

Study on the Judicialization of Access to Health Services in The City of Araguaína - To

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Abstract— The judicialization of health has been taking place in doctrinal and jurisprudential discussions, where individuals who need remedies or treatments have recourse to the judiciary to achieve their right to health. Justice has become the only solution, not having their rights guaranteed. Over the years, lawsuits have been increasing, and this is also happening in the municipality of Araguaína-TO. The objective of this study is to analyze and identify the judicial demand for health services related to primary care, in the municipality of Araguaína in the years 2016 and 2017, where a survey of data from the Technical Support Nucleus (NAT) of Araguaína-TO. In 2016, a percentage of 13.79% of the 429 consultations were obtained; already in 2017, an increase was identified from the previous year, thus there are 493 queries received at the NAT, where only 10.14% of these were judicialized and 89.86% resolved administratively. The numbers demonstrate high core resolvability. The data demonstrate the characterization of the majority of the demands,

bringing medical consultations, and being in second place the medicines. We emphasize the effectiveness of NAT in resolving cases by avoiding higher costs to the public service.

I. INTRODUCTION

The discussion on the judicialization of access to health services has brought to the center of the debate the actions of the Judiciary about guaranteeing the right to health in Brazil. This whole process has gained theoretical and practical importance, involving growing debates among academics, law operators, public managers, and civil society.

An increasingly frequent phenomenon, the lawsuits about the judicialization of health have increased considerably after the promulgation of the 1988 Constitution and consequently the enforcement of the right to health. In this context, citizens resort to the judicial provision on an individual or collective basis, questioning the State to comply with the constitutional principle [1].

The search for better health services and actions leads people to seek private health plans and/or the judiciary, to guarantee the right assured in the Federal Constitution of 1988. Especially about the provision of medications, exams, consultations, surgeries, Out-of-Domicile Treatment (OHT), vacancies in the Intensive Care Unit (ICU), and non-drug inputs, such as disposable diapers, special food, etc. [2].

The increase in judicial demand has contributed to destabilizing and financially overloading the schedule of health regulatory agencies. However, the Unified Health System (SUS) operates with structural problems, insufficient assistance, and capacity to effectively realize the right to health, since often what has been requested is not included in the Ministry of Health's drug lists [3].

In general, studies on the judicialization of health emphasize more strongly the negative effects of this type of demand on the management of health policies and actions. One of the main justifications is that this type of intervention in the SUS would deepen the inequities in access to health, privileging a certain segment and individuals, with greater claiming power, to the detriment of others. To the extent that individual needs or needs of certain groups would be met to the detriment of the needs of other groups and individuals. This paper analyzes the phenomenon of health judicialization, having the city of Araguaína - TO as an analysis unit.

II. HISTORY OF HEALTH JUDICIALIZATION IN BRAZIL

The lawsuit claiming medicines and medical procedures against public authorities began in the early

1990s for people living with HIV/Aids. Such manifestations are based on the constitutional right to health, which comprises, in an integral, universal, and free manner, the duty of the State to provide health care. The result of the actions filed by non-governmental organizations (NGOs) was the favorable jurisprudence to the accountability of the three spheres of government in the fulfillment of this state provision [4].

The lawsuits for access to medicines began with requests from HIV-positive patients, the medicines for this pathology were inaccessible and patients used the courts to have access to them. With the creation of a specific policy to control HIV/AIDS, the lawsuits turned to access to other classes of medicines [5].

The progress of HIV/Aids public policies has stimulated the population in general and other organized social movements to claim the right to health, because, in the last decades, the number of lawsuits related to health procedures and supplies against public entities has increased. Consequently, it is observed that the judicial claim becomes widely used as a tool to guarantee rights [6].

One of the motivations for the judicialization of health care was the negligence in updating the medications on the SUS list, due to the bureaucratic process for the acquisition and distribution of new medications. Moreover, the delay in the distribution of existing medications on the list, because it does not occur homogeneously, leads many patients to resort to the judiciary requesting these medications because they are not available at the health center where they were seen [7].

Of the most common characteristics in the different regions of Brazil, the first is that most requests are individual, in this sense the prescriber defines the treatment as the only one, in the function of this description the judicial request is configured as necessary; second, it highlights the fact that the prescription contains both drugs incorporated and not incorporated by the Pharmaceutical Assistance (PA) of SUS and some without registration in the country or without therapeutic indication described in regulatory agencies and the third feature highlighted by the authors is the increase in spending due to the growth of demands in all states of the federation [3].

III. JUDICIALIZATION OF HEALTH CARE

The Right to Health that is expressed in the phenomenon of judicialization of health is how the State,

in the Executive, Legislative or Judicial Powers. It must promote the good of the people in the form of equality and without discrimination of any kind by promoting universal and equal access to advances in biological technology. The high intensity of judicial demand in the health area reflects the search for the effectiveness of one aspect of this right, access to the material means to achieve it. The phenomenon can be considered a legitimate resource for reducing the gap between the law in force and the law experienced [8].

The largest health-related judicial demand in Brazil is made up of requests - individual and collective - for medications, which are based on a medical prescription and the supposed urgency to solve a certain "health problem". Whether due to the refusal to provide the medication or to the time imposed on the individual, the Executive Branch agencies have failed in providing pharmaceutical assistance, especially in the dispensation of medications, which has been solved in these cases by resorting to the Judiciary Branch. As resources are finite, the supply of a certain drug, especially if it is not standardized, for an individual may represent the lack of other drugs for the rest of the community, thus contributing to the violation of the principle of isonomy, provided in Article 5, caput of the Federal Constitution, as well as to accentuate the inequities in the health system [9].

In SUS management, the growing Judicialization of Health disrupts management. Since decentralization - one of the principles of the SUS and one of the axes of the National Medicines Policy - is not recognized by the Judiciary, thus all federated entities are equally responsible in the process, whatever the medicine. Since decisions on medications are true allocations of resources, the limit of violations of the separation of powers is threatened [9].

The Federal Constitution of 1988 also brought the existential minimum, and with its fulfillment, to realize the right to health, we run into the insufficiency of financial resources of the State for its realization, that is, the reserve of the possible [10].

The current trend of judicialization of health reverses this logic when it disregards public policies and the SUS principles of universality, integrality, and equity [11]. As well, the SUS, which has the attribution of guaranteeing the right to health to all, has become a large consumer market for the new releases of the pharmaceutical industry, which do not always meet the collective health needs of citizens [12].

3.1 Financial Impacts of Legal Claims on the Public Budget

The increase in spending on the health system originated with the implementation of the SUS, accompanying the expansion of services offered, hospital structure, health surveillance, and public laboratories. The responsibility of providing universal and integral care to the population obliged the State to maintain the operation of basic prevention and cure services, in addition to providing recovery and health promotion services, considered more complex. Therefore, advanced exams and procedures, admissions in intensive care units (ICUs), and provision of high-cost drugs, among other services, were gradually incorporated into public health policies [13].

Despite the judiciary's premise of determining that the state performs its constitutional obligations, the fulfillment of judicial decisions that imply positive action by the state faces obstacles stemming from insufficient financial resources in the face of society's growing need for public policies, in their most varied forms. Thus, the effectiveness of social rights depends on the state's financial availability [14].

For the author [14] points out that the reception by the Judiciary of actions that aim to compel the government to bear the costs of health care that public policies do not cover. This has a direct result on the budgetary and financial programming of the State, which, consequently, affects the formulation of policies and the provision of goods and services in other areas demanded by society.

The use of the courts to provide medicines that are included in the official public lists is a legitimate way to guarantee the full exercise of the right to therapeutic assistance. The greatest difficulty for the full realization of this right, however, refers to the supply of medicines that are not part of these lists. There are specific aspects of this demand that require a differentiated way of acting by the manager to respond to judicial orders. This occurs because practically all the judicial demands presented are for the granting of preliminary injunctive relief, implying immediate delivery of the medication by the manager, without being heard beforehand [3].

IV. METHODOLOGY

The study is retrospective research of data from the Technical Support Center (NAT) of Araguaína - TO, an agency of the Municipal Health Secretariat (SEMUS). The NAT reports were requested using a letter to SEMUS, and the use of the data was authorized by the organization.

V. RESULT AND DISCUSSION

5.1 Municipal Technical Support Center

The city of Araguaína is located in the northern region of the state of the Tocantins, where it has the second largest population in the state of Tocantins, with 164,093 inhabitants, according to estimates from the Brazilian Institute of Geography and Statistics 2013 survey. It is part of the regional health region, called the Araguaia Medium North, with its strategic geographical position, allows the municipality to assume a role as a service provider, with a complex network of public health care references for several surrounding municipalities. Including for patients from other states, such as Maranhão, Pará, Mato Grosso and Piauí [16].

According to the author [16], among the cities located in the interior of the state of Tocantins, Araguaína is the city that has the largest number of establishments related to health care. With a total of 189, it is formulated as an important regional reference center in the provision of services related to medical and hospital care. In the field of public health care services, this municipality has basic health units, a Municipal Medical Specialties Outpatient Clinic, a 24-hour Emergency Care Unit (UPA 24h), a Mobile Emergency Care Unit (SAMU 192), a Municipal Hospital, a Workers' Health Reference Center (CEREST), Epidemiological Surveillance, Municipal Health Surveillance, Zoonosis Control Center, besides the services provided under state management, such as the Public Regional Hospital of Araguaína and the State Specialties Outpatient Clinic, among others, characteristics that, associated with easy access to the local Judiciary, favor the increasing judicialization [17].

The requests that arrive at the NAT follow the flowchart shown in the figure below:

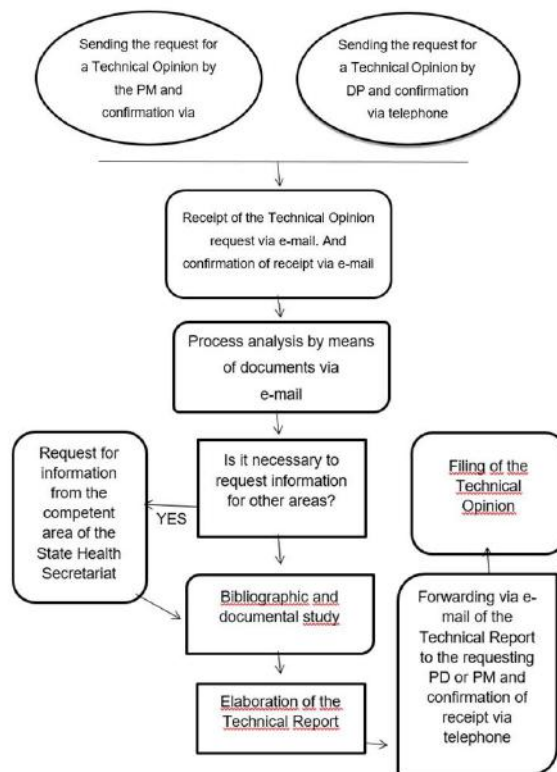


Fig.1: Flowchart of the handling of requests that arrive at the NAT

It is necessary to point out that the nuclei do not take the place of the judge in his decision. Because only the magistrate, in the case where the requested health services are not available on the SUS list, will be able to grant it or not, even though the opinion of the NAT, warns of the adequacy or unfoundedness of the fact in question. The opinion does not substitute the judge's action: it can only broaden his view of the situation.

5.2 Quantity of administrative demands consulted in NAT

The data provided by NAT obtained quantitatively the administrative demands consulted to the body, whose reference is argued from the period January to December 2017, as shown in table 01.

Table 01. Administrative demands were consulted to the Araguaína NAT in the period from January to December 2017.

PRE-PROCEDURAL RESOLUTIVITY					
Source	Administrative demands	Administrative resoluteness	Judicial claims	Injunctions granted	Injunctions denied
DP	310	282	28	18	10
MP	183	161	22	8	14
TOTAL	493 100,00%	443 89,86%	50 10,14%	26 52,00%	24 48,00%

Source: Municipal SUS Ombudsman/ NAT/ Araguaína-TO Municipal Health Secretariat.

The administrative demands consulted to NAT in the period from January to December 2017 according to table 1 report the actions by two judicial bodies, Public Defender's Office (PD) and Public Prosecutor's Office (MP). The PD obtained 310 administrative demands as a whole, 282 of which were resolved in the administrative area of the health secretariat. Of the demands that were judicialized, of the 310, only 28 were judged, 18 were granted and 10 were dismissed by the magistrates. About

the Public Prosecutor's Office, with a lower percentage than the PD, where 183 claims were brought, a good part was solved with the administration 161, however, 22 were in judicial terms, 8 were granted and 14 were dismissed. The PD causes this relevant number in its demands since the processes it provides are faster so that the claimant has greater preference due to the treatment it receives. The public agencies thus totaled 493 demands forwarded to the NAT in the period from January to December 2017.

5.3 Other judicial demands referred to the NAT

Table 02. Total demands according to related descriptions

	OVERVIEW		
	Judicial Processes	Granted Injunctions	Injunctions Denied
Demands without prior consultation to the NAT in the period	14	6	8
Cases judicialized in previous years referred to the NAT in the specified period.	22	3	19
Cases judicialized and forwarded to the NAT in previous years with granting of preliminary injunctions in the specified period	3	3	0
TOTAL	39	12	27

An overview of other demands sent to the NAT without administrative resolution is shown in the table above. These demands, without previous consultation in the NAT in the period, were 14 judicial processes, of which 6 were approved and 8 rejected. The lawsuits filed in previous years and forwarded to the NAT in the specified period were 22, of which 3 were granted and 19 rejected, a relevant number about those accepted by the magistrate. To the lawsuits filed and sent to the NAT in previous years with granting of injunctions during the specified period, 3 lawsuits were judged, and all of them were granted. Of the judicial demands sent to the NAT, there are a total of 39 judicial processes as a whole.

5.4 Overview of the judicialization against the Municipal Department of Health of Araguaína – TO

According to information provided by the Technical Support Center of the Municipality of Araguaína, with the demands for the years 2016 and 2017, comparisons show an increase in the year 2017 in administrative requests, with evolution of 14.92% compared to the previous year. Of these 493 demands, 443 were resolved in the administration of NAT, a number higher than in 2016, an evolution of 43.37%. The judicialized processes in the year 2016 were 120, already in the following year, it is observed the decrease of judicialized, where only 89 went through processes, a reasonably positive number with last year. Of the injunctions in these processes, 79 were granted and 41 dismissed in 2016, and in 2017 there were 38 granted and 51 dismissed, of the 89 judicialized processes, as shown in the figure below:

Table 03. Demands previously consulted by the Public Defender's Office and the Public Ministry, without prior consultation to the sector, and remaining demands.

Reference period	2016	2017	Evolution
Administrative Requirements (Public Defender's Office and Public Prosecutor's Office)	429	493	14,92%
NAT's administrative resoluteness	309	443	43,37%

Judicial cases	120	89	-25,83%
Injunctions granted	79	38	-51,90%
Injunctions denied	41	51	24,39%

Source: Municipal SUS Ombudsman/NAT/Municipal Health Secretary of Araguaína-TO

5.5 General analysis of the demands received at the NAT by classification

Table 04. An overall analysis of the demands received at NAT by classification in the period from January to December 2017/2016 respectively.

Reference period: JANUARY - DECEMBER 2017/2016										
	Requests administrative		Resolutivity administrative		Judicial requests		Court-Ordered Requests		Requests denied by the court	
Special food	18	27	17	24	1	3	0	0	1	3
Surgeries	42	50	42	48	0	2	0	0	0	2
Consultations	184	114	162	104	22	10	0	2	22	8
Correlates/supplies	35	34	22	16	13	18	13	18	0	0
Drug addiction	9	11	0	-13	9	24	3	18	6	6
Exams	98	71	78	67	20	4	3	1	17	3
Medications	110	130	87	95	23	35	17	29	6	6
Treatment	0	0	0	0	0	0	0	0	0	0
TFD	41	17	40	15	1	2	0	1	1	1
Internal transport	6	2	4	1	2	1	0	0	2	1
TOTAL	543	456	452	357	91	99	36	69	55	30
Percentage %	100%	100%	83,24%	78,29%	16,76	21,71	39,56	69,70	60,44	30,30

Source: Municipal SUS Ombudsman/NAT/Municipal Health Secretary of Araguaína-TO

With a broad and observant look, at the health services cited, consultations stand out as the leader in administrative requests in the year 2017 with a number referring to 184 administrative requests, of these, 162 were resolved in administrative analysis, compared to the previous year there was an increase, where they compete a total of 114 requests. In second place were the medicines, which in this context there was a reduction in requested requests. In the year 2016 130 were requested, already in the following year, with a reduction of 20 requests, where, 87 were solved by administrative terms of the health department of the municipality and 23 judicial arguments, then, in this same context 17 were granted and 6 dismissed.

It is important to point out that the number of requests presented indicates a margin of the situation of judicialization in favor of the Municipality, however, the volume of requests is much larger, because each demand request is presented for several items. Thus, it is in the interest of the NAT to present the total volume in a future report.

5.6 Comparative analysis of the demands consulted administratively in the years 2016 and 2017

The comparative analyses of the demands administratively consulted at NAT by the municipal SUS ombudsman in the period from January to December 2016 and 2017 are demonstrated by the flowchart below:

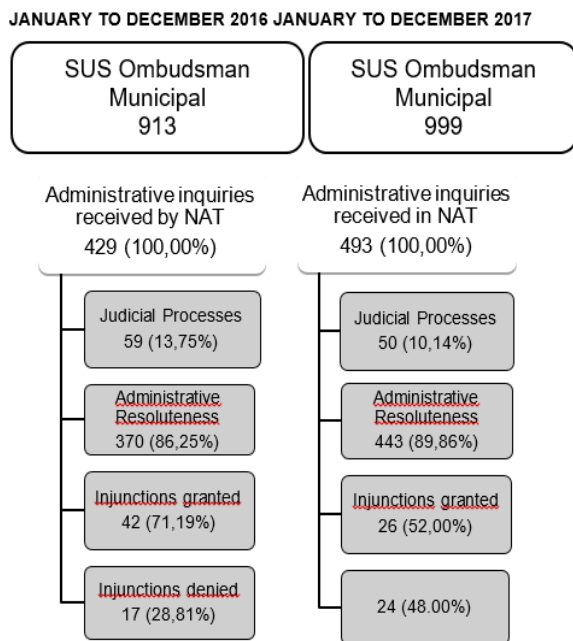


Fig.2. Flowchart of the comparative analyses of NAT demands between 2016 and 2017.

Source: Municipal SUS Ombudsman/NAT/Municipal Health Secretary of Araguaína-TO

In a comparison of the demands consulted administratively by the SUS ombudsman, there is an increase in demand in 2017, in the number of consultations to the SUS Ombudsman of the Municipality, which of 999, only 493 were received in the NAT, where 50 processes became judicialized and 443 resolved administratively. Data by which the effectiveness of the Ombudsman and the NAT is verified because a list that could be much longer was notorious in its administrative resoluteness gaining time in the health of the patient who needs it. Therefore, the number of people seeking their rights is still growing, comparing the two years analyzed in this study.

VI. CONCLUSION

As a constitutionally guaranteed, fundamental, and immediately applicable right, the right to health implies the obligation of the Public Power to provide medicines, treatments, and equipment, among others, and to carry out public policies to realize it. However, failures in the execution of existing public agencies, as well as the scarcity of resources, lead to a phenomenon of judicialization of the right to health, where the Judiciary appears as an important means to guarantee this right, adding to the budget difficulties already experienced by the Public Powers.

According to the data presented in this research, one can observe an increase in demands from one year to another. In 2016, there was a percentage of 13.79% of 429 consultations; in 2017, there was an increase from the previous year, with 493 consultations received by the NAT, where only 10.14% were judicialized and 89.86% resolved administratively.

The presentation of the data shows the characterization of most of the demands, being in the first place the medical consultations, and in second place the medications in the two years analyzed in this study.

According to the data presented, the effectiveness of the center in solving the cases previously consulted is highlighted, as well as its resolving capacity in partnership with public agencies to fully serve the citizen and reduce costs for the municipality.

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