judicialization; state omission; rights

RESUMEN

Introducción: Este artículo destaca la Intervención del Poder Judicial ante la falta de garantía estatal del derecho a la salud: la judicialización de la salud, es el tema de este artículo, resultado de una investigación dialéctica crítica explicativa aplicada a la salud pública brasileña.
Objetivos: Evaluar la importancia y efectividad de la protección urgente en la garantía del derecho a la salud; Identificar las causas que llevan a la omisión estatal en la garantía del derecho a la salud; Analizar críticamente la judicialización de la salud; Desmitificar la función de el Poder Judicial ante la inercia de las entidades federativas; Relacionar la teoría material con la práctica, para presentar esta dicotomía y propor que seja ser superada.
Métodos: Se trata de una investigación bibliográfica, inductivo - deductiva, con el fin de demostrar los requisitos para el otorgamiento de la tutela provisional, su importancia en el escenario de la política de salud, además de analizar críticamente la judicialización de la salud en el Estado de Goiás.
Resultados: La judicialización sigue siendo un problema que debe ser revisado, entre los tres poderes de gobierno, ya que las actitudes adversas hacia las concesiones de drogas están siendo inconstitucionales, ya que la propia Constitución establece las competencias de cada poder en la letra de la ley, y en este En este contexto, lo que estamos viviendo a lo largo de los años es exactamente una inversión de roles, ya que la responsabilidad de ejecutar el servicio y la medicación recae en el ejecutivo, y el Poder Judicial muchas veces falla en ejercer su rol de poder ejecutivo.
Conclusión: El derecho a la vida, la salud y la dignidad de la persona humana están íntimamente ligados, ya que en ausencia de uno no hay posibilidad de ejercer los demás. En este contexto y para concluir este análisis, según las fuentes del derecho, es necesario definir con precisión qué tiene más fuerza en el ordenamiento jurídico: principios, leyes, jurisprudencia, costumbres.

Palabras Clave: salud; judicialización; omisión del estado; derechos

1. HEALTH AS A RIGHT

The 1988 Magna Carta was a significant milestone in guaranteeing the fundamental human rights of survival, it was through it that the administrative regime of Brazil was re-democratized, in addition to bringing the institutionalization of rights to Social Security, as provided for in art. 193 to 204 of the CF / 1988.
The approach taken in this article is exactly understood in art. 196 of the CF, which provides:

> Art. 196. Health is the right of all and the duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other diseases and universal and equal access to actions and services for their promotion, protection and recovery . (BRASIL, 1988)

As a result, there must be solidary competence of the entities to guarantee the right to health, that is, it is up to them to provide what is necessary for the health and well-being of the individual, as provided for by Constitutional Amendment no. 29, of September 13, 2000, which established the mandatory application of minimum resources annually by the Union, the States, the Federal District and the Municipalities, in public health actions and services. (BONTEMPO, 2005)
The right to health has dual functionality, of protection and of positive right, the first concerns the protection of the State together with the integrity of the individual, of the human being itself and the second with regard to the State of the realization of public policies seeking its effectiveness and remembering that both demand resources for their guarantee.
Based on this, due to the lack of action by the State to guarantee the right to health, it is observed that due to these achievements, we can have warning signs pointing to a social collapse, as has already been seen in history, caused by a great weakening of the guarantee of the Social Rights foreseen in the Federal Constitution of 1988. A strong State is built with citizen participation, one that in its formation, learned to respect and demand its rights established in material law, through judicial intervention when necessary. This training to demand violated rights from federated entities is cultural and needs to be strengthened by the community, since we will not be violating any legal principle, or invading an area outside the law; actually exercising the citizen function, we will be building a more just society,

> For Minister (Min.) Celso de Mello, the social right to health is characterized as an inalienable subjective right, becoming indispensable for human life: Between protecting the inviolability of the right to life and health, which qualifies as a subjective right guaranteed by the Constitution of the Republic (art. 5 and art. 196 of the Constitution), or to make a financial and secondary interest of the State prevail against this fundamental law impose on the judge only one possible option: one that favors the undeniable respect for human life and health. (Regulatory Appeal in Extraordinary Appeal n393175-0 / RS, Second Panel, Supreme Court, Rapporteur Minister Celso de Mello. Judged on 12/12/2006, published on 02/02/2007).

Thus, it is noted that at the moment currently experienced, it is not a matter of discussing the declarations of rights, or the legislation that supports human rights, but above all its concretization to all who need them, that is, the entire Brazilian population. In this sense, it is necessary to use legal mechanisms for intervention with the executive branch to fulfill their legal duty, through provisional protection, the following requirements being fulfilled: periculum in mora and fumus boni iuris, which will be addressed in this article.

1.1. The Unified Health System and its guiding principles

The Unified Health System (SUS) was born in the 1980s, acclaimed and claimed by society through movements that demanded health reform. Despite that, SUS emerges to integrate and organize health policy actions in the three spheres of government.
Regulated by law no. 8,080 / 90, this aims to provide a set of health actions and services, provided by federal, state and municipal public bodies and institutions, of the direct and indirect Administration and of the foundations maintained by the Public Power, constituting the Unified Health System - SUS. In its conception, it is important to point out that SUS is a system of assistance services, but that aims to articulate and coordinate promotional and preventive actions, such as healing and rehabilitation.
SUS would raise a new health judgment now expanded, economic, social, cultural and biotechnological aspects would be associated. This goes beyond the health - disease view to a biopsychosocial context view, seeking to guarantee universality, integrality and equity, these known as the basic principles of SUS.

> Universality connects to guaranteeing the right to health for all, without discrimination, of access to health services, seeking to consolidate democracy, where the entire population would have the right to access public health services. As for integrality, as pointed out by Vasconcelos and Pasche (2006, p. 535), “this principle guided the expansion and qualification of SUS actions and services that offer from a wide range of immunizations to physical and mental rehabilitation services, in addition to health promotion actions of national intersectoral character. ” Likewise, equity "as a complementary principle to equality means treating differences in search of equality" (ELIAS, 2002).

The SUS institutionalization process starts from the north offered by the guidelines, such as decentralization with a single

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command, regionalization and hierarchy of services and community participation.
Decentralization wanted to achieve municipalization of service management, breaking paradigms. When talking about decentralization, it is necessary to think about regionalization. As pointed out by Vasconcelos and Pasche (2006), the objective of regionalization is to help in a better and more rational distribution of resources between regions, following the distribution of the population across the national territory. Regarding the hierarchy, what is sought is to order the system by "levels of care and establish assistance flows between services in a way that regulates access to the most specialized, considering that basic health services are those that offer contact with the population and are the most frequently used ".
Another guideline that brought several advances in democracy was community participation in decisions, through the creation of councils, with representation from the community, guaranteed by law no. 8,142 / 90, valuing the context of a more participatory democracy. Born from that, the Pact for life, the Pact in defense of SUS and the SUS Management Pact. These Pacts emerged through Ordinance No. 399, of February 22, 2006, with the approval of the Operational Guidelines of the Pact for Life, which establishes the previously mentioned pacts, being possible with the existence of the Unified Health System.
Therefore, we identified that one of the greatest advances in building a less unequal and fairer country is the institution of the Unified Health System, which contributed to the strengthening of citizenship, since the right to health care is indispensable for the survival of human beings. human.

1.2. Ensuring access to health

Although the guarantee of the right to health is provided for in the Federal Constitution of 1988 and in the law that institutes the Unified Health System, the trivial thing is the accessibility to this right that has not been offered according to the emergency and urgent needs of the population. Unfortunately health has become a policy unrelated to the law, different from what is expressed in the laws that deal with the subject.

> Health is a fundamental social right, linked, together with others (social assistance, social security and minimum income), to the right to the guarantee of a dignified existence, within the scope of which its object is more strikingly manifested with the right to life and the principle of human dignity. Life assumes, within this perspective, the condition of a true right to have rights, constituting, in addition, a precondition for the very dignity of the human person (SARLET, 1998).

In order to guarantee rights, each entity must assume its proper role, as stated in Novelino (2014), in Constitutional Law, adds that this system of reciprocal controls is also known as "system of checks and balances", an expression taken from the doctrine American, the Legislative Branch is responsible for drafting the laws, respecting the parameters of the Constitution, the Executive Branch is responsible for administering and adopting the principles of popular sovereignty and representativeness, and the Judiciary is obliged to judge any conflicts that may arise in the country, based on the laws in force.

> The Judiciary is charged with the task of defending the supremacy of the Constitution, which has a prominent role in the general system of checks and balances conceived by modern constitutionalism as a form of barrier to contain power. (BARROSO, 2007)

Fits here yet to establish that the understanding of the system of checks and balances can also be known as the theory of the separation of powers, enshrined by the French Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, in his book "The Spirit of the Laws". With the influence of the French Revolution, Montesquieu encompasses and systematizes the division of powers (separation of the three powers).
Henceforth, we will talk about the difficulty of exercising this principle among the powers expressly brought by the Federal Constitution, since the powers are being exercised by them in a general and comprehensive way. The State must, therefore, reorganize the allocation of the public health budget, prioritizing the application in areas that offer and favor the fundamental right to life.

> Pedro Lenza highlights the words of José Afonso da Silva to highlight the characterization of the three (typical) functions performed by the Bodies: legislative function: "it consists in the edition of general, abstract, impersonal and innovative rules of the legal order, called laws"; executive function: "solves concrete and individualized problems, according to the laws; it is not limited to the simple enforcement of laws, as is sometimes said; it contains prerogatives, and it includes all legal acts and facts that are not general and impersonal in character; For this reason, it is appropriate to say that the executive function is distinguished in terms of government, with political, legislative and decision-making powers, and administrative function, with its three basic missions: intervention, promotion and public service "; jurisdictional function: "Aims to apply the law to specific cases in order to resolve conflicts of interest". (LENZA, 2013)

In effect, the State uses it in many different ways to evade the obligation to provide health care, as provided by the 1988 Federal Constitution and Law no. 8,080 establishing the Unified Health System; using arguments unfavorable to human beings, such as

the principle of reserving the possible, the lack of budgetary allocation for the purchase of the medicine, the responsibility of another federated entity to exempt itself from responsibility, among other justifications that often violate human rights.

> The notorious precariousness of the Brazilian public health system, as well as the insufficient free supply of medicines, many of which are too expensive even for the higher income classes, have made the civilian population successfully resort to health tutelage for the effectiveness of their medical treatment, through preliminary judicial provisions, a phenomenon that came to be called judicialization of health. (ORDACGY, 2007)

2. THE STATE OMISSION IN GUARANTEING THE RIGHT TO HEALTH

The State over time, as previously mentioned, has evaded its responsibilities as a public administration and guarantor of social and minimum survival rights. In many cases it uses arguments that are somewhat banal and violate human rights and mainly the fundamental right to life. In recent years, what has been most highlighted as a justification for its omission has been the principle of legal reserve.

Thus, the population's need for health according to the legal reserve must be conditioned to the possibility of the State, it is as if we are talking about the binomial need x possibility. According to Leivas (2006), the reserve of the possible can be considered as a limitation of fundamental rights, allowing the State to provide public services following the precepts of reasonableness and proportionality.

It means informing that the State must make a prediction between the damage caused and the results that it intends to achieve, observing the criterion of what is reasonable and relating the ends and the means. The reserve of the possible has three dimensions: the relation of the need to the possibility, the legal availability of the connection between distribution of revenues and tax and budgetary powers, proportionality and reasonableness of the provision.

It is clear that the public administration does not have sufficient resources to serve the entire population, however, by providing social rights as fundamental, the State assumes a responsibility to effectively fulfill them, since the principle of reserve of the possible cannot prevail over the protection of guarantee of the right to health, since this guarantee is provided for in the Brazilian constitutional norm, and it is up to the public power to provide alternatives to offer assistance to all, under penalty of not complying with the Constitution.

It should be emphasized that no part of the constitutional text limits the right to health to a lack of budgetary funds. In a different way this right is given the widest and absolute guard, priority.

In order for the human being to have a dignified and quality life for survival, he needs the existential minimum to survive, and in this context, the minimum constitutes the set of benefits essential to the fulfillment of the basic conditions, and the fundamental rights must be fulfilled. to be carried out by the legislator and the public administrator.

The existential minimum finds, in the principle of maximum effectiveness, the reduced nucleus of social rights, so it is necessary to foresee a priority goal in the public budget, to elaborate public policies capable of meeting the basic needs of the population, without the need to “beg” for right.

3. THE JUDICIALIZATION OF HEALTH

Judicialization over the years has become a way for the population to demand and show that their rights are not being guaranteed according to the legal provision. The roles are being reversed, the executive and the legislature have been omitting their obligation, so that in the face of omission, the intervention of the judiciary becomes inevitable.

The legal provision of responsibility of the federated entities provides for joint and several liability between the federated entities: Municipalities, States, Union and Federal District, and due to the absence of the executive branch, judicialization arises.

> Over the past few years, there has been an increasing judicialization of life, a label that identifies the fact that numerous issues of great moral, economic and social repercussion have come to have their final decision-making instance in the Judiciary and, often, in the Supreme Court Federal. (BARROSO, 2014)

In the absence of an effective guarantee by the state of people's access to health (medicines), the Judiciary assumes the requirement of compliance with the legal obligation, since the State is ineffective in the implementation of public policies, in the administration of resources and, above all, in granting of the necessary drugs for the specific treatment of each patient.

The big problem is the excessive increase in individual lawsuits, showing the demand for guaranteeing the right to the Judiciary, as a faster way to consolidate access to medicines. This is because there is a genuine discredit of the legislative and executive power and an expectation that the judiciary will solve its health-related demand.

This is not about finding fault with the lack of health care, it is about finding alternatives to intervene in the quality of life of the population and guaranteeing the right provided for in the 1988 Federal Constitution, with the public authorities implementing the guarantee and not exempt from liability, and one of the alternatives found by the judiciary is the granting of provisional protection in specific and necessary cases.

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3.1. Provisional guardianship: effective alternative or just emergency?

In the current Civil Procedure Code / 2015 (CPC / 2015), provisional protection is provided for in articles 294 to 311. This type of protection is considered summary and not definitive, the summary is based on a less in-depth analysis of the demand. The provisional protection requires the probability of damage and not a certainty judgment.

This is not a permanent remedy because at any time it can be modified or even revoked, and it can also be replaced at any time.

According to Ortega (2016), provisional protection can be of two kinds: urgency and evidence. The protection of evidence does not require the danger of delay ("periculum in mora") and the emergency protection requires the danger of delay ("periculum in mora"), which can be divided into precautionary and anticipated. Caution when guardianship is conservative and advance when guardianship is satisfactory.

In this tuning fork, according to CPC / 2015, there is no longer a need to define protection in a different way, since emergency protection with evidence protection has the same elements, fumus boni iuris and periculum in mora, in addition to the unmistakable proof and irreparable or difficult to repair damage, each of the tutelage, with its own objective.

In the specific case of the granting of medicines and health services, we will talk about early emergency relief. In this case, a request is made to the judge by the author (user of the health services), for an preliminary preliminary concession of the medication request, with the allegation and compliance with the requirements provided by law, danger of delay ("periculum in mora") and evidence of good law ("fumus boni iuris"), where the author shows that he has the right guaranteed by law and that the delay in granting the medication can cause harm to him.

Urgent protection in this sense, guaranteed the principle of isonomy, rebalancing of forces, because the burden of time falls on the person who does not have the right (State) and that usually in this type of protection falls on the defendant, if that is the case. understanding of the magistrate.

Thus, it is observed that emergency protection is currently considered an effective alternative, since there is still no**,** proposed by the executive**,**the guarantee of the right to health without the need for judicialization regarding the granting of medicines. Guardianship is timid but effective in fulfilling the social role and procedural speed of exceptional and urgent cases, making society more smooth in procedural relations.

Thus, this protection starts to crystallize justice, even if covered by the cloak of provisionality, so that the judicial approval of a certain demand can be advanced so that the legal effects of the rights are duly ensured and effectively guaranteed.

It should be noted that this institute appears as another procedural alternative to offer effectiveness to one of the most persecuted principles foreseen in the Federal Constitution of 1988, the reasonable duration of the process.

3.2. Critical analysis of the judicialization of health in the State of Goiás

The current economic, social and political situation of our State is unfortunate, the breakdowns violate the constitutional norm, including the principle of the division of the three powers, the principle of human dignity, the principle of reasonable duration of the process, the right to life and health and especially social minimums, among others.

The justifications of the supporters, defenders of the Public Administration are the defense of the principle of the supremacy of the public interest and the principle of reserve of the possible, however nothing can be superimposed on the fundamental rights foreseen in the Brazilian legislation: life.

Unfortunately, the executive and judiciary power pretends to be "blind", "deaf" and "dumb" for the right to health, in view of the rules that establish the division of powers and their competences, since the damage is from the people who really need.

In spite of the fact that the judiciary acts as an executive, it is worth mentioning that the fundamental right is well known and known, but the reality is ambivalent management: at times it acts as a police power against the executive power and at other times it takes responsibility for the execution of the service, which has happened in most Brazilian states with the creation of Recommendation No. 36, of July 12, 2011 of the CNJ, materialized by the Technical Cooperation Term No. 001/2012, signed between the Court of Justice of the State of Goiás (TJGO), the Federal Justice in Goiás (TRF), the State Health Secretariat of Goiás (SES - GO), the Health Secretariat of the Municipality of Goiânia and the State Executive Committee, which creates the Judicial Technical Support Center (NAT JUS) of the State of Goiás.

The Technical Support Nucleus was regulated by Ordinance No. 13/2012 - District Court of Goiânia-GO, which built and approved the Rules of Procedure of this executive body. The objective was to comply with Resolution No. 238/2016 - CNJ, being the representation of the multiple committee, with several people from the health area.

According to the Goiás State Court of Justice,

- This NAT is restricted to the examination of the documentation submitted with the consultation;
- A more detailed and definitive examination of the case described in the file requires the expertise and testimonies of those involved, which is outside the activities of this NAT;
- This NAT is not responsible for the legal interpretation of the situation described in the case file, or for a statement on the merits or rejection of the request;
- Technical opinions do not use decision-making power or binding norms on the issues of the judicialization consulted;

- Opinions are exclusively consultative in nature, to assist magistrates who manifest themselves in the tenet of the principle of free rational conviction, limiting themselves to indicating rules relevant to the proposed case. (Source: TJ GO)

It should be noted that the nucleus is composed of representatives of the Court of Justice, Public Prosecution Service, OAB / GO, Executive Power of the State of Goiás, Executive Power of the Municipality of Goiânia, CREMEGO, Private Health Plans, PROCON, Ipasgo, Court of Accounts of the State and Municipalities, Regional Council of Psychology 9th Region - Goiás, Regional Council of Speech Therapy 5th Region - Goiás, Regional Council of Physiotherapy and Occupational Therapy 11th Region, Public Defender of the Union - Goiás, Brazilian Society of Pharmacists and Community Pharmacies and Public Defender of the Goias state.
Although there are several compositions relevant to the Nucleus, it is not a matter of analyzing the past lives of patients through the judiciary, executive power and the public ministry. Let us analyze, where is the guarantee of the principle of human dignity when the judiciary appropriates the role of the executive where his role would be to determine the service to the executive power? Where is the respect for the division of powers? Where is the responsibility of the executive power to the social minimums for the survival of the human being? Where is the respect for public administration principles?
Justice is becoming an active agent in the face of the state's failure to grant the right to health, and the executive has been accommodating in the face of the proactivity of justice, relying on absurd justifications to simply say that there is no budget, that there is no forecast in law, that there is no obligation, that medical reports need to be questioned by the real need of the patient. It is a question of circumventing the professional ethical training of the medical category and the health of the population.
Analyzing a pathology by technical notes without knowing its specificities and particularities has transformed the lives of thousands of people into merchandise, it is not a matter of evaluating the need only by superficial analyzes, the differential of the medical area is to accompany the patient and evaluate his need accordingly. with the stage of the installed pathology.
It is unacceptable that the judiciary does not manifest itself in the face of state omission with regard to NAT JUS, it is not the competence of the judiciary to set up a nucleus with specific responsibilities / attributions that should be that of the executive. The question is: why has the Judiciary taken on roles that do not belong to it and have not demanded the performance of those competing on these issues?
It is important to note that the internal regulations of the Health Chamber of the Judiciary of the State of Goiás already have established powers, on the website of the Court of Justice of the State of Goiás, through the Center for the Judicialization of Health (NAT JUS), such as manifestation regarding the scientific and technological methods, procedures relating particularly to the analysis of the efficacy and safety of materials and medicines, through evidence-based medicine and based on medical guidelines. There is no manifestation contrary to the judiciary in this article, unlike the manifestation of the judiciary when working to combat the omission of the state is formidable and plays the role that is established in the law. The opposite manifestation is due to the passivity of the judiciary when assuming a role that legally speaking does not comply with the provisions of the Constitution.
A reorganization of the country's structure is necessary, in the sense that the legislature really oversees the enforcement of laws, the executive practices its function of executing social policies capable of meeting population demand and the judiciary assumes the role of determining compliance with the Federal Constitution of 1988 effectively, efficiently and effectively.
The Judiciary has tried to offer the social minimum to the population and control the public policies of the State. Which obviously shouldn't be, as he is not a specialist in formulating projects and was not elected to exercise this office. As long as social control does not intervene to change this context, we will have no defenders, since those who know the reality of the community are only those who are part of it.

CONCLUSION

There were several achievements in medicine and health, requiring several legal regulations for science to reach its goal without violating ethical principles and fundamental human rights, such as the right to life and human dignity.
Along with this are the guidelines on the recommendation for the person to seek the body responsible for dispensing medicines before seeking justice, that is, first resort to the administrative route so that after the non-attendance, they can file an action in the Common Justice, thus avoiding unnecessary judicialization.
It is worth noting in health actions, it is recommended the prior hearing of the manager of the Unified Health System (SUS), in order to identify the applicant's previous request from the Public Administration, so that he can present proposals for therapeutic alternatives.
Judicialization is still a problem that needs to be reviewed, among the three branches of government, since adverse attitudes towards drug concessions are being unconstitutional, since the Constitution itself provides the powers of each power in the letter of the law, and in this context what we are experiencing over the years is exactly a reversal of roles, since the responsibility for executing the service and the medication lies with the executive, and the judiciary often fails to exercise its role to play the role of the executive .
Therefore, it is clear that we are facing a collapse in public administration, where the inversion of roles forces the fulfillment of its responsibility, since the essential thing here is not to analyze the good of the community, but to contribute to guaranteeing the right to health. and the non-violation of the human person's right to dignity. Even though the guarantee of universality and

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integrality in health is not being possible in the face of budgetary and financial restrictions, it is up to the managers to find alternatives for effective guarantee of the universal, the egalitarian and the minimum to health in order to survive.
The right to health depends on political will, decisions to be taken by public health managers and municipal, state and federal managers; better definition of actions based on participatory democracy and improvement of the entity's budget planning to be able to propose social policies capable of meeting the emergency needs and demands of the population that indirectly pays to be served with quality.
We need to fight collectively for the right guaranteed in the Federal Constitution of 1988, in spite of establishing whether the competences attributed individually between the three powers comply with the legal precept of granting social minimums for the survival of the population, that is, the competences of the entities can achieve this precept?
The right to life, health and the dignity of the human person are closely linked, since in the absence of one, there is no possibility of exercising others. In this context and to conclude this analysis, according to the sources of the law, it is necessary to define precisely what has more strength in the legal system: principles, laws, jurisprudence, customs; or is there no longer a relationship between the legal system and the political system?
At this moment, one should not worry about the culprits, with the negligence or indifference of public management when dealing with fundamental rights of survival, what we must seek is to try to solve the existing contradictions in the scope of the fundamental right to health. In the more specific case of SUS, if there are no significant changes in relation to the liability of social minimums, the constitutional project of the 1988 Federal Constitution is bound to compromise its taxation, since the excesses of uncontrolled judicialization lead us to believe in the absence social policies that effectively and efficiently guarantee the social rights provided for in the Federal Constitution of 1988.

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