

Social Policies in the Brazilian Justice System: institutions, actors and practices

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Introduction

Independent judicial systems are capable of promoting and maintaining human wellbeing, stabilizing democratic regimes and protecting human rights as a necessary condition for a revolution in rights (RÍOS-FIGUEROA; STATON, 2009). As a rule, on an institutional level these are related to preventing arbitrary government, while from an individual perspective they involve correcting discrimination in the application of law and socially they are linked to social stability (RÍOS-FIGUEROA; STATON, 2011). Research indicates that the judiciary and other institutions play a significant role in consolidating democratic regimes.

In the last decade Brazil has taken strides toward constructing social policies as mechanisms of social protection³ to reduce inequality and provide access to goods and services and, consequently, as instruments to improve the living conditions of the population. Nevertheless, as a large country marked by both socioeconomic and regional inequality, combined with the specific problems of social groups such as women, young people, the elderly, the black population and indigenous groups, violations are a permanent issue⁴. Since a number of studies in this regard are

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³ The 1988 Federal Constitution reestablished democracy and consecrated the foundations of a complex system of social protection based on universality, security and citizenship (Fagnani, 2011). Since then, despite its scale, Brazilian social policy “is still marked by specific policies with little coordination between them and significant challenges in terms of scope (universality and integrality) and the quality of goods and services offered” (Castro, 2012, p. 1018). Social policies can be divided social promotion and protection objectives. The first group contains policies linked to social security, while the second comprises those aimed at ensuring broader opportunities and equal access to the resources and benefits conquered by society. In addition to traditional policies, cross-cutting policies have also been developed, particularly those involving racial and gender equality and life cycle stages.

⁴ Brazil has implemented public policies centered on social protection and human rights, formulated based on social participation through periodically held conferences. However, violations persist in the following areas: Human rights violations during the military dictatorship and the need for accountability

underway, it is important to understand the role of the Brazilian Judiciary⁵ and other actors in the justice system in this new scenario.

Recently, the Brazilian justice system has been the object of several analyses, both from an institutional standpoint, in terms of its configuration, and from a regional perspective, demonstrating disparate scenarios in different regions of the country, particularly when causes and issues with a strong cultural heritage are at stake, such as the application of legislation to tackle domestic violence and causes involving children and adolescents (Silva, 2013). However, few studies investigate the role of the judicial branch, particularly the lower courts, with regard to public policies⁶ (TAYLOR, 2007; ALSTON, 2006) or that of new players such as the Public Prosecutor's Office and Public Defender's Office in the implementation and monitoring of public policy.

Research on the judicialization of two specific sectors of social policy is increasingly gaining ground. At the forefront of these investigations is the field of health (FERRAZ, 2011a; 2011b; and VIEIRA, 2008; MARQUES, 2008), followed by education with fewer cases in the courts and also less studied from a political science perspective (FERRAZ, 2011a; 2011b; and VIEIRA, 2008; MARQUES, 2008). On a smaller scale are studies on judicialization in social assistance (IVO and SILVA, 2011; BICCA, 2011; SANTOS, 2009).

The present study focuses on social policies and how they are addressed in Regional Federal Courts (TRFs) because we believe they are a prime locus for debate involving government players, especially the Federal Government⁷. Our aim is to identify the performance and relationship patterns between institutions and players in the justice system (Judiciary, Public Prosecutor's Office and Public Defender's Office) and the relationship between the parties in cases involving the triangle between the State, providers and beneficiaries.

on the part of public authorities; Violating the rights of human rights advocates; Violating the rights of traditional peoples: indigenous and Quilombo populations; Violations of the right to housing; Violations of women's rights; Public safety violations;

⁵ Authors in the field of comparative legal studies in Brazil are constantly advising of the excessive number of studies on superior courts, particularly the STF, and the lack of research on regional or intermediate courts.

⁶ In 2007, Taylor reported that despite the known impact of the Judiciary Branch on public policies and growing opposition to the classic view of courts as strictly legal instruments, the role of the Judiciary in public policies remains unclear, both in Brazil and the rest of Latin America (Taylor, 2007, p. 229). Recently, more studies have emerged on the judiciary in terms of enforcing the application of public policies, that is, involved in the execution phase of the cycle; however, it is important to better understand its other roles in shaping the agenda of public policies.

⁷ See the role of the Federal Government in Brazil's coordinated federalism model.

Our argument is that the emergence of the Public Defender's Office as a player to guarantee access to justice for the lower social classes has changed the profile of those who manage to exercise their rights through the courts, particularly in the field of health.

Research on this theme is aimed at consolidating a little explored field of study (Peerenboom, 2013), which seeks to relate development and political and social policies with the role of justice system institutions and players, primarily in terms of judicial involvement in the policy-making process.

This agenda has received political and academic support as well as wide-ranging support from international organizations since the start of redemocratization processes in Latin America, which reveal the important role of the courts in guaranteeing economic and social rights in developing countries.

In methodological terms, the study began by setting up the "Brazilian Federal Judiciary and judicialization of social policies" database containing court decisions on social policy in Brazil, focusing on the country's five Regional Federal Courts. We used a ten-year period (2004-2014) as a cutoff. The material is being analyzed using exploratory content analysis, followed by thematic analysis based on core categories, with the aid of *WordStat* and *Nvivo*⁸ software.

This paper presents the results of the first phase of research. It is important to underscore that the findings are partial. In the second phase, following analysis of the court decisions collected, interviews will be conducted with key players in the judicialization of social policies within the Brazilian justice system, mapped according to document analysis carried out in the first phase. Given the disparities found in different Brazilian regions, we also intend to perform a comparative analysis per court.

Theoretical references

The judicialization of politics is understood as the process of transferring conflicts from the political to the judicial sphere (BASABE-SERRANO, 2012, p. 350). Two distinct overlapping processes can be identified, but with different dimensions: Judicialization is a phenomenon that strengthens the participation of members of the

⁸ Two software programs were used due to our familiarity with Nvivo for coding and selecting passages, enabling detailed analysis of the material, while the WordStat statistical tool allows for prior overall assessment of the material.

judiciary in policy-making (procedural dimension), while judicial activism characterizes the intention of agents of the law when participating in policy-making (substantive dimension) (CARVALHO, 2009, p. 316).

From a conceptual standpoint, the initial focus of the judicialization of politics is stated in the book by Tate and Vallinder (1995), characterizing (1) a new "judicial activism", that is, a new willingness on the part of courts to expand the scope of issues on which they must make legal decisions; and (2) the interest of politicians and administrative authorities in adopting (a) procedures similar to the judicial process and (b) legal parameters in their deliberations. In this classic conception, judicialization affects societies that have developed the following characteristics: democracy, the separation of powers, a human rights policy, interest group systems, use of the law by political opposition, weak political parties or fragile coalitions in majority rule institutions, inadequate public infrastructure and even judiciaries, and delegating decision-making in certain areas to the courts (TATE and VALLINDER, 1995, p. 33). Despite consensus regarding this milestone, debate surrounding the political role of the courts is older and well-established (HIRSCHL, 2009; GISBURG, 2003; SHAPIRO and SWEET, 2002; EPP, 2008).

From a neo-institutional perspective, John Ferejohn identifies three ways in which the courts have taken on significant roles in the legislature. First, courts are increasingly capable and willing to limit and regulate parliamentary power, imposing material constraints on the powers of legislative institutions. Second, it is more and more common for substantive policy to be formulated in the courts. The third aspect is that judges are more willing to regulate political activity itself, whether practiced in or around legislatures, agencies or the electorate, by devising and applying acceptable behavior standards for interest groups, political parties, elected and appointed officials (FEREJOHN, 2002, p. 41). Judicialization is not restricted to increasing the power and role of courts in policy-making, but also in their use by political players and groups, which ultimately "transforms political issues into legal matters" (FEREJOHN, 2002, p.42). There are two general causes of judicialization: the greater fragmentation of power within the political system, limiting its ability to legislate or serve as an arena where policies are effectively formulated; and the increased confidence of courts as a legitimate space for the protection of rights, resulting in less opposition to judicial expansion (FEREJOHN, 2002, p. 56).

Research aimed at understanding the relationships between the judiciary and politics in Brazil only began in the early 1990s (VIANNA et al, 1999; CARVALHO, 2004, 2009; ENGELMANN and CUNHA, 2013; MACIEL and KOERNER, 2002; TAYLOR, 2007), indicating an increasing trend toward judicial activism (VIANNA, SALLES and BURGOS, 2007), with studies on a higher courts predominating. Moreover, different thematic focus areas can be maintained: From pioneering studies centered on the role of the Federal Supreme Court (STF) in Direct Actions of Unconstitutionality (ADINs) brought by political players to recent investigations on the explosion of individual lawsuits in regional courts requiring social policies. Liberal-formalists perspectives differ from those centered on understanding the extent of citizenship through the law (AVRITZER and MARONA, 2014).

From a social policy standpoint in particular, this new scenario coincides with the struggle for rights, whether through the constitutionalization process or based on institutional reform that reinforces the role of courts in resolving and assuring social rights. Authors have denominated this movement for access to the courts to improve the social provision of public policies as “courting social justice” (BRINKS and FORBATH, 2011 and 2013; BRINKS and GAURI, 2008, 2012). In many countries the courts compensate for government shortfalls in responsiveness and accountability, and although they are not a universal solution, they can promote debate by involving other players. In contexts of centralized social policies, ensuring constitutionalized rights, the courts assume two positions, adopting a formal style of jurisprudence or a more pragmatic policy-oriented style. The courts have become a key arena for mobilization, gaining ground in authoritarian power structures, but primarily contributing to bridging gaps in social administration.

Debate on the judicialization of social and economic rights has also centered on the benefits of litigation. Whereas some more critical studies indicate the persistence of traditional inequalities in Latin American countries, which remain in the judicial system with its selective access to justice (FERRAZ, 2011a and 2011b), others point to symbolic effects and structural changes that can benefit the general population in addition to the players represented in the courts (BRINKS and FORBATH, 2011, p. 1951).

In Brazil, the constitutional scenario after the return to democracy indicates changes in the role of the Judiciary, whereby case law on constitutional social rights are based on the 1988 Constitution. The country’s courts have become central players in

decision-making on basic needs such as health and education (BRINKS and FORBATH, 2013).

While the rise in educational litigation has been relatively small, health-related litigation has increased exponentially, generally in the form of individual lawsuits targeting medical services and medication and concentrated in states with better socioeconomic conditions, revealing a strong correlation between overall affluence, schooling levels and litigation. Litigation is more prominent among wealthier and more educated populations and the presence of an inadequate legal framework or basic services alone is not sufficient to provoke a revolution for social rights (HOFFMANN and BENTES, 2008).

Opposition to the judicialization of social policies in Brazil cites multiple complications that include everything from side effects, especially in the health sector, to “line jumping” through the granting of injunctions; and the issue of distributing the benefits of litigation among the social classes (HOFFMANN and BENTES, 2008). Arguments surrounding the violation of the principle of the separation of powers or in defense of the right to health, which imply that public budgets cannot be altered by judicial intervention, are also common among critics of judicialization.

The Brazilian reality in terms of health-oriented litigation reveals that the courts, led by the STF, have been highly assertive, deciding against the state to provide health care benefits for individuals not originally covered by the public health policy. A análise da trajetória do posicionamento das cortes indica que até metade dos anos 1990 a visão dominante do Judiciário era de que o reconhecimento dos direitos sociais pela Constituição era programático, restando à legislação o estabelecimento de programas de ação. A mudança radical deu-se como resultado da pandemia de Aids e o movimento dos tribunais inferiores na concessão de tratamentos avançados que posteriormente expandiram-se para outras áreas da saúde, incluindo procedimentos cirúrgicos, medicamentos para diabetes, Parkinson, Alzheimer, hepatite C, esclerose múltipla e outras (FERRAZ, 2009, p. 6).

There are not many cases involving the judicialization of social assistance in Brazil, focusing mainly on the Continuous Cash Benefit Program (BPC) and challenging the constitutionality of access criteria to the benefit for two specific social groups: the elderly and people with disabilities. In these cases, the courts have analyzed the prevalence of constitutional principles, the right to survival, citizenship and democracy in terms of universal access to rights, as well as the government’s

responsibility in guaranteeing it (IVO and SILVA, 2011; BICCA, 2011; SANTOS, 2009).

There are four models of social rights litigation in Brazil: (a) the first model involves lawsuits for access to medication and treatment brought both by middle class and poor individuals, where rulings tend to be favorable, but involve compliance issues that are typically only overcome by the middle classes and their attorneys; (b) the second centers on public suits brought by the Public Prosecutor's Office (MP) demanding structural remedies, which are often rejected by the courts for interfering in executive powers; (c) the third model involves litigation organized into specific sectors (such as NGOs that advocate medication for Aids), which also require individual lawsuits with a high level of compliance; (d) the final model initially emerged through the MP and is now also addressed by the Public Defender's Office and courts, with a view to avoiding formal legal proceedings and negotiating solutions directly with public authorities and other legal stakeholders. This model introduces *erga omnes* effects, guaranteeing direct rights and immediate impact on policy formulation (HOFFMANN and BENTES, 2008, p. 143).

Social policies in the federal justice system: Regional Federal Courts in evidence

The decisions database was compiled by nonstatistical sampling using a cutoff period (2004-2014)⁹. TRF decisions were selected by searching case law summaries using the term “social policies”.

To date, the *Nvivo* software database contains six hundred and thirty-four (634) decisions by the five TRFs integrated for analysis, of which two hundred and fifty-six (256) were adapted for quantitative analysis using *SPSS*, corresponding to TRF1, TRF2 and TRF3¹⁰.

Table 1: Sample of TRF Decisions using the search term “Social Policies”

⁹ We are currently restructuring the database so that the decisions it contains represent all the cases found when searching using the term “social policies” on the five Regional Federal Court (TRFs) websites.

¹⁰ The codes for categories of analysis in both programs are being redesigned considering that: (1) different decisions may refer to the same case, particularly due to the multiple resources in the Brazilian civil law system; (2) the Public Prosecutor's Office can appeal a case without necessarily having filed it, given its constitutional prerogatives; (3) the search systems for the online websites of courts differ; (4) difficulty identifying the actions of legal assistance services and university legal advice since the decisions only contain the names of the attorneys of the different parties.

Based on the sample, we collected decisions directly from court websites and imported them into software for analysis: *WordStat* was used for exploratory analysis and *Nvivo*¹¹ for thematic analysis with core categories¹².

TRFs are appellate courts of the second instance of federal justice, as stipulated in “Section IV – Regional Federal Courts and Federal Judges”¹³ and “Chapter III – Judiciary Power”¹⁴ of the 1988 Constitution of the Federative Republic of Brazil (CRFB/88), valid nationwide. The jurisdiction of federal second instance courts is divided into five judicial regions,

as follows: TRF1 has jurisdiction over cases in 14 judicial regions (Acre, Amazonas, Amapá, Bahia, Distrito Federal, Goiás, Maranhão, Minas Gerais, Mato Grosso, Pará, Piauí, Rondônia, Roraima and Tocantins); TRF2 over 2 (Espírito Santo and Rio de Janeiro); TRF3 over 2 (Mato Grosso do Sul and São Paulo); TRF4 over 3 (Paraná, Santa Catarina and Rio Grande do Sul); and TRF5 over 6 judicial regions (Alagoas, Ceará, Paraíba, Pernambuco, Rio Grande do Norte and Sergipe).

Based on this context of jurisdiction over federative units, the courts with the broadest jurisdiction over judicial regions, in descending order, are: TRF1, TRF5, TRF4, TRF2 and TRF3; the last two each have jurisdiction over 3 states. However, our analysis of the universe of decisions indicated the reverse of this scenario.

Graph 1: Universe of TRF Decisions using the search term “Social Policies”

Social policies of Brazilian TRFs: initial evidence

We performed a preliminary content analysis of decisions on social policies by federal courts using *WordStat/QDAMiner*.

This revealed considerable disparity between the states, although in analyses such as these it is still too soon to determine whether the visualization is an accurate representation of the universe.

¹¹ In Nvivo we are currently working with two types of classification to analyze the qualitative database of court decisions: (1) source classification; (2) categories; The first classifies the court decision's nature, form and structure according to Brazilian procedural standards, while the second aims to classify the players present in the decision.

¹² Two software programs were used due to our familiarity with Nvivo for coding and selecting passages, enabling detailed analysis of the material, while the WordStat statistical tool allows for prior overall assessment of the material.

¹³ See articles 106 to 110 of the 1988 Federal Constitution (CRFB/88).

¹⁴ See articles 92 to 126 of the 1988 Federal Constitution (CRFB/88).

While the literature indicates a discrepancy in lawsuits among the courts, the prevalence of references to the states of Minas Gerais and Rio Grande do Sul may confirm previous studies that demonstrated the predominance of the latter in these matters, confirming the relationship between social conditions and judicialization.

Graph 2: Frequency of references to Federative Units

With respect to the type of cases identified, the majority centered on guaranteeing access to health, evident in an overall analysis of the words found. These reflect the situation depicted in the literature not only of the international scenario, but the national picture with respect to state courts, where access to medication as a right and duty was identified in over half the cases that fall under Federal Government responsibility, given the jurisdiction of the federal justice system over lawsuits in which Federal Government is the defendant, but also demanding liability on the part of municipalities.

Graph 3: Frequency of lawsuit defendants (Federal Government and Municipality)

The number of words dedicated solely to the objects of lawsuits and the profile of claimants reflects the pursuit of access to health, either in the form of guaranteeing medical treatment or the supply of medication for patients who allege risk of death as carriers of diseases such as Aids, cancer, diabetes and hepatitis. Education is a less prominent cause and is evident in cases for access to higher and basic education.

Illustration 1: Frequency of health-related words in decisions

Cluster and proximity analyses once again reflect this scenario, especially when superimposed against lawsuits for free access.

Illustration 2: Cluster and proximity analyses

Decisions refer primarily to public policies, programs and their clientele, beneficiaries and users.

It is important to underscore that, in relation to the judicialization of public policies, references to phases of the cycle are recurrent, with most debate focusing on implementation, as well as significant discussion on the formulation and assessment of policies.

Graph 4: Frequency of references to phases of Public Policies

The most common rights invoked are the right to life and security, followed by education. The right to health is subsumed under the right to life, with the right to property and privacy featuring less prominently.

Graph 5: Frequency – Fundamental Rights

In regard to principles, decisions often refer primarily to human dignity, followed by quality, legality, humanity and so-called ‘insufficient assets’ (*hipossuficiência* in Portuguese).

Graph 6: Frequency – Legal Principles

In terms of legal grounds, the Federal Constitution is the most cited document, serving as a basis for cases and decisions.

Graph 7: Frequency – Legal Grounds

Thematic Analysis: institutions, players and practices in TRFs

Analysis of the categorized decisions (TRF1, TRF2 and TRF3) indicates Rio de Janeiro as the state with the highest number of suits filed in first instance courts followed by Minas Gerais and São Paulo, generating this universe of appeals with the appellate courts. Both Rio de Janeiro and São Paulo have *sui generis* cases¹⁵, which are

¹⁵ In the case of Rio de Janeiro, it should be noted that there is a Board of Health Dispute Resolution (CRLS), which is made up of the following agencies: State Attorney General, Municipal Attorney General, State Court, State Public Defender’s Office, Federal Public Defender’s Office, State Secretary of Health and Municipal Secretary of Health. The presence of this program may or may not explain the role of this player in TRF2. In São Paulo, the State Public Prosecutor and Public Defender acted together in a public class action, in case no. 2010.61.04.004390-9¹⁵, against the municipality of Santos

similar to the fourth model of litigation identified by Hoffmann and Bentes (2008, p. 143).

Table 2 – State of origin of cases

Based on the argument put forward here regarding the emergence of the Federal Public Defender's Office (DPU) as a key player in the judicialization of social policies, we found that the DPU represented one of the parties (defendant or plaintiff) in almost half the cases heard (43.7%).

Table 3 – Is the Federal Public Defender's Office representing the defendant and/or plaintiff?

This same analysis by state reveals that more than half of the cases (51%) in Rio de Janeiro are represented by the DPU and 22% of cases in Minas Gerais.

Table 4 – State of origin of cases * Is the Federal Public Defender's Office representing the defendant and/or plaintiff?

An analysis of those who filed the appeals indicates significant variation. This will be better analyzed in the final section of this paper when we present the relationship patterns between the State, providers and beneficiaries. Here, it is important to note that in courts TRF1, TRF2 and TRF3, the Federal Government is the most frequent appellant (around 50% of cases), followed by people (14.3%), states and municipalities. Also identified, though in lower numbers, are regulatory agencies, health operators (public and private hospitals, private insurers, public universities) and agents of the justice system itself, such as the Federal and State Prosecutor's Offices and Public Defender's Offices.

Table 5 – Party that filed appeal 1

demanding vaccinations against H1N1 for all children and adolescents. This decision discussed the formulation and government strategy in defining the target audience of public policy in the National Strategy for Vaccination Against Swine Flu (H1N1) 2009.

Table 6 – Party that filed appeal 2

Table 7 – Party that filed appeal 3

Table 8 – Party that filed appeal 4

Analysis of the appellees in appeals contrast with the previous finding, with people identified as the respondents in more than 50% of cases, followed by the Federal Government (approximately 20%), states and municipalities. This indicates that, despite the triangle between the government, providers and beneficiaries, the highest number of lawsuits and greatest debate involving public social policies are linked to the relationship between individuals and the federal entities.

Once again this demonstrates how much Brazilian judicialization differs from that of other countries, where market-based social provision models mean there is greater pursuit of human rights than in Brazil, where the search for rights originates directly from the government.

Table 9 – Respondent in proposed appeal 1

Table 10 – Respondent in proposed appeal 2

Table 11 – Respondent in proposed appeal 3

Table 12 – Respondent in proposed appeal 4

A preliminary analysis of decisions identified patterns in two key aspects in this study: The first is the relationship between the parties in lawsuits and the second involves players and institutions within the justice system and the relationship between them in these types of cases.

Relationships between the parties in lawsuits: the triangle between the Government, providers and beneficiaries.

With respect to identifying the players and motives for judicialization, Brinks and Gauri (2012) observed the same relationship pattern between players in terms of

triangulation: government, providers, beneficiaries (regulation, provision, private obligations). However, in quantitative terms, the beneficiaries X government relationship is far more common.

This overview of lawsuits can be illustrated using four major cases:

a) The typical relationship places citizens and the government on opposite ends, with the former claiming for medication, hospital beds and surgical procedures.

With respect to medication, at least two types of cases are observed: suits involving medication registered by ANVISA that is not supplied by the government because it is not included in the list of free medication provided under the National Health System (SUS), which is typically granted by the judiciary in situations where drugs distributed by the SUS are not suitable for certain patients; and cases of medication not registered by ANVISA in which, despite favorable positions, arguments used against granting the drugs require technical rigor and competence on the part of regulatory agencies, demonstrating the risk of the justice system deliberating on issues outside its expertise. In cases involving requests for hospital beds, surgical procedures or medical tests decisions tend to be favorable.

In health-oriented cases there tends to be solidarity and accountability among the entities in the understanding that:

The Government, State, Federal District and Municipality are legitimate defendants in cases seeking the provision of medication essential to the health of those in need and cases may be brought against any of these (Superior Court of Justice, First Panel, Appellate Review in Interlocutory Appeal 842866/MT, j. June 12, 2007).

b) groups of patients pursuing these same rights in class action lawsuits.

These types of cases are often brought by carriers of diseases such as HIV, cancer, and hepatitis C. The role of the Public Defender's and Public Prosecutor's Offices are described in the following section.

c) cases in which health care operators and the Government are on opposite sides, with the latter demanding payment for health services provided at public or private institutions to beneficiaries who have sought treatment.

In these instances, the government applies for reimbursement from health insurance operators for medical services provided to citizens (beneficiaries) with a guaranteed right to health care under the National Health System (SUS), who would not have to pay for care when treated in the public care network. The justification for

this refund lies in illegitimately obtaining resources that were not provided by private operators.

Although a minority, we also observed an opposing position to SUS reimbursement, determining that there is no established legal relationship between private health care operators and the Government, or a waiver of citizen's right to using the National Health System by hiring private health insurance.

d) Another type of case identified is the pursuit of reimbursement by patients who receive poor quality care in public hospitals.

Since the picture of judicialization in health is well known, what can be said about other rights? In the past decade there has been an increase in the number of lawsuits involving the right to and securing daycare and preschool for children aged 0 to 6 years. An increase has also been observed in judicialization involving rights such as social security and welfare. Despite advances in the judicialization of other rights, the number of lawsuits on these issues is still far lower than those involving health.

The following section addresses the role of the justice system in these cases.

Performance and relationship patterns between players and institutions within the justice system: Judiciary, Public Defender's and Public Prosecutor's Office

Judiciary

Debate on the role of the judiciary in formulating public policies forms part of the defense of constitutional principles. The role of the judiciary is as a regulator and enforcer, ensuring that federal and regional governments comply with the Constitution and the rights enshrined therein.

Advocates of the Judiciary Branch's role in delivering social rights, particularly the right to health, argue that these are vital to ensuring human dignity. Thus, the judiciary cannot fail to consider at least the 'existential minimum' of each of these rights, which is the logical requirement of the principle of human dignity. (TRF3. Agravo de Instrumento nº 0021504-23.2012.4.03.0000/MS, 2012.03.00.021504- 1/MS, Relator Juiz Federal Convocado Roberto Jeuken, Terceira Turma do TRF3, julgado 07/02/2013)

In fact, if we consider that it is only through the courts that citizens can gain access to certain public programs and policies and ensure their basic rights, the justice system ultimately represents society in the face of government inefficiency, requiring the exercise of executive powers at federal, state and municipal level.

This is based on a principle known as the “existential minimum”, namely “the basic material conditions needed to ensure a dignified life. In such cases, judicial action to protect social rights is fully justified”.

In this legal context, if the Federal Government neglects its duty of care, the Judiciary Branch intervenes to exercise judicial control over public policy to ensure the effectiveness of the relevant constitutional provision[...].”

In accordance with the majority position, the Judiciary acknowledges its role in guaranteeing the right to health and its responsibility in transforming this scenario.

“[...]in Brazil, the problem may not lie in judicialization itself or, in simpler terms, the justice system's interference in creating and implementing public health policies, because in almost all cases the judiciary merely enforces effective compliance with existing policies. This information may be important in formulating a criterion or parameter to reach decisions in cases such as these, in which the primary issue is that of the Judiciary Branch's interferences in other branches of government. As such, based on what was stated in the public hearing, the first item to be considered is the existence or not of a state policy covering the provision of health care claimed by the party. By deferring the provision of health care included among the social and economic policies formulated by the National Health System (SUS), the judiciary is not creating public policy, but simply ordering its compliance [...]”. (TRF2. Apelação Cível n.º 2009.51.01.029677-4/RJ, Relator Desembargador Federal Poul Erik Dyrland, Oitava Turma Especializada do TRF2, julgado em 14/12/2011)

In advocating for the protection of the vulnerable and underprivileged, in the view of some magistrates the independent action of the judiciary is the only alternative for low-income populations to obtain the necessary care.

[...]In the field of essential individual and social rights, judges should not be swayed by convenient or opportunistic claims put forward by lax administrators. Otherwise, it would fall to the judiciary to make political or value judgments in spheres in which the legislator has left it no other option but to demand full and immediate compliance with Public Administration obligations[...]. (STJ. Recurso Especial Nº 440.502 - SP (2002/0069996-6), Relatora Ministro Herman Benjamin, 15 de dezembro de 2009)

In other words, in the attributions of its power, the judiciary can provide no more than ensure the validity and social effectiveness of what is provided under law.

However, arguments against judicialization remain, with three major unfavorable principles: the right to health, the separation of powers and inequality in the Judiciary in terms of intervening in favor of some and not others, particularly in cases of respecting waiting lists.

According to some viewpoints, “*judicialization of the right to health*’ has gained theoretical and practical importance that involves not only agents of the law, but also

public administrators, health care professionals and civil society as a whole. While on one hand the Judiciary Branch is essential to the effective exercise of citizenship, on the other judicial decisions have caused significant tension between those who formulate and implement public policies, who find themselves compelled to ensure the provision of different social rights that often contrast with health policy established by governments and budgetary possibilities.” (TRF3. Agravo de Instrumento n° 0021504-23.2012.4.03.0000/MS, 2012.03.00.021504- 1/MS, Relator Juiz Federal Convocado Roberto Jeuken, Terceira Turma do TRF3, julgado 07/02/2013)

According to critics, policy choices adopt criteria that, when altered by the justice system, cause distortions in terms of distributive justice.

These distortions are evident in much of the federal judicialization of social policies. In lawsuits involving social policies brought in TRFs, orders for the government to comply with the immediate provision of individual benefits are far more common than measures aimed at formulating more effective public policies that encompass a wider community. In this respect, action by the Judiciary in terms of enforcing compliance for an individual may result in removing the rights of all those outside that legal relationship:

Magistrates called to preside over these cases need to balance the right to life and a dignified existence of the plaintiff against the right to life of thousands of other Brazilians who may lose out on services because the amount allocated to these is redirected to comply with a legal decision aimed at catering to a single individual, particularly when adequate care is already being provided. (TRF2. Apelação Cível n.º 2009.51.01.029677-4/RJ, Relator Desembargador Federal Poul Erik Dylund, Oitava Turma Especializada do TRF2, julgado em 14/12/2011)

In such cases the justice system ultimately favors those with greater purchasing power, confirming the findings in the literature. However, considering that the Federal Public Defender’s Office is responsible for around 50% of cases, such inequality is no longer observed in court decisions. In this regard, the institutionalization of this agency, changes the scenario slightly in terms of an elitist justice system previously only accessible to the upper classes of society.

These are also the main arguments used by state authorities when attempting to avoid compliance with court orders.

Public Prosecutor's Office

The primary debate surrounding the role of the Public Prosecutor's Office in protecting social policy centers on the legitimacy of filing a Public Civil Case in favor of a single individual.

The nature of powers deemed as the jurisdiction of the Public Prosecutor, the scope of its responsibility, range of categories and themes over which it presides, and the investigative, enforcing and determining power of this agency – constitutionally qualified by its importance to the jurisdictional function of the State – allow the Public Prosecutor's Office to broadly exercise class actions without restrictive or inhibiting interpretations. The Public Prosecutor is legitimately able to bring a public class action in defense of individual rights.

Protecting the interests and rights of the vulnerable is evidently and indisputably a social issue, even when the immediate result of the Public Civil Case seems to support a single individual. In these instances, the case is a public one, not in terms of the number of people directly affected or benefitted by the legal measure (= quantitative criterion of immediate beneficiaries), but due to the nature of the legal relationship based on mandatory social inclusion [...]. In protecting the extremely vulnerable, society itself ultimately benefits (TRF5. Apelação – Reexame Necessário n.º 00005666220104058102, Relator Desembargador Federal Francisco Cavalcanti, Primeira Turma do TRF2, DJE-TRF5 16/11/2012)

Individuals are required to claim in isolation depending on their specific situation, for example, rejection or intolerance of a certain medication. In this instance the Constitution itself also offers mechanisms for representation. With respect to unenforced individual rights, public defenders, representative associations and the Public Prosecutor's Office are legitimate forms of representation. This is evident in the previously mentioned public civil case, where the Federal Public Prosecutor's Office is claiming for the provision of special medication for specific individuals suffering from HIV. In relation to these individuals the case has been deemed legitimate and should proceed.

This has resulted in severe criticism alleging that Public Prosecutors “*seeks to contribute to improving public policy through the occasional class action, based heavily on needs, resources and priorities; after the necessary investigation, it seems the Public Prosecutor's Office has elected to compete for chaos, filing a strictly individual lawsuit with the scope of a public civil case under the weak and abstract reference to “other patients”, acting as a true attorney or public defender.*” (TRF2. Agravo

n.º 2010.02.01.006137-0/RJ, Relator Juiz Federal Convocado Luiz Paulo da Silva Araújo Filho, Quinta Turma Especializada do TRF2, julgado em 2011)

Public Defender's Office

As demonstrated above, the role of the Federal Public Defender's Office is essential in the judicialization of rights, especially the right to health. Its activities involve bringing individual lawsuits, class actions and public civil cases that invoke the joint responsibility of state entities¹⁶ in providing medical and surgical treatment as well as medication.

While individual lawsuits are well known, cases seeking the implementation of public policies to benefit large portions of the population draw particular attention, as in the case below:

This is an interlocutory appeal filed by the Federal Public Defender, aimed at reversing the individual decision rejecting the request for injunctive relief sought under the following terms: a) provision of essential medical and hospital care, with the allocation of specific and exclusive wing for the care, including urgent and emergency care, of transplant patients, as well as a team of suitably trained staff, under penalty of a daily fine; b) that the defendants present, within a reasonable time period, a project for the implementation and/or construction of a 24-hour Specialist Center exclusively for transplant patients, with specialized personnel. (TRF5. Agravo n.º 130569-PB, Relator Desembargador Federal Rogério Fialho Moreira, Quarta Turma TRF5, julgado em 11.06.2013)

As previously mentioned in the discussion regarding the legitimacy of a public civil case brought by the Public Prosecutor on behalf of an individual, there is significant debate, apparently less so in case law, surrounding the legitimacy of this type of lawsuit filed by public defenders.

Public civil cases are a suitable means of seeking health protection for citizens, even though the legal protection sought by the plaintiff reaches only a limited group or a single individual, because it is a fundamental right enshrined in the Constitution, indivisible and indispensable, and part of the broader concept of human dignity. Active legitimacy of the Public Defender's Office. . (TRF5. Apelação - Reexame Necessário n.º 26090/RN, Relatora Desembargadora Federal José Maria Lucena, Primeira Turma TRF5, TRF5 (DJE) - 18/04/2013)

Thus, if the action of the Public Defender is limited by prohibiting the use of public civil cases, the portion of the population that cannot cover the costs of

¹⁶ This is because, with regard to the right to health, jurisprudence is conciliatory in terms of the SUS (National Health System), whereby the agencies that comprise the Federation can be sued in court for the supply of medication, with joint responsibility prevailing as per article 196 of the Constitution, as understood by the Superior Court of Justice.

a lawsuit will not have full access to the right. (STJ. REsp. n° 555.111/RJ, Voto vista proferido pela Ministra Nancy Andrighi)

It is important to underscore the key role the Public Defender's Office plays in the justice system, which should be interpreted in a broad manner consistent with its full performance. Nothing justifies limiting its performance to simply sponsoring individual causes. [...]. As such, the defense must act individually when faced with individual cases of insufficient assets, but will naturally be less effective if offering individualized assistance in order to address the range of homogeneous individual and collective interests pertinent to those in need.

Despite this debate, it seems the Public Defender's Office has assumed its role in public civil cases, with a significant number of such cases observed in our data, though not exceeding individual lawsuits.

Arguments concerning the presumption of 'insufficient assets' and vulnerability on the part of those represented by the DPU are present in all the decisions.

Insufficient assets on the part of the plaintiff is recognized due to their representation by the Federal Public Defender's Office and treatment at a Charity Hospital, as well as the high cost of the medication. (TRF4. Agravo de Instrumento n° 2009.04.00.040106-0/SC, Relatora Juíza Federal Convocada Vivian Josete Pantaleão Caminha, Quarta Turma do TRF4, julgado em 20/10/2010)

In response to the question about whether conflicts between institutions and players (MP, OAB X DP) contribute to reproducing a scenario of individual lawsuits with few indirect and regressive effects, while class actions are better at promoting equality, findings in the literature demonstrate the traditional conflict between the Public Defender and Public Prosecutor's Office in respect to defending collective interests. However, there are cases of class actions brought by both authorities. In terms of effectiveness, these types of cases are better because they benefit a large number of people:

A public class action filed by the Public Prosecutor and Public Defender of the State of São Paulo calling for the Municipality of Santos to vaccinate all children and adolescents against "H1N1". (TRF3. Apelação Cível n° 0004390-63.2010.4.03.6104/SP, Relator Juiz Federal Convocado Roberto Jeuken, Terceira Turma do TRF3, julgado 02/05/2013)

RESULTS

Preliminary analyses confirmed the presence of intense 'judicial activism' in Brazilian federal courts, demonstrating willingness on the part of judges and other players in the justice system to expand the scope of issues on which they must reach a

decision. In this respect, paraphrasing Ferejohn (2002, p. 41), TRFs “have increasingly become places where substantive policy is formulated”.

Although levels of compliance differ significantly depending on the type of case filed, it can be argued that the courts compensate for government shortfalls in responsiveness and accountability.

In regard to the type of cases found, although the present study used a cutoff period one decade later, similar patterns were identified to those observed by Hoffmann and Bentes (2008, p. 143) for Brazilian state courts. However, it cannot be said that there is a balance between the four models, with individual lawsuits filed both by private attorney and public defenders more common, followed by cases brought by the MPF and DPU demanding structural policies, and few instances of organized litigation, which seems to have diminished in the last decade.

We also found that the triangulation observed by Brinks regarding the players in judicialization can easily be applied in our analyses, since our study contains individual lawsuits against the government and health insurance companies, the government against private institutions and vice versa, and private institutions against health insurance companies. Nevertheless, as previously mentioned, most cases involve the relationship between beneficiaries (citizens) of public policies and the government.

With respect to different areas, education appears little in the empirical material, with most cases involving demands for preschool services, while those centered on social welfare involve disputes over the Continuous Cash Benefit Program.

The courting justice literature provides an overview of judicial action in Brazil, which is characterized by the presence of significant individual lawsuits, whereas class actions predominate in other countries. In relation to the type of legal assistance provided to the different parties, the literature indicates the involvement of both public and private defense attorneys in Brazil; however, the preliminary findings have identified more cases brought by the Federal Public Defender’s Office than private attorneys. This contrasts with the arguments presented in the literature that access to the courts in cases involving economic and social rights is largely only afforded to higher social classes, confirming our hypothesis that the emergence of the Public Defender’s Office as an institution and key player in the judicialization of rights guarantees greater access to justice for less privileged population groups.

There are a number of issues to investigate in addition to the percentage of cases brought by each institution. It is important to identify where the cases are filed and

consider both the country as a whole and the different regions, as well as the differences between the federal courts themselves, without addressing whether the public catered to by the institution is in fact vulnerable.

Although we can tentatively state that advances have been made towards greater equality in federal justice, the same cannot be said about the types of cases and decisions found in the courts. Our study sample confirms the literature in terms of the predominance of individual lawsuits. Moreover, even in class actions such as civil public cases filed by the Public Prosecutor and now the Public Defender's Office, there are cases of judicialization on behalf of single individuals. Although we do not address the concept of 'legalization' (Brinks, 2012) or the impact of cases, the literature is conciliatory in demonstrating that class actions are far more effective in terms of compliance and indirect effects; however, our scenario indicates that the justice system is active in granting access to rights, although the beneficiaries are individuals as opposed to groups. Exceptions to this pattern are class actions brought by carriers of HIV and others diseases such as diabetes and hepatitis, claiming for access to treatment and medication as a group.

In relation to the position of the judiciary as to its role in guaranteeing constitutional rights, Brinks (2012) reports the presence of policy-oriented courts. Although principles such as the right to health and separation of powers are included in jurisprudence, decisions are typically based more and the existential minimum principle. As such, in terms of the separation of powers, the predominant understanding is that the primary focus should not be interference, but rather on fulfilling the primary function of control. Although opposing arguments are put forward by defendants in cases, which are generally authorities within the Executive Branch, these do not win through in court decisions.

With respect to the application of principles such as the right to health, the need to monitor the budget and other financial control mechanisms over public accounts, although the judiciary highlights their importance, most cases continue to rule in favor of individual players.

In relation to the other two key players in this process, namely the Public Prosecutor's and Public Defender's Office, the material analyzed does not permit significant inferences, but demonstrates the presence of substantial conflict between these players, with new possibilities for the use of public class actions on the part of the latter and individual lawsuits for the MP.

The second phase of the study will involve in-depth interviews with the different players in judicialization, selecting the most prominent judges, prosecutors and defenders in cases, in order to determine to what extent institutional guarantees affect the judicialization of social policies. In this respect, it is important to investigate:

- whether institutional capacity and infrastructure are determining factors in the action of different players.
- if performance patterns can be explained by institutional constraints. career guarantees, wage rates, institutional and budgetary independence can result in more or less heterogeneous positions among the different players. To what extent recruitment and training patterns result in homogeneous positions in relation to the issues in question. the view of the players regarding their role in the democratization process and guaranteeing rights.
- the role of judicial autonomy in guarantees and compliance with decisions. it can be argued that non-autonomous/independent courts have no role in political forces, which means judicializing/legalizing economic and social rights, because they respect the separation of powers; court decisions without the power of compliance are ineffective, particularly in terms of direct effects on other players and the indirect impacts of the case.
- Why litigation in Brazil is predominantly individual as opposed to collective. Whether courts are ill equipped to deal with class actions that result in action on the part of the government, a phenomenon that reproduces judiciary ‘delivery’ of individual cases.
- if the structure of the justice system and types of cases have different effects on maintaining or reproducing inequality. Whether in countries such as Brazil, with a Roman law (civil law) system and tendency for filing individual cases (repeatedly seen in courts), distributive justice is lower.
- if the players involved in judicialization are always the same. the views of these players regarding their role and that of their institution.
- the reasons behind the significant differences between the TRFs? What determines the variations in case numbers and patterns? whether cases are driven by response to an external demand or internal behaviors.
- the impact of legalization, who files cases and who wins, identifying the profile of successful litigants and their types of legal assistance – public defenders,

private attorneys, MP, etc., whether there is an evident difference in terms of access to justice among different social classes.

- the direct effects on litigants and non-litigants, indirect impacts on the legal system and indirect effects outside the legal system (and how these can be identified and measured).

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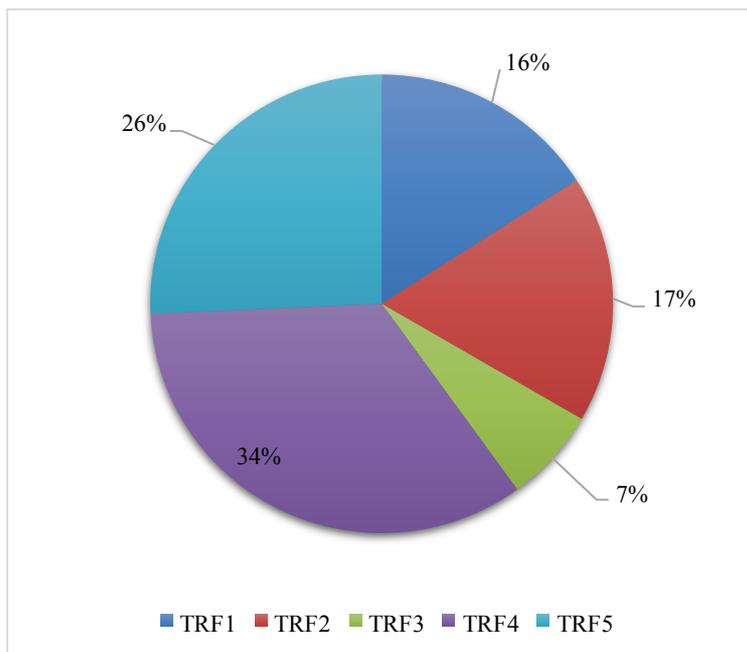
ATTACHMENT

Table 1: Sample of TRF Decisions using the search term “Social Policies”

Year	Regional Federal Courts				
	TRF1	TRF2	TRF3	TRF4	TRF5
2004	3	9	0	3	1
2005	0	7	0	4	1
2006	0	3	3	6	0
2007	4	6	7	17	3
2008	1	2	4	43	3
2009	0	3	6	54	8
2010	1	5	1	40	8
2011	0	10	3	22	29
2012	3	21	7	6	48
2013	38 ¹⁷	19	8	14	33
2014	49	30	7	5	28

Source: TRFs Database

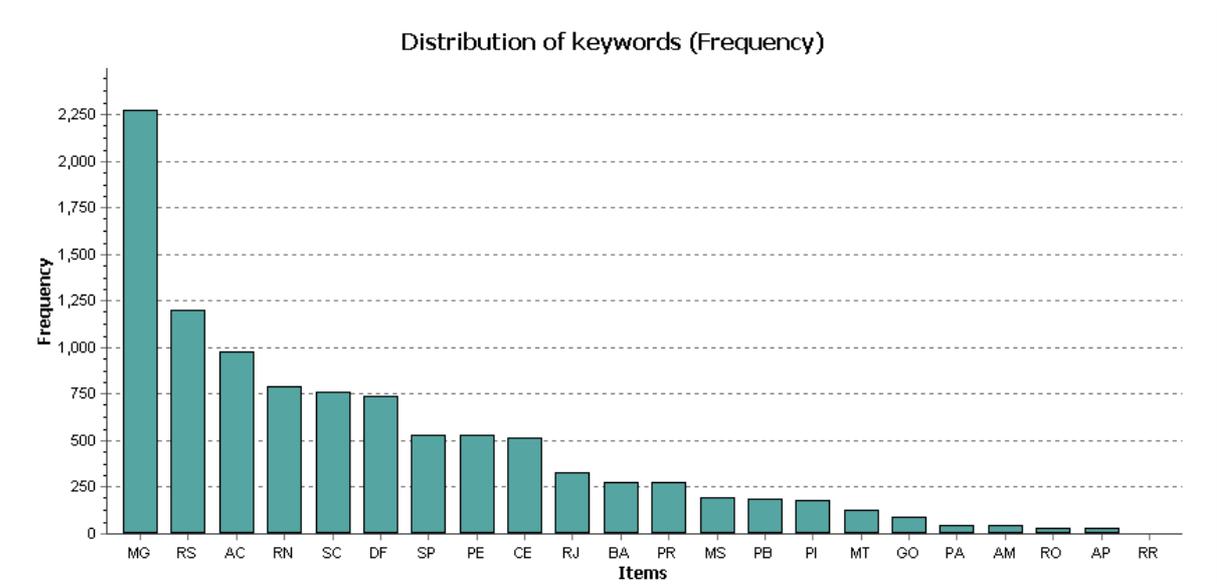
Graph 1: Universe of TRF Decisions using the search term “Social Policies”



Source: TRFs Database

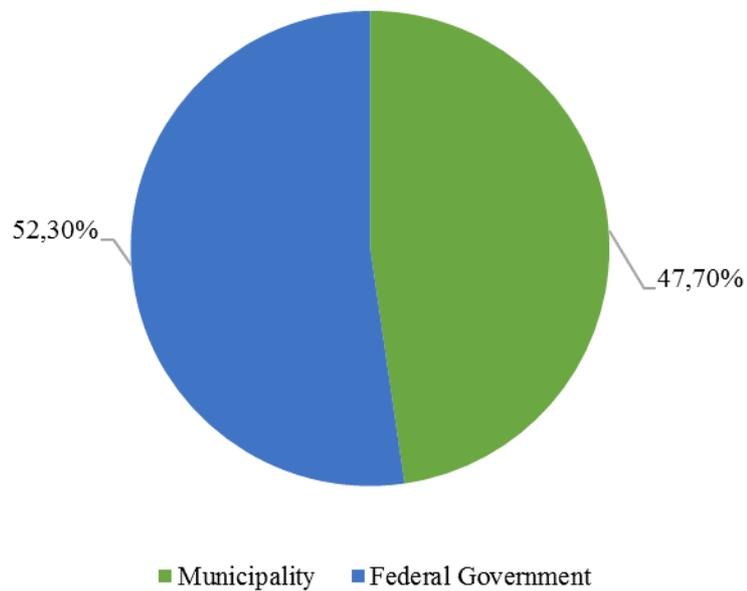
¹⁷ As fontes das decisões “18” e “19” do TRF1 são iguais, portanto, fora suprimida do banco a fonte “19” do ano de 2013.

Graph 2: Frequency of references to Federative Units



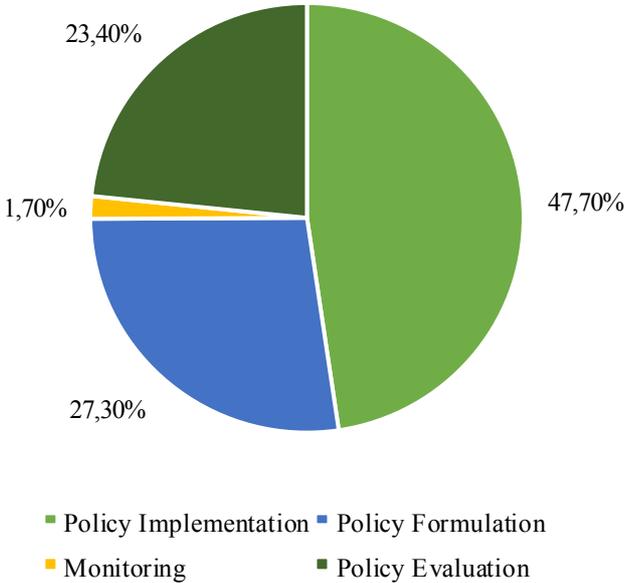
Source: TRFs Database

Graph 3: Frequency of lawsuit defendants (Federal Government and Municipality)



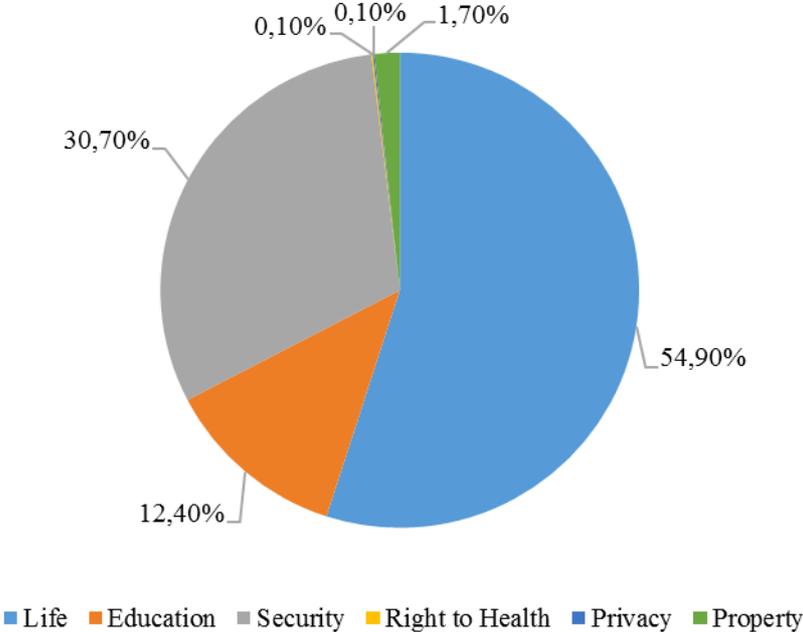
Source: TRFs Database

Graph 4: Frequency of references to phases of Public Policies



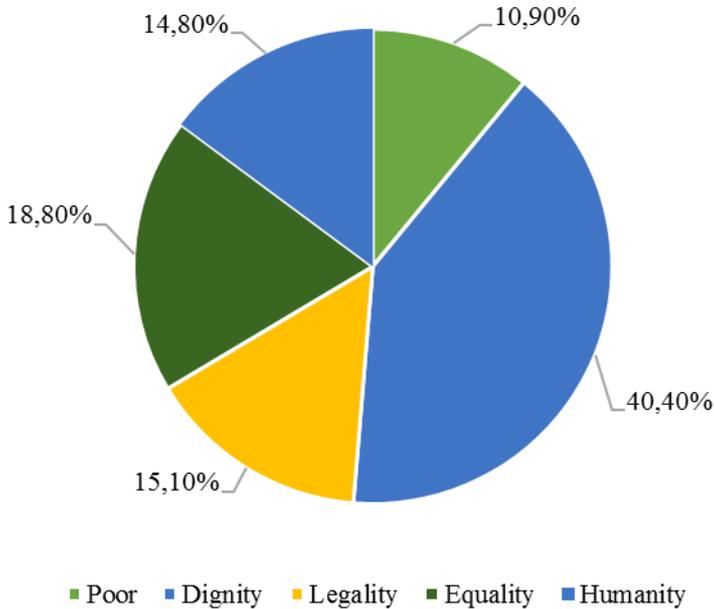
Source: TRFs Database

Graph 5: Frequency – Fundamental Rights



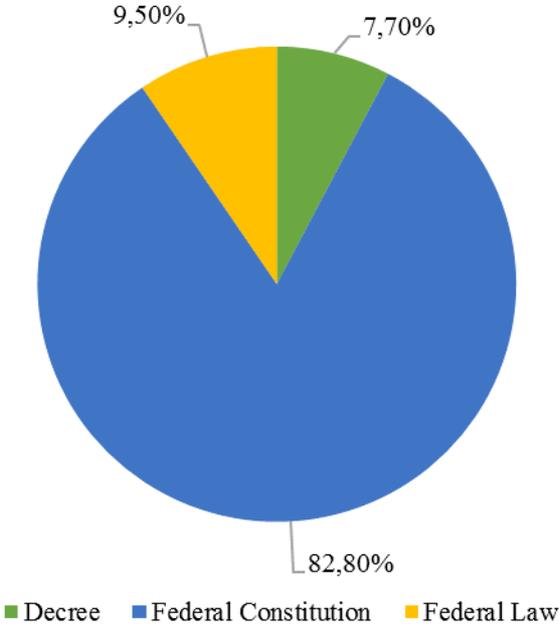
Source: TRFs Database

Graph 6: Frequency – Legal Principles



Source: TRFs Database

Graph 7: Frequency – Legal Grounds



Source: TRFs Database

Table 2 – State of origin of cases

	Frequency	Percentage	Percentage Valid	Percentage Cumulative
AC - Acre	1	,4	,4	,4
AM - Amazonas	2	,8	,8	1,2
BA - Bahia	5	1,9	1,9	3,1
DF - Distrito Federal	21	8,1	8,1	11,2
ES - Espírito Santo	9	3,5	3,5	14,7
GO - Goiás	3	1,2	1,2	15,9
MA - Maranhão	2	,8	,8	16,7
MS - Mato Grosso do Sul	7	2,7	2,7	19,4
PA - Pará	2	,8	,8	20,2
PI - Piauí	7	2,7	2,7	22,9
RJ - Rio de Janeiro	106	41,1	41,1	64,0
RO - Rondônia	1	,4	,4	64,3
SP - São Paulo	39	15,1	15,1	79,5
TO - Tocantins	1	,4	,4	79,8
MG - Minas Gerais	52	20,2	20,2	100,0
Total	258	100,0	100,0	

Source: TRFs Database

Table 3 – Is the Federal Public Defender's Office representing the defendant and/or plaintiff?

	Frequency	Percentage	Percentage Valid	Percentage Cumulative
Valid Não	121	46,9	56,3	56,3
Valid Sim	94	36,4	43,7	100,0
Total	215	83,3	100,0	
Missing Não se aplica	28	10,9		
Missing Sem informação	15	5,8		
Total	43	16,7		
Total	258	100,0		

Source: TRFs Database

Table 4 – State of origin of cases * Is the Federal Public Defender's Office representing the defendant and/or plaintiff?

		A Defensoria Pública da União é a procuradora da parte recorrida e/ou recorrente?		Total
		Não	Sim	
Estado de origem do instrumento processual	AC - Acre	0	1	1
	AM - Amazonas	1	0	1
	BA - Bahia	2	2	4
	DF - Distrito Federal	20	0	20
	ES - Espírito Santo	3	6	9

	A Defensoria Pública da União é a procuradora da parte recorrida e/ou recorrente?		Total
	Não	Sim	
GO - Goiás	0	3	3
MS - Mato Grosso do Sul	3	2	5
PA - Pará	1	0	1
PI - Piauí	0	7	7
RJ - Rio de Janeiro	38	51	89
RO - Rondônia	1	0	1
SP - São Paulo	37	0	37
MG - Minas Gerais	15	22	37
Total	121	94	215

Source: TRFs Database

Table 5 – Party that filed appeal 1

Party	Frequency	Percentage	Percentage Valid	Percentage Cumulative
Agência Nacional de Saúde Suplementar - ANS	4	1,6	1,6	1,6
Agência Nacional de Vigilância Sanitária - ANVISA	1	,4	,4	1,9
AGF Saúde S/A	1	,4	,4	2,3
Caixa Econômica Federal - CEF	4	1,6	1,6	3,9
CIA Vale do Rio Doce	1	,4	,4	4,3
Conselho Regional de Enfermagem de Minas Gerais - COREN/MG	1	,4	,4	4,7
Defensoria Pública do Estado de São Paulo	1	,4	,4	5,0
Defensoria Pública do Estado do Pará	1	,4	,4	5,4
Espólio	1	,4	,4	5,8
Estado da Federação ou Distrito Federal	23	8,9	8,9	14,7
Fazenda do Estado de São Paulo	2	,8	,8	15,5
Fazenda Nacional	1	,4	,4	15,9
Fundação de Seguridade Social - GEAP	1	,4	,4	16,3
Fundação Oswaldo Cruz - FIOCRUZ	1	,4	,4	16,7
Fundação Universidade de Brasília - FUB	1	,4	,4	17,1

Party	Frequency	Percentage	Percentage Valid	Percentage Cumulative
Irmandade da Santa Casa de Misericórdia de Curitiba	1	,4	,4	17,4
Irmandade da Santa Casa de Misericórdia de Limeira	1	,4	,4	17,8
Justiça Pública	1	,4	,4	18,2
Master Saúde	1	,4	,4	18,6
Assistência LTDA	1	,4	,4	19,0
Master Saúde LTDA	1	,4	,4	19,4
Medico Medicina Coletiva S/A	1	,4	,4	19,4
Ministério Público Federal	5	1,9	1,9	21,3
Município	13	5,0	5,0	26,4
Não aplicável - Remessa Ex Ofício	1	,4	,4	26,7
Pessoa Física	37	14,3	14,3	41,1
SBH Santa Casa de Misericórdia de Ribeirão Preto	1	,4	,4	41,5
Seguradora S/A	1	,4	,4	41,9
Sem informação	14	5,4	5,4	47,3
Semepe Serviço Médico de Pernambuco LTDA	1	,4	,4	47,7
Sistema Paulista de Assistência	1	,4	,4	48,1
Sociedade Empresarial - LTDA	2	,8	,8	48,8
Souza Cruz S/A	1	,4	,4	49,2
União Federal	128	49,6	49,6	98,8
Universidade Federal de Uberlândia - UFU	2	,8	,8	99,6
Universidade Federal do Rio de Janeiro - UFRJ	1	,4	,4	100,0
Total	258	100,0	100,0	

Source: TRFs Database

Table 6 – Party that filed appeal 2

Party	Frequency	Percentage	Percentage Valid	Percentage Cumulative
Valid Agência Nacional de Vigilância Sanitária - ANVISA	1	,4	,4	,4
Valid Estado da Federação ou Distrito Federal	37	14,3	14,3	14,7
Fazenda do Estado de São Paulo	2	,8	,8	15,5

Party	Frequency	Percentage	Percentage Valid	Percentage Cumulative
Fundação Universidade Federal de Mato Grosso do Sul - FUFMS	2	,8	,8	16,3
Ministério Público do Estado de São Paulo	1	,4	,4	16,7
Ministério Público do Estado do Mato Grosso do Sul	1	,4	,4	17,1
Ministério Público Federal	1	,4	,4	17,4
Município	19	7,4	7,4	24,8
Não aplicável	157	60,9	60,9	85,7
Não atribuído	1	,4	,4	86,0
Pessoa Física	8	3,1	3,1	89,1
Sem informação	12	4,7	4,7	93,8
União Federal	16	6,2	6,2	100,0
Total	258	100,0	100,0	

Source: TRFs Database

Table 7 – Party that filed appeal 3

Party	Frequency	Percentage	Percentage Valid	Percentage Cumulative
Estado da Federação ou Distrito Federal	5	1,9	1,9	1,9
Ministério Público Federal	1	,4	,4	2,3
Município	20	7,8	7,8	10,1
Não aplicável	212	82,2	82,2	92,2
Não atribuído	1	,4	,4	92,6
Pessoa Física	3	1,2	1,2	93,8
Sem informação	12	4,7	4,7	98,4
União Federal	4	1,6	1,6	100,0
Total	258	100,0	100,0	

Source: TRFs Database

Table 8 – Party that filed appeal 4

Party	Frequency	Percentage	Percentage Valid	Percentage Cumulative
Município	2	,8	,8	,8
Não aplicável	242	93,8	93,8	94,6
Não atribuído	1	,4	,4	95,0
Pessoa Física	1	,4	,4	95,3
Sem informação	12	4,7	4,7	100,0
Total	258	100,0	100,0	

Source: TRFs Database

Table 9 – Respondent in proposed appeal 1

Party	Frequency	Percentage	Percentage Valid	Percentage Cumulative
Agência Nacional de Saúde Suplementar - ANS	12	4,7	4,7	4,7
Associação Brasileira de Produtores Envasadores de Álcool e seus Implementos - ABRASPEA	1	,4	,4	5,0
Conselho Regional de Enfermagem em São Paulo - COREN/SP	1	,4	,4	5,4
Defensoria Pública da União	1	,4	,4	5,8
Estado da Federação ou Distrito Federal	8	3,1	3,1	8,9
Fazenda Nacional	1	,4	,4	9,3
Hospital Santa Cruz - Santa Casa de Misericórdia de Itabuna	1	,4	,4	9,7
Hospital São Marcos	1	,4	,4	10,1
Instituto Nacional do Seguro Social - INSS	1	,4	,4	10,5
Valid Justiça Pública	4	1,6	1,6	12,0
Mínistério Público Federal	12	4,7	4,7	16,7
Município	12	4,7	4,7	21,3
Não aplicável - Remessa Ex Ofício	1	,4	,4	21,7
Pessoa Física	132	51,2	51,2	72,9
Santa Casa de Misericórdia de Araçatuba	1	,4	,4	73,3
Santa Marina Saúde LTDA	1	,4	,4	73,6
Seguradora S/A	1	,4	,4	74,0
Sem informação	15	5,8	5,8	79,8
Souza Cruz S/A	1	,4	,4	80,2
SULMED Assistência Médica LTDA	1	,4	,4	80,6
União Federal	49	19,0	19,0	99,6
Universidade Federal do Espírito Santo - UFES	1	,4	,4	100,0
Total	258	100,0	100,0	

Source: TRFs Database

Table 10 – Respondent in proposed appeal 2

Party	Frequency	Percentage	Percentage Valid	Percentage Cumulative
Valid Agência Nacional de Vigilância Sanitária - ANVISA	1	,4	,4	,4
Estado da Federação ou Distrito Federal	38	14,7	14,7	15,1

Party	Frequency	Percentage	Percentage Valid	Percentage Cumulative
Fazenda do Estado de São Paulo	6	2,3	2,3	17,4
Fundação Nacional de Saúde - FUNASA	1	,4	,4	17,8
Hospital e Maternidade Santa Clara LTDA	1	,4	,4	18,2
Instituto Nacional do Seguro Social	4	1,6	1,6	19,8
Ministério Público Federal	5	1,9	1,9	21,7
Município	18	7,0	7,0	28,7
Não aplicável	153	59,3	59,3	88,0
Não atribuído	1	,4	,4	88,4
Pessoa Física	11	4,3	4,3	92,6
Sem informação	13	5,0	5,0	97,7
União Federal	6	2,3	2,3	100,0
Total	258	100,0	100,0	

Source: TRFs Database

Table 11 – Respondent in proposed appeal 3

Party	Frequency	Percentage	Percentage Valid	Percentage Cumulative
Espólio	1	,4	,4	,4
Estado da Federação ou Distrito Federal	8	3,1	3,1	3,5
Fundação Nacional do Índio - FUNAI	1	,4	,4	3,9
Ministério Público Federal	1	,4	,4	4,3
Valid Município	28	10,9	10,9	15,1
Não aplicável	193	74,8	74,8	89,9
Não atribuído	1	,4	,4	90,3
Pessoa Física	6	2,3	2,3	92,6
Sem informação	13	5,0	5,0	97,7
União Federal	6	2,3	2,3	100,0
Total	258	100,0	100,0	

Source: TRFs Database

Table 12 – Respondent in proposed appeal 4

Party	Frequency	Percentage	Percentage Valid	Percentage Cumulative
Estado da Federação ou Distrito Federal	1	,4	,4	,4
Ministério Público Federal	1	,4	,4	,8
Valid Município	2	,8	,8	1,6
Não aplicável	229	88,8	88,8	90,3
Não atribuído	1	,4	,4	90,7
Pessoa Física	7	2,7	2,7	93,4
Sem informação	13	5,0	5,0	98,4

União Federal	4	1,6	1,6	100,0
Total	258	100,0	100,0	

Source: TRFs Database