

The Judicialization of Health in The Western Amazon: Budgetary Impact Caused by The Judicialization of Health Within the Municipal Health

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Abstract

The present work addresses the theme of health judicialization and its impacts within the budget. It analyzes the financial effects of court decisions in the Municipal Health Secretariat of Porto Velho, capital of the state of Rondônia. As a temporal delimitation, the period between the years 2014 to 2017 was taken into account. The paper goal is to examine the judicialization phenomenon and which impacts it brings to the administrative scope. The research has a bibliographic and documentary nature, consulting scientific articles, books, websites and especially transparency portals of the entities that institute and gather data on the budget execution of the health area in the Municipality of Porto Velho. The study works with a qualitative approach on the budget, related to the resources that are provided by the municipality of Porto Velho. It is concluded that the financial, structural and intellectual planning is essential for the municipal entity to be able to implement the fundamental social rights to health, as well as the related public policy, which is often affected by excessive judicialization.

Keywords: Judicialization, Impacts, Health, Public Budget, Porto Velho

1. INTRODUCTION

De Brazilian Federative Republic Constitution reserved in its article 5 the right to life, liberty, equality, security and property.

Health, as well as a fundamental social right is a duty of the State, governed by Article 196 of the Brazilian Federal Constitution, which guarantees all citizens the duty to the State to create "social policies and economic measures aimed at reducing the risk of disease. and other injuries". In addition, the article deals with the access to health in a universal and equitable manner, as well as "actions and services for its promotion, protection and recovery" (BRASIL, 1988; PINSKY, 2013; CONCEIÇÃO, 2016). Article 198 of the same Legal Code determines that public health actions and services integrate a regionalized and hierarchical network, structured in the form of a Unified Health System (SUS). This system is based on the principles of decentralization, global service and community participation, financed by the budget of the Union, the States, the Federal District and the municipalities.

The research turned to the study of public health in the city of Porto Velho, state of Rondônia, located in the western Amazon has a theoretical basis on facts collected on the transparency portal of the State Department of the Health (SESAU) and the Municipal Secretariat of Health (SEMUSA) of the municipal public entity focused on public expenditure between the years 2014 and 2017.

The phenomenon known as the Judicialization of Health, occurs when the Judicial Power, through its jurisdictional function, decides on traditional demands for other powers (BRANDÃO, 2013; ARAUJO, 2015). Thus, the Brazilian justice is called to respond requests that deliberate on issues related to the health field; these actions being favorable to the claimant, the competent body for public health service is obliged to comply with determinations. These determinations are the subject of research to authors who study the intervention of the judiciary in response to the individual, often to the detriment of the community. SUS is guided by the Annual Budget Bill - PLOA, and its judicialization can affect other state actions and campaigns.

The general goal of the research is to discuss the judicialization of health and the impact of judicial convictions on the public budget, within the framework of the municipal health service of Porto Velho, specifying the relationships of judicial penalties arising from of the judicialization of health between 2014 and 2018 of the capital of the state of Rondônia.

Regarding the methodology, this research will analyzes documents in public domain as well as bibliographies related to the judicialization of health, thus making it possible to highlight what is already known on the subject, in view of this, it was possible to develop, demonstrate and understand how the judicialization of health works and its influences in the financial field of the municipality of Porto Velho.

The public budget is a crucial topic in order to understand what this phenomenon is. Indeed, in most judicial decisions, it is not directly consulted on how the decision taken will affect the health budget. Budget laws must be taken into consideration when it comes to the judicialization of health (PETUBA, 2018).

The approach begins to address the health-related budget system and the issue of the Existential Minimum. This is the phenomenon of health judicialization in Porto Velho and its impacts on the municipal budget, with the delimitation of time between 2014 to 2017. Finally, the results of budgetary interference and the influence of judicialization of health in the municipality of Porto Velho are demonstrated.

2. THE CONTEXT OF BRAZILIAN HEALTH AND ITS PUBLIC SERVICE SYSTEM

Public health in Brazil stems from several administrative structures and many editions throughout history, from the creation of the colony until 1930, the actions developed in the field of health, were created and put into practice without order. effective institutional. Consequently in 1991, the National Health Foundation (FUNASA) was created, in accordance with its internal regulations, Decree n ° 8.867, its competences are:

Art. 2 ° To Funasa, health promotion and protection entity, competition:

I - promote sanitation solutions for disease prevention and control; and

II - formulate and implement health promotion and protection actions linked to actions implemented by the national environmental health surveillance subsystem.

Perception and attention to disease prevention in Brazil emerged with the health movement. Until the early 1910s, health concerns focused on the urban perimeter, then began to gain momentum in the interior of the country, when the health movement began to engage with more strength and visibility. The medical officers of health have started to better understand the health reality of the entire territory and not just the centers. Brazilian health problems, both institutional and administrative, can be explained by these complications resulting from poor scientific, technological and industrial development, as well as from the weak amplification of medical assistance. Above all, the problem of the expansion of preventive health, linked to the long process of organization, awareness and creation of citizenship rights.

Along with the re-democratization that has taken place in Brazil, the ideals of reformulation of Brazilian society have been broadened, as well as the inclusion of different social actors, collective individuals and eminent personalities. Health care began to occupy positions of relative importance in the state apparatus,

which resulted in the establishment, years later, of the Unified Health System and guaranteed in the Federal Constitution of 1988, the universal right to health (ALENCASTRO, 2014).

2.1 Creation and implementation of the Unified Health System in the context of the Federal Constitution of 1988

The SUS proposal has as its main focus the right that all citizens have to health, this right started to be recognized and demand specific protection in Brazilian law. This right is related to the condition of citizenship.

Through the reforms that took place due to the country's re-democratization, and with the introduction of the new Federal Constitution in 1988, other individuals of law who needed specific shelter and vulnerable peoples, children and adolescents, disabled people, among others. With all the reforms in Brazilian legislation, the country has evolved significantly, with regard to the recognition and appreciation of citizenship. However, it is necessary to identify that the custody and effectiveness of health is a public responsibility, therefore, every Brazilian citizen has the power to speak up, which causes effective action and constant social control by everyone.

On September 19, 1990, Law 8.080 was created, known as the Organic Health Law, which establishes guidelines for the structuring and performance of the activities of the Unified Health System (SUS). It concerns the main structure for understanding and practical implementation of health policy in Brazil, since it is the law that serves as the foundation for all SUS legislation, providing in its text regarding the circumstances for the promotion, custody and restoration of health, tidiness and the performance of health services, normalizing the health chapter in the Federal Constitution of 1988.

According to Scaff and Chioro (1999), in their text "Implementation of the Unified Health System", they state that "[...] SUS is not a service or an institution, but a System that means a set of units, services and actions that interact for a common purpose. [...]". The 1988 Federal Constitution, in its articles 196 to 200, contains concepts, principles and the new organization based on health reform, thus determining how public health works (ALCANTARA, 2009).

The fundamental social right to health, with universal and equal access, described as a duty of the State, and the right of all, is defined in art. 196 of the Federal Constitution, which guarantees, through social and economic policies, the reduction of the risk of diseases and other diseases, promoting actions and services aimed at protecting and recovering. In this sense, there was a need to create a regionalized and hierarchical network, which resulted in the creation of the Unified Health System (SUS). Section II of the 1988 Federal Constitution deals with health regulation, Article 198 discusses the hierarchy and organization of the SUS. With the establishment of health in the Federal Constitution as a fundamental social right, as expressed in art. 6º: "Education, health, food, work, housing, transportation, leisure, security, social security, maternity and child protection, assistance to the destitute are social rights, in the form of this Constitution". Thus, health receives distinct legal protection, as it is part of the fundamental human rights.

When health was characterized as a fundamental social right, the State committed itself to providing positive and beneficial actions, related to the creation of reserved social and economic public policies, for the promotion, protection and recovery of the health of all those citizens in need. The social progress and respect for the human person is evident, because all the positive rights that it deals with regarding health,

states that being healthy is not only the absence of diseases, with the insertion of health as a fundamental right, to mental, physical and social health is taken into consideration for the well-being of all Brazilian citizens.

According to Gilmar Mendes (2012), the Constitution attributed unparalleled value to fundamental rights, the introduction of the chapter at the beginning of the constitution already denotes, the legislator's intention, to lend it special value. Article 60 states "The Constitution may be amended upon proposal". However, the original legislator, still recognized the fundamental rights, as integral elements of the identity and the continuity of the Constitution, for that reason they included in the list, of the devices that cannot be objects of deliberation to the proposals of amendments to the constitution that aim to abolish it, § 4 of the same article decides.

Paragraph 4. The proposed amendment to abolish: I - the federative form of State; II - direct, secret, universal and periodic voting; III - the separation of Powers; IV - individual rights and guarantees. (BRASIL, 1988.)

There has been great progress regarding the concept of health. People who are considered healthy are not those who do not have any type of disease, people who are considered healthy are those who are good at being physical, social and mental. However, the positive right, often does not take into account all these prerogatives, reducing health demands simply to combat and treat diseases and facilitating access to medicines.

3. SYSTEM BUDGET CORRELATE HEALTH AND THE QUESTION OF EXISTENCIAL MINIMUM

From an organizational point of view, budget systems act as basic mechanisms for public sector planning: the complementary Fiscal Responsibility

Law (LRF) n°. 101/2000 and Federal Law n°. 4.320 / 1964 that regulates the budget and public accounting, bringing the Pluriannual Plan (PPA), Budget Guidelines Law (LDO), Annual Budget Law (LOA), the Budget Execution Summary Report (RREO), Tax Management Report (RGF).

The Fiscal Responsibility Law addresses the control of spending by the Federal Government, states, municipalities and the Federal District, regulating the tax collection capacity of the aforementioned entities. This measure is based on the previously common borrowing. The law also promotes the mandatory existence of transparency about public spending (LUNARDI, 1999).

The tax liability law is set out in its art. 1 and paragraph regarding the responsibilities imposed by the standard.

Art. 1the This Supplementary Law establishes public finance standards for responsible fiscal management, protection of Chapter II of Title VI of the Constitution.

§ 1. Responsibility in fiscal management presupposes the planned action and

transparent, in which prevent risks and correct deviations that may affect the balance of public accounts by meeting the outcome goals between revenues and expenditures and obeying limits and conditions with respect to revenue waiver, generation of personnel, social security and other expenses, consolidated and securities debts, credit operations, including revenue anticipation, guarantee granting and registration in Remains Payable.

Federal Law n°. 4.320 / 1964 is a Federal rule, which legislates about general rules of financial law, regarding the construction and administration of the budgets and balance sheets of all federated entities. It is the law that leads the way to the application of public money by the constituted Powers. When dealing with the Budget Law, the provision deals with the differentiation of revenue and expenditure, thus allowing to recognize the segmentation and specification of both. In this way, the legislator highlights the source of revenue and, consequently, the use of expenses. With the definitions of the Fiscal Responsibility Law (LRF) n°. 101/2000 and Federal Law n° 4.320 / 1964, which regulate the public budget, set out in the previous paragraphs, it is also necessary to explain the other budget laws that would be: Pluriannual Plan (PPA); Annual Budget Law (LOA); the Summary Report on Budgetary Execution (RREO); Fiscal Management Report (RGF).

Tax budgets related to the three branches of government, their funds, bodies and entities of the direct and indirect administration, including foundations instituted and preserved by the government; It deals with the budget invested in companies, in which the State has direct or indirect capital stock; It also deals with the budget related to Social Security, comprising entities and bodies that have direct or indirect administration involvement, such as funds and foundations established and preserved by the State.

The winning manager of the electoral election, whether at the federal, state or municipal level, should guide the preparation of the PPA, so that at the beginning of the management there is long-term budgetary programming in all areas of government action, such as the guidelines, objectives and targets of public administration for capital expenditures, including continued duration program. Thus, the PPA is the mainstay of guidance for the design of the LDO and LOA. In summary, the PPA is the government program, containing the strategic planning of government actions, thus providing for works and other investments, it must express the planning of the entire public administration, in a medium-term scenario. It is forbidden that any investment whose execution exceeds a financial year may not be initiated without prior inclusion in the multiannual plan, or without a law that authorizes its inclusion, under penalty of a crime of liability. The LDO, on the other hand, has the main objective of defining what are the governmental priorities for the next year, that is, for the next year of government, based on the goals that were established by the government in the PPA. Unlike the Pluriannual Plan, the LDO is prepared every year by the government. The Budgetary Guidelines Law plays a supporting role in the rules relating to the amounts that the government intends to save to invest, thus delimiting limits on personnel expenses and payments and tax changes for each of the Executive, Legislative and Judiciary Powers as well as the Ministry Public. Used as a basis for the preparation of the LOA, the LDO exercises a link between the prediction of goals in the multiannual plan and the application of the budget established by the LOA.

The Annual Budget Law has the primary function of controlling the entire structure that deals with the

forecast of budget revenues, which are received by the government, especially those paid by taxpayers through taxes. The spending schedule must be predetermined and public managers must strictly comply with the spending forecast in the LOA (ABRAHÃO and ROMERA, 2019).

The expenditure schedule, including health, consists of scheduling the monthly expenses that each agency linked to the higher expense agency can use. The programming phase is entirely concerned with the variations in the collection during the financial year, this phase is divided into normative decree, fixed disbursement schedule and projection of the revenue behavior. Bidding comprises an administrative process which aims to ascertain who provides the best possibilities for the good or service.

The commitment consists in the act coming from the competent authority, which generates for the Public Power the obligation to pay. Committing an expense means issuing a Note of Commitment, which is divided into authorization, issue, signature, internal control and accounting. It appears that the commitment is the real from obligations. The other phases of the expenditure are dependent on it and follow a mandatory itinerary after that phase. The commitment defines the conditions of the contract and can be considered as the contract itself and in some cases relieves the composition of another contractual instrument. Theory of the Possible Reserve x Existential Minimum.

The non-fulfillment of the right to health has generated what is called the judicialization of health, in which the judiciary becomes the main actor for the realization of fundamental rights, sometimes replacing the legitimate responsible for the execution of the public budget, and causing problems and imbalances in public accounts and the consequence of some decisions.

That is where the conflict between the theories of the possible reserve and the Existential Minimum arises, the Reserve of the Possible is an external element, capable of limiting or even restricting the access of holders to a specific social right, in the face of the State's budgetary limitation. The social rights of man are those constitutionally guaranteed, provided by means of State benefits, according to Alexandre de Moraes (2003), social rights, characterize as true positive freedoms, of mandatory observance in a Social State of Law, aiming at the improving the living conditions of the underprivileged, with a view to achieving social equality.

The programmatic constitutional norms on social rights that we find today in the great majority of the constitutional texts of European and Latin American countries define goals and purposes which the ordinary legislator must raise to an adequate level of achievement. These “program norms” prescribe the accomplishment, by the State, of certain ends and tasks; however, they do not represent mere recommendations or moral precepts with ethical-political efficacy merely for guidance, but constitute directly applicable law (KRELL, 2002).

The theory of the Possible Reserve was imported into Brazilian law, and interpreted only as a reserve of the financially possible, as it is considered as a limit to the realization of fundamental social rights, only the existence or not of available public resources. Due to its Brazilian social and economic reality, this theory is used as an obstacle for the realization of fundamental social rights in the face of the State's limitation in having sufficient financial resources to implement them, therefore and conditioning the amount of resources available to carry out the project. social law, by focusing only on one right, makes the

provision of others unfeasible.

Due to the lack of financial conditions to fully guarantee all fundamental social rights, it is up to the State to make choices, establishing criteria to be followed, through the implementation of public policies. Such public policies consist of the allocation of the public budget for certain purposes, however, they find impediment in the Reserve of the Possible, in view of the economic limitation of the State. Therefore, it is up to the State, in view of a concrete case of conflicting rights, to seek compatibility and interpretation in order to generate a hierarchy of these rights, thus making the rights considered most relevant at that moment prevail. This power of state choice is called discretionary power, whereby the Public Administration is free to choose, based on the premise of opportunity and convenience, in a way that is more favorable to the public interest, without the need for legal provision. These choices must be guided by the Federal Constitution, which determines the guidelines to be followed in order to satisfy the fundamental objectives set out therein.

It is noteworthy that the discretion in the conduct of the Public Administration does not allow him to choose whether or not to materialize a fundamental right, but that when carrying out the distribution of resources, he weighs up the legal assets in question. The Reserve of the Possible, can only be invoked when there remains objectively proven the inexistence of financial resources for the accomplishment of a determined purpose.

It is not possible to leave it to the State to decide whether or not to implement, at least a minimum portion, of each fundamental social right, necessary to guarantee the dignified life of each individual, under penalty of directly attacking fundamental rights and guarantees. This minimum portion of fundamental rights is called the Existential Minimum.

Finally, the Existential Minimum emerged for the protection of individuals through the implementation of a portion of the constitutional guarantees able to provide human beings with a life with dignity, in the face of all the disdain that we permanently witness from the public authorities towards the urgent needs of the population (FRANÇA, 2015). In the event that there is any affront regarding the realization of at least the essential nucleus of a certain fundamental social right, the Judiciary must be called upon to intervene, since, due to the unavailability of the aforementioned rights, they enjoy jurisdictional protection.

4. THE PHENOMENON OF HEALTH JUDICIALIZATION IN PORTO VELHO AND ITS IMPACTS ON THE MUNICIPAL BUDGET: ANALYSIS FROM 2014 TO 2017.

The judicialization of health is based on the judicial search, as a way of implementing public policies in individual or collective demands, such as high-cost medications, or the supply of diapers and / or other objects for maintenance or life support.

In this sense, as an object of study the city of Porto Velho, capital of the State of Rondônia, in Western Amazon, which received a great immigration process in the period from 2009 to 2016, arising from the construction of two hydroelectric plants, in the madeira basin, which bathes the city of Porto Velho and region, where it tested its ability to meet the growing demand of citizens in a sustainable way, in various

social fields, such as health and education. The study sought to settle hypotheses, whether there was an increase or decrease in cases of judicialization of health.

Barroso (2012) conceptualizes judicialization as issues of broad political or social repercussion that instead of being decided by traditional political instances, such as the National Congress or the Executive Branch, some issues are being decided by the Judiciary Branch. Leticia Santos (2013) says “[...] judicialization [...] a continuous transfer of power to judges and courts, who started to decide on political and social issues, which, in the main, should be resolved in other traditional instances, as the Legislative and Executive.”

Maria Loureiro wrote a review on the book “Towards Juristocracy: The Origins and Consequences of the New Constitutionalism” (2004) of the author Hirschl's and your position on the “Judicialization of politics” which, in the author's view, is a term commonly used to encompass what, in fact, are three interrelated processes. In more abstract terms, the judicialization of politics refers to the dissemination of speeches, jargon, rules and legal processes in the political sphere and in forums and processes for the elaboration of public policies (LOUREIRO, 2004; HIRSCHL, 2009).

According to Barroso (2007; 2012), judicialization became part of the Brazilian normative system for three reasons: the first would be due to the re-democratization of the country, which culminated in the promulgation of the 1988 Constitution. With the recovery of the judiciary's guarantees, the Judiciary Power ceased to be a specialized technical department and became a true political power, capable of enforcing the Constitution and the laws, including in confrontation with the other Powers. In short, redemocratization strengthened and expanded the Judiciary, as well as increased demand for justice in Brazilian society.

The second reason for judicialization, according to Barroso (2012), would be the comprehensive constitutionalization, which brought countless matters to the Constitution, which were previously left to the dominant political process and to ordinary legislation. Constitutionalizing a matter means transforming Politics into Law. According to the constitutionalist, the Brazilian charter is analytical, ambitious, suspicious of the legislator. When constitutionalizing a matter, it potentially becomes a legal claim, which can be the subject of a lawsuit (CARVALHO, 2013).

The third and last cause of judicialization, is the Brazilian system regarding the control of constitutionality, one of the most comprehensive in the world. Defined as hybrid or eclectic, it combines aspects of two different systems: the American and the European. Incidental and diffuse control is used, whereby any judge or court can fail to apply a law, in a specific case that has been submitted, if it considers unconstitutional, an American model. And finally, the European model, which allows certain matters to be taken in theory and immediately to the STF, considered to be control by indirect action, “it can be concluded that, in the exercise of its desideratum, that is, in the resolution of specific cases, it is possible that jurisdictional action, [which] contributes to the improvement of social public policies” (MENDES, 2012, p. 945).

The expansion of the phenomenon of judicialization in the West accompanies a worldwide process of increasing protagonism in the constitutional courts, which are increasingly required, not only to resolve political conflicts, but also to act in the defense of social rights and the promotion of public policies. Some aspects are responsible for carrying out this phenomenon, such as the judicialization of electoral processes and the judicial corroboration of transformations in the political regime; fundamental dilemmas of restorative justice; “judicial supervision” over executive power in the macroeconomic and national security

areas; and above all, judicialization of the formation of collective identities.

Thus, even if the magistrates had a large number of doctors at their disposal to assess, that is, to quickly examine the requests for medicines and treatments requested, these doctors would not always be properly updated to be able to provide a reliable technical assessment to the point to support the judicial decision of the case. The judge also makes a final consideration of an analysis of the urgency and relevance of the requests made in court.

In the first place, it is necessary to emphasize that the requests brought to the judiciary in the great majority present a request for early protection, that is, a procedural object used in cases in which the urgency in reaching the result is the main point of the discussion, before fully analyze the specific case. Thus, there is no way to carry out expert technical evidence regarding this alleged urgency, because the claim of the request is invariably that if it is not granted at the right time, it will put the patient's life at risk. The judicialization of health is not a permanent solution to solve the problems of access to treatments in the SUS.

For the State, this is also not the ideal alternative: the Union, state and municipalities spend exorbitant amounts on the purchase of specific medicines to comply with the judiciary's deliberations than if the medicines were purchased in quantity, with values negotiated for everyone who they need it. In addition to that, as it is not likely to predict the amount of the budget that will be allocated to the aid of lawsuits, public managers face greater challenges in maintaining a practical and efficient health service for the population, since some resources need to be repositioned (HOLANDA, 2014).

In general, it is the duty of the Union, States and Municipalities to provide everyone with health, physical and mental well-being, as stated above, through public policies that help the population in an equal way, but knowing how to identify the particularities of each situation. Judicialization is used as a tool to activate this right, when state entities for whatever reason do not fulfill their duty.

The programmed budget in many cases fails to cover all expenses, that is, when the judicial decision is enforced and when there is not enough budget, it is necessary to withdraw financial resources from other areas to meet that particular judicial decision. Research and readings on the subject of judicialization and making a comparison with the reality of health in Porto Velho, demonstrate that there is a serious problem between health and finance. On the one hand, individual needs are, in some cases, ceased, however the collective ends up not receiving enough resources to deal with all the demand.

The municipality of Porto Velho faces major challenges between judicial decisions and the health budget, the transparency portal of the Municipal Secretariat of the Municipality (SEMUSA) discriminates in detail the finances of the municipality, and what can be observed is that the legal decisions, in some cases, they end up impeding the development and care for citizens' collective health. In addition to this problem, a survey carried out in 2014 presented the following graph, which concerns the dissatisfaction of the population with regard to the provision of health services, and who attributes the difficulty in authorizing the receipt of the medicines claimed by the judiciary (Cf. LAFFIN, 2017).

In a study by Nascimento (2014, p. 34), it was demonstrated that the population of Porto Velho places the public power as the great engraver of the difficulties to access medicines, taking this data into consideration it is assumed that an adequacy is necessary, noting that the judicial demands are in favor of public managers, and that the processes are difficult in the face of the needs of people.

The population of Porto Velho places the public authorities as the greatest aggravator of the difficulties in accessing medicines, taking this data into account it is assumed that an adjustment is necessary, noting that the judicial demands to the detriment of public managers, and that processes are difficult in the face of people's needs.

Another point observed is that in some cases there is a lack of preparation by the Judiciary regarding the actions pleaded and there is also a lack of reparation and knowledge of professionals in Porto Velho to deal with some situations. In many cases the patient needs specific treatment and takes action in the legal sector, where the judge defines the action in favor of the applicant, however the Municipality does not have the capacity for structure and knowledge to properly serve the patient and he is sent to another state. What creates another problem, since the state that will receive the patient, will have to adapt its budget and structure to receive that person, which can generate changes and problems of large or small levels for the entire health system.

Nascimento (2014) in his research observed that the search for the Judiciary is often suggested by health professionals, since according to the research, it is up to health professionals to exhaust all possibilities of patient care, before guiding or transferring the patient. even for the judiciary. She demonstrates this perspective in the following chart:

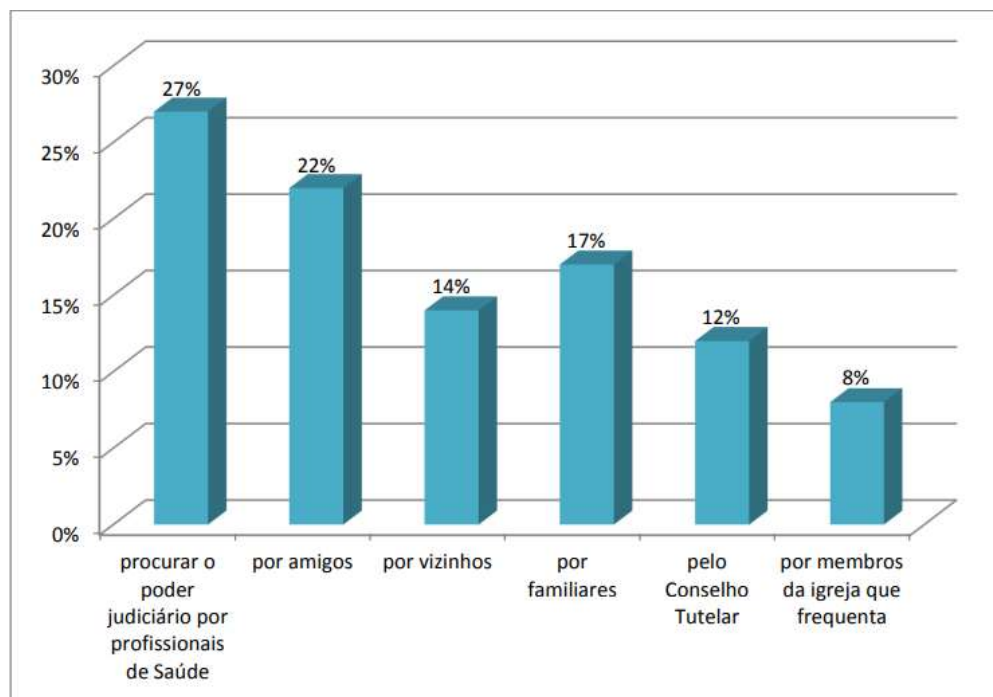


Figure 1: Graph of the research referring to the indication of assistance in the judiciary.

Source: NASCIMENTO, 2014, p. 34.

Next, comes the suggestion of people close to the citizens, about the judiciary, as a viable alternative to safeguard the right to the patient. We conclude that the judicialization of health has spread in popular culture, making the right to health notorious and known, and the possibility of reversing the patient's condition, accessing the judicial means.

It is understandable from the medical point of view, to request the best treatment, based on the best medical evidence, however the millionaire treatment that may be granted, may unbalance the public budget, and

trigger unforeseen actions, which are harmful to the community.

4.1 3.1 Results and discussion: Budgetary demonstration and influence of the judicialization of health in the Municipality of Porto Velho between the years 2014 to 2017

In the municipality of Porto Velho, capital of the State of Rondônia, the action called compliance with court sentences was introduced in the budget bill for the 2014 fiscal year, with a budget of R\$ 260.000,00 (two hundred and sixty thousand reais), having the transfers that occur from the Unified Health System - SUS as the source of the financial resource. In the rendering of accounts of the expenses for the financial year of 2014, expenses with court orders, the amount of R\$ 228.089,10 (two hundred and twenty-eight thousand, and eighty-nine reais and seventeen cents), with the difference of -12,27% being detailed below:

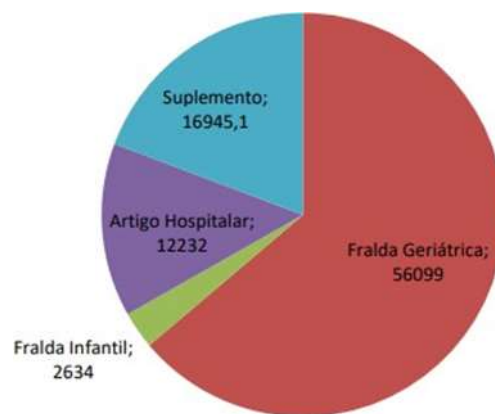


Figure 2: Detailed chart of expenses with court orders - fiscal year 2014.

Source: Municipal Health Department - SEMUSA, 2014.

It is observed that the expenditure with the greatest judicial demand was for access to medicines, followed by geriatric diapers, food supplements, hospital articles and, finally, baby diapers.

The Municipal Secretary of Health's total budgetary projection for 2014 was R\$ 205.158.013,00 (two hundred and five million, one hundred and fifty-eight thousand and thirteen reais). Expenses with lawsuits represent a percentage difference of 89.846,43%, a number considered low, but higher than actions such as, for example, purchases of ambulances that, according to the Process: 1712.02235-00-2013, the cost of the amount of R\$ 136.000,00 to serve the population of the districts and capital of Rondônia.

The figure below shows the impacts of the judicialization of health on the budget in the year/fiscal year 2015.

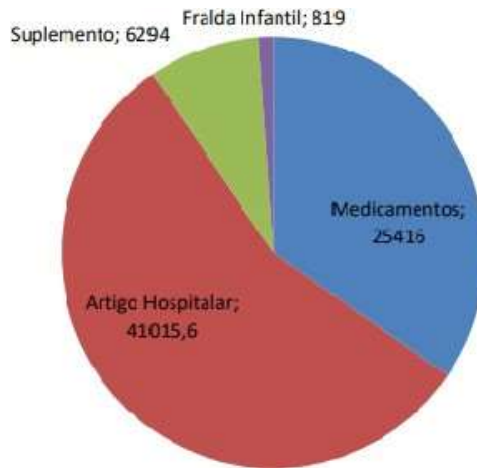


Figure 3: Detailed chart of expenses with court orders - fiscal year 2015.

Source: Municipal Health Secretariat - SEMUSA, 2015.

In 2015, the budget projection of the Municipal Health Secretariat was R\$ 228.064.003,00 (two hundred and twenty-eight million, sixty-four thousand, and three reais), regarding the budget for the action of “Compliance with Judicial Sentences” in the Municipal Health Department amounted to R\$ 470.796,00 (four hundred and seventy thousand, seven hundred and ninety-six reais), an increase in the projection of 4.744,75%, a high number when compared to the number spent on expenses previous year. It turns out that the expenses with the judicial judgments recorded in the year / fiscal year of 2015 were R\$ 73.544,60 (seventy-three thousand, five hundred and forty-four reais, and sixty cents) expenses reached around 1.462,13% less than the total estimated for the period. The value of judicial decisions in 2015 were low compared to that recorded in the year / fiscal year 2014.

As for 2016, the consequences of the judicialization of health were as follows:

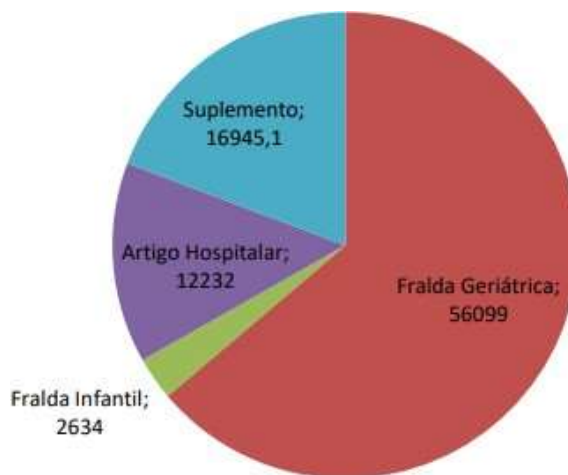


Figure 4: Detailed chart of expenses with court orders - fiscal year 2016.

Source: Secretariat Municipal Health- SEMUSA, 2016.

The growing demand in the year/year 2016, resulted in expenses of R\$ 251.358.788,00 (two hundred and fifty-one million, three hundred and fifty-eight thousand, seven hundred and eighty-eight reais) to

R\$ 251.358.788.00 - 9.,27% in relation to what the PLOA (2015).

In the 2016 budget bill, there was a decrease in the projection with the Compliance with Judicial Sentences action, to R\$ 288.250,00 (two hundred and eighty-eight thousand, two hundred and fifty reais), decreasing the projection of the previous year by approximately 512,28% (2015), but decreased only 9,80% compared to fiscal year 2014, the year in which lawsuits were introduced, in the list of budgetary projections.

Expenses from the 2016 court rulings amounted to R\$ 79.451,08 (seventy-nine thousand, four hundred and fifty-one reais and eight cents), compared to 2015 when the expenses for court rulings resulted in a sum of R\$ 73.544,60 (seventy-three thousand, five hundred and forty-four reais and sixty cents), the difference is 7,54%.

Observing the expenses through the 2016 judicial decisions, hospital articles supplied after intervention by the Judiciary, had higher costs compared to other services which in some cases may, depending on the situation, have greater importance and urgency (FINKELMAN, 2002). Given that the judicial decisions that caused a greater demand in the investment of hospital equipment, they end up reducing the acquisition of other objects that, in some cases, may have an imminent precision and importance, such as, for example, the demand for medicines.

We move on to the study of expenses related to the judicialization of health in 2017.

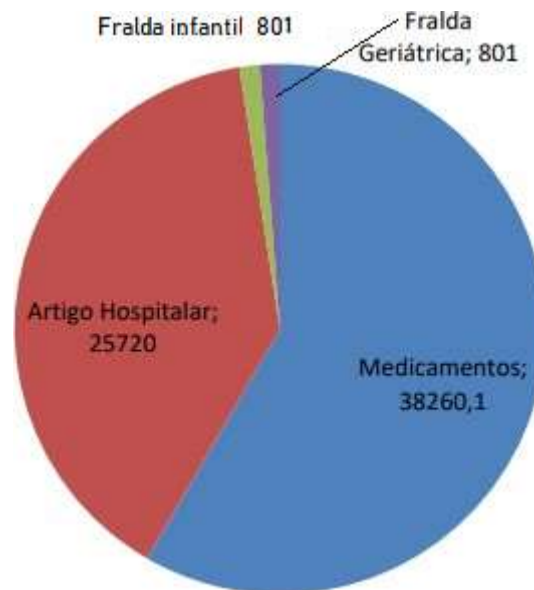


Figure 5: Detailed chart of expenses with court orders - fiscal year 2017.

Source: Municipal Health Secretariat - SEMUSA, 2017.

In 2017, there was a budgetary projection in the amount of R\$ 255.810.076,00 (two hundred and fifty-five million, eight hundred and ten thousand and seventy-six reais) of the Municipal Health Department, increase of 1,74% referring to the projection of the previous year.

As for the budgetary projection for compliance with Judicial Judgments, the amount was R\$ 350.000,00 (three hundred and fifty thousand reais) for the year 2017. The value of the budgetary projection for compliance with judgments in 2017 is considered a high value, since, according to the LOA of that year, actions such as Construction, Expansion, Reform of Psychosocial Care Centers - CAPS, which recorded

an estimated expenditure of R\$ 200.000,00 (two hundred thousand reais). Judicial decisions in 2017 add up to the amount of R\$ 65.582,10 (sixty-five thousand, five hundred and eighty-two reais and ten cents, less than the forecast for the year with a difference of 18,737%. How can it be seen in the graph below, regarding expenditures through the 2017 judicial decisions, the drugs supplied after intervention by the Judiciary, had higher costs, therefore greater demands

In 2020, in the extraordinary appeal (RE/566471), with General Repercussion (Theme 6), the STF recognized that the State has a duty to supply high-cost drugs, which are not part of the Unified Health System (SUS) dispensation program, as long as they meet objective criteria.

The recognition of the individual right to supply, by the State, a high-cost medication, not included in the National Medicines Policy or in an Exceptional Dispensing Medicines Program, depends on proof of the indispensability - adequacy and necessity -, of the impossibility of substitution. of the drug and the financial incapacity of the patient and the members of the solidary family, respecting the provisions on food in articles 1.694 to 1.710 of the Brazilian Civil Code.

As we noted, the supply of high-cost medications is consolidated, as the greatest challenge for the State, given the complexity and uniqueness of the input, the astronomical values, which can harm any community that depends on the public budget.

5. FINAL CONSIDERATIONS

The Brazilian Unified Health System (SUS) was implemented with the intention of bringing any and all citizens the right to a quality and healthy life, however the deficiency of public resources to comply with what Brazilian legislation provides, especially when it comes to public budgets, since in many cases budget management should be carried out through well-established criteria of choices and priorities, in a technical and rational way, as well as defining new public policy strategies to be implemented, so that judicialization is used as an exception and not as rule. The inefficiency of the public health service caused the population to petition the Judiciary for immediate solutions to their demands, which the public service is constantly unable to supply (HENNIG; DALENOGARE, 2014).

The judicialization of health is an extraordinary fact, which occurs in the absence of adequate public services, which are maximized in times of economic or political crisis. A survey of data about the reasons, problems and insufficiencies that are part of SUS in Porto Velho and in the rest of the country, establishes the reasons and reasons for why people so often seek the judiciary to remedy or at least try to remedy their health problems, which vary between medications and specialized care.

The Reserve of the Possible can live peacefully with the Existential Minimum, since it acts as a limit for your invocation. The Reserve of the Possible can only be accept by the judge when analyzes of proportionality and the guarantee of the Existential Minimum is carried out, with respect to health rights. As for the public budget, it is the object of planning that seeks to order expenses so that public health acts effectively. The public budget is guided by three laws: the LDO - Law on Budgetary Guidelines, PPA - Pluriannual Law and LOA - Annual Budget Law. The annual budget law was created with the purpose of establishing goals which must be reached in the following year. These laws regulate all the actions of the entity, and define that no public expenditure can be executed outside the budget. It is in this law that the

revenue estimate and the setting of the entity's expenses are found. It also predicts how much the government must collect so that the programmed expenditures can actually be executed (GIACOMONI, 2004; 2009).

As for the data collected and analyzed, it was possible to infer that the expenses with the judicialization of health in the Municipality of Porto Velho impacted the budgets of the years of 2014 when the expenses with legal claims represented a percentage difference of 89,846.43%, in relation to the previous year, number considered low, but higher than actions such as, for example, purchases of ambulances which, according to the Process: 1712.02235-00-2013, cost the amount of R\$ 136.000,00 to serve the population of the districts and capital of Rondonia. In 2015 there was a mismatch between planning and spending on the judicialization of health.

Expenses with court judgments recorded for the year / fiscal year 2015 were R\$ 73.544,60 (seventy-three thousand, five hundred and forty-four reais, and sixty cents), with expenses reaching approximately 1.462,13% less than the estimated total for the period, based on public health policy planning, the year 2014. Judicialization can influence and hinder the budget forecasting process, harming the community, especially those who need assistance from the public health service.

In 2016, spending through judicial decisions on hospital articles provided after intervention by the Judiciary, had higher costs compared to other services, which in some cases may, depending on the situation, be of greater importance and urgency.

In 2017, the budgetary projection for compliance with Judicial Judgments was R\$ 350.000,00 (three hundred and fifty thousand reais) while the value of the budgetary projection for compliance with judgments was considered high, since, according to the LOA for that year, actions such as Construction, Expansion, Renovation of the Psychosocial Care Centers - CAPS, which recorded an expense estimate in the amount of R\$ 200.000,00 (two hundred thousand reais).

The research presented here achieved the main objective insofar as it was demonstrated that in the time frame surveyed, the judicialization of health was detrimental to budgetary projections and in the actual execution of the budget for the area of health in Porto Velho.

The subsistence of the Unified Health System, which concentrates the competence and capacity to attend all types of situations arising from the health of the Brazilian population, it is necessary to allow for better financial, structural and intellectual planning so that this right can be realized fundamental social.

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