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PUBLIC HEALTH GUARANTEES TODAY: CONSTITUTIONAL PROTECTION

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Abstract: This study aimed to verify the health guarantees present in the Federal Constitution (1988) referring to citizens. The work is justified by having a theme that adds relevant information about what the Constitution says about the rights of the citizen and the duty of the State, in line with the dignity of the human person. The research had a bibliographical study in its base, dealing with subjects related to health, making use of books, magazines, newspapers, laws and jurisprudence. However, regarding the aforementioned guarantees, one must think that there is an existential minimum and that it differs in its applicability because there is a very large disparity between what one “can” and what “must” in a unilateral disruptive way. Although it has one of the most onerous tax burdens in the world, it still owes a lot to citizens when it comes to decent health care. It was found that it is far from a complete realization of the principle of human dignity, but that a big step was taken with the Federal Constitution of 1988, which in its articles positivizes this fundamental right.

Keywords: State; Health; Constitution; Dignity of human person.

INTRODUCTION

Several changes occurred in Brazilian society in the period between the Constitutions of 1824 and 1988. The evolution of the Brazilian Constitutions is the result of this evolution of society through historical facts. In 1824, we were a Monarchy marked by strong administrative and political centralism through the Moderating Power. Today, with the 1988 Constitution, we have essential guarantees and rights for human beings and a huge range of protection and resistance rights.

Since the advent of the 1988 Constitution, with the New Republic, democracy and citizenship have been recurrent themes in the academy, in public policies, in the organization

of administrative apparatuses and institutions. weaknesses of the democratic system.

In this sense, the principle of human dignity emanates values and interpretation vectors for other fundamental rights. Fundamental rights such as life, freedom, equality, leisure, housing, health, education and food (basic rights) if they are not guaranteed by the Public Power, one cannot speak of dignity, since all the aforementioned rights must be preserved to carry out the greatest foundation of the Republic: the dignity of the human person.

Law number: 8080, of September 19, 1990, provides for the conditions for the promotion, protection and recovery of health, the organization and operation of the corresponding services. This law regulates, throughout the national territory, actions and health services, performed separately or jointly, on a permanent or occasional basis, by natural persons or legal entities governed by public or private law (BRASIL, 1990).

Health centers and posts, hospitals, including university ones, laboratories, blood centers, blood banks, as well as foundations and research institutes, are part of the SUS. Through the unified health system, all citizens have the right to consultations, exams, hospitalizations and treatments in health units linked to the SUS (Unified Health System) at the municipal, state and federal levels, whether public or private, contracted by the public health manager (MINISTRY OF HEALTH, 2020).

Based on this information, the present study presents the following problem: How to think about dignity in the current scenario of public health in the country?

The present academic research aims to bring an understanding of the norms destined to public health, based on the dignity of the human person and on the reserve of the possible. Thus, SUS (SINGLE HEALTH SYSTEM), its historical concepts and

definitions will be analyzed.

This is a study with a qualitative approach, which aims to understand the norms for public health, based on the constitutional guarantee of access to health, according to exploratory reading carried out in works in the area.

According to Lakatos (2007), qualitative research considers a relationship with a link between the real world and the subject, so this relationship cannot be translated into numbers. The interpretation of phenomena and attribution of meanings are essential in qualitative research. It requires the natural environment as a direct source for data collection, with the researcher being a key part of the research.

For Gil (2006), the fundamental advantage when preparing a bibliographical research is to leave the researcher with the coverage of several phenomena, but with the disadvantage of harming the quality of the research, since there are probabilities that the secondary sources contain mistakes, generated by the way erroneous collection and processing of data.

Literature review is meticulous and extensive analysis, analyzing and defining topics, authors, words and data sources. Thus, the review is considered the starting point for scientific research, showing the topic addressed in new and different ways (CONFORTO; AMARAL; SILVA, 2012).

THE SINGLE HEALTH SYSTEM

In order to understand health policies in Brazil, it is necessary to go beyond the current situation, making an incursion into the history of health and of Brazil itself. The acronym SUS means "Unified Health System", this system was created in 1988, based on the Federal Constitution. According to article 196 of the Brazilian Constitution of 1988 provides that all Brazilians and foreigners residing in the country have the right to health, that this

right is for everyone and a duty of the State.

The SUS (Unified Health System) can be considered one of the greatest social achievements enshrined in CF/88. Its principles point to the democratization of actions and health services that are no longer restricted and become universal, in the same way, they are no longer centralized and start to be guided by decentralization.

Article 196 – Federal Constitution -Health is everyone's right and the State's duty, guaranteed through social and economic policies aimed at reducing the risk of disease and other injuries and universal and equal access to actions and services for its promotion, protection and recovery.

Everyone has rights protected by the State and access to health is universal, it is everyone's right, and this service has to be equal, we must all be treated equally, without distinction of class, color or race. SUS is one of the largest public health systems in the world, only Brazilians have the privilege of having the system implemented in the country.

From the enactment of article 196, it starts to guarantee the right to the citizen, the law that regulated the creation of the SUS was Law 8.080 of 1990. The first article says that this law regulates, throughout the national territory, the actions and services of performed individually or jointly, on a permanent or occasional basis, by natural persons or legal entities governed by public or private law (PINGARILHO, 2010).

This system was not created by chance, before its creation there was a great fight, this fight was recognized as "Sanitation Campaign". At the end of the 1980s, there were social movements for the improvement of health for the population, and this Brazilian sanitary movement gained representation through health professionals. This occurred in 1986 during the VIII National Health Conference in Brasilia (PINGARILHO, 2010).

Before the implementation of SUS, only

social security contributors were entitled to care, those who were not social security contributors depended on church charities, as a result of which few people had access to health. Nowadays, this access is universal, the concept of health has changed, today health is seen as quality of life.

Before the system was implemented in Brazil, the Ministry of Health only took care of prevention, it was the Ministry of Social Security that took care of medical services. This right was not for everyone, it was not universal, but only for taxpayers, only those who had a registered card enjoyed medical services (MINISTRY OF HEALTH, 2020).

In the SUS, the budget is divided into three parts, they are the resources of the Municipality, State and Union. Until the year 2000, the resources for financing the SUS did not have a certain destination. In 2000, Constitutional Amendment 29 was approved, which was supposed to be in force until 2004, when the complementary law that would define SUS expenses must be voted, but this only happened in 2012 (MINISTRY OF HEALTH, 2020).

Nowadays, there is a pact in law saying that the state government must allocate 12% of its budget to SUS, and municipalities must contribute at least 15% of their budget. The value that the Union must pass on to health varies with the Gross Domestic Product (GDP), which is the sum of all the wealth produced by the country, and must always be the value of the previous budget plus the variation in GDP plus 5% (MINISTRY OF HEALTH, 2020).

The public budget, as an indispensable normative instrument for the maintenance of the State and the promotion of fundamental objectives, such as the right to health and the right to life, advocated by the Federal Constitution, binds the actions of the (three) Public Powers to the achievement

of the purposes originally prioritized and inserted therein, since, despite conveying the authorization needed by the instituted powers to carry out public spending, government actions and programs must be implemented in order to achieve the expected results (SANTANA, 2011).

Among the purposes that must be prioritized through the annual budget law, for which the State's action is directed, the realization of fundamental rights emerges, since they are closely linked to the (re) construction of social reality based on the principles and objectives advocated by the internal constitutional order (BRASIL, 1988).

The SUS principle is listed in article 198 of the Federal Constitution.

Article 198 – Public actions and services are part of a regionalized and hierarchical network and constitute a single system, organized according to the following guidelines: I – Decentralization, with a single direction in each sphere of government; II – Comprehensive care, with priority given to preventive activities, without prejudice to assistance services; III – Participation of the community.

The principles listed in Article 198 of the Federal Constitution are the ideological principles, which aim to guarantee health for the entire population. The principle is something fundamental, it is a rule that initiates other laws. The principles of the Unified Health System were established in 1990, through an Organic Health Law (LOS) (SOUZA, 2018).

PRINCIPLE OF UNIVERSALITY

All Brazilians have the right to health and the health services they need regardless of complexity, cost or activity (FIOCRUZ, 2018). The Federal Constitution confirms that health is everyone's right, and that the entire population has the right to health regardless of social class, race and color, and the State has

the duty to guarantee access to health services for the entire population Brazilian.

Article 196 – Federal Constitution – Health is everyone’s right and the State’s duty, guaranteed through social and economic policies aimed at reducing the risk of disease and other injuries and universal and equal access to actions and services for its promotion, protection and recovery.

This principle was fundamental to our Federal Constitution of 1988, it transformed health, it became a right for everyone and not just for those who had a formal contract, previously only those who were linked to social security had the right, and the other people had to pay for the services (FIOCRUZ, 2018). The Principle of Universality is that all citizens have access to healthcare.

PRINCIPLE OF INTEGRALITY

It means that the services must be integrated, working in a network. Health is a whole, it involves from the biological, social and economic aspects, and to make health it is necessary to unite knowledge (FIOCRUZ, 2018). One of the principles of the SUS (Unified Health System), integrality, is present both in discussions and in practices in the health area and is related to the integral condition, and not partial, of understanding the human being.

It is related to an integral condition, it is associated with a treatment with respect for the patient, welcoming. The health system has to be prepared to listen to the patient, to meet their needs (FIOCRUZ, 2018). That is: the health system must be prepared to contemplate its needs, understand it inserted in its social context and, reach the objectives within its status quo. This principle considers people as a whole, it has to meet their needs, and it is very important to integrate actions such as health promotion, disease prevention, treatment and rehabilitation (MINISTRY OF HEALTH, 2018).

EQUITY PRINCIPLE

Equity involves generosity, solidarity and coexistence between differences and the different. Some people think that equity is not equality, one of the examples of this principle is the neighborhood Health Unit, everyone has access, and a person from that neighborhood is bedridden and for him to have the same access as the others he needs a wheelchair, wheels or a home service. Therefore, equity is treating “different” people differently so that they can have equal rights (MINISTRY OF HEALTH, 2018).

This principle says that about the need to treat the unequal with inequality, so that it can achieve equality of opportunity for survival. Everyone must have the opportunity to use the health system, and people are not the same and therefore they need different needs and according to the principle of equity, it aims to reduce this inequality. Equity aims to achieve justice social, the system has to guarantee equal living conditions for all, so this principle is considered one of the most important.

Taking as another example, a person with hearing impairment, in order to have a better quality of life, needs a hearing aid, or a cochlear implant so that he can hear and understand other people. Everyone has rights, but some people need more support to guarantee these rights (ÁVILA, 2010).

Given these points, it is understood that in fact the Union together with the States must serve the population in relation to public and budgetary health as provided by law, pointed out in the Federal Constitution in Articles 196 to 200 (ÁVILA, 2010). In the democratic state of law, it is necessary to understand that the constitutional text, in an implicit and subjective way, points out the principles of prohibition of social regression and the principle of solidarity, principles encompassed by a term that has long marked Brazilian society, namely: “Principle of human dignity”.

Therefore, according to the principle of prohibition of regression, the Brazilian State cannot regress in advances and achievements in the field of social public policies, although little expressed in the legal system, it has practical applications that show day-to-day actions of all Brazilian citizens or naturalized, it is what prevents the guarantees and conquests from regressing to political discussions, sometimes in view of their benefits, since it is of public interest attuned to the etymology of the “ *res publica* ” (thing of the people) and, therefore, an indissoluble factor.

THE DIGNITY OF THE HUMAN PERSON

The recognition and protection of the dignity of the human person is the result of the rise of human thought, and it was from the Constitutions that fundamental rights had a significant advance. The concept of human dignity is related to the morality of man, with the realization of his humanity and rationality, it is also related to the reciprocal respect that must exist between human beings. The principle of the dignity of the human person guarantees, above all, the recognition of man as a superior being, creator and measure of all things (BARCELLOS, 2010).

This Principle emanates values and vectors of interpretation for other fundamental rights, fundamental rights such as life, freedom, equality, leisure, housing, health, education and food (basic rights) if they are not guaranteed by the Public Power, one cannot speak of dignity, since all the aforementioned rights must be preserved in order to implement the greatest foundation of the Republic: the dignity of the human person (BARCELLOS, 2010).

Regarding the current status of social rights, we have:

Social rights, as a dimension of fundamental human rights, are positive state benefits, set

out in constitutional norms, which provide better living conditions for the weakest, rights that tend to equalize unequal social situations. They are, therefore, rights that are linked to the right of equality. They are valid as a prerequisite for the enjoyment of individual rights insofar as they create material conditions that are more conducive to achieving real equality, which, in turn, provides conditions that are more compatible with the effective exercise of freedom. (GRINOVER, 2014. p 294).

The State, by not allowing the effective exercise of fundamental freedoms, through the placement of the necessary means to promote citizenship and human dignity, violates fundamental precepts of the Federal Constitution (GRINOVER et al., 2014). Faced with the primacy of human dignity, all other fundamental rights revolve around it, with the aim of achieving it.

THE EXISTENTIAL MINIMUM AND THE RIGHT TO HEALTH

The idea of an existential minimum emerged in Germany between 1950 and 1975, and in Brazil it had its initial milestone with the judgment of the claim of non-compliance with the fundamental precept of n.º. 45, which recognized the possibility of judicial action aimed at implementing public policies in the face of the failure of the Public Power, practicing this unconstitutionality by omission, since it had the duty to act but did not act, not ensuring economic and social rights and cultural (2nd dimension rights), making it impossible for citizens, especially the poor, to exercise the fundamental right of freedom (positive, real or concrete) (BELIZÁRIO, 2017).

In this sense, health must encourage integrated action among the public authorities, in order to implement the (material) equality of all, mainly with regard to access to preventive measures, medical treatments,

public goods and services that with it are related (SANTANA, 2011).

Thus, the purpose of the norm extracted from article 196 of the CF, the role of the legislator, considering that public health policies condition the effective exercise of state activity in the sense of promoting, protecting and recovering the health of the population.

With regard to the right to health, which, in addition to having as its object one of the purposes pursued by the social security protection system – whose organization is based on “universality of coverage and care”, has as an instrument of effectiveness an integrated system of actions and public health services ((Unified Health System)– SUS) developed based on “universality of access” and “comprehensiveness and equality of health care” (OLIVEIRA, 2010).

In the items set out in the Unified Health System, comprehensiveness is the priority axis of a health policy, that is, as a means of realizing health as a matter of citizenship, it means understanding its operationalization based on two reciprocal movements to be developed by the subjects involved in organizational processes in health: overcoming. This principle considers people as a whole, meeting all their needs. For this, it is important to integrate actions, including health promotion, disease prevention, treatment and rehabilitation.

CONCLUSION

It was possible to understand, from the presented study, that the recognition and protection of the dignity of the human person is a result of the rise of human thought, and it was from the Constitutions that fundamental rights had a significant advance.

The concept of human dignity is related to the morality of man, with the realization of his humanity and rationality, it is also related to

the reciprocal respect that must exist between human beings. The principle of the dignity of the human person guarantees, above all, the recognition of man as a superior being, creator and measure of all things. With regard to aspects related to health, a path has begun to be followed, but, for a concrete change in reality, many other steps need to be taken.

Regarding these aspects, the Public Prosecutor's Office, taking advantage of its constitutional and legal attributions, must act to implement the fundamental social rights of people who need public health, guaranteeing them the right to an existential minimum.

It is known that a large part of the money used to finance the SUS (Unified Health System) comes from social contributions from employers and employees, such as the INSS (National Social Security Institute). Another part comes from the payment of taxes embedded in the price of products and services (Tax on Circulation of Goods and Provision of Services - ICMS), IPI (Tax on Industrialized Products), taxes on profits (COFINS), on automobiles (IPVA) and on housing (IPTU). By distributing this amount, the Federal Government becomes the main funder of public health in the country.

In addition to the largest share of the money, the Federal Government is also responsible for formulating national health policies, but implementation is carried out by its partners (states, municipalities, NGOs and the private sector). This form of organization, which has different agents, is what is called decentralization.

The work did not intend to exhaust the doubts or eliminate the problem intrinsic to the subject, so much so that it is possible to suggest the realization of other works focused on the theme.

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