

HEALTH LAW: KNOWLEDGE IN EVOLUTION

Direito Sanitário: conhecimento em evolução

The recognition of the right to health in Brazil, given by the Federal Constitution of 1988 (CF/88), is unequivocal and of a solar clarity: “health is the right of all and the duty of the State” (art. 198). This express recognition was accompanied by an important set of constitutional provisions (arts. 196 to 200) that defined fundamental guarantees to the right to health, highlighting the creation of the Unified Health System (SUS), endowed with its own and extremely democratic and humanist principles and guidelines, such as universality, equal access, community participation, regionalization and integrality of public health services.

From 1988 to now, the Brazilian State has developed a broad set of legal norms aimed at the more concrete configuration of the SUS and the realization of the right to health, with emphasis on Law 8,080/1990 and Law 8.142/1990. The normative production in the health field, defined by the CF/88 as a competitor between the Union, states, Federal District and municipalities (art. 24, XII), enables all federal entities to publish legal norms for the organization of the public health system and the protection of the right to health throughout the national territory. This intelligent distribution of federative competences for legislative production enables, at the same time, the harmonization of general health standards by the Union and respect for regional diversities and local health peculiarities.

The rapid evolution of Health Law in Brazil was also accompanied by a growing judicialization of the right to health. Since the 1990s, the right to health has been taken to court, reaching the year 2020 with significant numbers of lawsuits in progress to request medications, surgeries, high-cost treatments, parenteral foods, etc. According to the research “*Judicialização da saúde no Brasil: perfil das demandas, causas e propostas de solução*”, conducted by Cepedisa/USP in partnership with Insper for the National Council of Justice (NCJ), the phenomenon of judicialization in the country is broad, national, quite diverse and covers multiple characteristics, and should be permanently studied¹.

¹Available at: <https://www.cnj.jus.br/wp-content/uploads/2019/03/66361404dd5ceaf8c5f7049223bdc709.pdf>

In this context, 32 years after the recognition of health as a fundamental right of Brazilians, Health Law is consolidated in Brazil as a specific field of knowledge to be studied, as is already the case in other countries, such as France and Canada. Endowed with hermeneutic principles that are proper to it, Health Law is presented today as the scientific field specifically aimed at understanding how the right to health can be effectively protected in democratic societies, including normative studies, jurisprudence and comparative.

Intersectoral and multidisciplinary by nature, health law has relative scientific autonomy, which does not eliminate the need for an intense dialogue with the more traditional branches of law, such as Administrative Law, Environmental Law, Criminal Law, Civil Law, Constitutional Law, Consumer Law and, as a background, the general theory of human rights. Nor could it be different, given the complexity that scientific production involves for emerging issues in this 21st century. In order to be well understood and applied, Health Law also needs to dialogue intensely with other branches of science in general, notably public health, medicine and the social and human sciences.

The *Revista de Direito Sanitário* was pleased to closely monitor the evolution and consolidation of Health Law in Brazil through the scientific articles it receives, evaluates and publishes. Initially more focused on themes focused on the judicialization of health and on some aspects of interpretation of legal norms, today these articles present, in addition to these classic themes, the most different approaches in the field of Health Law, encompassing the formulation and standardization of public policies; democratic production of the law; emerging themes that need new regulation, such as digital health, artificial intelligence and regulation of health professions; global issues of legal and normative interest in the health field, such as the Covid-19 pandemic.

The *Revista de Direito Sanitário* follows the new challenges for the realization of the right to health, ready to continue representing a plural, democratic and scientific space. In this sense, we are pleased to inform you that, in 2021, the journal will adopt the system of continuous publication of articles, giving more speed to the dissemination of the works.

Finally, we take the opportunity to highlight that the publication is always open to receive collaborations, in the form of original articles, comments on forensic decisions and reviews of national or foreign publications.

Good reading!

Fernando Aith

Editor in chief