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COVID-19 IN BRAZIL: HEALTH AS A SOCIAL GUARANTEE AND JUDICIAL INTERVENTION IN TIMES OF CRISIS

COVID-19 NO BRASIL: SAÚDE COMO GARANTIA SOCIAL E A INTERVENÇÃO JUDICIAL EM TEMPOS DE CRISE

DAVID MENDIETA

Doctor in Constitutional Law from the Complutense University of Madrid (Spain). Full-time professor at the University of Medellín (Colombia). Member of the legal research group at the Faculty of Law at the University of Medellín (Colombia). Lattes Curriculum: http://lattes.cnpq.br/2977074832780697. ORCID: 0000-0002-6944-6815. Email: dmendieta@udem.edu.co.

MEIRE FURBINO

Doctoral student and master at PUCMinas, Specialist in Public Law and Tax Law, Graduate in Administration and Law. Servant of the Court of Justice of the State of Minas Gerais. University professor. Lattes: http://lattes.cnpq.br/2767731526290041. ORCID: https://orcid.org/0000-0003-4463-9554. Email: meirefurbino@gmail.com.

RENATO LUIS DRESCH

Master in Public Law from the University of Franca. Specialist in Civil Procedure from the Municipal College of Franca – SP. Specialist in Health Law from the School of Public Health of the State of Minas Gerais. Professor at Faculdade Milton Campos, Belo Horizonte/MG. Lattes Curriculum: CV: http://lattes.cnpq.br/276773152629004. ORCID: https://orcid.org/0000-0002-0963-6457. Email: renatoluisdresch@gmail.com.

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LAVÍNIA ASSIS BOCCHINO

Master student at the Post-Graduate Program in Law at PUCMinas, with a scholarship from CAPES-PROEX. Graduate in Law (PUC Minas). Member of the Research Group "Law, Rationality and Artificial Intelligence – DR.IA.UnB". Lattes Curriculum: CV: http://lattes.cnpq.br/5508879787247579. ORCID: https://orcid.org/0000-0003-1295-3442. E-mail: lavinia9assis@gmail.com

ABSTRACT

Objective: To discuss the role of the Brazilian judiciary in protecting the fundamental rights of life and health, in the face of the exceptional dilemmas caused by the pandemic, highlighting the importance of the public health system and, also, the impact of the COVID-19 health crisis.

Methodology: The research methods were documental and bibliographic, with the purpose of understanding the relationship between the public health system and the judiciary, in face of the challenges raised for the protection of health, as a fundamental right, and its exasperation in face of the new coronavirus pandemic in Brazil. It was also sought to analyze the impact of the health crisis holistically and the preventive measures applicable.

Results: From the conceptual articulation it was possible to point out that a dialogue between the technical knowledge of the health system and the judiciary is essential, so that the magistrate's interpretation is better subsidized and resolves health demands with greater efficiency, including when dealing with pandemic-related issues.

Contributions: It deals with interpretation from a perspective that aims to guarantee and protect the fundamental and human rights of health and life, starting from the need for the insertion of a technical analysis to judicial interpretation. In this sense, it emphasizes the importance of monitoring and researching the public health system in the face of humanitarian crises such as Covid-19. The performance of the Supreme Courts and the necessary interpretation of the legislation is emphasized, in line with the constitutional normative, in order to strengthen legal security in the health system, is emphasized.

***Keywords**: Fundamental right to health; Covid-19; Legislation; Superior courts of justice; Interpretation.*

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RESUMO

***Objetivo**: Discutir o papel do judiciário brasileiro, quanto à proteção dos direitos fundamentais da vida e da saúde, frente aos dilemas excepcionais que a pandemia ocasionou, evidenciando a importância do sistema de saúde pública e, além, com o impacto da crise sanitária da Covid-19.*

***Metodologia**: Os métodos de pesquisa foram o documental e o bibliográfico, com o intuito de compreender a relação do sistema de saúde pública e do judiciário, diante dos desafios levantados para proteção da saúde, como direito fundamental, e sua exasperação face à pandemia do novo coronavírus no Brasil. Buscou-se, também, analisar o impacto da crise sanitária de forma holística e as medidas preventivas aplicáveis.*

***Resultados**: A partir da articulação conceitual foi possível apontar que é imprescindível um diálogo entre o conhecimento técnico do sistema de saúde e o judiciário, para que a interpretação do magistrado seja melhor subsidiada e resolva as demandas de saúde com maior eficiência, inclusive quando se tratar de questões ligadas a pandemia.*

***Contribuições**: Trata-se da interpretação sob uma perspectiva que visa garantir e proteger os direitos fundamentais e humanos da saúde e da vida, partindo da necessidade da inserção de uma análise técnica à interpretação judicial. Nesse sentido, salienta a importância do monitoramento e pesquisa do sistema de saúde pública em face de crises humanitárias como a da Covid-19. Ressalta-se a atuação das Cortes Superiores e a necessária interpretação da legislação, em consonância com a normativa constitucional, de forma a reforçar a segurança jurídica no sistema de saúde.*

***Palavras-chave**: Direito fundamental à saúde; Covid-19; Legislação; Cortes superiores; Interpretação.*

1 INTRODUCTION

In the international context, the Inter-American Court of Human Rights has established that there is no hierarchy between civil and political rights and Economic, Social, Cultural and Environmental Rights (ESCR), because they are indivisible and interdependent categories, as well as being enforceable before the competent authorities. In this sense, the American Declaration of the Rights and Duties of Man establishes that everyone has the right to health and that it "[...] be safeguarded by

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sanitary and social measures relating to [...] medical care corresponding to the level allowed by public resources and those of the collectivity" (article X) (INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, 1948, n. p.). For its part, the Charter of the Organization of American States (OAS) establishes that member states must devote their maximum efforts to the development of an efficient social security policy (INTER- AMERICAN COMMISSION ON HUMAN RIGHTS, 1993).

The Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights establishes that everyone has the right to health, understood as the enjoyment of the highest attainable standard of physical, mental and social welfare, and indicates that health is a public asset (article 10). The right to health is enshrined in a vast field of international norms, which demonstrates the imperative of its defense and preservation (INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, 1988)[1].

In the national context, the right to health, consecrated as a fundamental and social right in the Constitution of the Federative Republic of Brazil of 1988 (CFRB/88), has reach throughout the national territory and must be assured to all equally (CFRB/88, articles, 6, 196, and 198) (BRAZIL, 1988). It is a right of indispensable guarantee, since it is consistent with the crucial objective of the legal system: the protection of human life. The viability of this right came about through the creation of the Unified Health System (Sistema Único de Saúde [SUS]), made effective by Law 8.080/90, whose financing and access are assured by administrative laws and norms (BRAZIL, 1990a).

However, to meet health demands in the judicial sphere, communication between the justice and health systems was lacking. To this end, through Resolution

[1] By way of example, the following norms on the right to health can be cited: Article 25.1 of the Universal Declaration of Human Rights; Article 12 of the International Covenant on Economic, Social, and Cultural Rights; Article 5, section e) of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 12.Article 12.1 of the Convention on the Elimination of All Forms of Discrimination against Women; Article 24.1 of the Convention on the Rights of the Child; Article 28 of the Convention on the Protection of Migrant Workers and Members of Their Families, and Article 25 of the Convention on the Rights of Persons with Disabilities. Health as a right is also enshrined in several regional human rights instruments, such as Article 17 of the Social Charter of the Americas; Article 11 of the 1961 European Social Charter; Article 16 of the African Charter on Human and Peoples' Rights; the Inter-American Convention on the Protection of the Human Rights of Older Persons, and other international instruments and decisions.

No. 238/2016, the National Health Forum of the National Council of Justice (Conselho Nacional de Justiça [CNJ]) created the Technical Support Center of the Judiciary (Núcleo de Apoio Técnico do Judiciário **[**NATJUS]), in order to certify that magistrates have access to safe technical information for an aligned judgment, especially in the case of preliminary injunctions, in order to attend the scientific and economic reality of health (BRAZIL, 2016).

The global health crisis, such as the current Covid-19, further highlights the importance of strengthening the public health system, as well as institutional dialogue about procedures and decision-making, given that the whole world is more susceptible to epidemics caused by viruses, including those as yet unknown.

Since the commitment of 196 countries to detect and report public health crises, mediated by the World Health Organization (WHO), provided in the International Health Regulations (in force since 2007), there is a plan of measures to contain the spread of a pandemic, especially when there are no treatments, medicines or vaccines, such as the quarantine, isolation, social distancing and community containment or *lockdown* (AQUINO et al., 2020). The application of these measures has a direct impact on the mortality rate, the capacity of the health system, and the economy. To make them effective, it is necessary to adopt awareness-raising policies, economic plans, especially in countries with high rates of social inequality, fiscalization and monitoring of hospital data.

In Brazil, in addition to the health and economic crisis, there was a political conflict that threatened the effectiveness of Law No. 13.979/2020, which provides for measures to combat Covid-19, due to the lack of managerial alignment between the Union and the other federative entities, which resulted in the need for interference of the Federal Supreme Court (Supremo Tribunal Federal [STF]), defined in the Direct Action of Unconstitutionality (Ação Direta de Inconstitucionalidade [ADI]) No. 6.341 (BRAZIL, 2020b). In the economic plan, the emergency income assistance was approved, by Law nº 13.982/2020, for people in a situation of financial vulnerability (BRAZIL, 2020c). However, due to problems in the application of public policy, the necessary emergency effectiveness was not achieved.

Given this scenario, this article, through bibliographic, documental and

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statistical research, sought to deepen the themes exposed, with emphasis on the Brazilian health system and the difficulties arising from viral infections (COVID-19). Thus, in a first moment, the Brazilian health system is analyzed, proceeding with the issue of the pandemic - in general aspects and especially in Brazil - in order, at the end, to evidence and understand the interpretation of the judiciary in lawsuits that deal with health and in the face of the new demands brought by the pandemic, including in relation to the competence for decision making, in the different state levels of the federation.

In spite of the exceptions, the guarantee of the fundamental right to life and health must guide the procedures, whether they are in the area of medical assistance, implementation of public policies, or judicial interpretation of the legislative measures adopted.

2 ASPETCS OF THE RIGHT TO HEALTH IN THE BRAZILIAN SYSTEM

For centuries, the right to health care was treated in Brazil only as a assistance or insurance right, intended to assist the poor and those who had formal employment ties, not figuring among the categories of constitutional protection intended for the entire population. Hypossufficient people could only seek protection in philanthropic entities that provided health care.

Since the Brazilian Constitution of 1988, the right to health has been elevated to the category of fundamental social human right (CFRB/88, article 6), guaranteeing universal and equal access in conformity with social and economic public policies (CFRB/88, article 196), observing the guideline of integral care (CFRB/88, article 198, II), constituting an obligation of the Brazilian State at the state, district, and municipal levels, which are responsible for the institution of public policies to make this right effective (CFRB/88, article 23, II) (BRAZIL, 1988).

In this context, the Brazilian Constitution of 1988 created the so-called Unified Health System (Sistema Único de Saúde [SUS]), intended to serve all people, regardless of origin, nationality, and financial condition. The infra-

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constitutional legal framework to give effect to the constitutional guarantee of access to health care is Law No. 8,080/90, the so-called Organic Health Law (Lei Orgânica da Saúde [LOS]), which regulated access to health care (BRAZIL, 1990a). Complementary Law No. 141/2012 (BRAZIL, 2012a), which regulates the financing of the system, was also issued, while Law nº 8.142/90 (BRAZIL, 1990b), sets the criteria for social participation aimed at "assessing the health situation and proposing guidelines for the formulation of health policy" that are formalized through the Health Conference and Health Councils.

The regulation of access to health care is still governed by numerous administrative regulatory norms, among which can be highlighted Decree No. 7,508/2011, which regulates the LOS, Resolution No. 01/2012, of the Ministry of Health, which established the National List of Essential Medicines (Relação Nacional de Medicamentos Essenciais [RENAME]), which sets the guidelines as to the medicines that should be made available by the SUS (BRAZIL, 2011b, 2012b). Finally, the Consolidation Ordinance No. 02/2017, of the Ministry of Health, which consolidates the rules on national health policies of the SUS (BRAZIL, 2017).

Although the population and operators in the justice system did not fully understand the scope of the constitutional guarantee of access to health care, in a paradigmatic judgment handed down in 2000, the STF established clearer guidelines, recognizing that universal and equal access was a norm of full effectiveness and concrete effect, emphasizing that the programmatic norm of article 196 of CFRB/88, should not "[...] become an inconsequential constitutional promise," with the State having the obligation to fulfill it (BRAZIL, 2000, p. 2). From this precursory decision on the right to health, the Brazilian population awakened that it could demand positive actions from the Brazilian state to provide them with the necessary therapeutic actions for the 'promotion', 'protection' and 'recovery' of health, thus inaugurating the so-called judicialization of health.

The organization of the Brazilian health system is quite complex because, at the same time that it consists of a single system, its competencies are articulated and divided among the Union, the states, the Federal District, and the municipalities. However, since they all have financial and administrative autonomy, there are

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conflicts regarding the responsibility of each one for health actions and services.

However, the SUS is an integrated system of actions carried out autonomously or cooperatively by the various entities of the federation, with the Municipality, by force of article 30, item VII of CRFB/88 being the main executor, counting on the technical and financial cooperation of the Union and the States. The organization of the health system is not very well understood by the judiciary, which, in various instances, intervenes transversely in its regulation, ordering actions and procedures outside the established rules (SCHULZE; GEBRAN NETO, 2015).

It is important to understand that in the area of health, the issues are also factual and not exclusively legal, which implies the need for specific analysis of each case. One can notice that there has been a maturing of jurisprudence regarding health-related cases, so much so that it was emphasized in a judgment of the Superior Court of Justice (Superior Tribunal de Justiça [STJ]) that the "[...] medical prescription is not a judicial enforcement order," which means that its validity is relative and can be verified in order to assess the level of scientific evidence in which it is inserted (DIREITO à saúde, 2021, 1h40min17s).

The fact is that health actions require mutual understanding between the various responsible parties, with application of the "theory of communicative action" proposed by Habermas and Karl-Otto Apel, basing the use of language as a form of communication, aiming at the interaction between the subjects of the relationship, so that cooperative actions can be coordinated in favor of a solidary social result, through mutual understanding arising from the debate among participants, in order to trace actions and "[ ] to be able to act in a dialectical process in which the planes of reality are not considered absolute, but that hold the possibility of an effective communication that [sometimes] escapes the determinations of the system" (POLLI, 2013, p. 18).

Although all units of the federation have autonomy, the 'mutual understanding' among the participants, by means of a process in which there is a "[...] rationally motivated assent", which implies a consensus of wills in accordance with "[...] their plans of action and to pursue their respective goals only under the condition of an existing or to be negotiated agreement about the situation and the

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

expected consequences", as recalled by the German philosopher Habermas (1989, p. 165), are important elements to achieve universal access within a guideline of integral care.

In addition to the factual/legal issue that involves legal health claims, there is the need for the judge to have access to technical information regarding the most appropriate medical approach for the patient, to confirm (or not) the relevance of the clinical picture and the prescription described by the assistant physician. Such documents should instruct the cause, because any action or health service is subject to efficacy, accuracy, and safety, elements that sustain evidence-based medicine (Medicina Baseada em Evidência [MBE]). Therefore, in order for the lawsuits to be pronounced within a technical rationality, it is necessary that the judge has at his disposal exempt technical information to corroborate (or not) the assistant doctor's prescription, especially to pronounce preliminary decisions. This judicial rationality is also a technical criterion when it comes to pandemic-related claims, as will be addressed in this study.

2.1 TECHNICAL INNOVATIONS IN THE JUDICIAL SPHERE TO IMPLEMENTATION THE RIGHT TO HEALTH

The necessary technical improvement in legal health claims led the National Council of Justice (CNJ) to elaborate, through Resolution No. 107/2010, the National Forum of the Judiciary for Health, with the assignment to "[...] propose concrete and normative measures for the improvement of procedures, reinforcement the effectiveness of judicial proceedings and the prevention of new conflicts" through actions "[...] aimed at the optimization of procedural routines, the organization and structuring of specialized judicial units" (BRAZIL, 2010b). Then, it issued Recommendations 31/2010 and 36/2011, in which it suggested the creation of support measures for the technical improvement of judicial health claims that culminated in the elaboration of *Enunciados* guidiners the jurisdictional provision on the subject (BRAZIL, 2010a, 2011a).

In this same premise, in order to create a dialogue between the justice

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system and the health system, several courts have established technical support centers for prior consultation with judges about the best health technologies to support them in their preliminary decisions. Such technical notes were the responsibility of NatJus (Resolution No. 238/2016) (BRAZIL, 2016).

NatJus is an important instrument of inter-institutional dialogue to improve the technical knowledge of the judges and guide them in solving legal health claims, because the technical opinions and notes produced by health professionals make up the indispensable technical basis for decision making. In this sense, one can use the analysis of repeated cases for access to the same health technology, addressing the existence of public policies or similar drugs already incorporated into clinical protocols in a position to meet the patient's needs (BRAZIL, [201-]).

It is realize that the solutions to the problems can be found to the extent that the subjects can hold a qualified debate, establishing the minimum necessary, by means of communicative action, to, in the end, obtain positive results for all those involved, in a perspective that is, in fact, transformative.

Facing the exposure, it is important to recognize that there is no constitutional or legislative deficit, but rather an instrumental deficit related to the moment of implementation of public policies essential to realize the right to health, as outlined in the constitutional norm. The entire structure provided for in the SUS should be sufficient to provide health services, both in normal times and in periods of calamities and emergencies, such as the current one, motivated by the SARS-CoV-2 virus, which causes the Covid-19 disease, discussed in the next topic.

3 THE PANDEMIC (COVID-19) CAUSED BY A STATELESS VIRUS

On November 16, 2002, at a fair in Foshan, southern China, a man was hospitalized after ingesting the stew of chicken, cat and snake, fresh animals purchased at that fair (EXPLAINING..., 2019). China defined the disease as atypical pneumonia, but it began to spread and kill people. After the disease migrated to other countries, the World Health Organization (WHO) declared an international

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emergency and officially named the disease *Severe* Acute Respiratory Syndrome (SARS). At that time, China declared an outbreak only after 18 people had already died and hundreds were infected. for this reason, following the SARS epidemic, the WHO brought 196 countries together to commit to improving the halibility of "[...] detecting, assessing, warning, and reporting public health events," Article 5, item I, of the International Health Regulations (IHR) (ORGANIZACIÓN MUNDIAL DE LA SALUD, 2008).

Bill Gates, one of the interviewees in the Explaining (2019) series, states that a pandemic would be one of the greatest risks to human life, the economy would break down, many lives would be taken, and no country would be immune. However, with technology, the time to produce a vaccine, which typically takes four to five years, this risk could be reduced. In this perspective, the need for investment in public health, in all countries, not only in times of epidemics or pandemics, but also in normal times, is highlighted, because there is no way of knowing when the next crisis will occur, nor what the transmitter will be (EXPLAINING..., 2019).

On December 12, 2019, the first official case of the new coronavirus was announced, based on the hospitalization of a patient in Wuhan, China. However, studies identified his hospitalization on December 1, 2019 with Covid-19 symptoms. The symptoms were detailed in the first published scientific paper from data collected from a patient hospitalized on December 26, 2019. From the outbreak detected in Wuhan city, it was found that most of the patients sickened by the new coronavirus were at the Huanan market, a place where wild animals are traded live or slaughtered at the time of sale. However, other patients were not directly contaminated there, which allows to conclude that there are other sources of infection (GRUBER, 2020).

On March 11, 2020, the WHO decreed a Covid-19 pandemic due to the global health crisis spread by the new coronavirus (SARS-CoV-2). Worldwide, as of February 22, 2021, 111,102,016 confirmed cases, including 2,462,911 deaths, have been reported to the *World Health Organization* (WHO, 2021a).

Initially, in the absence of a vaccine and, even in the face of its existence, considering that there is still the problem of low capacity and speed of worldwide

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distribution, solutions are sought that do not overload health systems, avoid deaths and a serious economic crisis. Given this scenario, what should be done to prevent the spread of the disease is to separate "[...] people to interrupt the transmission", to this end should use the measures of "[...] isolation, quarantine, social distancing and community containment" (WILDER-SMITH; FREEDMAN, 2020, p. 1).

In the case of Covid-19, due to the high level of transmissibility, the isolation of only infected people is not a 100% effective measure, as well as the quarantine of people possibly exposed to the disease, since, for this measure to work, the identification of those infected should be fast, which does not occur in the case of the new coronavirus, which even manifests itself asymptomatically in some people (WILDER-SMITH; FREEDMAN, 2020). While social distancing has been presented as an efficient way to reduce contamination, with the goal of reducing social interactions, restrictions are imposed both for those infected and also for those who are not infected, but who are more vulnerable to the disease. When these restrictions are still insufficient, it is necessary to extend the social distancing in a more severe way, that is, it is necessary to contain the entire community, called "community-wide containment" or *lockdown, which is* an "[...] intervention applied to an entire community, city, or region, designed to reduce personal interactions, except for the minimal interaction to ensure vital supplies" (WILDER-SMITH; FREEDMAN, 2020, p. 2).

It is highlighted that the restriction of activities and even freedom have been adopted in several countries since the beginning of the pandemic. In the USA, for example, the Supreme Court understood that it is possible to restrict rights for the common good, because not even freedom is an unrestricted license for people to act according to their deliberations, especially in the face of a pandemic. In France, it was also recognized by the Council of State, the possibility of the authorities to limit the fundamental rights and freedoms in order to safeguard public health, observed the adequacy and proportionality of the measures to be adopted (SAMPAIO; ASSIS, 2020). All this demonstrates the concern to control the spread of the virus and the increase of those infected.

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3.1 FIGHTING THE INVISIBLE ENEMY: SOCIAL DISTANCING, MONITORING, ECONOMIC AID, AND LEGISLATIVE MEASURES

Due to the Covid-19 pandemic, on March 20, 2020, the Federal Senate recognized a state of public calamity in Brazil, through a legislative decree. To contain contamination by the new coronavirus, the WHO recommended social distancing, to minimize contagion and, consequently, contain the growth of the overall mortality rate of 3.4%, whose variation is directly influenced by the age group and the health status of the individual, for example, in the elderly over 80 years old (mortality is 15%) and people with comorbidities, that is, people who are part of a risk group, the mortality rate is higher (CARBINATTO, 2020).

The precarious conditions in which many Brazilians live, who share small houses – in which crowding is inevitable - and without the minimum infrastructure, contribute to the increased mortality rate (AQUINO et al., 2020). According to the study 'Social distancing measures in the control of the Covid-19 pandemic: potential impacts and challenges in Brazil', populous and large countries like Brazil, with high social inequality, deficit in health resources and their poor distribution, should adopt "[...] more stringent measures of social distancing" to avoid the collapse of the health system and many deaths, "[...] measures of this nature allow time to be gained for the organization of health care resources and epidemiological surveillance, in order to control Covid-19" (AQUINO et al. , 2020, p. 2428). However, these measures of deactivation of non-essential services, to avoid crowding and, consequently, the overloading the health system, generated great impact on the economy, increasing the number of unemployed and damaging the income of many who work in informality.

In view of this, an emergency income for people in a situation of economic vulnerability was approved through Law No. 13.982/2020 (BRAZIL, 2020c). This financial benefit, called Emergency Aid (*Auxílio Emergencial*), was intended for informal workers, individual microentrepreneurs (Microempreendedor Individual [MEI]), the self-employed and the unemployed, through an app and *website* (BRAZIL,

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

2020c). However, in the applicability of this aid there were significant flaws when disregarding the various difficulties of the population, such as, for example, the lack of *internet* access, which affects 46 million Brazilians (TORKANIA, 2020), which becomes an obstacle to effective access of the *website* or the app.

In addition to the health and economic crisis, the conflict in the Brazilian political scenario and the omission of the Federal Government, weakened the effectiveness of Law No. 13.979/2020, which provides for measures to combat Covid-19 (AQUINO et al., 2020). It was then up to the states and municipalities to guarantee the measures of social distancing, to preserve the autonomy of local decisions, prescribed in article 23, item II, of the Federal Constitution. The Judiciary, in turn, was intensely demanded to define the correct interpretations of the legislation, as exemplified by the decision rendered by the STF in ADI 6.341, in which the autonomy of the states and municipalities regarding decisions on public health was fixed (BRAZIL, 2020l).

The pandemic does not occur in the same way in municipalities and states, which is why national restrictions may not be as effective as local measures. In addition, surveillance should include monitoring of accurate hospital data in order to better guide decisions that can activate or deactivate the social distancing measure, which is more effective than an intervention of continuous duration (AQUINO et al., 2020). Exactly for this reason, for the relaxation of social distancing measures, it is necessary to monitor the pandemic by analyzing the "[...] capacity of health services - measured by supply and service structure indicators" (AQUINO et al., 2020, p. 2431).

The analysis and monitoring of the spread of the disease at the three levels of the SUS requires: (I) "[...] the development of indicators to evaluate the evolution of the epidemic and the systematic disclosure of notification data, disaggregated by municipality and sanitary districts"; (II) "[...] the expansion of testing capacity to identify infected individuals with asymptomatic, presymptomatic and symptomatic forms, hospitalizations and deaths as a result of Covid-19"; (III) "[....] the precise definition of suspected and confirmed cases, based on clinical and laboratory criteria; the permanent evaluation of the implementation, effectiveness and impact of control strategies" (AQUINO et al., 2020, p. 2444). From these data it is possible to make

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decisions aimed at controlling and combating the disease.

3.2 A POSSIBLE EFFECTIVE WEAPON: MASS VACCINATION

Even with the beginning of vaccine production, concerns have not ceased; it is still necessary to monitor the pandemic and maintain social distancing measures, considering that, at the present time, there are no vaccines for everyone. Vaccine distribution depends on the country's health system infrastructure, population numbers, and ability to afford the costs, which, according to the Economist Intelligence Unit (EIU), may not occur because "[...] some countries may not be fully vaccinated until 2023 - or ever" (VACINAS... , 2021, n. p.).

It is essential that vaccination be worldwide, because variant strains have been found to mutate in some regions, becoming resistant to the vaccine and migrating to other countries, which could jeopardize all the progress already made. However, there are countries that cannot afford the vaccine and do not make vaccination a priority. For this reason, in order to ensure access to vaccines and an equal distribution, the Covax initiative[2] will provide vaccines free of charge through a special fund to countries that cannot afford them (VACINAS... , 2021).

Even China and India, the largest producers of vaccines, will not be able to fully vaccinate their population by the end of 2022, as they are populous countries with not enough health workers. China is benefiting from the situation, on a global level, as it will have an influence gained over the long term and it will be "[...] very difficult for governments that receive these vaccines to say no to China for anything in the future" (VACINAS... , 2021, n. p).

By March 1, 2021, according to *Our World in Data* (2021), created by Oxford University, Israel is the country with the highest vaccination rate in the world (94.88%), while the United States is the country that has distributed the most vaccine doses: 76,899,987 doses applied (23.33%).

[2] Covax is co-lead by Gavi, *Coalition for Epidemic Preparedness Innovations (*CEPI) and the WHO. It is an international initiative, with the scope of ensuring equitable access to vaccines for all countries of the world (*WORLD HEALTH ORGANIZATION*, 2021b).

Vaccination in Brazil began on January 18, 2021, reaching until the date of the survey 8,465,403 inhabitants, with a still low application rate of 3.98 for every 100 people. At this rate, the forecast for the country is that by mid-2022 the population will be immune (WORLD HEALTH ORGANIZATION, 2021b). According to the Economist Intellligence Unit (EIU), the "[...] other Latin American countries, such as Argentina and Chile, will also have mass vaccination only in 2022, according to estimates. And Bolivia, Paraguay, Venezuela, Guyana and Suriname, starting in 2023" (VACINAS... , 2021, n. p.).

In a context of worldwide shortage of vaccines against Covid-19, in addition to political and economic conflicts, it is true that Brazil has developed a National Plan for the Operationalization of the Vaccine against Covid-19, in which it points out the main objective of vaccination that should focus on reducing the "[...] morbidity and mortality caused by covid- 19, as well as maintaining the functioning of the health services workforce and maintaining the functioning of essential services" (BRAZIL, 2020d, p. 19). Beyond this, however, it is necessary to establish an interpretation according to the laws that have been developed so that they can effectively contribute to the fight against the pandemic and its consequences.

4 THE LEGISLATION AND INTERPRETATION OF THE SUPERIOR COURTS IN RELATION TO JUDICIAL HEALTH CLAIMS IN TIMES OF COVID-19

The true scope of access to public health care has not yet been well understood by Brazilian courts, and it is not uncommon to find decisions that subvert the structure of the health system, based on judicial activism nurtured by solipsism and devoid of the technical rigor that the matter requires.

It is true that judicial activism finds barriers in the legislation. However, the absence of legislation, or its interpretation according to the democratic constitutional dictates, should be combined with the necessary rationality to obtain the effectiveness of fundamental rights, which, in itself, justifies a dose of activism on the part of the Judiciary, whether in that interpretation, or in the delimitation of decision-

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

making spaces and the definition of the legitimates for decision-making.

In the so-called "[...] due process of judicial interpretation", described by José Adércio Leite Sampaio (2009, p. viii) in the presentation of Cass Sustein's book, judges should make use of "[...] at least formally, [of] a deontology of constitutional application, moving by precedent decisions, by the requirements of systemic coherence, by neutral and universalizable principles of constitutional law", in order to adopt "[...] a rational decision-making process [...] adequately justified according to the standards recognized by the concrete legal community". This procedure, according to the constitutionalist, concretizes the precepts of the constitution through jurisprudential construction.

It is not new that Brazilian courts have been concerned with the need to provide greater rationality in judicial decisions. In an attempt to provide greater rationality in judicial decisions, the STJ judged, on May 4, 2018, Repetitive Special Appeal No. 1.657.156 - RJ (THEMA 106) in which it fixed with binding effect the following thesis:

> The concession of drugs not incorporated in normative acts of SUS requires the cumulative presence of the following requirements: i) Proof, by means of a substantiated and detailed medical report issued by a physician who assists the patient, of the indispensability or necessity of the drug, as well as the inefficacy, for the treatment of the disease, of the drugs provided by SUS; ii) financial inability to afford the cost of the prescribed drug; iii) existence of the drug's registration at ANVISA, observing the uses authorized by the agency (BRAZIL, 2018).

Therefore, in the repeated theme of judicialization of health and guided by the principle of deference to regulatory agencies, it was established that access to drugs not incorporated into public policies depended on a substantiated medical report, indicating the "[...] indispensability of the drug" in addition to the ineffectiveness of those provided by SUS for the disease the patient is suffering, in addition to requiring proof of the patient's financial inability to bear the cost, and also the existence of registration or authorization from the National Health Surveillance Agency (Agência Nacional de Vigilância Sanitária [ANVISA]) for its use in the country.

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

From this judgment of the STJ it can extract that there was the recognition that the universal and equal access to health, within the guideline of integrality, as a social right only covered what was provided in public policies. Besides that, access to health came to be considered as being of a welfare nature.

In the same vein, criteria of rationalization and legal certainty in judicial health claims, on May 22, 2019, the Plenary of the STF concluded the trial of Repetitive Extraordinary Appeal No. 657.718 (THEMA 500), in which it decided about access to medicines without registration at Anvisa, when the following thesis was fixed:

> 1) The State cannot be obliged to supply experimental drugs. 2) The absence of registration at Anvisa prevents, as a general rule, the supply of medication by judicial decision. 3) It is possible, exceptionally, the judicial granting of medication without sanitary registration, in case of unreasonable delay of Anvisa in appreciating the request (deadline higher than the one provided in Law 13.411/2016), when three requirements are met: (i) the existence of a request for registration of the drug in Brazil (except in the case of orphan drugs for rare and ultra-rare diseases); (ii) the existence of registration of the drug in renowned regulatory agencies abroad; and (iii) the inexistence of a therapeutic substitute with registration in Brazil. 4) Actions demanding the supply of drugs without registration at Anvisa must necessarily be brought against the Union (BRAZIL, 2019a, p. 3).

The STF has established, therefore, that there is no way to impose on the State the obligation to fund drugs in the experimental phase and that registration at Anvisa is a priority requirement, only overcome in exceptional situations when cumulatively there is a registration request that has not been examined within the legal period, provided there is registration at a 'renowned' agency abroad, in addition to the inexistence of a therapeutic substitute registered in Brazil, considered cumulative requirements. Anvisa registration will be waived for orphan drugs intended for the treatment of rare and ultra-rare diseases (BRAZIL, 2019).

As the Federal Union is responsible for the approval and incorporation of new drugs, as a rationalization measure, the STF has also determined, in a binding manner, that any lawsuits for access to unregistered drugs must be filed against the Federal Union.

Finally, in the Extraordinary Appeal with general repercussion No. RE 566471/RN (THEMA 6), which deals with the "State's duty to provide high-cost

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

medication to patients with serious illnesses who cannot afford to buy it", the justices indicated the thesis to be established, with emphasis on the thesis authored by Justice Marco Aurélio:

> Recognition of the individual right to be supplied with high-cost medication by the State, not included in the National Medicines Policy or in the Dispensation Medication Program in Exceptional Circumstances, included in the approved list, depends on demonstration of the indispensability - adequacy and necessity -, the impossibility of substitution, the financial incapacity of the patient and the lack of willingness of the family members to pay for it, respecting the provisions on food in articles 1649 a 1710 of the Civil Code and the right of return is assured (BRAZIL, 2020k).

The decision follows the same orientation of the STJ that health is a fundamental social right, with universal and equal access, restricted to public policies. For medications not included in public policies, the patient must cumulatively prove the exceptionality of his or her condition and the indispensability of the medication, with impossibility of substitution, in addition to his or her own financial inability and that of the family in solidarity to pay for them.

Finally, when concluding, on May 23, 2019, the judgment of Extraordinary Appeal in a repetitive character No. 855.178-SE (THEMA 793), in which the limits of the responsibility of the federal entities was discussed, the STF stayed the following thesis:

> The entities of the federation, as a result of the common competence, are jointly and severally responsible in the provision demands in the area of health, and in view of the constitutional criteria of decentralization and hierarchization, it is up to the judicial authority to direct the compliance according to the rules of division of competences and determine the reimbursement to those who bore the financial burden (BRAZIL, 2019b).

In this judgment, the STF recognizes a constitutional solidarity, but admits its fractionation according to public policies, so as not to leave patients helpless, admitting regressive responsibility according to the agreement. In fact, article 19-U of Law 8.080/90, clearly establishes that the state responsibility has limits in what has been agreed upon, meaning that the solidarity is only systemic.

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

As already affirmed, these precedents show that, since before the pandemic, the Judiciary has been concerned with the need to provide legal security to the citizens, establishing criteria of rationality in legal decisions.

4.1 LEGISLATIVE AND OF INTERPRETATIVE GUIDANCE MEASURES IN TIMES OF PANDEMIC

Given the global pandemic caused by the transmission of the virus (SARS-CoV-2) and the need to adopt measures to deal with the resulting emergency, Law No. 13,979, of February 7, 2020, was enacted in Brazil, providing measures such as isolation, temporary dispensation of bidding for the purchase of goods, services and health supplies, restriction to locomotion, use of masks, medical examinations, laboratory tests, collection of clinical samples, vaccination, epidemiological research, specific medical treatment, request for goods and services, among other actions and services (article 3) (BRAZIL, 2020b). This law should be in force during the term of the Legislative Decree No. 6 of 2020, which recognized the state of public calamity in the country for fiscal responsibility purposes[3], that is., until December 31, 2020 (BRAZIL, 2020e).

However, in order to protect the fundamental rights to life and health, the STF interpreted the decision accordingly and granted a preliminary injunction to extend, without a defined deadline, the adoption, at the federal, state and municipal levels, of health measures to fight the pandemic caused by the virus. It was emphasized the fact that the pandemic has not cooled down in the period initially foreseen. On the contrary, it is "[...] on the rise, appearing to be progressing, including due to the emergence of new strains of the virus, possibly more contagious," which requires prudence, prevention and precaution, aspects that justify the adoption of exceptional measures provided in Law No. 13979/2020, at least until the postponement of the validity is approved by the Legislature (BRAZIL, 2021a, p. 18).

[3] In relation to fiscal management responsibility, Complementary Law No. 173, of May 27, 2020, which established the Federative Program for Confronting SARS-CoV-2 (COVID-19), was also voted on. Available at https://www.in.gov.br/en/web/dou/-/lei-complementar-n-173-de-27-de-maio-de-2020-258915168. Accessed on 31 Jan. 2020.

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

In another direction, the CNJ, through Recommendation No. 62 of March 17, 2020, also intervened regarding the adoption of preventive measures against the spread the coronavirus infection (COVID-19) within the criminal justice systems, mainly because it deals with people deprived of liberty or with socio-educational measures, in "[...] confinement spaces", conducive to the high spread of the disease, in the face of factors such as crowding of people, the insalubrity of the environments, the difficulty of isolating symptomatic individuals, in addition to insufficient health teams to provide the necessary care, "[...] inherent characteristics of the 'unconstitutional state of affairs' of the Brazilian prison system recognized by the Federal Supreme Court in the Argumition of Noncompliance with Fundamental Precept (Arguição de Descumprimento de Preceito Fundamental [ADPF]) No. 347" (BRAZIL, 2020a, n. p.).

The agency recommended, among other measures, the "[...] preferential application of socioeducational measures in open environment", "[...] reassessment of socioeducational measures of internment and semi-freedom", "[...] reassessment of decisions that determined the application of internment-sanction", as well as the reassessment of prisons, etc. (BRASL, 2020a, n. p.). It also recommended the prioritization of "[...] destination of monetary penalties decreed during the period of state of public health emergency for the acquisition of cleaning, protection and health equipment necessary for the implementation of the planned actions" (BRAZIL, 2020a, n. p.). These and other administrative measures of the control body of the Judiciary demonstrate the attempts to create rationality in the judicial interpretation of the right to health, in order to obtain effective results that respect and prioritize the fundamental rights - life and health - especially in this period of abnormality.

4.2 THE PERFORMANCE OF BRAZIL'S HIGHER COURTS (STF AND STJ) WITH REGARD TO EXCEPTIONAL MEASURES

In this new scenario, which has an invisible and dangerous enemy as an actor, rules have been imposed to adapt to the exceptionality caused by the enemy, which have often violated fundamental rights and relativized the immanent rights of

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

individuals, so that the Supreme Court of Brazil (STF) is required to respond in a way that is consistent with the prevalence of those rights, so as not to create a state of exception in which a state of public calamity has already been decreed.

As already mentioned, the public health system in Brazil is thoroughly regulated by laws and normative acts that, inspired by the higher law, provide the guidelines for an effective service, in order to promote the effective provision of the right *in concreto* (SARLET, 2014).

Laws, however, are not enough if there are gaps or interpretive biases that prevent or hinder their application. In these situations - which are many in Brazil - the courts are called upon to decide how to apply certain laws, how and by whom. This happens both in the initial instance and in the Higher Courts. In times of pandemic, the situation has worsened, requiring specific positions of the aforementioned Courts in order for the government to take a decision.

The political and institutional rise of the Judiciary nowadays is evidenced mainly by judicialization and activism, as a form of democratic response to constitutional demands (BARROSO, 2018). In this sense, Roberto Luís Barroso (2018) points out that, not only in Brazil, but throughout the democratic world, the Supreme Courts and Constitutional Courts have played diverse roles, sometimes counter-majoritarian, by invalidating acts of other Powers, on other occasions, representative, by meeting the demands of society that have not been satisfied by the political instances, and also, illuminist, by promoting social advances important for the evolution and the civilizing process.

Despite the criticism to this role exercised by the Judiciary, it is certain that the constitutional jurisdiction has shown itself as "[...] a space of discursive or argumentative legitimation of political decisions, which coexists with majoritarian legitimation," especially in young democracies, in which "[...] the institutional maturing still needs to face a tradition of hegemony of the Executive and a persistent weakness of the representative system" (BARROSO, 2018, p. 143).

Specifically in the area of health, the STF and CNJ have adopted measures to improve judicial provision, consisting of public hearings, creation of the National Forum of the Judiciary for Health, national meetings to discuss specific issues, in

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

short, actions that aim to optimize the care of the individual according to the rules established in the legislation (DRESCH; BICALHO, 2019).

If the lawsuits related to health already filled the courts before the pandemic, the fact intensified in the period, with the spotlight directed to the Supreme Courts, especially the decisions of the STF, regarding the discussion of the constitutionality of public policies to combat the pandemic, such as the interpretation that allowed negotiations of salary reduction and suspension of labor contracts without the participation of unions; of the determination that the government should create a containment plan for Covid-19 applicable among indigenous people; the determination that the data on the disease should be published daily and in full by the Ministry of Health; and the prohibition of the government from publishing an advertising piece with the intention of encouraging the population to disregard the social isolation measures.

The STJ has adopted a series of measures to avoid contagion by the virus, not only internally, but also for its citizens. The biggest example was the authorization for people who were arrested and had their provisional release conditioned to the collection of bail to be exempted from this payment. The decision was handed down in a collective habeas corpus action, filed by the Public Defender's Office, based on CNJ Recommendation 62/20. The Rapporteur of the constitutional action, Minister Sebastião Reis Jr. concluded that there is evidence that the prison environment is conducive to the spread of the virus, making the health of the incarcerated vulnerable. The minister also recalled the "[...] unconstitutional state of affairs" of the Brazilian prison system and the current exceptionality caused by the pandemic, which in addition, causes great impact on the economic scenario, with decrease or with drawal of income of the citizen, sufficient reasons to justify the release (in cases provided by law), without the payment of bail, as a way to effectuate the judicial provision (BRAZIL, 2020f, n. p.).

At the level of Public Administration, the STJ determined, on January 19, 2021, that state and municipal managers of Amazonas state informed about the receipt and use of federal funds intended to combat the pandemic, in addition to

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

providing detailed explanations about the issue of oxygen shortage in health units (BRAZIL, 2021c).

It should be remembered that the state of defense is not to be confused with the state of calamity decreed in Brazil. Although there is a certain degree of discretionary power that grants the "[...] Chief Executive a certain margin of freedom in his decisions, under the justification of preserving public health and protecting the existing order," the constitutional rules must be observed and, especially, one cannot flex fundamental rights "[...] outside the constitutionally permitted hypotheses," in which proportionality rules should be applied (SAMPAIO; ALMEIDA; SOUTO, 2020, p. 181). And one cannot forget that discretion is subject to legality, proportionality and reasonableness.

The STF, attentive to the need to provide information to interested parties and the population in general, has created the "Covid-19 Actions Panel", in which all the information about lawsuits filed and tried by the Court can be found. The balance, between March and January 20, 2021, was 6,946 actions filed, including Habeas Corpus - with the highest incidence (5,308) -, Direct Actions of Unconstitutionality (103 ADIs) and Arguments of Noncompliance with a Fundamental Precept (51 ADPFs), in addition to processes for the control of constitutionality of norms and acts of the Public Power, Extraordinary Appeals (Recurso Extraordinário [RE]), among others (BRAZIL, 2021b; FREITAS, 2020). The following examples of the STF's actions can be cited by subject:

> 1º) Acquisition of the Covid-19 vaccine: Argument of Noncompliance with a Fundamental Precept, ADPF 756; 2nd) Rules for importation and distribution of vaccines against Covid-19: Direct Unconstitutionality Action, ADI 6661; 3º) Vaccination requirement: Direct Unconstitutionality Lawsuits ADIs 6.586, 6.587 and Extraordinary Appeal with Bill of Review ARE 1.267.879; 4º) Competence to impose restrictions during a pandemic: Direct Unconstitutionality Action ADI 6343; 5º) Maintenance of sanitary measures against Covid-19: Direct Unconstitutionality Action ADI 6625 (SCHULZE, 2021).

Besides these, another paradigmatic example of conforming interpretation, issued by the STF, occurred in relation to the recognition of the concurrent

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

competence of the federated entities (CFRB/88, article 23) for normative and administrative measures to be taken by the States, Federal District, and Municipalities on health-related issues, forbidden to violate the constitutional precept (BRAZIL, 2020l).

It should be emphasized that in the concurrent competence the municipal interest is clearly identified, since the initial care resulting from the contamination of the disease is verifiable in the health services, Emergency Care (Units, Unidades de Pronto Atendimento [UPA]) of the municipalities, despite the lack of structure and public resources to provide the necessary and sometimes urgent care. Not infrequently, the municipalities depend on technical and financial cooperation from the States and the Federal Union.

The STF also decided about aspects of the Fiscal Responsibility Law (Lei de Responsabilidade Fiscal [LRF]) and Budget Guidelines Law (Lei de Diretrizes Orçamentárias [LDO]), and the contours of application in the pandemic period (ADI 6.357 MC/DF), when it granted interpretation in conformity with the Federal Constitution to "[...] remove the requirement for demonstration of budgetary adequacy and compensation in relation to the creation/expansion of public programs intended to face the context of calamity generated by the dissemination of COVID-19", determining the application of the precautionary injunction to all federal entities that declared a state of calamity due to the pandemic (BRAZIL, 2020j, p. 11-2).

Regarding compulsory vaccination for all people, three lawsuits were filed in the STF, two of which deal with i) immunization policy for Covid-19 and ii) extraordinary appeal dealing with the duty of parents to vaccinate their children, even when they have philosophical convictions contrary to vaccination. Specifically regarding compulsory vaccination, with the claim of achieving herd immunity, the STF granted an interpretation in conformity with the Constitution to article 3, III, d, of Law 13.979/2020, to establish that:

> [...] (A) compulsory vaccination does not mean forced vaccination, as it always requires the user's consent, but it can be implemented through indirect measures, which include, among others, the restriction to exercise certain activities or to frequent certain places, as long as they are provided

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

> by law, or result there from, and (i) are based on scientific evidence and relevant strategic analysis, (ii) are accompanied by ample information about the effectiveness, safety and contraindications of immunizers, (iii) respect human dignity and fundamental rights of the people; (iv) meet the criteria of reasonableness and proportionality, and (v) the vaccines are distributed universally and free of charge; and (B) such measures, with the limitationsset forth, may be implemented both by the Federal Union and by the States, Federal District and Municipalities, respecting their respective spheres of competence (BRAZIL, 2020g, p. 2-3).

Thus, respecting the spheres of competence, all federative entities may implement the necessary measures to carry out the vaccination against Covid-19 (POMPEU, 2020). Many other decisions have been rendered in the sense of defining concurrent legislative competences, and political-administrative common, such as the Precautionary Measure in Complaint 39.871/DF, which recognized the validity of the prohibition of river transport for the purpose of sightseeing in the State of Amazonas (BRAZIL, 2020h).

In the Precautionary Measure in the Suspension of Security 5.382/PI, which discusses the obligation to deliver pulmonary ventilators purchased by the State of Piauí from a private company, whose production was administratively requested to the Federal Union, with clear favoring of the federal public policy, it was consigned in the decision that "[.] the importance of a collaborative and coordinated action of the political entities stands out, once the mismanagement of resources, which are scarce when compared to the infinite demands of the sector, can induce non-assistance, implying risk to public health" and that, even in the face of the crisis, the "[....] the intangibility of the federative pact" must be guaranteed in order to recognize, in a deliberative judgment, that the suspension of the order to deliver the products would put at risk the constitutional order and the public health policy of the state entity (BRAZIL, 2020i, p. 6).

It should also be noted that the commitment of the STF and CNJ to public health was recently expressed by Resolution No. 710 of November 20, 2020, which institutionalized the United Nations Agenda 2030 (UN) within the scope of that Court and established actions and initiatives, in accordance with the Sustainable Development Goals (SDGs) set by Agenda 2030, including health and well-being

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

(article 1, inc. III), in order to monitor and prioritize the judgment of such actions (BRAZIL, 2020m).

Finally, the choices made to fight this common enemy will be able to change people's behavior, because, of course, in moments of crisis, opportunities appear. Let it be the opportunity to make life more human and less saleable; more real and less liquid; with more otherness and less vanity, in which ethical and moral values can prevail over economic ones. The hope of Yuval Noah Harari (2020) that this crisis may help humanity to strengthen what is most human among people and to reduce the disunity that currently prevails, is emphasized. Slavoj Zizek's ([2020], n. p.) assertion that "[...] only through our efforts to save humanity from self-destruction will we create a new humanity" and through the existence of the "[...] mortal threat can we glimpse a unified humanity" is reaffirmed.

And, in this respect, the virus will have contributed to the creation of a new status *quo* in which people care about each other's wellbeing and take care that everyone's health is a reflection of a healthy planet, ecologically sustainable, where peace and health are the flags one wants to have hoisting at all times.

5 FINAL CONSIDERATIONS

Human life must be the center of attention for all sciences, in order to make behavior compatible, whether in the political, judicial, or social arena, so that all decisions are rationalized in favor of defending the greater good that is life, especially in a crisis scenario, originating from an invisible enemy called SARS-CoV-2 (COVID-19).

The fundamental and social right to health requires a deep understanding of the system, in Brazil, the SUS, in order to guide health managers and all those who work in this area, such as judges, who are called upon to decide on lawsuits requesting treatment, medication, hospitalization, etc.

The interpretation that the Supreme Courts make of the legislation and the pertinent regulation establishes criteria of social justice and legal security, in addition

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

to serving as a guide for the outcome of the issues that reach the Judiciary, from the initial instance. In this area, both the STF and the STJ have a firm understanding that the fundamental right to health should be accessible to all and equally.

However, other parameters are necessary to instruct the judges, especially when it comes to repetitive issues. One example is the analysis of Thema 106, in which the STJ intercalated the judicial decisions with the technical criteria of the health system, for example, the requirement to submit a medical report proving the efficacy of the medicine requested in the lawsuit, as well as proof that the patient could not afford the cost of the medicine. These requirements ensure more accuracy and economy to the health system and provide better orientation for judicial interpretations.

In the scope of the STF, in the decision of Thema 6, even though it is still pending final and unappealable, it defined that the State must provide high-cost medications to people with serious diseases and poor. It is also worth noting the judgment of Thema 793, which determined the joint and several liability in health care claims for all entities of the federation.

Faced with the fear caused by Covid-19, challenging situations were present and a state of public calamity was decreed. The collapse of health care (and the system), caused by the pandemic, brought about exceptional situations that required (and still require) great effort from the judiciary to ensure the protection of the fundamental rights of health and life, mainly.

At times like these, there is a strong expectation of the position of the Supreme Courts so that their decisions protect fundamental rights - especially health, control the exacerbated judicial activism and avoid a state of exception. By analyzing the picture that has been outlined since the beginning of the pandemic, it can see that the Brazilian courts, and also the CNJ, have not shirked their role of guiding, through interpretative means, the development of policies in an attempt to stop the spread of the virus or even protect individuals from the high level of infection. Without going beyond the systematic division of powers, it fell to the Judiciary to give the final word on the definition of powers between the federated entities, the determination to provide information on the use of resources to combat the pandemic, the obligation

[Received/Recebido: Janeiro 25, 2021; Accepted/Aceito: Março 30, 2021]

to vaccinate everyone, among other issues, all based on current legislation, guided by constitutional principles.

The current moment demands maturity from the Judiciary, in order to convey to the population its commitment to ensure compliance with the constitutional principles of legality, impersonality, morality, and efficiency in public service, especially those actions aimed at combating the pandemic caused by the spread of Covid-19.

It is certain that life is the greatest good of the human being. All the actions engendered for the construction of an effective system of health protection, such as SUS, aim to ensure the fundamental right to life and allow individuals to have access to public policies related to the maintenance of their health, both in normal times and, especially, in the face of challenges arising from an invisible enemy that has the power to change the social reality, the daily life, and impose new practices, many of them isolationist. It remains, then, to undertake efforts to circumvent the crisis caused by it, seeking the union of sufficient forces, whether from the powers (and their Public Agencies), or from individuals, to overcome this pandemic stage, so that life overcomes the virus and health is guaranteed and effectively preserved.

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