

Expansion of the judiciary in the Brazilian public health system

Carlos Eduardo Artiaga Paula¹, Ana Paula da Silva², Cléria Maria Lôbo Bittar³

Abstract

This study addresses the history of and interpretations made by the Brazilian Supreme Court in its judgments when intervening in the Brazilian Public Health System to make it more effective. Research was carried out on the Supreme Court's jurisprudence database and fourteen rulings were highlighted. It was observed that the basis for intervention in the Health System was its very deficiencies and the constitutional guarantee of health services, and that the lawsuits have become more complex, requiring more detailed reasoning and adherence to new theories by the Supreme Court. The intervention covered not only access to health goods, but also other aspects related to the management of the Brazilian Public Health System. In general, the stance of the Supreme Court was affirmative, aiming not only to support the decision, but to establish rules for the future. It is concluded that judicial intervention in public health system should not only be maintained, but intensified.

Keywords: Health's Judicialization. Brazilian Supreme Court.

Resumo

Expansão do poder judicial no Sistema Único de Saúde

Este estudo aborda o histórico e a interpretação do Supremo Tribunal Federal em seus julgados ao intervir no Sistema Único de Saúde para torná-lo mais efetivo. Foram feitas pesquisas na base de jurisprudência do Tribunal, destacando-se 14 acórdãos. Observou-se que as bases para intervenção no sistema são suas deficiências e a garantia constitucional dos serviços de saúde, e que as ações se tornaram mais complexas, exigindo fundamentação mais minuciosa e adesão a novas teorias por parte do Supremo. A intervenção abrangeu não apenas o acesso a bens de saúde, mas também outros aspectos relacionados à gestão do Sistema Único de Saúde. No geral, a postura do Supremo Tribunal Federal foi afirmativa, tendo em vista não apenas respaldar a decisão, mas fixar regras para o futuro. Conclui-se que a intervenção judicial no sistema de saúde pública deve não apenas ser mantida, mas intensificada.

Palavras-chave: Judicialização da saúde. Brasil-Decisões da suprema corte-Jurisprudência.

Resumen

Expansión del poder judicial en el Sistema Único de Salud

Este estudio aborda la historia y la interpretación del Supremo Tribunal Federal, en sus decisiones, al intervenir en el Sistema Único de Salud para tornarlo más efectivo. Se realizaron investigaciones en base a la jurisprudencia del Tribunal, destacándose catorce fallos. Se observó que el fundamento para la intervención en el sistema son sus deficiencias y la garantía constitucional de los servicios de salud, y que las acciones se tornaron más complejas, exigiendo una fundamentación más minuciosa y la adhesión a nuevas teorías por parte del Tribunal Supremo. La intervención abarcó no sólo el acceso a bienes de salud, sino también a otros aspectos relacionados con la gestión del Sistema Único de Salud. En general, la postura del Supremo Tribunal Federal fue afirmativa, teniendo en cuenta no sólo respaldar la decisión, sino también fijar reglas para el futuro. Se concluye que la intervención judicial en el sistema de salud pública no sólo debe mantenerse, sino que también debe intensificarse.

Palabras clave: Judicialización de la salud. Suprema Corte de Justicia Brasileña.

1. **Doutorando** carlosedart@gmail.com – Universidade de Franca (Unifran) 2. **Especialista** annap95755@hotmail.com – Universidade Federal de Viçosa (UFV), Viçosa/MG 3. **Doutora** cleria.bittar@unifran.edu.br – Unifran, Franca/SP, Brasil.

Correspondência

Carlos Eduardo Artiaga Paula – Rua Lagamar, 97, Copacabana CEP 38701-184. Patos de Minas/MG, Brasil.

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The intervention in the Unified Health System (SUS) perpetrated by the Judiciary is a growing phenomenon in Brazil. The “*Justiça pesquisa*” (Justice Research) report, prepared by the Conselho Nacional de Justiça - CNJ (National Justice Council)¹, evaluated the judicialization of health and concluded that there is an increasing demand by the Judiciary to address these issues. In 2016, there were 300 thousand actions related to the right to health in the country².

The academia has also followed this trend of lawsuits in the area of health and, therefore, has been more concerned with this issue. According to Oliveira et al., studies on health judicialization *have increased every year, demonstrating the importance of topic*³, which is also supported by the study by Araújo et al.⁴. The main issue in this area has been the access to medicines - Oliveira et al.⁵, for example, concluded that 60% of the publications analyzed dealt with the topic.

According to the Ministério da Saúde - MS (Ministry of Health)⁶, the Sistema Único de Saúde - SUS (Unified Health System), one of the largest health systems in the world, includes from simple ambulatory services to organ transplants, drug control, the implementation of health promotion policies, among other functions. The system is supported by the Organic Laws of Health, such as Law 8,080/1990⁷, which advocates broad actions, such as policy formulation (article 5), health surveillance, worker health, epidemiological, comprehensive care (article 6), among others.

Given this, the interference of the Judiciary in SUS is not limited to the warrant of access to medicines. In fact, it is much broader and encompasses all the aforementioned system services⁸, including administrative acts, such as bidding processes for procurement of goods and services. With regard to this last point, a report prepared by the World Bank states that judicial intervention in bidding processes, caused by, for example, a bidder who has felt prejudiced, *can paralyze the buying process completely during months or even years*⁹, directly affecting the management and supply of drugs. The great influence of the Judiciary in the public health management is, therefore, clear.

Judicial intervention in the SUS is carried out by all the organs that comprise the Judiciary, provided for in art. 92 of the Constituição Federal - CF (Brazilian Federal Constitution)¹⁰. It involves from the first instance judge to the maximum body, the Federal Supreme Court (*Superior Tribunal Federal*, STF). The latter, as provided in art. 102 of the CF, has

the final say in the interpretation and application of constitutional provisions. For this reason, the Supreme Court has been nicknamed “guardian of the Constitution”¹¹, and it is incumbent upon it to declare, as a last resort, the constitutionality or not of a particular law or normative act.

The power and the duties of the STF have been extended over time. The Emenda Constitucional - EC (Constitutional Amendment) 45/2004¹² allowed the court, after successive decisions on the constitutional matter, to issue a summary with binding effect in relation to the other organs of the Judiciary and to the direct and indirect public administration (article 103-A of CF / 1988)¹⁰. In addition, the new Código de Processo Civil (Code of Civil Procedure)¹³ provides, in art. 927, that other judges and courts must observe the decisions of the higher courts. This gives the STF a prominent position since its decisions must be observed by the other organs of the Judiciary.

The intervention of the Brazilian Supreme Court in the SUS becomes even more relevant because the right to health is foreseen in art. 6 of the CF, reinforced in the section “On Health”, art. 196¹⁰. Thus, the “final word”¹⁴ on judicial intervention in the SUS, in compliance with this right, is incumbent upon the STF. Considering the prominent position of this Court in the Brazilian legal system, this article aims to analyze the history and the interpretive changes of this court of justice by interfering in the SUS in order to make effective the fundamental right to health.

Methods

Between February and May 2017, the following sets of key words were searched on the STF jurisprudence database¹⁵: “*interferência, judiciário, judicialização, gestão pública, administração, saúde*” (“interference, judiciary, judicialization, public management, administration, health”); “*acesso, saúde, política pública*” (access, health, public policy); “*competência, judiciário, política pública, saúde*” (jurisdiction, judiciary, public policy, health); “*serviço saúde, judiciário*” (health service, judiciary); “*acesso medicamentos*” (access medicines); “*contratos, licitação, SUS e saúde*” (contracts, bidding, SUS and health). In the searches, the words were combined by the logical operator “and”, which allowed to locate the judgments that contained all the keywords indicated by the researcher.

The search found 89 rulings. From these, we sought to select those who answered the following guiding question: “from a historical perspective,

what are the interpretations, arguments and positions of the STF when intervening in the SUS with the purpose of effecting the right to health?"

Based on this question, 14 rulings met the research criteria, since they dealt with access to health goods and services, as well as involving some judicial intervention in the SUS. There were 75 rulings excluded; some repeated, others without any relation to the health system (matters of administrative, criminal law, etc.). There were also rulings regarding private health systems, which are not the subject of this analysis.

The 14 rulings were analyzed interpretatively and argumentatively, based on content analysis, which allowed to organize the documents into three categories, *a posteriori*. The summary of the method is described in Frame 1:

Frame 1. Research method

Method	Document research
Collection period	February/may 2017
Source	www.stf.jus.br
Research keywords	<i>Interferência, judiciário, gestão pública, saúde e sinônimos</i> (Interference, judiciary, public management, health and synonym, in Portuguese)
Logical operator of the search	"and"
Rulings collected	89
Rulings that fulfilled the search criteria	14

Results

The 14 STF rulings that met the criteria of the research were divided into three categories. The first of these, comprising six rulings, involved actions motivated by the access of a person or group to medications and medical treatments. At least in one of the poles of the action, the interests were individual.

In the second category, with four rulings, the lawsuit interfered in the management of the SUS as a "negative legislator", that is, invalidating a law or act of public power, such as in bidding processes, hiring of employees, administrative contracts, among others.

The third and last category of analysis, also with four rulings, encompassed the role of the Judiciary role in SUS management as a "positive legislator", that is, not only annulling an act, but acting as the very manager of the SUS, determining administrative measures for the health sector.

It can not be denied that first category rulings affect the management of public health since the administrator will have to face a dilemma in providing medicine by judicial imposition. In this situation, on the one hand, lies the individual interest, which seeks the medicine and, on the other, the public interest that opposes the provision.

In the last two categories only the public interest is discussed, but what differentiates them is the type of judicial action: in the second category, the role of the legislator is negative; in the third, positive. Frame 2 demonstrates the relationship of the rulings surveyed and the content of the judgment, organized in the three categories of analysis:

Frame 2. List of surveyed rulings

	Process number	Content of the judgment
1st Category	AR* 393.175-0/RS 16	Access to medicines was ensured. They focused on the poverty of applicants and the state's duty to ensure health.
	AR 486.816-1/RJ 17	
	AR 271.286-8/RS 18	
	RE with RG** 566.471-6-RN 19	Not yet judged. It is questions the duty of the public power to provide high-cost drugs.
	RE with RG 607.582/RJ 20	Not yet judged. It analyzes the possibility of determining blocking of public accounts to ensure access to medication.
	RE com RG 657.718 21	Not yet judged. It analyzes the possibility of the Judiciary granting access to drugs without registration in the National Health Surveillance Agency (ANVISA).
2nd Category	AR 259.508-0/RS 22	Judicial interference was requested in an agreement made between two federative entities within the SUS. The Judiciary refused to intervene, as this is a discretionary judgment of the administration.
	AR 244.217-8/MA 23 AR 237.771-4/MA 24 AR 262.134-0/MA 25	It recognized the legitimacy of the Public Prosecution Service in proposing a public civil action on the illegality in a bidding process.

continues...

Frame 2. Continuation

	Process number	Content of the judgment
3rd Category	AR 727.864/PR 26	It determined the obligation of the State, not specifically envisaged by law, to bear the costs of private hospitals that treat patients in emergency situations when there are no beds available in the SUS.
	AR 684.612/RJ 27	A chaotic situation of a hospital in Rio de Janeiro was observed and the hiring of professionals was determined.
	AR 734.487/PR 28	It determined administrative measures in the hospital in the city of Londrina, such as the liberation of financial resources and increase of beds in adult ICU.
	ADI*** 1.923-DF 29	It analyzed the contracts signed between the State and social organizations that also involve the SUS. It waived the bidding process but determined a specific form for this hiring.

* Regimental aggravation; ** Extraordinary appeal with general repercussion; *** Direct unconstitutionality lawsuit

Discussion

The analysis of the rulings makes it possible to observe that the Judiciary intervened in the problems inherent to SUS - even because this power acts mainly in the face of injury or threat to the right, under the terms of art. 5th, subsection XXXV, from the CF¹⁰. And it is no wonder that the issue of health judicialization is on the rise since the problems involving the SUS are serious and growing.

This is evidenced by the survey carried out by the Ministry of Health, which evaluated the SUS 5.5 in a scale from 0 (worst) to 10 (best)³⁰, demonstrating the deficiencies of the Brazilian system. In addition, health programs in Brazil do not work efficiently, such as Family Health, which aims to promote health and prevent diseases by changing the hospital-centered model.

The consequence of this is that hospitals are crowded. *Data from the Tribunal de Contas da União - TCU (Federal Audit Office) indicate that 64% of hospitals are always overcrowded. Only 6% are never full*³⁰. Health workers are lacking, especially physicians, mainly in the interior. Other important points are the lack of training and the lack of qualification of these professionals.

The way SUS is managed is also questioned. Oliveira et al, 5 as well as Freitas Filho and Sant'Ana³¹, found a great bureaucratization of the system, high demand and delay in service delivery. Pharmaceutical resources, for example, are poorly managed. Diniz, Medeiros and Schwartz³², in a study carried out with 597 municipalities (10.7% of the Brazilian municipalities), observed that in 71% of them the inventory control is lacking or outdated and 39% have inadequate storage conditions, pointing to serious management flaws.

In addition to these problems in the public administration, the Brazilian public health system lacks investments. Brazil invests only 5% of the GDP in the SUS, behind Argentina, Uruguay, Canada, France, Switzerland, and the United Kingdom, that invest between 7.6% and 9% of GDP, according to data presented by the Secretary of Science, Technology and Strategic Inputs of the Ministry of Health³³.

With the enactment of Constitutional Amendment 95/2016³⁴, which limits public expenditure for 20 years, the Instituto de Pesquisa Econômica Aplicada - IPEA (Institute for Applied Economic Research)³⁵ concluded that, considering a real GDP growth rate of 2% per annum in the period of validity of the amendment (2017-2036), the cumulative loss for SUS financing would be R\$ 654 billion. According to the study, the amendment will greatly affect the financing and guarantee of the right to health in Brazil, creating favorable ground for the judicialization of the area.

The difficulties that afflict the SUS are also recognized by the STF. The Extraordinary Appeal with General Repercussion 684.612/RJ pointed to *the lack of satisfactory conditions in the provision of health services in the Brazilian State, especially for the less favored social strata*³⁶.

From the analysis of these rulings, it can be seen that judicial intervention in the SUS is justified due to failures, mismanagement, omission and inertia of the State in protecting and offering minimum conditions to citizens, based on the right to health provided by the Constitution and public policies. These conditions were called "existential minimum" in the rulings, fundamental dispositions of a right (in this case, health) that allow people not only to live in dignity but also to have access to civilizational values

and participate in the political process and in the democratic debate in an informed way³⁷.

Among the six rulings in the first category (judicial intervention to secure individual rights), three older ones, dated 2000, 2005, and 2006¹⁶⁻¹⁸, referred to individual rights as such. In these trials, in order to grant medication, the condition of poverty of the applicants was stressed. It was also emphasized that the right to health, closely linked to life, is an obligation of the public power and should not consist in an inconsequential constitutional promise. That right shall prevail over the financial interest of the State.

When it argued against the concession, the State pointed out that there was no provision in the budget and that procurement of drugs must comply with bidding processes. Both arguments were rejected by the Judiciary. The first, on the assumption that the Public Power must obey the Constitution and the right to health, and that to think otherwise would imply considering the Constitution a letter of promise devoid of efficacy. The second argument was overturned considering that the purchase of drugs dispenses bidding in case of an emergency.

The last three rulings of the first category analyzed also dealt with individual rights, but the cases discussed were much more complex when compared to the first ones 19-21. While the former discussed only the State's duty to provide medicine to a person deprived of resources, the latter addressed the obligation of the public authority to provide high-cost or medication unregistered at ANVISA, as well as the possibility of determining the blocking of public accounts, if that access was not guaranteed.

It will certainly be up to the Judiciary to justify, to argue and to amplify the analyzes on these last three cases because they will have general repercussion, that is, what is decided must be fulfilled by all the other instances in similar situations. It should be clarified that the general repercussion is a requirement for the admissibility of extraordinary appeals instituted by the constitutional amendment EC 45/2004¹². With this, such appeals will be judged by the Supreme Court only if the court recognizes social, political, economic and/or legal relevance that extrapolate the interests of the parties involved in the lawsuit.

In the analysis of the rulings of the second category (judicialization of health in the form of negative legislator), the Judiciary intervenes in the SUS when some illegality is found in the public management - for example, if the manager fails to comply with the bidding requirement, according to the rulings

Agravo Regimental - AR (Regimental Aggravation) in Recurso Extraordinário – RE (Extraordinary Appeal) 244.217-8/MA²³, AR in RE 237.771-4/MA 24 and AR in RE 262.134-0/MA²⁵. A minimalist judicial stance was verified in ruling AR in RE 259.508-0/RS²² when preventing criteria of convenience and opportunity of the public administration.

Minimalism and maximalism are understood as strands that guide judicial action. In this latter strand, which finds support in the thinking of Ronald Dworkin¹¹, it is sought to decide the cases in a broad and profound way, uttering ambitious theoretical justifications, in order to fix rules for the future. In minimalism, on the other hand, the judicial decision uses abstractions and generalizations only when extremely necessary to solve controversies. That is, it avoids to the maximum creating or delimiting rules, leaving this function to the Legislative.

This perspective, notably influenced by the thinking of Cass Sunstein³⁸, defends the so-called "passive virtues"; for example, when the judge refuses to resolve conflicts³⁹ and leaves the decision to the other powers, more qualified for the function. This occurred in the RA in RE 259.508-0/RS²², in the case in which the STF stated that the analysis of the agreement between Porto Alegre and the state of Rio Grande do Sul was related to the public administration and, therefore, there was no judicial intervention. Of the 14 decisions analyzed, disregarding those that have not yet been judged, most deal with maximalist judicial decisions. In only one of them, the Judiciary decided not to interfere.

Regarding the rulings of the third category (Judiciary as a positive legislator), notably in RA in RE 727.864/PR²⁶ and RE in RG 684.612/RJ²⁷, judicial decisions and their factual support were more complex, since judicial intervention would require measures of management to solve the cases. There were even more serious problems. The RA in RE 727.864/PR²⁶ registered a lack of hospital beds for emergencies in the public network. In the RE with RG 684.612/RJ²⁷, the situation of the Salgado Filho hospital in Rio de Janeiro was defined as "chaotic". In both cases, the health of the local community was at risk due to the lack of structure of the health system.

As opposed to judicial intervention, the public power has raised the principle of separation of powers, claiming that the judiciary can not interfere in the functions of the Executive, charged with managing the public administration and apply resources. In all the trials, the State referred to the "reserve of the possible" theory, which consists of limiting state responsibility based on the lack of resources to meet all

social demands. This precept is summed up in what can reasonably be expected and demanded of the State, considering the existing financial limitations⁴⁰.

However, these theses were overcome when the Judiciary adhered to the innovative theories underlying judicial interference. In AR in RE 727.864/PR²⁶, in addition to the existential minimum theory, others were invoked, such as the “prohibition of insufficient protection”, “prohibition of excess”, “prohibition of social retrogression”, the theory of “control of will and of result” and also the theory of “restriction of restrictions or limitation of limitations”.

By the prohibition of insufficient protection, neither the law nor the State can present deficiencies in relation to the guarantee of fundamental rights, in this case, health. The prohibition of excess implies that the State should not practice acts that violate fundamental rights, be it in the creation or the application of the law. In turn, the prohibition of social retrogression determines that the legislator can not suppress rights without offering a counterpart to the citizen. Therefore, this principle confers stability to the social achievements already provided in the Constitution, prohibiting the State from abolishing them⁴¹.

The theory of control of will and of result consists in the possibility of demanding from the public administrator, even judicially, effective and effective results. Control of the acts of the public administration, which are no longer solely due to legality, but also to the effects on the fulfillment of the constitutional objectives⁴².

Finally, the theory of the restriction of restrictions or limitation of limitations authorizes the Judiciary to implement fundamental rights in the face of the inertia of the Legislative and Executive powers, which normally provokes unbearable social situation, in disrespect of the Constitution.

All the above theories maximize guarantees because they protect the fundamental rights of the person. This demonstrates that the Judiciary adopted an intervening and maximalist stance in the cases cited. However, in the HR in the Instrument of Appeal (AI) 734.487/PR²⁸, a minister of the STF argued against this position, affirming that the Judiciary does not create public policies, but only determines the fulfillment of the existing ones.

To analyze this argument it is important to differentiate public policies and public management (or public administration). The latter consist of Executive actions to carry out actions defined in the political sphere, as defined by Farah⁴³. Many public policies are goals to be fulfilled, such as the commitments to

sustainable development⁴⁴ and the National Policy for Health Promotion⁴⁵, among others.

Public management occurs, therefore, when the political agent performs something concrete in the eagerness to achieve the intended objectives. The health promotion policy, for example, *seeks to promote environmental preservation and the promotion of safer and healthier environments*⁴⁶. Based on this, the manager can, for example, determine the reforestation of the riparian forest of a stream.

We can also think of the case in which the Judiciary stipulated *the release of financial resources, the expansion of the adult-intensive care unit of the Hospital Universitário de Londrina (minimum of 10 beds)*⁴⁷. This action demonstrates that it is observing a public policy, but as a manager, that is, as an agent and executor of public policies.

Against this idea, it is possible to point out the inertia of the Judiciary, since it only acts when provoked by the parties. It may also be argued that it is not in their constitutional obligations to create or implement public policies. However, these arguments do not detract from its role as health manager, since it has the final decision on the measures to be taken.

Similarly, a king surrounded by counselors should hear advice and opinions repeatedly, but it is up to him to make the final decision. He is responsible for the implemented action, not his advisers. Therefore, the prerogative of inertia of the magistrate and the fact of hearing all the parties involved in the situation, with different points of view, without mentioning the relevant participation of the Public Prosecutor, does not prevent that the intervention measure comes from the Judiciary.

Therefore, this intervening measure must come from this instance, because it is the one who holds the power to follow an opinion or not, to deliberate on a certain action and to define its result or, as Gardbaum¹⁴ says, to give the final word. In the case of the RE with RG 684.612/RJ²⁷, for example, the request for intervention at the Salgado Filho hospital in Rio was carried out by the parties, and evidence was produced to support the request of those involved. But the final decision was that the hospital should hire physicians and technicians in sufficient quantity to meet the demand in order to overcome the critical situation.

From the analysis of the judgments, it is concluded that it is not the factual situation that will determine the stance of the STF as a negative/positive or minimalist/maximalist legislator. In addition to the practical case, the arguments and theories surrounding the litigation must be considered.

An example of a minimalist decision is the AR in RE 259.508-0/RS²², regarding an agreement between the State of Rio Grande do Sul and the city of Porto Alegre. The Judiciary chose not to intervene in this case, since it was in accordance with the criteria of convenience and opportunity of the administration. However, in the Ação Direta de Inconstitucionalidade - ADI (Direct Unconstitutionality Lawsuit) 1,923/DF²⁹, referring to the organizations in agreement with the State, the STF determined parameters for these contracts. Both decisions could have the same result, depending on the fundamentals and arguments adopted. Thus, the result is susceptible to a high degree of variability, since it results from the positioning of the judges.

This argument does not intend to mischaracterize the importance of the facts analyzed, since the judgments involve serious violations of the right to health. It is noted that the more serious the situations described in the rulings, the more incisive tended to be the intervening judicial measures. However, this does not detract from the fact that the final decision depends on the understanding of the magistrates.

Therefore, although the Judiciary decides based on the laws and the Constitution, the creative force of the judge is expanding with regard to intervention in the SUS - it relies on the support of laws and new theories to deal with the precariousness of current health the Brazilian public. In this way, the Judiciary assumes more prerogatives and intervention positions, without limits to innovation and the creation of theses and foundations that can solve practical situations involving the SUS.

We must also consider two aspects: it is necessary to solve the problems of the SUS, which are quite serious, especially when the political power is unable to solve them, but we must also take into account the repercussion of these decisions in the organization and planning of the activities of the SUS.

Final considerations

Currently the judicialization of health, that is, the intervention of the Judiciary in all services and administrative acts of the SUS, has been more pronounced in relation to the supply of medicines. This control involves all organs of the judiciary, from the first instance judge to the Supreme Court.

The present study focused on the Supreme Court because it has the final say in the interpretation of constitutional provisions. In order to base its interventions, the STF relies on the vast Brazilian legislative framework,

including the CF and the laws of the SUS. This makes it possible to conclude that the country's health system is highly guaranteeing, by promoting actions of protection, prevention, and health promotion.

However, the mere existence of laws to guarantee the right to does not justify the intense judicial intervention on the current Brazilian public health system, since it is necessary to observe the social reality and also the degree of applicability of the norm. It is also possible that existing laws are not applied, at least not in literal form, as is the case, for example, in the recognition of homoaffective union (although the constitutional text states that a stable union is between man and woman).

The analysis of the decisions of the STF indicates that judicial interference in the SUS is expanding, mainly because the problems of SUS are large and serious in the current historical-social context of the country so that the complexity of the actions of the court has increased over time. In the rulings of the first category, for example, the older ones dealt with individual rights, while the more recent lawsuits dealt with cases that could affect society as a whole. The STF did not refrain from appreciating more complex situations, adopting a maximalist position not only to judge but also to establish rules for the future.

Judicial decisions indicate strong resistance by the executive to the interference of another power, although both have a common interest - to make the health system more effective. This conflict is contradictory, since the Executive and Judiciary should assume dialogical and cooperative positions.

However, the judicial process does not seem to be the most appropriate for discussing SUS problems, considering that, as a rule, the procedural relationship deals with specific or even punctual cases, without worrying about the analysis of the entire health system. In addition, the judge occupies a prominent position for taking the final decision, which must be absolutely fulfilled by the public authority once the resources have been exhausted.

Assuming that the judicial route is not the most appropriate to discuss the SUS, the extrajudicial way is defended, in which the participation of the Judiciary is not mandatory for the public power. It should be stressed that it is not the magistrates' prerogative to deliberate or at least know the policies of the public health system.

Therefore, it is necessary to seek means of interaction and communion of efforts between the powers, without excluding the intervention of the Judiciary. The present study demonstrates that

judicial intervention in the SUS will be maintained and increased since the Brazilian Supreme Court in most decisions reaffirmed its constitutional prerogatives for that purpose. In addition, the STF has not withdrawn in the face of the failures of

the political power to guarantee minimum health conditions for the citizen. On the contrary, it used juridical theories, some innovative ones, to assure the health to those who have claimed judicial protection.

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Participation of the authors

The authors participated equally in the project.

Carlos Eduardo Artiaga Paula

 0000-0001-6927-9239

Ana Paula da Silva

 0000-0002-9393-0682

Cléria Maria Lôbo Bittar

 0000-0001-8947-6491

