

Judicialization of medicines in the State of Rio de Janeiro: development from 2010 to 2017

Judicialização de medicamentos no Estado do Rio de Janeiro: evolução de 2010 a 2017

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ABSTRACT This article aimed to describe the evolution of the number of lawsuits requesting medicines in the state of Rio de Janeiro. This is a retrospective descriptive study, using the database of the Court of Justice, which describes the evolution of the number of lawsuits in the period 2010-2017. Data were analyzed according to the variables: Municipality, Health Region, and population size. Of the 87 counties (in 84 municipalities), 62 had an increase in the number of lawsuits. The Capital Judicial District concentrated the largest number of overturned cases, ranging from 2,026 to 2,797, with a similar pattern to the State. The largest increase in the number of lawsuits was observed in the municipalities of the group Small Size I (158.1%) and a decrease of 10.2% in the Medium-sized municipalities. With the exception of the Metropolis, the increase was more pronounced in the period 2014-2017 compared to the 2010-2014. There was a marked increase in lawsuits in the Special Courts of Public Treasury to the detriment of the Lower Public Treasury Courts. In conclusion, despite the general trend of growth, it presented a different trend according to the Judicial District, Region and population size of the municipalities, suggesting potential interference of institutional actors. Additionally, it was observed a migration of cases to Special Courts of Public Treasury in the Capital.

KEYWORDS Health's judicialization. Pharmaceutical preparations. Pharmaceutical services.

RESUMO O artigo objetivou descrever a evolução do número de ações judiciais com pedido de fornecimento de medicamentos no estado do Rio de Janeiro. Trata-se de pesquisa descritiva retrospectiva, realizada no banco de dados do Tribunal de Justiça, em que se descreve a evolução do número de ações judiciais no período 2010-2017. Os dados foram analisados segundo as variáveis: Município, Região de Saúde e porte populacional. Das 87 comarcas (em 84 municípios), 62 tiveram aumento nos números de processos. A Comarca da Capital concentrou o maior número de processos tombados, variando de 2.026 a 2.797, com padrão semelhante ao do Estado. Observou-se o maior aumento no número de ações nos municípios de Pequeno Porte I (158,1%) e queda de 10,2% nos municípios de Médio Porte. À exceção da Metrópole, o aumento foi mais pronunciado em 2014-2017 em relação a 2010-2014. Houve marcado aumento de processos no Juizado Especial Fazendário em detrimento das Varas de Fazenda Pública. Conclui-se que a despeito da tendência geral de crescimento, este apresentou tendência diferente em função da Comarca, da Região e do porte populacional dos municípios, sugerindo potencial interferência de atores institucionais. Adicionalmente, constatou-se a migração das demandas para os Juizados Especiais Fazendários na Capital.

PALAVRAS-CHAVE Judicialização da saúde. Preparações farmacêuticas. Assistência farmacêutica.

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Introduction

The Federal Constitution consolidates health as a social right, of unquestionable public relevance¹. As a corollary, there is the obligation of the public authorities to implement policies aimed, among other tasks, at promoting and guaranteeing access to actions and services, in a universal and equal manner, with a view to promoting, protecting and restoring the health of the population.

The strong mobilization, with effective actuation of the social movements, especially those related to the defense of the carriers of HIV (Human Immunodeficiency Virus) and Aids (Acquired Immunodeficiency Syndrome), calling the interests of HIV-positive people, gave rise to the phenomenon of judicialization of health issues². Judicial lawsuits inaugurated, then, this route of postulation also for the care of patients with other diseases, causing the number of actions involving health to increase in a worrying way in the Country³. Many citizens have turned to the Judicial Branch to urge public entities to provide medicines and related services. This phenomenon of seeking the judiciary branch to meet health demands is called health judicialization and, according to different authors, has been compromising principles of the Unified Health System (SUS), such as comprehensiveness^{4,5}.

Thus, the Judicial Branch has been used as a means to meet individual and collective demands in the health area, representing an important vehicle for vocalization, especially for the under-sufficient, of their urgent and unavoidable needs. On the other hand, this scenario poses challenges to the public system, including with regard to administration and purchase, also influencing the selection of medicines at the expense of evidence of efficacy.

In the State of Rio de Janeiro (SRJ), previous studies have already demonstrated its great magnitude and impact on

health policies^{2,6}. In Rio de Janeiro, different initiatives, such as responses to the phenomenon of judicialization, have been implemented. The Call Center for Legal Demands (CADJ), created in 2007, was set up to harmonize administrative procedures between state and municipal levels, avoiding duplication and, thus, reducing costs. The Technical Advisory Council (NAT), established in 2009, as a result of technical cooperation signed between the State Health Department (SES/RJ) and the Court of Justice of the State of Rio de Janeiro (TJ/RJ), has as its main role the provision of technical subsidies to magistrates in lawsuits related to health claims. The Health Dispute Resolution Chamber (CRLS), which started operating in September 2013, aims to enable professionals from SES/RJ and the Municipal Health Secretariat of Rio de Janeiro (SMS/RJ) to provide care to the citizen, directing him/her to the place where he/she can obtain the intended good or service if offered by SUS, or promoting his/her insertion in the justice system, otherwise⁷.

Despite an intense scientific production on the judicialization of pharmaceutical care, there are few academic approaches using updated information from the TJ/RJ database, from the publication of Law n° 12.401/2011⁸, which amended Law n° 8.080/1990⁹, disciplining comprehensive therapeutic care. Studies are also scarce after the installation of the CRLS, NAT and Special Public Treasury Courts, these in the Court District of the Capital of the SRJ in December 2010, by State Law n° 5.781/2010¹⁰.

Thus, not only the contemporaneity of the period contemplated and the use of the database of the Supreme Court of Law, but also the analysis in a normative and structural context different from that hitherto addressed, reveal the importance of the study presented here.

In this scenario, this article aims to

describe the evolution of the number of lawsuits requesting the provision of medicines in the SRJ.

Methodology

This article used data collected as part of a larger study¹¹. This is a retrospective descriptive research conducted in the TJ/RJ database, covering the total population of the SRJ. In this approach, we describe the evolution of the number of lawsuits filed against public entities (State and Municipalities). The unit of analysis was the overturned lawsuits, being the object of interest those with clear indication of request for supply of medicines.

The database was extracted on June 19, 2018, being used by the Data Collection and Processing Division (Dicol) of the TJ/RJ the extraction criteria, according to Resolution n° 46/2007¹² of the National Council of Justice (CNJ) in the Public Treasury and Treasury Court competencies, generating a summary report by County, Subject, Processor's Jurisdiction and year of distribution.

From the list of possibilities of the 'Subjects' related to health, those potentially related to the request for drug supply were selected: Drug Supply; Drug Supply – Disabled Deige; Unproven Efficiency Drug/Treatment/Surgery; Drug Not Standardized by SUS; Drug Not Registered with Anvisa; Medicines – Other; Medicines and Other Health Supplies – Treasury Courts; Medical-Hospital Treatment and/or Supply of Medicines, being analyzed all

the processes that met this criterion in the period of interest.

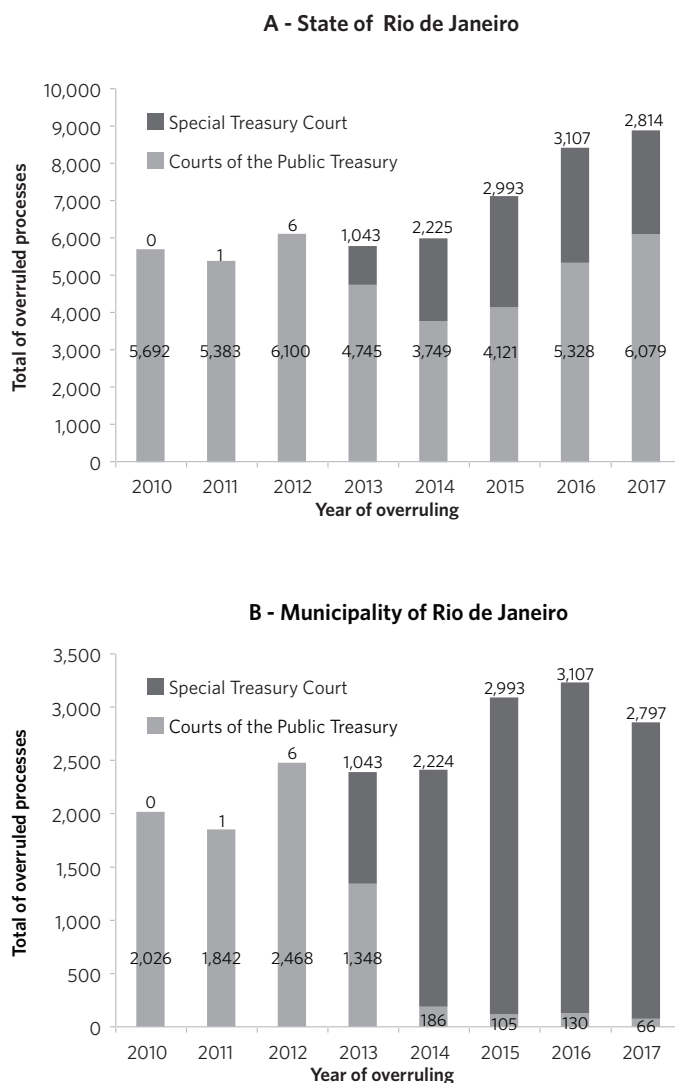
In order to better correlate the theme of judicialization with the context of public administration in the health area, the data were analyzed according to the variables: Municipality, Health Region and population size. For the latter, the Municipalities were classified as: Small I (up to 20,000 inhabitants), Small II (20,001 to 50,000 inhabitants), Medium (50,001 to 100,000 inhabitants), Large (100,001 to 900,000 inhabitants) and Metropolis (over 900,000 inhabitants)¹³. In the temporal approach, in addition to the analysis of the variation in the total period, at times, the periods 2014-2010 and 2017-2014 were analyzed separately, in view of the beginning of the full operation of CRLS from the end of 2013.

The data were considered to be publicly available, and the analysis was dispensed with by the Research Ethics Committee.

Results

In the SRJ 53,386 cases related to the supply of medicines distributed to public entities were identified, of which 5,692 were listed in 2010; and 8,893 in 2017. There was a growth of 56.2% of cases in the total period studied, with reasonable stability in the period from 2010 to 2014; from this year until 2017, there was a more significant increase, respectively, 4.9% and 48.9%. From 2013, the first processes on medicines filed in the Special Public Treasury Court were identified, gaining increasing proportion (*figure 1-A*).

Figure 1. Annual distributions of actions related to medicines, Courts of Public Treasury and Special Treasury Courts. State (A) and Municipality (B) of Rio de Janeiro. 2010-2017



Source: Own elaboration.

According to the legal division and organization, the judicial bodies are distributed by Court Districts. Of the 87 Court Districts (in 84 municipalities), 62 had an increase in the ratio of lawsuits filed in the period analyzed. The District of the Capital concentrated the largest number of overturned processes, ranging from 2.026 to 2.797 processes from

2010 to 2017, with a similar pattern to the SRJ (*figure 1B*).

It was observed that, in the 2017-2010 ratio, there was an increase in all Health Regions of the SRJ (*table 1*). The one with the highest growth was the Ilha Grande Bay, and the one with the smallest increase was the Northwest region.

Table 1. Lawsuits related to demand for medicines, second year and Health Region of the Rio de Janeiro State. 2010-2017

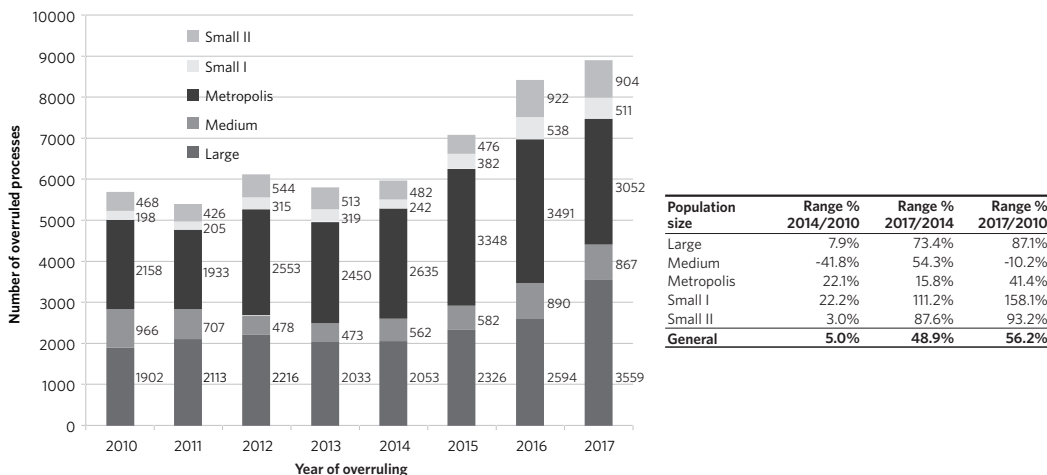
Health Region	2010	2011	2012	2013	2014	2015	2016	2017	Ratio % 2017/2010
Ilha Grande Bay	17	5	43	20	20	19	56	89	524%
Coastal Lowlands	394	473	369	425	479	446	572	520	132%
Capital	2026	1843	2474	2391	2410	3098	3237	2863	141%
Center-South	172	171	189	203	185	177	194	237	138%
Paraíba Valley	485	286	411	380	311	398	686	568	117%
Metropolitan I	506	589	794	813	721	658	580	818	162%
Metropolitan II	448	406	381	334	503	533	615	511	114%
Northwest	752	571	532	470	546	633	870	786	105%
North	357	406	271	282	376	593	722	1224	343%
Mountain	535	633	642	470	423	559	903	1277	239%
Total	5692	5384	6106	5788	5974	7114	8435	8893	156%

Source: Own elaboration.

Figure 2 records the variation of the proposed actions on the selected Subjects according to the population size of the municipalities. Regarding the distribution of cases, the largest increase in the number of lawsuits in the period 2010-2017 was observed in the

Municipalities of the Small I group (158.1%). However, there was a decrease of 10.2% in the Medium-sized Municipalities. With the exception of the Metropolises, the increase was more pronounced in the 2014-2017 period compared to the 2010-2014 period.

Figure 2. Lawsuits potentially related to drug demands according to population size of the Districts and percentage growth. State of Rio de Janeiro, 2010-2017



Source: Own elaboration.

Discussion

The judicialization is an important phenomenon in the health issue, it is crucial that it is monitored and evaluated, in order to better harmonize the actions of the different Powers, as well as the increase of public policies to meet the needs of citizens, protecting and respecting their rights. It involves, therefore, the interface between Powers, with health, economic, social and legal implications.

It is essential, in this context, to properly classify lawsuits, correctly recording the data. The CNJ issued Resolution nº 46/2007¹², which created the Unified Procedural Tables of the Judicial Branch, aiming at the standardization and normalization in the treatment of information in the Judicial Branch and enabling its better strategic planning. Specifically at the state level, the Joint Regulatory Act nº 03/2008 of the TJ/RJ¹⁴ implemented, following the guidelines outlined by the CNJ, the Unified Procedural Tables, which have the purpose of promoting the standardization of the terminology in the registration of judicial proceedings and which were used to search the results of this research.

Although the standardization measures represent a considerable advance, classification failures were identified, noting that some processes retrieved in the search with the keywords did not have as their object the supply of medicines. Such gaps in the database may be the result of non-excluding categories, insufficient description and poor clarity of categories, as well as insufficient training of responsible professionals. In this sense, process classification problems may imply information failures.

Despite the general growth of lawsuits filed for supplying medicines in the SRJ during the study period, this increase was not uniform in the counties, nor when considering the municipal size.

The Court District of the Capital, which

serves one of the main metropolises of the Country, concentrated the largest absolute number of cases. Pepe et al.⁶, in a study that analyzed the demands of the SRJ in 2006, for medicines considered essential, also identified a predominance of actions in the Court District of the Capital. The authors point out that this data may be related to the existence of a larger network of health and legal services, in addition to population size. Even if we consider that the proportional increase in the claims, which was the object of the study, was not very significant in the period, the growth in the volume of lawsuits filed in the Court District of the Capital is still relevant.

It is important to note that the increase and decrease of lawsuits over time should be interpreted with caution, as specific aspects concerning the reality of a given region, as well as the social and political context, both nationally and locally, can influence this movement. Even questions concerning the proper functioning of justice and the Office of Public Defenders and, of course, the health system can lead to an increase or reduction in the reduction of the search for the Judicial Branch by citizens.

Specifically regarding the District Court, it was identified that the scenario of the judicialization of health has changed significantly, and the migration of demands from the Courts of the Public Treasury to the Special Treasury Courts remained quite visible. *Figure 1* perfectly portrays this movement, revealing that the search for Courts of the Public Treasury, in 2013, still surpassed the search for Special Treasury Courts. However, this proportion has been reversed over the years, reaching the table recorded in 2017, where the Special Courts received almost all the cases (97.7%), in the selected Subjects.

The Special Treasury Courts were created at the SRJ by State Law nº 5.781/2010¹⁰. This rule had excluded from the system's competence, for a period of two years from its

entry into force, actions based on the right to health. Thus, from 2011 to 2012, lawsuits seeking the provision of medicines by public entities, as they are actions based on the right to health, continued to be distributed before the ordinary Judgments of the Public Treasury. From 2013, aside from the legal prohibition, the Special Treasury Courts began to receive almost all of these actions.

This data is of great relevance in understanding the profile of the lawsuits involving the claim of supply of medicines by the Public Treasury, since the Special Courts operate in a totally own justice system, with greater speed and informality, receiving fewer complex causes, low value and not admitting expertise. It is also fundamental for understanding the evolution of the phenomenon of judicialization of health, especially with regard to empirical research, since it should be considered, for its realization, the system of Special Treasury Courts, where there is.

Besides the evolution of the demand for the Special Treasury Courts to the detriment of the Courts of the Public Treasury, there was a very different variation in the number of lawsuits in relation to the municipal size.

Regarding the different Health Regions, it is important to highlight that the comparative analysis between the results should be carried out by performing an interpretation in conjunction with other research elements, in particular, because the number of Municipalities that integrate these different Regions, as well as their population sizes are quite disparate. It is also important to remember that the division by Health Regions is not always in line with the division of District Courts made by the Judicial Branch. Thus, some Municipalities, although they belong to a certain Health Region, may have their demands accepted by another District Court, since they do not have Judgments installed in it. This factor should be considered in order to make a

more accurate diagnosis about the real situation of a given Health Region.

As for the increase in the number of medicine-related cases, this fact has also been found in other studies, both for the supply of medicines² and for broader health issues, including nationwide¹⁵. Likewise, Mappelli Júnior¹⁶ identified an increase in the lawsuits proposed in the State of São Paulo (alone or in solidarity with Municipalities and/or the Union), aiming at obtaining medicines, therapeutic supplies and other products, in the period between 2010 and 2014. In the case of the SRJ, the particular situation may also be linked to the severe financial crisis that hit it, especially in recent years, which may have led to assistance failures.

Considering the protagonism of the Judicial Branch in several other areas of social relations^{17,18}, including specific health issues, we could understand that, proportionally, in the case of the entire State, the volume of instances related to medicines is not so high. However, one cannot disregard the relevance of the matter addressed in these cases nor the circumstance that more and more people have to seek the judicial path to be satisfied with their claim to perform a certain drug treatment.

The possibility of failure or misinterpretation in the registration of the Subject, made by the author's representative at the time of the distribution of the action, was a limitation of the study. Although this rating must be reviewed by a court clerk, the misclassification may persist. It is possible, therefore, that a process, registered in a Subject that relates it to the theme of medicine supply, has as its object another theme related to the health area. In any case, given the general quantitative universe that encompasses the entire SRJ, this limitation does not compromise the result of the analysis, which seeks to identify the evolution of lawsuits over time.

Final considerations

The temporal cut of the study, which covered seven years of judicialization, allowed us to have a vision of its evolution in the SRJ; and, as for the District Court, allowed us to identify the influence of new agents in this context, in order to contribute with other pieces to the construction of the design of this complex phenomenon.

The quantitative analysis carried out has revealed important aspects in a scenario in which the reality is totally different from that identified in the first studies on the subject. In fact, important innovations have emerged, such as the creation of CRLS, NAT and the installation of Special Treasury Courts.

Regarding CRLS and NAT, they are new institutional actors that may prove important in the search for the exhaustion of therapeutic alternatives that fit the standardization made by SUS, trying to achieve better cost-benefit to the public entity, as well as ensuring safety and effectiveness in treating patients. Especially the NAT gains relevance for giving the technical-sanitary support to the decisions made in the processes.

The importance of greater articulation between the legal and health sectors seems to be a consensus among all those who addresses the study of judicialization. However, despite the evolution in the theoretical field,

with positive practical reflexes, especially with regard to the administration of justice, related organs and the setting of parameters for decisions, the numbers indicate that judicialization continues to grow, revealing a dissonance among the aspirations of the population regarding the realization of their right to health and regarding the organization of the public power to meet these aspirations, according to the design outlined in the Federal Constitution.

The growing numbers of judicialization suggest both the need for constant monitoring of current measures and the formulation and implementation of new measures to effectively identify why citizens still need to seek the Judicial Branch to achieve the practical effectiveness of the right to health guaranteed by our Basic Law.

Collaborators

Peçanha LO (0000-0001-7081-4980)* contributed to the conception, planning, analysis and interpretation of data; elaboration of the draft; participation in the approval of the final version of the manuscript. Simas L (0000-0003-2494-8747)* and Luiza VL (0000-0001-6245-7522)* contributed to the conception, data collection, analysis, interpretation of results, production and revision of the text. ■

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