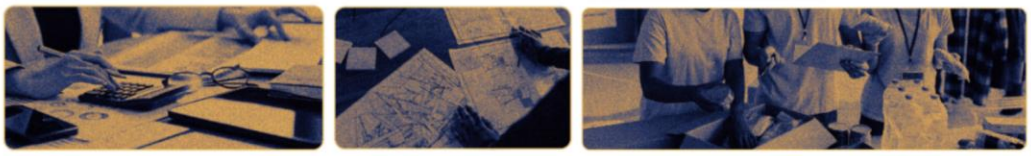

IMPACTO CIENTÍFICO EDITORA

JUDICIALIZATION OF HEALTH AND DEVELOPMENT: INTERSECTIONS BETWEEN RIGHTS AND CHALLENGES FOR THE BRAZILIAN PUBLIC HEALTH SYSTEM (SUS)

JUDICIALIZAÇÃO DA SAÚDE E DESENVOLVIMENTO: INTERSEÇÕES ENTRE DIREITOS E DESAFIOS PARA O SUS

JUDICIALIZACIÓN DE LA SALUD Y EL DESARROLLO: INTERSECCIONES ENTRE DERECHOS Y DESAFÍOS PARA EL SISTEMA ÚNICO DE SALUD (SUS) BRASILEÑO

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ABSTRACT

The judicialization of healthcare in Brazil has had significant effects on the formulation and implementation of public policies, especially within the Unified Health System (SUS). This article examines the implications of this phenomenon and its relationship to the discussion on development, focusing on the allocation of public resources and access to healthcare. Adopting a qualitative approach and based on documentary analysis, the research mobilizes institutional data and empirical evidence that reveal the impact of judicial action on health planning and shared management among federative entities. Based on a theoretical framework that integrates discussions on public policies and development, it is demonstrated that judicialization, while legitimizing the individual right to health, frequently destabilizes budgetary rationality and access to essential goods and services. The analysis highlights the need to strengthen inter-federative coordination mechanisms, restructure primary care, and qualify the technical support units for the Judiciary, as ways to mitigate the negative effects of judicialization. It is concluded that the right to health, in order to fulfill its structuring role in development, must be treated as a collective public policy, based on planning, adequate financing, and inter-institutional articulation. Overcoming current distortions requires transforming the fragmented logic of judicial intervention into a cooperative logic of democratic and integrated management of the SUS.

Keywords: Judicialization of Health. Sustainable Regional Development. SUS. Territorial Inequality. Public Policies.

RESUMO

A judicialização da saúde no Brasil tem provocado efeitos significativos sobre a formulação e a execução das políticas públicas, sobretudo no âmbito do Sistema Único de Saúde (SUS). Este artigo examina as implicações desse fenômeno e sua relação com a discussão acerca do tema desenvolvimento, com foco na alocação de recursos públicos e no acesso à saúde. Adotando uma abordagem qualitativa e fundamentando-se em análise documental, a pesquisa mobiliza dados institucionais e evidências empíricas que revelam o impacto da atuação judicial sobre o planejamento sanitário e a gestão compartilhada entre os entes

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federativos. A partir de um referencial teórico que integra discussões sobre políticas públicas e desenvolvimento, demonstra-se que a judicialização, embora legitime o direito individual à saúde, frequentemente desestabiliza a racionalidade orçamentária e o acesso a bens e serviços essenciais. A análise evidencia a necessidade de fortalecer mecanismos de coordenação interfederativa, reestruturar a atenção primária e qualificar os núcleos técnicos de apoio ao Judiciário, como caminhos para mitigar os efeitos negativos da judicialização. Conclui-se que o direito à saúde, para cumprir seu papel estruturante no desenvolvimento, deve ser tratado como política pública coletiva, baseada em planejamento, financiamento adequado e articulação interinstitucional. A superação das distorções atuais passa pela transformação da lógica fragmentada de atendimento judicial em uma lógica cooperativa de gestão democrática e integrada do SUS.

Palavras-chave: Judicialização da Saúde. Desenvolvimento Regional Sustentável. SUS. Desigualdade Territorial. Políticas Públicas.

RESUMEN

La judicialización de la atención sanitaria en Brasil ha tenido efectos significativos en la formulación e implementación de políticas públicas, especialmente dentro del Sistema Único de Salud (SUS). Este artículo examina las implicaciones de este fenómeno y su relación con el debate sobre el desarrollo, centrándose en la asignación de recursos públicos y el acceso a la atención sanitaria. Mediante un enfoque cualitativo y basado en el análisis documental, la investigación moviliza datos institucionales y evidencia empírica que revelan el impacto de la acción judicial en la planificación sanitaria y la gestión compartida entre entidades federativas. Utilizando un marco teórico que integra las discusiones sobre políticas públicas y desarrollo, se demuestra que la judicialización, si bien legitima el derecho individual a la salud, frecuentemente desestabiliza la racionalidad presupuestaria y el acceso a bienes y servicios esenciales. El análisis destaca la necesidad de fortalecer los mecanismos de coordinación interfederativa, reestructurar la atención primaria y mejorar los centros de apoyo técnico al Poder Judicial como vías para mitigar los efectos negativos de la judicialización. Se concluye que el derecho a la salud, para cumplir su función estructuradora en el desarrollo, debe ser tratado como una política pública colectiva, basada en la planificación, la financiación adecuada y la coordinación interinstitucional. Superar las distorsiones actuales exige transformar la lógica fragmentada de la asistencia judicial en una lógica cooperativa de gestión democrática e integrada del Sistema Único de Salud (SUS) de Brasil.

Palabras clave: Judicialización de la Salud. Desarrollo Regional Sostenible. SUS. Desigualdad Territorial. Políticas Públicas.

1 INTRODUCTION

The Unified Health System (SUS), conceived as a universal, comprehensive, and equitable public policy, represents one of the most complex implementations of the 1988 constitutional pact. By enshrining the right to health as a duty of the State and a prerogative of all, the Brazilian legal system inaugurated an agenda of institutional obligations whose implementation depends on multiple dimensions: stable financing, articulated federative management, territorial equity and continuous public policies.

However, the persistence of social and regional inequalities, the asymmetry in the supply of services and the low installed capacity in small municipalities impose significant challenges to the full realization of this right. It is in this context that the judicialization of health has expanded, often used as a means of access to medical care, but also as evidence of the structural gaps in public policy.

The phenomenon of the judicialization of health — especially with regard to the demand for high-cost drugs and procedures outside the SUS list — has implied tensions between the guarantee of individual rights and the sustainability of the public health system. Judicial decisions that determine the provision of specific treatments, unlinked to regional management agreements, directly impact sectoral planning and municipal and state budgets. In this sense, two problematizing questions arise from the research: How to reconcile compliance with court orders with the collective logic of SUS organization? And what are the effects of this dynamic on equity in access, justice and development?

The main objective of this article is to analyze the impacts of the judicialization of health on development, focusing on the allocation of public resources and interfederative governance. The specific objectives are: to examine the phenomenon of the judicialization of health in the light of the Brazilian normative framework and the constitutional principles of the SUS; to identify the financial and administrative effects of judicialization for states and municipalities; and to discuss the implications of this dynamic for the promotion of a development model based on justice and institutional sustainability (Brasil, 1990).

The relevance of the theme is evidenced both by the social relevance of health as a fundamental right, and by the urgency of reviewing the mechanisms of articulation between the Powers and the federative entities in guaranteeing this right. The significant increase in lawsuits in health in recent years exposes not only the fragility of the administrative channels for responding to the needs of the population, but also the limits of the institutional capacity of public managers in the face of a scenario of increasing judicialization. By dealing with the

intersection between the right to health and public rationality, the present study seeks to contribute to a critical understanding of the phenomenon, offering subsidies for the construction of more equitable solutions.

The research adopts a qualitative approach, based on documentary analysis and literature review. The structure of the article is organized into three sections, in addition to this introduction and final considerations. The first section discusses the conceptual foundations of development and its interface with the right to health, based on classical and contemporary theoretical frameworks. The second examines the judicialization of health in Brazil, exploring its causes, trajectories and repercussions on the governance of the SUS. The third section presents the results of the documentary analysis, with emphasis on the impacts of judicialization and access to the federative structure. Finally, the conclusion summarizes the findings and points out possible paths for the institutional improvement of public health policies in Brazil.

2 DEVELOPMENT AND THE RIGHT TO HEALTH: CONCEPTUAL FOUNDATIONS

Development as an object of study and public policy requires the overcoming of inequalities and the realization of fundamental social rights. Among these, access to health occupies a central role, not only because of its care dimension, but also because of its structuring character in the consolidation of citizenship, social cohesion and democratic stability. The analysis of this theme requires the intersection of legal, political and economic approaches.

Latin American developmentalist thought, represented by Celso Furtado (1966), highlighted the structural character of inequalities from an early stage. Furtado argues that underdevelopment does not simply result from the absence of economic growth, but from the historical reproduction of asymmetries in the distribution and access to public goods, such as education and health. For the author, breaking this cycle requires deliberate policies of social inclusion.

Over the last few decades, the concept of development has undergone important reformulations. Amartya Sen (2010) defined development as the expansion of substantive freedoms, among which health plays a decisive role. This perspective inverts the traditional logic, by understanding health not as an end derived from economic growth, but as a precondition for individuals to be able to exercise their autonomy and realize their potential.

Jeffrey Sachs (2017), when reflecting on the Sustainable Development Goals (SDGs), argues that equitable access to health is one of the pillars of sustainability. For the author, public and universalist health systems promote social gains that transcend the health field, contributing to economic productivity and political stability. By reinforcing the link between health and development, Sachs adds empirical density to Sen's argument.

In the Brazilian legal system, the right to health has been enshrined as a fundamental right since the 1988 Constitution. Article 6 inscribes it among the social rights, and Article 196 imposes on the State the obligation to promote it through public policies that ensure universal and equal access. It is a right to benefits, which requires continuous state action and cannot be relativized by criteria of political convenience.

Bambirra and Santos Neto (2017) observe that national development, as a constitutional objective, must be interpreted in the light of the realization of fundamental rights. Thus, the promotion of access to health throughout the national territory is not only a sectoral policy, but a requirement for the implementation of the federative pact and distributive justice.

Sarlet (2007) emphasizes that the fundamental rights included in the Constitution have a dual nature: they are simultaneously binding legal norms and expressions of constitutive values of the Democratic State of Law. In the case of the right to health, this implies that its non-implementation represents not only a management deficit, but an injury to the constitutional order itself.

Acemoglu and Robinson (2012), when investigating the causes of the success or failure of nations, point out that inclusive institutions are the basis of development processes. The guarantee of universal access to health is, in this context, an institutional variable that conditions the equitable distribution of opportunities and strengthens citizenship.

Albuquerque (2010) argues that substantive democracy — that which goes beyond the electoral rite — requires effective access to fundamental rights, such as health and education. The author also adds that the effectiveness of these rights represents the link between political development and social development, reinforcing the role of the State as a guarantor of human dignity.

This perspective requires the articulation between state planning, normative regulation and public financing. However, as indicated by data from the IBGE (2022) and Medical Demography in Brazil (CFM, 2023), significant inequalities persist in the distribution of doctors, beds, and equipment. Among the types of inequalities, the geographic concentration

of infrastructure can be mentioned, which compromises the equity of the SUS and intensifies vulnerabilities.

Veiga (2010), when reflecting on the foundations of sustainable development, highlights that social justice, environmental balance and democratic governance are interdependent dimensions. Health, at the same time cause and consequence of these dynamics, proves to be a sensitive indicator of the quality of development.

In this scenario, health must be understood as a vector of national integration. Its effectiveness at different scales indicates the capacity of the Brazilian State to reduce historical inequalities and promote the inclusion of previously marginalized populations. The absence of this access negatively impacts not only the individual condition of well-being, but also institutional legitimacy and community cohesion.

Coordinated action between the Union, states and municipalities thus becomes essential to ensure that the right to health ceases to be a normative statement and becomes a daily reality. The allocation of resources, the organization of care networks and the strengthening of local public management are strategic dimensions of this process.

Thus, by linking development to the right to health, it becomes evident that its effectiveness depends on the institutional capacity of the federative entities and on interfederative cooperation. Therefore, the lack of access to health care by a segment of the population, therefore, can be linked to the understanding that there is no development in this circumstance. And, in Brazil, when health is not accessed, some forms can be used, one of them is the judicialization of health.

The judicialization of health consists of the action of individuals filing requests for their rights as citizens in court to access procedures, services, or medicines that may not be offered to the population by the Unified Health System (SUS). This way of accessing health, although necessary in many situations, reveals the limits of public policies when they lack planning, adequate financing and effective social control. Overcoming these situations may require new forms of federative agreement, anchored in social justice and sustainability.

As Martins and Campos observe,

> The growth of lawsuits highlights the need for a more technical and balanced approach on the part of magistrates, especially in the context of limited resources and growing challenges in the administration of the SUS. Thus, the articulation between the Executive and Judiciary branches becomes essential to mitigate the effects of judicialization, ensuring that the right to health is realized without compromising the structure and viability of the public system (Martins; Campos, 2025, p. 10).

The articulation between health and development requires, however, an approach that values the specificities of the demands in social or territorial terms. For example, small and medium-sized municipalities, often made invisible by large national policies, face acute limitations in infrastructure, human resources, and financing. This reality demands flexible strategies that respect the diversity of contexts and recognize the centrality of primary care as the structuring axis of the system.

It is in this sense that the formulation of public policies must be based on accurate diagnoses, capable of guiding interventions guided by criteria of equity and effectiveness. Strengthening the technical capacity of subnational entities, encouraging interfederative cooperation, and transparency in the management of public resources are promising ways for the right to health to cease to be only formally recognized and to become, in fact, realized for the entire population, in the different Brazilian territories.

Concluding this theoretical section, it is observed that the effectiveness of the right to health as a vector of development depends on stable institutional capacities, public planning, adequate and continuous financing, evidence-based regulation, regionalized networks with problem-solving primary care, as well as mechanisms of participation and social control. This arrangement must articulate the constitutional principles of universality, integrality and equity (Brasil, 1988; Brazil, 1990) with goals for reducing inequalities and promoting well-being provided for in the 2030 Agenda (UN, 2015). From this framework, the next section presents the results and discusses how different institutional and territorial configurations condition the materialization of this right in the country.

3 METHODOLOGICAL PROCEDURES

This research adopts a qualitative approach, of an exploratory and descriptive nature, with the objective of understanding the multiple interfaces between judicialization of health and development, in the light of data and theoretical references. According to Gil (2017), the main purpose of exploratory research is to develop, clarify and modify concepts and ideas, with a view to formulating more precise problems or researchable hypotheses.

According to Creswell (2010), qualitative methods are especially appropriate for the analysis of complex phenomena, as they allow immersion in the social, institutional and normative meanings that structure the object investigated.

Document analysis was used as a central strategy, including official sources produced by bodies such as the Federal Court of Accounts (TCU), the National Council of Justice

(CNJ), the Ministry of Health (MS) and the World Health Organization (WHO). These documents were selected based on criteria of topicality, thematic relevance and institutional reliability.

In addition, a literature review was carried out from authors in the areas of public policies, law and development. The theoretical corpus was composed of reference works that deal with judicialization as a legal-political phenomenon (Barroso, 2007; Sarlet, 2007; Aith, 2014), development as an institutional construction (Veiga, 2010; Prado, 2015; Ribeiro, 2002) and inequalities in the Brazilian federative context (Vieira, 2023; Buíssa et al., 2019).

The systematization of the data was guided by analytical categories derived from the research objectives themselves, organized in the following axes: (1) right to health and to the SUS; (2) judicialization of health and budgetary impact; (3) public policies and access to justice. This analytical structure allowed the construction of critical inferences about the limits and possibilities of judicialization as a mechanism for the realization of rights and its compatibility with the principles of equity and development.

4 RESULTS AND DISCUSSION

The results presented are based on the understanding of health as a condition and expression of development: expansion of freedoms (Sen, 2010), systemic gains from universal systems (Sachs, 2017) and centrality of inclusive institutions for equitable opportunities (Acemoglu; Robinson, 2012). On the legal-constitutional level, health is considered a right to provide services and a duty of the State, governed by universality, integrality and equity (Brasil, 1988; Brasil, 1990), in addition to the effectiveness of fundamental rights (Sarlet, 2007). In sustainable development, the distributive and territorial dimension highlighted by Veiga (2010) counts.

In this context, the judicialization of health appears in the data less as an episodic anomaly and more as a reactive mechanism to failures in provision and technological incorporation, with unintentional redistributive effects. There is a concentration of demands in contexts of lower installed capacity and lower coverage of primary care, which reinforces regional inequalities, precisely the type of asymmetry that the debate on development seeks to address. In institutional terms, the expansion of individual actions compresses the budget programming and moves away from decisions on protocols and agreements, stressing the collective rationality required by the SUS.

The 2030 Agenda offers parameters to assess progress in health. SDGs 3 and 10 guide to ensuring well-being for all and reducing inequalities (UN, 2015). Thus, the indicators mobilized in this section, installed capacity, coverage, judicial expenditures, distribution of doctors, and access to medicines function as evidence of institutional performance according to these principles. The objective is not to list numbers in the abstract, but to show how choices and institutional arrangements condition the materialization of the right to health and, consequently, of development itself.

4.1 THE 2030 AGENDA AND THE SDGS IN BRAZILIAN HEALTH POLICY

The incorporation of the Sustainable Development Goals (SDGs) as an international guideline has increased the relevance of the right to health in the global agenda. In particular, SDG 3 proposes to "ensure healthy lives and promote well-being for all, at all ages", while SDG 10 seeks to "reduce inequality within and between countries" (WHO, 2015). Both are directly connected to the federative structure of the SUS, requiring articulation between the levels of government and policies that respect Brazilian diversity.

This convergence between global goals and constitutional obligations is expressed, in the case of Brazil, in the need for investments in health to be territorially balanced. Data from the Ministry of Health (2023a) and the National Household Sample Survey - PNAD, show that regions such as the North and Northeast face greater difficulties in terms of primary care coverage, availability of professionals, and regular access to essential medicines. This highlights the urgency of implementing interfederative governance mechanisms guided by distributive justice.

In this context, the SDGs function as a normative reference that reinforces the State's commitment to confronting inequalities. From the adhesion to the 2030 Agenda, Brazil assumed specific goals related to the reduction of infant mortality, vaccination coverage, access to medicines, and strengthening primary care — all anchored in the principle of equity. Acemoglu and Robinson (2012) recall that societies that do not develop inclusive institutions are unable to sustain social and economic progress in the long term. The following is a table that summarizes the correlation between the objectives of the 2030 Agenda, the health indicators, and the federative challenges faced by the SUS.

Table 1

Correlation between SDGs, health indicators and federative challenges in Brazil

Objective of the 2030 Agenda	Associated Health Indicator	Federative Challenge
SDG 3 – Good health and well-being	Primary Care Coverage (e-Gestor, 2023a); Infant Mortality (MS, 2024)	Inequality in the supply of services; Shortage of human resources
SDG 10 – Reduction of inequalities	Distribution of doctors per thousand inhabitants (CFM, 2023); Access to medicines (RENAME, 2024)	Technical capacity of the municipalities; Unequal per capita funding
SDG 16 – Peace, justice and strong institutions	Judicialization of health (CNJ, 2023); Effectiveness of local management	Fragility of interfederative coordination bodies

Source: UN (2015); Ministry of Health (2023a, 2024); CNJ (2023); CFM (2023); RENAME (2024).

The practical application of the 2030 Agenda therefore requires more than symbolic adherence. It requires the integration of territorial diagnoses with planning instruments, in addition to the commitment of the three federative entities with clear goals, continuous financing and periodic evaluations. Aith (2014) emphasizes that the strengthening of the SUS involves integrated networks that guarantee equitable access.

This scenario reinforces the role of international indicators as vectors of *accountability*,[4] allowing the effectiveness of public policies and their contribution to development to be monitored. Ultimately, the realization of the right to health within the framework of the 2030 Agenda will depend on the institutional capacity to reduce historical asymmetries, consolidate democratic practices, and produce policies sensitive to the vulnerabilities of Brazilian territories.

4.2 JUDICIALIZATION OF HEALTH: DEFINITIONS, ORIGINS AND TRAJECTORY IN BRAZIL

The judicialization of health occupies a prominent place in contemporary analyses of the limits and possibilities of the realization of social rights in Brazil. The phenomenon intensified after the Federal Constitution of 1988, whose centrality in fundamental rights conferred new normative density to the right to health. By establishing this right as a state duty, the Constitution created the legal basis that would allow citizens and groups to appeal to the Judiciary in the face of the omission or failure of public policies. This process of judicial

[4] Accountability can be translated as public responsibility or democratic accountability, referring to the obligation of governments and institutions to be accountable for their actions to society.

activation gained relevant contours to the extent that it revealed the fragility of administrative structures in the face of the complexity of health policy and its multiple demands.

Barroso (2008) argues that the judicialization of health transcends the demand for medicines and starts to encompass structural choices of the State, such as the allocation of resources and the definition of priorities. In this regard, he notes that:

> "[…] judicialization means that relevant issues from a political, social or moral point of view are being decided, in a final manner, by the Judiciary. It is, intuitively, a transfer of power to the judicial institutions, to the detriment of the traditional political instances, which are the Legislative and the Executive" (Barroso, 2010, p. 8).

Such displacement of decision-making power is not only due to legislative or executive omission, but also to the growing social demand for immediate responses, especially in sensitive areas such as health. From this perspective, Sarlet (2007) highlights that fundamental rights of a provisional nature, such as the right to health, require positive actions from the State for their implementation. Administrative inefficiency, marked by the fragmentation of the system, the absence of updated clinical protocols, and the chronic underfunding of the SUS, opens space for judicialization as a compensatory mechanism. Thus, the Judiciary becomes a de facto actor in the regulation of public policies, even though its intervention is not always guided by technical and budgetary criteria compatible with the complexity of health management.

Fachini (2023) emphasizes the ambivalent nature of judicialization. On the one hand, it reaffirms the right to health as a fully enforceable subjective right. On the other hand, it can cause imbalances in the administrative structure of the SUS. The absence of dialogue between the Powers and the predominance of punctual judicial decisions unrelated to health planning compromise the rationality of the system.

Aith (2014) shows that the obstacles to the realization of the right to health are not restricted to lawsuits. They are linked to governance issues and to the organization of the SUS itself. According to the author,

> The duties of the State in the protection of health can be translated into an obligation to develop and execute public policies capable of achieving two major objectives: i) to reduce as much as possible the risks of diseases and health problems to individuals and the population and; ii) organize a network of quality public services capable of ensuring universal and equal access to public health actions and services (AITH, 2014, p. 6).

The joint analysis shows that judicialization, although relevant to ensure individual rights, exposes structural flaws in the SUS. To overcome them, governance adjustments, investments in information technology, and valuing primary care are necessary, at the risk of perpetuating institutional inefficiencies.

Another relevant element is the territorial dimension of judicialization. The CNJ report (2023) shows that the highest rates of judicialization are concentrated in states with precarious infrastructure and low coverage of primary care. This indicates that access to justice, paradoxically, becomes a gateway to the SUS in regions where the system fails to guarantee minimum services. In these contexts, the Judiciary acts as a precarious substitute for public policy, which compromises the legitimacy of health planning and reinforces inequalities. As the report points out,

> The Health Judicialization Panel presents information on health-related lawsuits, allowing you to visualize, in an interactive way, the behavior of judicialization by state, by subject, and by type of medicine or treatment demanded, making it possible to identify regional inequalities and subsidize public policies (CNJ, 2023, p. 17).

Therefore, understanding the judicialization of health as a mere conflict between individual rights and budget limitations is not sufficient reading. The phenomenon needs to be analyzed as an expression of the tensions between norm and reality, between constitutional project and state capacity. The growing volume of lawsuits is a symptom of a systemic dysfunction, which demands articulated solutions between the Powers, based on evidence, interfederative agreement and technical accountability.

Thus, judicialization should be understood less as an exception and more as a warning sign for the review of the processes of formulation, financing and implementation of public health policies. The answer to this phenomenon is not exclusively in the courts, but in the ability of public managers and legislators to redesign social policy instruments in the light of constitutional principles and the requirements of equity, integrality and universality of the SUS.

4.3 JUDICIALIZATION AND PUBLIC HEALTH POLICIES: TENSIONS AND DILEMMAS

The judicialization of health, particularly with regard to the demand for medicines, represents one of the main points of tension between individual rights and the rationality of public policies. By transferring to the Judiciary the decision on the provision of treatments,

often outside the guidelines of the SUS, the system faces challenges related to territorial equity, federative planning and budgetary sustainability.

The financing of the Unified Health System (SUS) is marked by persistent insufficiencies, which have worsened in the context of the current fiscal regime and in the face of the new demands imposed by the demographic and epidemiological transition. While in several countries there is an increase in public contributions, Brazil maintains a structure in which private spending exceeds state spending, evidencing historical limitations in the consolidation of a universal system. According to the Economic Policy Note:

> Contrary to recent international experiences, Brazil maintains a situation of chronic underfunding of the Unified Health System (SUS), in which private spending exceeds public spending even in the face of the existence of a universal system. As highlighted in the Economic Policy Note prepared for ABrES, "contrary to recent developments, the text points to the chronic underfunding of the Unified Health System (SUS), highlighting the uniqueness of the Brazilian case, in which private health spending is higher than public spending, even in the face of the existence of a universal system. The note highlights the recent worsening of the federal financing conditions of the SUS, under the impacts of the current fiscal regime, estimating the withdrawal of almost R$ 60 billion from the sector" (Funcia et al., 2022, p. 2).

This diagnosis shows that the problem of underfunding is not limited to conjunctural oscillations, but reflects a structural pattern of fiscal policies. The reduction of federal resources compromises the maintenance of essential areas, such as primary care, pharmaceutical services and specialized procedures, widening regional inequalities and weakening the effectiveness of a system designed to be universal and equitable.

This scenario directly impacts the federative balance. States and municipalities are often co-responsible for judicial decisions that force them to pay for inputs outside their budget, often without the proper technical or financial support from the Union.

The disproportionality between the collection capacity of federated entities and the judicially imposed obligations accentuates inequalities and compromises equity in the allocation of public resources, as highlighted by Buíssa, Bevilacqua and Moreira (2019).

In addition to the financial burden, judicialization imposes challenges to the planning logic of public policies. The National Council of Justice (CNJ, 2023), in its National Panorama of the Judicialization of Health, points out that lawsuits for medicines are still concentrated in a few items, but with a high fiscal impact. This mismatch between lawsuits and public policy

compromises the effectiveness of health programs planned based on clinical protocols and scientific evidence.

The World Health Organization (WHO, 2022) also recognizes judicialization as a phenomenon present in several countries, but points out that in Brazil it assumes critical proportions due to the combination of a high degree of litigation, fragility in technological incorporation, and structural deficiencies in the public system. This finding reinforces the importance of investing in administrative mechanisms for conflict resolution and strengthening of technical support centers for the Judiciary, as a way to qualify judicial decisions based on technical and epidemiological criteria. Next, the indicators of the judicialization of medicines in Brazil will be presented.

Table 2

Indicators of the judicialization of medicines in Brazil (real data)

Indicator	Value/Information	Source
MoH's spending on judicial decisions (2019)	R$ 1.3 billion	TCU (2021)
Percentage of medicines not incorporated into the SUS	61% of the total judicialized	TCU (2021)
Medicines with the greatest financial impact	5 items = 70% of legal costs	CNJ (2023)
Percentage of decisions with no technical evaluation	35%	CNJ (2023)
WHO recognition of judicialization in Brazil	Critical phenomenon due to the absence of protocols and management	WHO (2022)

Source: Prepared by the author (2024).

It is evident, therefore, that the judicialization of health, although often associated with the defense of rights, also reveals flaws and requires coordinated responses from the State.

The solution lies in reformulating administrative channels, strengthening public management, and increasing transparency in the definition of health priorities. The challenge is to balance respect for individual rights with efficiency and distributive justice in the use of public resources, especially in a country marked by persistent inequalities and asymmetries in the institutional capacity of federative entities.

4.4 JUDICIALIZATION AND DEVELOPMENT: A STRUCTURING DEBATE

The judicialization of health, when analyzed from the perspective of development, reveals not only administrative and budgetary conflicts, but also profound implications for access to justice. As Veiga (2010) observes, sustainable development demands a balanced

articulation between efficiency, equity and inclusion — elements systematically destabilized by the fragmentation caused by isolated judicial decisions, often dissociated from planning.

This fragmentation is particularly evident when analyzing the impact of judicialization on the SUS. By responding in a timely manner to individual demands, the Judiciary may inadvertently compromise the rational allocation of resources agreed upon in the inter-management forums. Vieira (2023) points out that judicial action, by ignoring the arrangements and agreements established by shared management instances, weakens the principles of integrality and equity and contributes to the perpetuation of asymmetries in access to health services.

Ribeiro (2002), when critically reflecting on the concept of development, argues that overcoming inequalities requires structuring and sustainable approaches. Excessive judicialization, by focusing on individualized and short-sighted responses, compromises this possibility, generating distortions that benefit certain groups to the detriment of public policies planned for the population as a whole. This imbalance undermines cohesion and hinders the consolidation of integrated and efficient health systems.

In addition, Prado (2015) warns of the presence of an ideology of development that, when appropriated by certain interest groups, converts the Judiciary into an arena for asymmetrical disputes of power and public resources. In this context, judicialization distances itself from its role of correcting injustices and starts to operate as a vector of federative imbalance, making it difficult to build policies guided by the principles of distributive justice and federative solidarity.

Therefore, it is necessary to redirect the debate on judicialization to the field of democratic planning. It is not a matter of delegitimizing the right of access to the Judiciary, but of strengthening collective instruments of agreement, evidence-based protocols, and mechanisms of public transparency. Only with this convergence will it be possible to ensure that the right to health actually contributes to development, instead of accentuating its distortions and inequalities.

The documentary analysis showed that the judicialization of health in Brazil is mostly concentrated in the demand for high-cost medicines, not standardized by the SUS, according to data from the CNJ (2022) cited by Gurgel:

> The numbers show the growth of judicialization, for which the panel of procedural statistics of health law of the CNJ reports that more than 520 thousand lawsuits related to the judicialization of health are in progress in the Brazilian judicial system. Among

> the most common topics, the supply of high-cost medicines stands out (GURGEL et al., 2023, p. 4).

According to the TCU (2021), in 2019 alone, the Ministry of Health spent R$ 1.3 billion on court decisions, of which 61% refer to items outside the National List of Essential Medicines (Rename). These data reinforce Aith's (2014) assertion that judicialization reflects structural management gaps and the absence of effective administrative flows to ensure regular access to essential inputs.

When these data are compared with the regional indicators of the Ministry of Health and the CNJ, there is a concentration of lawsuits in regions with lower coverage of primary care and greater inequality in the distribution of health professionals, such as the North and Northeast.

Medical Demography (CFM, 2023) points out that these regions have, respectively, 1.2 and 1.4 doctors per thousand inhabitants, while the Southeast has 3.5. This disproportion confirms Vieira's (2023) thesis that judicialization reproduces and deepens historical inequalities, by benefiting those who have greater access to the Judiciary, even in contexts of social vulnerability. These findings are also in line with the conception of Amartya Sen (2010), for whom development requires equitable access to basic services, such as health, as a condition for the expansion of freedoms.

From a territorial point of view, the data confirm the warnings of Ribeiro (2002) and Prado (2015) regarding the risks of fragmentation of public policies. This dynamic weakens the constitutional principles of equity and universality and highlights the imbalance between judicial decisions and public management.

The transversality of the phenomenon is also expressed in the overload of state administrative structures, which accumulate unforeseen judicial responsibilities. There is an urgency for articulation between the Judiciary and the Executive for the adoption of criteria based on evidence and protocols. The absence of this articulation results in uncoordinated decisions that compromise the effectiveness of public policy, by disregarding agreements and guidelines previously established in the inter-management forums. Recent technical cooperation initiatives show attempts to address this gap by strengthening instruments to support judicial decision-making. As the National Council of Justice records,

> "[…] the following technical cooperation agreements were signed, aimed at improving and expanding e-NatJus: Technical Cooperation Agreement No. 135/2024, involving

> the CNJ, the TJBA and the Sociedade Beneficente Israelita Brasileira Hospital Albert Einstein, with a view to joining efforts [...] for the development and collaborative use, on the Digital Platform of the Judiciary (PDPJ-BR), of the e-NatJus system" (CNJ, 2024, p. 61).

Data extracted from the PMAQ National Report (Abrasco, 2022) also reveal significant disparities in the quality standards of primary care between municipalities. Those who received the lowest score in the 2017–2021 cycle are, in many cases, the same ones who face the most lawsuits related to the provision of services and medicines. This reinforces the need to strengthen interfederative coordination mechanisms and provide technical support to local entities in structuring problem-solving networks. Furtado's (1966) critique of the perpetuation of inequalities due to the unequal distribution of public services is still current.

Judicialization also impacts financing mechanisms. As Buíssa et al. (2019) point out, the compulsory allocation of public resources based on court decisions compromises the execution of multi-year plans and the goals agreed upon at health conferences. This scenario aggravates the budget imbalance between the federative entities and creates a cycle of legal and financial insecurity that affects the continuity of public health actions.

From the normative point of view, the findings confirm the reading of Sarlet (2007), for whom the right to health, as a right to benefits, requires the institutionalization of universal and permanent public policies, and cannot be replaced by episodic judicial solutions. The prevalence of specific lawsuits reveals not only the ineffectiveness of certain public policies, but also the fragility of instances of social participation and control. This finding is corroborated by the WHO (2022).

In this sense, the national literature also shows that judicialization emerges precisely from the institutional gaps of the State in ensuring the effectiveness of social policies. The absence of consistent planning, added to the discontinuity of government actions and the underfunding of essential services, opens space for the Judiciary to be called upon as a substitute for public policy. As Ribeiro points out,

> The implementation and execution of the most diverse public policies lack effectiveness, continuity, management and budget. When the State fails to comply with its legal duty to access services essential to the well-being of the population, space is opened for such demands to be transferred to the Judiciary. As Ribeiro observes, "the judicialization of public policies expresses the inability of the State to ensure all citizens the rights that are generically recognized in the laws" (RIBEIRO, 2021, p. 380).

From the crossing of empirical data with the theoretical basis of the research, it becomes evident that the phenomenon of judicialization cannot be understood only as a legitimate demand for access to rights, but as a symptom of challenges for updating and advances for the SUS.

The rationalization of the use of the Judiciary in the field of health depends on the construction of well-structured regional networks, the valorization of primary care and the constitution of technical support centers for the Judiciary with mediation capacity and qualified guidance. This effort implies recognizing that the strengthening of public health policy requires monitoring, evaluation, and resumption of long-term planning capacity, as proposed by Sachs (2017) and Veiga (2010).

The analysis carried out not only validates the theoretical assumptions of the study, but also reaffirms the need to strengthen cooperative governance among the federative entities. The judicialization of health, by revealing the limits of the current model of financing, management, and service delivery, imposes an agenda of monitoring and deepening rationality guided by evidence, regional planning, and distributive justice. Overcoming these barriers is essential for the right to health to stop being operationalized in a fragmented way and to consolidate itself as one of the pillars of development.

5 FINAL CONSIDERATIONS

The analysis carried out throughout this research allows us to affirm that the judicialization of health in Brazil reveals itself as a multifaceted phenomenon, which cannot be understood only from the perspective of the individual guarantee of rights. Its complexity requires a systemic reading that considers the effects produced on institutional structures, budget flows, and federative governance of the Unified Health System (SUS).

Judicialization, although it represents a legitimate mechanism of access to the right, when it expands in an uncoordinated way and concentrated on individual demands, compromises the principle of equity, corrodes regional agreements and contributes to the fragmentation of public health policy.

From the articulation between the empirical data and the theoretical framework, it becomes evident that judicialization has produced direct impacts on the organization of local health systems, especially in regions marked by structural vulnerabilities.

The disproportionality between lawsuits and the technical and financial capacity of subnational entities reinforces historical inequalities, intensifying regional asymmetries and

hindering the consolidation of universal public policies. The theoretical contributions of Veiga, Ribeiro, Prado and Vieira demonstrate that development requires planning processes and the institutionalization of access to rights and social justice.

In this sense, the results point to the urgent need to reformulate the instances of articulation between the Judiciary and the health system. The construction of qualified technical support centers, the constant updating of RENAME, the strengthening of primary care and the adequate financing of networks are indispensable measures to mitigate the negative effects of judicialization and increase the effectiveness of public policies.

Federative governance needs to be rescued as a space for legitimate agreement, capable of reconciling local autonomy and national coordination, based on evidence and criteria of distributive justice.

In the end, it is found that overcoming the dilemmas presented by judicialization does not depend only on specific adjustments, but on a structural transformation of the way the Brazilian State conceives and operationalizes social rights. The right to health must be rescued as a collective development project and not as a result of fragmented litigation. This change in perspective is essential to consolidate the SUS as a public policy of the State, reduce inequalities and promote a development model that unites social justice and full citizenship.

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