https://doi.org/10.53303/hmc.v14i1.1238
ISSN 2526-6349 *On-line version*
ISSN 2175-1943 *Print version*

HUMANIDADES

Review article

Study of the Effectiveness of the Reserve of the Possible in front of the Right to Health

Estudo da Efetividade da Reserva do Possível perante o Direito à Saúde

Dayane Ferreira Silva[1] | Jéssica Albuquerque Vieira Oliveira[1] | Luan Júnior Lima Monção[1] | Vanessa Cláudia Sousa Oliveira[1]

[1]*Centro Universitário FUNORTE, Montes Claros, MG, Brazil.*

Abstract

Objective: to analyze the effectiveness of the reserve of the possible in relation to the right to health, a fundamental right frequently discussed in lawsuits. The lack of financial, structural and human resources leads the State to invoke this theory as a defense, compromising the constitutional guarantee of immediate access to health. The study in-depth analyses the application of this theory in the context of promoting the social right to health in the public sphere. **Materials and Methods:** the research adopted a qualitative approach, with a bibliographic and legislative review, examining legal doctrines, case law and legal frameworks related to the reserve of the possible and the right to health. **Results:** it was found that the frequent use of the theory by the State has distorted its original application, harming access to the right to health and increasing judicialization. Despite constitutional guarantees, the spontaneous fulfillment of this right by the State is limited, causing harm to human dignity. **Final considerations:** the reserve of the possible theory should be applied sparingly and with strict criteria to avoid it serving as an argument for State omission. Strengthening public policies and respecting the 1988 Federal Constitution are essential to guarantee the right to health and reduce the need for judicial interventions.

Keywords: Reserve of the possible. Judicialization of health. Right to health.

Resumo

Objetivo: analisar a efetividade da reserva do possível em relação ao direito à saúde, um direito fundamental frequentemente discutido em demandas judiciais. A carência de recursos financeiros, estruturais e humanos leva o Estado a invocar essa teoria como defesa, comprometendo a garantia constitucional de acesso imediato à saúde. O estudo aprofunda a análise sobre a aplicação dessa teoria no contexto da promoção do direito social à saúde na esfera pública. **Materiais e Métodos:** a pesquisa adotou abordagem qualitativa, com revisão bibliográfica e legislativa, examinando doutrinas jurídicas, jurisprudências e marcos legais relacionados à reserva do possível e ao direito à saúde. **Resultados:** verificou-se que o uso frequente da teoria pelo Estado tem desvirtuado sua aplicação original, prejudicando o acesso ao direito à saúde e aumentando a judicialização. Apesar das garantias constitucionais, o cumprimento espontâneo desse direito pelo Estado é limitado, causando prejuízo à dignidade humana. **Considerações finais:** a teoria da reserva do possível deve ser aplicada com parcimônia e critérios rigorosos para evitar que sirva como argumento para omissão estatal. O fortalecimento de políticas públicas e o respeito à Constituição Federal de 1988 são fundamentais para garantir o direito à saúde e reduzir a necessidade de intervenções judiciais.

Palavras-chave: Reserva do possível. Judicialização da saúde. Direito à saúde.

Corresponding author: Jéssica Albuquerque Vieira Oliveira| profjessicaalbuquerque@gmail.com
Received: 03|01|2024. Approved: 08|10|2025.
Assessed by the double-blind review process.

How to cite this article: Silva DF, Oliveira JAV, Monção LJL, Oliveira VCS. Study of the Effectiveness of the Reserve of the Possible in front of the Right to Health. Humanidades (Montes Claros). 2025;14(1):272-82. https://doi.org/10.53303/hmc.v14i1.1238

Introduction

The study covers the fundamental rights, in an even more specific section for the right to health. Such right as others related to the social character, are rights classified doctrinally as second generation rights. In this sense, the position of Sarlet[1] when affirming that such rights would be defined as social freedoms, in addition to those that correlate with collective rights, such as health obviously.

Health was consolidated as a fundamental right in article 6 of the current Federal Constitution of 1988, which presents in its literality the definition that, as well as education, food, work, housing, transportation, leisure, security, social security, the protection of motherhood and childhood and assistance to the homeless, health is a social right in the form of the Constitution[2].

It happens that, despite the clear constitutional definition, sometimes the right to health is not spontaneously respected and guaranteed by the State, requiring the citizen to resort to the judiciary. This constant intervention of the judiciary, per se, is a foundation of interest and importance to the legal items, which raises the degree of notability of the present theme.

It should be noted that this judicial intervention covers several aspects of health: surgeries, special treatments, supply of medicines and other drugs, hospitalizations, among other procedures. Thus, the range of actions and guardianship pleaded in the judiciary is wide and expandable, as the state ceases to provide constitutionally guaranteed health to the citizen[3].

The right to health is a facet of the higher right of human dignity: there is no dignity without guaranteed minimum health conditions. In this sense, the Brazilian state, in addition to defining the fundamental right of health, defines the state obligation to effectively guarantee this provision, as found in article 196 of the 1988 Federal Constitution that defines health as a state duty[2,4].

The demands related to the right to health are countless and, in the midst of this plurality of demands, there are those that encounter resistance on the part of the State under the argument of the application of the theory of the reservation of the possible. In a simple way, this theory states that, despite the definition of the social right to health, the exercise and guarantee of it by the State would be conditional on the existence of resources for this purpose, whether financial, structural, human or other that may be impeded[5]. Authors, such as Barroso[6] and Mendes and Branco[7], are firm in the understanding that there is no way for the State to comply with its constitutionally defined obligations without providing citizens with ample access to health care, whether through treatment or supply of medicines.

In this delicate context of citizens' claims and state negatives, the present research is aimed at analyzing the right to health and the institute of the reserve or theory of the possible, focusing on state intervention.

Materials and Methods

To achieve the objective of this study, the research was based on a qualitative perspective, which allowed a historical bibliographic review about the institutes relevant to the subject. Through doctrinal legal production, priority was given to the study of legislation and literature review.

Results

The theory of the reservation of the possible in the Brazilian legal system has brought an important tool for the balance between fundamental rights and the limits of state resources. However, the indiscriminate use of this principle has led to a distortion of its original application, negatively impacting the right to health, which should be guaranteed in a broad and unconditional way by the Federal Constitution of 1988.

In this context, the judicialization of the right to health has been essential to fill the gaps left by the State, forcing it to fulfill its obligations. The study shows that although the reservation of the possible is a legitimate theory, its application must be judicious and limited in order to prevent it from becoming an instrument of disregard for constitutional guarantees and an obstacle to human dignity.

Discussion

The right to Health as an aim of the Human Dignity

As presented in the previous topic, the right to health is a fundamental right of the second generation, being included in the definition of social rights. For Sarlet8, the definition of social rights is closely related to the basic guarantees of collectivity, they are constitutionally defined rights that seek the solution of situations of inequality, reflecting in guarantee of dignity.

In the Brazilian legal system, health was elevated as a fundamental right by article 196 of the Federal Constitution of 1988, thus, on the basis of a guaranteeing state, consolidated after the dictatorship lived, it provides that:

> Article 196 - Health is the right of all and duty of the State, guaranteeing through social and economic policies aimed at reducing the risk of disease and other ailments and universal and equal access to actions and services for its promotion, protection and recovery[2].

Like the other fundamental rights, the right to health has its origin in a historical construction that, in modern times, starts from human dignity to subsidize any foundation of existence of rights. However, commonplace mention of Bobbio[9], but not less important, is the current need to guarantee rights, since the foundation of these rights was far exceeded.

Still in this part of the historical evolution that already underlies the right to health, Ordacgy10's approach offers a relevant contribution to understanding its origin. The author inserts the right to health in an essentially social dimension, conceiving it as a unfolding of the development of fundamental human rights and the consolidation of the concept of full citizenship. The right to health can be seen as the most prominent human and social right, with a universal bias, elementary and inescapable, because umbilically linked to the right to life, what is perceived by its historical precedents and the high level of regulation of the matter in the context of domestic and international laws.

Materialized through Constitutions (as a rule), fundamental rights underpin the idea that simple human nature generates the clear right to dignity, which, in order to be effective, is divided into various facets that, in turn, are confused with other rights. Health is one of these facets, so there is no dignity for those who are not guaranteed health, being the primary function of every state this positive exercise, even more a democratic right state[10].

It is important to emphasize that this evolution of fundamental rights is intrinsically related to the evolution of constitutional law, while one materializes, the other serves as a foundation, validity of that legal diploma. The undisputed evolution that the Constitutional Law has achieved is fruit, in large part, the acceptance of fundamental rights as the core of the protection of the dignity of the person and the certainty that there is no other legal document more suitable to enshrine the assecurative devices of these claims than the current Constitution[12].

As presented in the previous paragraphs, the right to health is expressly provided for in the current Constitution. More than that, the Constitution of the Federative Republic of Brazil of 1988 (CRFB/1988), raised the right to health to a level of guarantee not previously verified in the legal system. The right to health and other fundamental rights are presented as being of immediate application, in accordance with article 5 of the same degree.

This immediate applicability is included in the studies on the effectiveness of constitutional provisions, so that the immediate applicability can be translated as the no need for legislative action subsequent to the constitutional provision. That is: if the CRFB /1988 guarantees those rights immediate applicability, there is no need to speak of regulatory law or anything of the kind, being a State obligation to respect those rights to initiate the Constitutional prevision[12].

Although it speaks of constitutional evolution and forecast expressed in the current constituent, can not forget the historical character presented above. Thus, the CRFB /1988 had not been a forerunner of the right to health, with provisions of a legislative and administrative nature previously, they all issued rules addressing this issue, as a rule, in order to establish legislative and administrative powers. However, the CRFB /1988 was the forerunner in conferring due relevance to

health, approaching it as a social-fundamental right, thus affirming a close harmony between the text of the Constitution and the striking international declarations of human rights[5].

The right to health contributed directly to the consolidation of a fundamental guarantee in contemporary times: public health. This structure acquires even greater prominence in the face of scenarios, such as the pandemic of 2020 and subsequent years. This emergence comes precisely in the attempt to realize the right to health, social and collective law, which must necessarily be guaranteed by the State. In this context of evolution in the course of human history, the major health problems that individuals faced were correlated with the nature of community life, which is closely linked to communicable diseases, and consequently to improved sanitation, that is, the physical environment, such as, for example, the provision of water and quality food, in addition to medical assistance and, consequently, the relief of disability and helplessness. The relative emphasis on the themes presented and those arising from them has changed over time. Just as their reciprocity gave rise to Public Health in the format we know today[14].

From the evolution and conceptualization presented, it is clear the immense importance that the right to health has since the beginning of constitutional guarantees. Having health is a prerequisite for the exercise of the right to freedom, free association, free initiative and exercise of labor, among all other rights exhaustively expressed in article 5 of CRFB /1988[2]. In short, it is possible to verify that the right to health has an intimate relationship with the right to dignity, being that essential for its effectiveness.

The Theory of the reservation of the possible

The institute of the reserve of the possible relates to the context of the research because it is used by the State almost in all its defenses arising from demands for judicialization of health. Thus, as the proposal is to dwell on the effectiveness of its use, a presentation of the concept is paramount.

The principle of the reservation of the possible has German origin, and is called *Vorbehalt des Möglichen*. The emergence is related to a decision of the Federal Constitutional Court of Germany, in demand that dealt with vacancies in a medical course of the country[15].

In the said decision, ruling in favor of the German state, the Court decided the stalemate by the theory of the reservation of the possible, since it would not be reasonable in this particular case to guarantee the right of entry to all litigants, since the structural conditions of higher education were not sufficient for this. There is a powerful defense factor: reasonableness of requests made to the State[16].

This use, then, begins to evolve in the German legal system and influence other legal systems, while it starts a relativization of charges for rights vis-à-vis the state that, at least in legislative matters, should be the guarantor of social welfare[17].

In this context, the principle of the reservation of the possible is incorporated in Brazilian law, according to the lessons of Silveira[17], in two aspects: reservation of the possible fatic when related to an absolute absence of state resources; and reservation of the possible legal when the absence is budgetary, There is no provision for those expenses.

Thus, within the Brazilian legal system, Sarlet[8] (2008, p. 30) synthesizes the reservation of the possible in these terms

> The reservation of the possible is indeed (considered in all its complexity), a kind of legal and factual limit of fundamental rights, but it may also act, in certain circumstances, as a guarantee of fundamental rights, for example, in the case of conflict of rights, when dealing with the invocation – provided that the criteria of proportionality and the guarantee of the minimum existential in relation to all fundamental rights are observed – of the unavailability of resources in order to safeguard the essential core of another fundamental right.

In another work, Sarlet1 discusses the idea that the state's obligation to provide certain services should observe what society can reasonably require. That is, even if there is the availability of resources and capacity for action on the part of the public power, it can not be imposed on the State to provide something beyond the limits of reason, being necessary to respect criteria of proportionality and reasonableness in effecting the rights.

In the same play, Silveira[18] (2008, p. 200) teaches that:

> The reservation of the possible (Vorbehalt dês Possible) is understood as a limit to the power of the State to effectively implement fundamental rights in instalments, having its origin in the German constitutionalist doctrine of limiting access to university education for a student (numerus-clausus Entscheidung). In this case, the German Constitutional Court (Bundesverfassungsgericht) held that there are factual limitations for the satisfaction of all requests for access to a right.

Other doctrines of today end up focusing on the reserve of the possible as a mere instrument for budgetary control, which, however, given the immense amount of legal demands and discussions about the institution, is too simple to understand itself as a good concept.

Beyond the conceptualization, as regards the application of the theory of the reservation of the possible, it is agreed among the doctrine that this can only be accepted by the judiciary when it is fully proven by the State that there are financial conditions for the realization of a given activity, so that the wide use of the institute without any criteria ended up distorting it from its origin, as has been seen in lawsuits against the State by the health[19-23].

The positive interference of the judiciary in the health public administration

As discussed in previous topics, the right to health is a constitutionally guaranteed fundamental right with immediate applicability. In other words, we can affirm to be a liquid and certain right, however, the lack of effectiveness of the constitutional provision led to a high rate of lawsuits that deal with health. In this sense, informed the CNJ (National Council of Justice)[24] about the large number of claims involving health care in the Judiciary and the representative expenditure of public resources resulting from these legal proceedings.

Anyone who is injured in their rights can appeal to the judiciary to have the stain repaired. This is the result of the infamous principle of access to justice, or even the principle of non-separability of jurisdiction, provided for in article 5, paragraph XXXV, of CRFB/1988, which provides that "the law shall not exclude from the assessment by the judiciary injury or threat to law"[2].

Thus, when the citizen does not find in the state - hospitals, public clinics, health centers and others – the proper care, a prerequisite of the guarantee to health, access to justice guarantees him the opportunity to request judicially the realization of the social right to health. Moura[25] highlights that, in the face of non-compliance with a forecast assured by CRFB /1988, it is legitimate and necessary to resort to the judiciary as a way to ensure its effectiveness.

Mendes and Branco[7] portray a study on the judicial actions related to health and education carried out in five Brazilian states and, in the jurisprudence of the Supreme Court and the Superior Court of Justice, this research found that 96% of the disputes concerned the right to health, while only 4% refer to the right to education. Therefore, there is a significant number of health-related disputes. It should be emphasized that even before there was a constitutional provision that health is a state duty, there had already been discussion about this, who will say now that the provision is clear, generating, as so stated, a net right to health. In this sense:

> The first actions that discussed the right to health reached the superior courts in the mid-1990s, basically demanding the right of access to the supply of medicines by the public authorities. Since then, and especially from the beginning of the 2000s, the number of lawsuits related to the right to health has grown exponentially[26].

Recent research shows that the number of lawsuits in the health area is massive, generating a significant expense to the state. However, it is certain that such expenditure, by express constitutional provision, would have occurred even without the need for judicial claims. The research reports that:

> In turn, data from the Ministry of Health indicate that the excessive number of legal actions that discuss access to UHS benefits has had very relevant effects on the budget of the amount of resources spent by the Ministry of Health with judicial convictions was approximately R$ 2.5 million; in 2006, R$ 7.6 million; in 2007, BRL 10.7 million; in 2008, BRL 47.6 million; in 2009, BRL 83.1 million; in 2010, BRL 174.1 million; in 2011, BRL 244 million; and in 2012, BRL 287.4 million[26].

It is evident that, if the right to health is not spontaneously guaranteed by the State, the judicialization of the subject is an effective means for guaranteeing citizens' rights. To view the numbers as mere expenses for the States is to belittle the condition of lack of dignity perpetrated against the plaintiffs, so that the judiciary has been playing an important role in the realization of the fundamental right to health, even if several times, confronting the reserve of the possible as a means of State defense.

Final Thoughts

The need for enforcement of fundamental rights can be a means to synthesize the situation of judicialization of health experienced in the Brazilian legal system. The foundation of human rights has long been understood as the dignity inherent in the human condition, so that both domestically and internationally there are countless laws aimed at protecting human rights.

It happens that the cold letter of the law does nothing more than generate the expectation of a right that, as verified by the researches carried out, has been, for several times necessary to resort to the judiciary to make it effective. Health is provided as a right of immediate applicability, but between prediction and practice, there are numerous organizational, administrative and political problems in the Brazilian state.

The evolution of fundamental rights, combined with the evolution of constitutional law, lead to the absolute impossibility of considering at present the existence of a right to health without direct relation to the State. The path is precisely inverse: Health is defined and understood as a state duty and thus must be treated, and the judicialization of health shows that certainly the duty of the state has not been spontaneously fulfilled.

Making the situation even more difficult, it has been that, in addition to not guaranteeing spontaneously, the State by its procurators, is massively using the reserve of the possible as a new refusal to provide rights to citizens, even if, as exposed, is a very special application principle, in cases of absolute impossibility of providing the good claimed, in this approach, health.

The criticism has doctrinal support and the rapid adherence to the construction of the principle of the reserve of the possible translated an idea that the existence of social rights is conditioned to the existence of resources in public coffers. Thus, social rights conditioned to public coffers do not generate any effective legal link with the State.

To condition the effectivity of a fundamental right, whose constitutional provision is of immediate applicability is, in fact, to deny validity to the major law of the national juridical system. Overcoming this problematic framework requires a restructuring of the public system, an

implementation of affirmative health policies and effective compliance with the constitutional provision.

It is necessary to implement and realize the exercise of rights, especially the right to health, since the provision of rights, which was the first primeval, has already been implemented, but not enough for the guarantee of human dignity.

Author contributions

Jéssica Albuquerque Vieira Oliveira and Luan Junior Lima Monção: conception and design of the research. **Dayane Ferreira Silva, Jéssica Albuquerque Vieira Oliveira and Luan Junior Lima Monção:** data collection. **Dayane Ferreira Silva, Jéssica Albuquerque Vieira Oliveira, Luan Junior Lima Monção and Vanessa Cláudia Sousa Oliveira:** data analysis and interpretation; manuscript writing; critical review of the manuscript regarding intellectual content and final presentation. The authors approved the final version of the manuscript and declared themselves responsible for all aspects of the work, including ensuring its accuracy and integrity.

Conflict of interests

The authors declare no competing interests.

References

1. SARLET, Ingo Wolfgang. **Dignidade da Pessoa Humana e Direitos Fundamentais na Constituição de 1988**. 10. ed. rev. e atual. – Porto Alegre: Livraria do Advogado, 2015.

2. BRASIL. [Constituição (1988)]. **Constituição da República Federativa do Brasil de 1988**. Brasília, DF: Presidência da República. Disponível em: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Acesso em: 12 abr. 2025.

3. MORAES**,** Alexandre de**. Direito constitucional.** 40. ed., rev., atual. e ampl. Barueri, SP: Atlas, 2024. 1056 p.

4. FERNANDES, Bernardo Gonçalves. **Curso de direito constitucional**. 16. ed., rev., ampl. e atual. Salvador: JusPODIVM, 2024.

5. SILVA, José Afonso da. **Curso de direito constitucional positivo**. 45. ed. São Paulo: Juspodivm, 2024. 944 p.

6. BARROSO, Luís Roberto. Da falta de efetividade à judicialização excessiva: direito à saúde, fornecimento gratuito de medicamentos e parâmetros para a atuação judicial. **Revista de Direito Social**, Porto Alegre, v. 9, n. 34, abr. 2009. Disponível em: https://bd.tjmg.jus.br/server/api/core/bitstreams/83585ac8-146c-4d05-8c61-bdb051495ca4/content. Acesso em: 12 abr. 2025.

7. MENDES, Gilmar Ferreira; BRANCO, Paulo Gustavo Gonet. **Curso de Direito Constitucional.** 13. ed. São Paulo: Saraiva, 2018.

8. SARLET, Ingo Wolfgang; FIGUEIREDO, Mariana Filchtiner. Reserva do possível, mínimo existencial e direito à saúde: algumas aproximações. In: SARLET, Ingo 3744 Wolfgang. TIMM, Luciano Benetti (Org.). **Direitos fundamentais, orçamento e reserva do possível.** Porto Alegre: Livraria do Advogado, 2008.

9. BOBBIO, Norberto. **A era dos direitos**. Rio de Janeiro: Elsevier, 2004.Tradução: Carlos Nelson Coutinho.

10. ORDACGY, André da Silva. O direito humano fundamental á saúde pública. **Revista da Defensoria Pública da União**, v. 1, n. 1, dez. 2018. Disponível em: https://revistadadpu.dpu.def.br/article/view/185. Acesso em 03 dez.2024.

11. BONAVIDES, Paulo. **Curso de direito constitucional**. 35. ed. São Paulo: Malheiros, 2020. 880 p.

12. MASSON, Nathalia. **Manual de Direito Constitucional**. 12. ed., rev., ampl. e atual. Salvador: JusPODVIM, 2024.

13. PAULO, Vicente; ALEXANDRINO, Marcelo. **Direito Constitucional descomplicado**. 23. ed., rev., atual. e ampl. Rio de Janeiro; São Paulo: Forense; MÉTODO, 2024.

14. BRAUNER, Maria Claudia Crespo; MADEIRA, Sérgio Danilo. Direito fundamental à saúde no Brasil: a saúde pública face aos desafios da política de medicamentos. In: VEIGA, Fábio da Silva; VIGLIONE, Filippo; DURANTE, Vincenzo (org.). Direitos Fundamentais na Perspectiva Ítalo-Brasileira. Porto/ Padova: Instituto Iberoamericano de Estudos Jurídicos e Università di Padova, 2021. (V. II). E-book.

15. SETTI, Matheus Gomes; FACHIN, Melina Girardi. A migração constitucional da reserva do possível entre a Alemanha e o Brasil. **Revista de Direito Brasileira**, Florianopolis, v. 35, n. 13, p. 75-105, maio.2024. Disponível em: https://www.indexlaw.org/index.php/rdb/article/view/8460. Acesso em: 05 dez. 2024.

16. MATSUSHITA, Thiago Lopes. **Reserva do possível**. In: CAMPILONGO, Celso Fernandes; GONZAGA, Álvaro de Azevedo; FREIRE, André Luiz (Coords.). Enciclopédia jurídica da *PUC-SP*. Tomo: Direitos Humanos. 1. ed. São Paulo: Pontifícia Universidade Católica de São Paulo, 2017. Disponível em: https://enciclopediajuridica.pucsp.br/verbete/508/edicao-1/reserva-do-possivel. Acesso em: 18 dez. 2024. Acesso em: 03 dez.2024.

17. CRITSINELIS, Marco Falcão. A reserva do possível na jurisdição constitucional alemã e sua transposição para o direito público brasileiro. **Revista CEJ**, Brasília, v. 21, n. 71, p. 122-136, jan. 2017. Disponível em: http://bdjur.stj.jus.br/jspui/handle/2011/111101. Acesso em: 04 dez. 2024.

18. SILVEIRA, Paulo Antônio Caliendo Velloso da. **Direito tributário e análise econômica do direito**. Rio de Janeiro: Elsevier, 2009.

19. SOUZA, Lucas Daniel Ferreira de. Reserva do possível e o mínimo existencial: embate entre direitos fundamentais e limitações orçamentárias. **Revista da Faculdade de Direito do Sul de Minas,** Pouso Alegre, 2013.Disponivel em: https://revista.fdsm.edu.br/index.php/revistafdsm/article/view/524/414. Acesso em: 12 abr. 2025

20. BARROSO, Luis Roberto. **O novo direito constitucional brasileiro: contribuições para a construção teórica e prática da jurisdição constitucional no Brasil**. 1.ed. Belo Horizonte: Fórum; 2013.

21. SARLET, Ingo Wolfgang. **A eficácia dos direitos fundamentais**. 14. ed. Porto Alegre: Livraria do Advogado; 2024.

22. BRASIL. Supremo Tribunal Federal. **Embargos de declaração no Recurso Extraordinário 855.178/SE**. Relator: Luiz Fux. Redator do acórdão: Edson Fachin. Brasília, DF, 23 maio 2019.

Disponível em: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=752469853. Acesso em: 13 abr.2025.

23. PIOVESAN, Flávia. **Direitos humanos e o direito constitucional internacional**. 23. ed. São Paulo: Saraiva Jur; 2025.

24. CNJ. Conselho Nacional de Justiça. **Judicialização da saúde no Brasil: perfil das demandas, causas e propostas de solução**. [*S. l.*], 2019. Disponível em: https://www.cnj.jus.br/wp-content/uploads/2011/02/95da70941b7cd226f9835d56017d08f4.pdf. Acesso em: 03 dez. 2024.

25. MOURA, Verônica Bessa de Paulo de *et al*. Direito à saúde e os entraves quanto à implementação de políticas públicas. **Revista Multidisciplinar em Saúde**, IV Congresso Brasileiro de Saúde On-Line, v. 4, n. 2, maio.2023. Disponível em: https://ime.events/conbrasau2023/pdf/17176 . Acesso em: 03 dez. 2024.

26. BALESTRA NETO, Otávio. A jurisprudência dos tribunais superiores e o direito à saúde – evolução rumo à racionalidade. **Revista de Direito Sanitário**, São Paulo, Brasil, v. 16, n. 1, p. 87–111, 2015. Disponível em: https://revistas.usp.br/rdisan/article/view/100025/98615. Acesso em: 23 abr. 2025.