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ORIGINAL ARTICLE

Administrative consensus as a tool for good governance: strategies to mitigate the judicialization of public health in Brazil

O consenso administrativo como instrumento de boa governança: estratégias para mitigar a judicialização da saúde pública no Brasil

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Abstract: The judicialization of public health in Brazil has grown exponentially in recent decades, posing significant challenges to administrative governance and the efficient allocation of public resources. This study investigates the impact of this phenomenon on the formulation and implementation of health policies, analyzing the effects of judicial intervention on the management of the Unified Health System (SUS). As an alternative to excessive litigation, administrative consensus emerges as a viable approach to conflict resolution, promoting greater adherence to SUS guidelines and reducing the burden on the Judiciary. Through a literature review and document analysis, this study examines successful experiences of mediation and negotiation in the public sector, such as the Health Dispute Resolution Chambers (CRLS) and the Interinstitutional Committees for the Resolution of Health Claims (CIRADS). The research concludes that the institutionalization of consensual mechanisms can strengthen public governance, ensuring greater predictability, efficiency, and equity in the provision of health services.

Keywords: Public governance. Administrative consensus. Judicialization of health. Unified Health System. Conflict resolution.

Resumo: A judicialização da saúde pública no Brasil tem crescido exponencialmente nas últimas décadas, impondo desafios significativos à governança administrativa

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e à alocação eficiente dos recursos públicos. Este estudo investiga o impacto desse fenômeno na formulação e implementação de políticas de saúde, analisando os efeitos da intervenção judicial na gestão do Sistema Único de Saúde (SUS). Como alternativa ao excesso de litígios, o consenso administrativo surge como uma abordagem viável para a resolução de conflitos, promovendo maior adesão às diretrizes do SUS e reduzindo a sobrecarga do Poder Judiciário. Por meio de revisão de literatura e análise documental, o estudo examina experiências bem-sucedidas de mediação e negociação no setor público, como as Câmaras de Resolução de Litígios de Saúde (CRLS) e os Comitês Interinstitucionais de Resolução de Demandas de Saúde (CIRADS). A pesquisa conclui que a institucionalização de mecanismos consensuais pode fortalecer a governança pública, assegurando maior previsibilidade, eficiência e equidade na prestação dos serviços de saúde.

PALAVRAS-CHAVE: Governança pública. Consenso administrativo. Judicialização da saúde. Sistema Único de Saúde. Resolução de conflitos.

1 INTRODUCTION

The judicialization of public health in Brazil is a phenomenon that has been progressively intensifying, posing challenges to administrative governance and compromising the efficient management of public resources. Although access to the Judiciary is a fundamental right, excessive judicial interference in health policies can result in the disruption of state planning, unequal allocation of resources, and difficulty in implementing guidelines previously established by the Unified Health System (SUS).

It is in this scenario that administrative consensus emerges as an opportunity to promote efficient and sustainable conflict resolution, including in matters of public health, in order to reduce the impact of litigation on public administration.

The present study thus aims to analyze administrative consensus as an instrument of good governance to mitigate the effects of litigation on public health. The overall objective is to examine how consensual methods of conflict resolution can strengthen public governance, bringing the user of public services and the Administration to the center

stage of dispute resolution. To this end, this study has the following specific objectives: (1) to locate the right to good administration in Brazilian law and its relationship with governance; (2) to identify the challenges of litigation in public health and its impacts on administrative governance; (2) to explore good practices of consensuality in conflict resolution in public health.

The theoretical basis of this research is based on the theory of the fundamental right to good administration, as defended by authors such as Juarez Freitas and Vanice Valle. The concept of good administration is approached from its relationship with the efficiency of public management, transparency, citizen participation, and the need to comply with SUS guidelines. In addition, the research dialogues with studies on public governance and appropriate methods of dispute resolution, examining their feasibility as mechanisms to improve the implementation of health policies.

Methodologically, the research adopts a qualitative approach, based on a literature review and document analysis. The investigative procedures include the interpretation of normative texts, legal doctrines, and institutional reports, as well as the analysis of empirical data from the National Council of Justice (CNJ) and concrete experiences of administrative consensus in the health sector. The technique used is the systematic interpretation of legal and empirical sources, allowing connections to be established between the fundamental right to good administration, the challenges of judicialization, and the possibilities for improving public governance through administrative consensus.

Ultimately, the aim is to demonstrate that the implementation of consensual methods can act as an effective tool for reducing litigation in public health and strengthening state governance. The adoption of institutional measures that encourage mediation and extrajudicial conflict resolution can contribute to a more efficient and transparent public administration that is aligned with the constitutional principles of good governance and administrative sustainability.

2 THE FUNDAMENTAL RIGHT TO GOOD ADMINISTRATION IN BRAZIL: THE PATH TO CONSENSUS

The study of the fundamental right to good administration has matured in the context of Western legal systems, based on its express provision in the Charter of Fundamental Rights of the European Union (União Europeia, 2000), specifically in its Article 41. This established a series of rights corresponding to the idea of adequate and participatory administration, involving equal treatment (impartial, equitable, and within a reasonable time frame) by the bodies and institutions of the European Union; community participation in decisions that concern it, including access to proceedings of interest to it; the obligation to give reasons for decisions; and compensation for damage caused by the institutions or agents of the European community.

The content of this right to good administration, and its ramifications, was not new in the legal arena, much less from the perspective of Brazilian law, in which clauses with content similar to that established in Article 41 of the European Charter of Fundamental Rights have long been consolidated, including with constitutional status. However, it served as inspiration for the topic to gain academic relevance in Brazil as well, albeit based on different premises. In this sense, Diogo de Figueiredo Moreira Neto argues that, in Brazilian law, the duty of good administration, which he treats as a general principle of administrative law, derives directly from Article 37, caput, of the Constitution, notably by enshrining the principle of efficiency, supplemented by the provisions of Article 70, caput, which specifically provide for the mandatory nature of legitimacy and economy in administrative dealings (Moreira Neto, 2014).[1]

[1] Arguing along the same lines: "In Brazil, in fact, the fundamental right to good governance must be considered implicit in the text of the Constitution, notably as an extension of the constitutional principles of Public Administration enshrined above all in Article 37 of the 1988 Constitution." (Coelho; Quentin, 2021, p. 98).

Juarez Freitas, in turn, in highlighting the existence of the fundamental right to good administration at the national level, points to Article 74 of the Federal Constitution, which supports the subjective public right to effective public management, which precisely integrates the fundamental right analyzed here (Freitas, 2015a).

Ingo Sarlet also sees the fundamental right to good administration present in the Brazilian constitutional text since 1988, especially in view of the provision of fundamental rights, the guiding principles of Public Administration, such as probity and morality, impersonality, efficiency, and proportionality, and the centrality of human dignity (Sarlet, [s. d.], p. 1-2).

Thus, despite the lack of express provision in Brazilian law, it has been understood that the right to good administration, with fundamental status, is based on a series of constitutional principles and on the State's duty to realize other fundamental rights provided for in the Constitution, thus going beyond what is established in the European Charter of Rights.

It is in this broader perspective of a fundamental right to good administration, which encompasses the role of a more efficient and effective State in fulfilling constitutional commitments, especially those of a service-oriented nature, that its main guideline for public governance is concentrated, insofar as, by densifying the content of this law, there is room for its implementation, based on what Coelho and Quentin (Coelho; Quentin, 2021, p. 102) call the hermeneutic role of the fundamental right to good governance[2] .

Given these guidelines, Juarez Freitas defines good administration as the fundamental right to a Public Administration characterized by efficiency, effectiveness, and proportionality, "fulfilling its duties with transparency, sustainability, proportional motivation, impartiality,

[2] Understood here as synonymous with good administration, given the similarity between the concepts.

and respect for morality, social participation, and full responsibility for its omissions and actions" (Freitas, 2015b, p. 198). Furthermore, he emphasizes that compliance with the obligations assumed in the fundamental right to good administration must be the prerequisite for the legitimacy of public policies, which must adhere to the axiological table of the Constitution and its objectives of justice and social development (Freitas, 2015b, p. 196). This consolidates the perception of this right as an essential means available to judicial or administrative control for the realization of the fundamental objectives of the State and, consequently, of effective public policies (Freitas, 2015b, p. 195, 201).

This notion that good administration is directly related to the legitimacy of state action, while at the same time being guided by binding constitutional priorities corresponding to fundamental objectives, values, and rights, notably those of a service-oriented nature, is especially dear to Freitas and resonates significantly with other scholars of the subject.

Vanice Valle (Valle, 2010, p. 223), following a similar path but with a focus on administrative action, argues that the right to good administration is primarily directed at the State and seeks to create appropriate mechanisms and institutions to address current complexities, starting with the necessary democratization of public choices and the prioritization of public action through governance models (Valle, 2010, p. 153-154). The author, incidentally, highlights the commitment to governance, combined with the "democratic management of public affairs, open to contributions, censorship, and control by organized civil society," as the objective face of the right to good administration itself (Valle, 2010, p. 223-224).

From this perspective, therefore, the connection between good administration and the issue of public policy is reinforced[3], since it is

[3] This article uses the concept formulated by Andréia Nunes, inspired by Maria Bucci, according to which "Public policy consists of a government action program, from which

not possible to think about the implementation of binding constitutional priorities, especially those that convey obligations for the State to act in an efficient, effective, and equitable manner, except through the implementation of public governance mechanisms capable of ensuring the adherence of the administrative function to constitutional commitments and democratic participation in the public choices necessary for its planning.

In this work, following the path taken by Vanice Valle, the focus of the hermeneutic function of the fundamental right to good administration is centered on the exercise of governance as a guarantor of citizen participation in public policy, whether to legitimize its design or, in the implementation stage, to participate directly, in a consensual manner, in the mechanisms for correcting policy, so as to makethem increasingly adhere to the public choices that determine their planning and implement binding constitutional priorities.

Consensus, incidentally, is pointed out by the aforementioned author (Valle, 2010, p. 223) as an integral element of the very notion of good governance, manifested by "pluralistic action by the administration, based on consensus building," since the complexity of the current scenario requires social participation in the public decision-making processes that define public policies, even serving as a bulwark against the judicialization of the administrative function, encouraged by the Federal Constitution.

In this context, the fundamental right to good administration, which exists implicitly in the Brazilian constitutional framework, is identified, in its objective dimension, on the one hand, by adherence to the constitutionally defined and legitimizing purposes of the legal order, and on the other, by the existence of public policies that implement this

the State's actions in setting goals, defining priorities, surveying the budget, and means of execution for the fulfillment of constitutional commitments are extracted, which is externalized through institutional arrangements." (Nunes, 2017).

parameter axiological, through public governance mechanisms that are naturally participatory and point to the need for consensus building.

Thus, based on the identification of governance with pluralistic participation in administrative action, which cannot be limited to the formulation phase but must also extend to the control of its implementation, to be carried out in a participatory and consensual manner, it is understood, as will be seen below, that, especially in the field of well-designed public policies, such as the unified health system, the correction of deviations that occur at the time of its execution can be better resolved through administrative consensus, as opposed to the standard option of judicial intervention.

3 JUDICIALIZATION OF PUBLIC HEALTH: AN OBSTACLE TO GOOD GOVERNANCE

The judicialization of health, a phenomenon whose conceptualization lacks uniformity in the specialized literature (Vieira, 2020, p. 25), can be described as the activation of the Judiciary by individuals or groups of individuals, as citizens or consumers, with the aim of obtaining access to health actions and services from the Public Power or private organizations operating in the health sector, such as diagnostic and therapeutic procedures, consultations, hospitalizations, dispensing of medicines and medical-surgical supplies (Oshiro, 2020, p. 278; Ramos et al., 2017, p. 20).

The above concept is indeed broad and covers both the public and private dimensions of the problem. In this paper, however, the discussion focuses on its public aspect, since it is from this perspective that the phenomenon is directly related to the challenges for good governance and public health policy, through judicial interventions in its implementation.

This phenomenon was driven, at the normative level, by the Federal Constitution of 1988, which, in its articles 196 et seq., established

an ambitious model of universal, participatory, comprehensive, and free public health. However, the complexity of its implementation placed legal institutions at the center of discussions about its effectiveness. On a practical level, the judicialization of health gained momentum in the 1990s, driven by the struggle for access to treatment for people with HIV/AIDS. The widespread acceptance of these demands by the judiciary led to the incorporation of treatment into public health policy, making Brazil a global benchmark. This positive outcome may have encouraged the growth of litigation in public health, which has since reached alarming levels (Braga; Oliveira; Ferreira, 2021, p. 3).

According to data consolidated by the National Council of Justice (CNJ) regarding procedural developments, in 2023 alone (Brasil. Conselho Nacional de Justiça, 2024, p. 10), 327,359 new cases involving public health, corresponding to approximately 59% of cases involving health in a broad sense, representing an increase of 11.8% compared to 2022.

The following year, in 2023, despite a significant percentage increase in the number of cases tried compared to the previous year (17.3% increase), totaling 293,601, the number of cases pending at the end of that year in relation to public health alone, was 475,790, which is equivalent to an increase of 11.5% compared to 2022 (Brasil. Conselho Nacional de Justiça, 2024, p. 10).

Furthermore, it can be inferred from the data available in the Health Law Procedural Statistics Panel (Brasil. Conselho Nacional de Justiça, [s. d.]) that, in 2024, up to November 30, 2024 (according to data available at the time of this research), the number of new cases reached 345,666, while the number of judgments was 334,105 and the number of pending cases rose to 508,617.

It should be noted that, although the number of judgments has also increased significantly, the number of pending cases continues to grow, indicating that the system is still unable to judge cases at the same speed at which they are filed. In fact, the volume of cases involving public health in Brazil is growing at a rate that exceeds

the judiciary's capacity to resolve them definitively, with no prospect of reversal. This situation persists even in the face of an increase in the number of judgments in 2023 and 2024, highlighting the unsustainability of the current model. In addition to contributing to the progressive congestion of court cases, excessive litigation in public health generates a series of distortions in the implementation of public policy itself.

As Vieira points out, expenses related to lawsuits involving medicines, within the scope of the Ministry of Health alone, grew by approximately 221% between 2012 and 2016, reaching R$ 1.5 billion in the latter year, before falling by 26% between 2016 and 2017, and remain stable in 2017 and 2019 (Vieira, 2023, p. 3). Of the total expenditure on medicines during this period, 94.6% relates to only 10 medicines, most of which were not included in the list of medicines dispensed by the Unified Health System (SUS) (Vieira, 2023, p. 3-8), exacerbating the problem of public health financing in Brazil based on a disorganization of planned public policy. In addition to this scenario of high spending on the purchase of drugs not included in public health policy, as warned by Teodoro and Caetano (Teodoro; Caetano, 2016), the pharmaceutical industry supports lawyers, medical societies, and patient associations to mobilize public opinion in order to prevail in its economic interest in marketing high-cost drugs to the State.

The large number of lawsuits related to public health, with direct interference in collectively designed public policy, demonstrates a preference for treating any failures in health care provision from an individual perspective. There is even evidence that the Judiciary, in its control of legality, is more cautious when deciding structural cases, which naturally involve greater political and economic impact, and where the possible consequences of decisions are less clear, which ultimately leads to a greater chance of success in small, individualized cases (Ferraz; Wang, 2013).

In fact, by concentrating on atomized demands, emphasizing the focus on the realization of "microjustice," as opposed to the collective

treatment of public health problems from a "macrojustice" perspective – according to the famous distinction made by Federal Supreme Court Judge Gilmar Mendes – the Judiciary ends up privileging a minority that has access to the instruments of justice (Brasil. Supremo Tribunal Federal, 2010, p. 70). Ferraz (Ferraz, 2017, p. 207-208), analyzing data from the National Council of Justice from 2014, observes that most individual public health disputes are concentrated in the South and Southeast, the richest regions of the country. States such as São Paulo, Rio de Janeiro, Rio Grande do Sul, and Minas Gerais, with high Human Development Index (HDI) scores, accounted for about 82% of the cases, while Pará, Maranhão, and Piauí accounted for only 0.2%. This inequality is this is repeated at the state and municipal levels, where wealthier neighborhoods have a higher number of lawsuits (Ferraz, 2017, p. 207-208).

This model of judicialization contradicts the constitutional principles of universality and equity in public health, resulting in what is known as the "two-door SUS" (Ferraz; Wang, 2014): one door for those who resort to the courts to obtain treatment without budgetary restrictions and another for the rest of the population, whose already limited access is aggravated by the diversion of resources due to legal demands. Contributing further to the erosion of the public health system is the lack of knowledge among Brazilian magistrates about the policy of incorporating new technologies into the SUS, as well as its guidelines and standards, as detected in a study conducted by Insper at the request of the CNJ (Insper; CNJ, 2019, p. 21).

The study found that, despite the high demand for healthcare-related lawsuits, references to the National Commission for the Incorporation of Technologies into the SUS (CONITEC) are minimal. In São Paulo, only 72 of the 80,000 decisions analyzed mention CONITEC, and among the courts, the one with the highest number, the Federal Regional Court of the 4th Region, the index was only 2.28% of the total decisions (Insper; CNJ, 2019, p. 21), which is also

reflected in the negligible number of mentions by judges of statements made by the CNJ itself on the subject (Insper; CNJ, 2019, p. 21-22).

Furthermore, according to the report produced by the CNJ's Laboratory of Innovation, Intelligence, and Development Goals, 46% of magistrates admit that their decisions do not fully follow public health policy guidelines (Brasil. Conselho Nacional de Justiça, 2021, p. 100). This perception is shared by public managers, especially at the municipal level, 83% of whom indicate that judicial decisions only sporadically take such policies into account (Brasil. Conselho Nacional de Justiça, 2021, p. 99). The reportalso highlights the poor quality of procedural instruction, with 70.6% of judges agreeing that the parties do not present sufficient information and evidence for a careful decision (Brasil. Conselho Nacional de Justiça, 2021, p. 100). For 49.9% of magistrates, cases often lack even a formal refusal by the Public Administration to the request brought before the Judiciary, highlighting weaknesses in the reasoning behind judicial decisions in the area of health.

Given this scenario, it is clear that the continuous and growing transfer to the Judiciary of individual cases in which access to public health is discussed from a micro-justice perspective has generated serious dysfunctions in the respective public policy, designed to solve a collective, macro-justice problem. This interference, marked by non-compliance with health legislation, represents a violation of the fundamental right to good administration, as it contradicts the principles of efficiency and effectiveness, as well as the notion of good governance as pluralistic action, compromising a planned public policy, forged collectively and with social control, based on technical knowledge and a plurality of agents.

One of the responses to this problem, as proposed below, consists precisely in returning to the fundamental basis of good public governance: plural action. Consensus, especially administrative and extrajudicial, is the most appropriate instrument for avoiding the dysfunctions generated by excessive litigation in public health.

4 CONSENSUS: THE PATH TO GOOD ADMINISTRATION IN PUBLIC HEALTH

Public governance, as discussed by Vanice Valle (Valle, 2010, p. 223-224), is a broad and dynamic concept based on social participation, consensus building, and respect for democratic principles, making it essential for the realization of good administration and the democratization of the exercise of administrative functions.

The core of the discussion on public governance, in fact, lies in adapting the "principal agent" dilemma of private institutions to the public sector, where the people, who hold power (Article 1, sole paragraph, of the Federal Constitution), are the "principals," and public officials, who exercise this power on their behalf, are the "agents" (Brasil. Tribunal de Contas da União, 2020, p. 38). Thus, understanding this concept requires social integration in state decisions, that must cover both planning and the correction of deviations in the implementation of public policies, ensuring respect for democratic choices and social participation (Coelho; Lolli; Bitencourt, 2022). This reality requires a collaborative and interconnected process in which various actors, especially service users, take on a more active role in realizing the right to health.

Thus, as Bucci points out (Bucci, 2017, p. 80-85), the answer to the problem of the judicialization of health involves the implementation of some relevant strategies, all of them in line with the guidelines of good administration, such as: (a) the reversal, by the Judiciary, of the automatic granting of preliminary injunctions, with a more in-depth analysis of the specific elements of each case; (b) the review, by the Executive Branch, of the way therapeutic care policies are presented, in order to make them clearer and more accessible; (c) the improvement of the legality of these policies, with a detailed explanation of institutional responsibilities, to be carried out by the Executive and Legislative Branches; (d) the regulation, by these same branches, of clear and objective protocols for the care of users within the health

system; and (e) the dissemination, promoted jointly by the Executive and Judicial branches, of the lists of medications and treatments of the Unified Health System (SUS), with an emphasis on their binding nature for magistrates.

This improvement in public health policy, especially on the part of the Executive Branch, which is responsible for implementing it, must be accompanied, as recommended by Valle (Valle, 2020, p. 18), by greater respect on the part of the control functions for the institutional capacities of the agents who formulate public policy preceded by planning, as is the case here. Thus, judicial review in cases involving public health must be guided by deference to technical and administrative acts performed in accordance with SUS guidelines and regulations.

The Brazilian Supreme Court, incidentally, in ruling on General Repercussion Theme No. 1234 (Brasil. Supremo Tribunal Federal, 2024), consolidated the understanding that judicial control in health disputes should be limited to the legality of the administrative act, without replacing the decision of the public manager. This position, constructed by consensus in a Special Commission with representatives of Federal Entities and various entities, reaffirms the need for prior analysis of CONITEC's refusal to incorporate technologies and the administrative refusal to provide treatment.

This recognition of the primacy of planning in public health policy can strengthen the adoption of consensual mechanisms in dispute resolution, ensuring greater alignment with SUS guidelines. In this way, the aim is to balance individual and collective justice, discouraging excessive judicialization, often based on criteria other than those established in state planning.

Bucci asserts (Bucci, 2017, p. 76), in this regard, that consensual methods of conflict resolution in the health area have proven effective in reducing judicialization in a qualified manner, by prioritizing dialogue and the construction of negotiated solutions. Experiences such as the Interinstitutional Committees for the Resolution of Health

Claims (CIRADS) in Rio Grande do Norte and the Chambers for the Resolution of Health Disputes, as in Rio de Janeiro, stand out for bringing together public defenders, prosecutors, and health secretariats, promoting swift and effective responses to users' demands.

As highlighted by Mello and Xavier (Xavier; Mello, 2022), in the specific case of the Health Dispute Resolution Chamber (CRLS), established in 2013 in Rio de Janeiro, consolidating a continuous effort of inter-federative coordination involving the Union, the states, and municipalities, and interinstitutional coordination, with the participation of state and municipal prosecutors, state and municipal health departments, and the state public defender's office, significant results have been achieved in reducing the judicialization of health claims and promoting administrative solutions.

The data (Xavier; Mello, 2022, p. 38) they collected indicate that, in its first year of operation, the CRLS-RJ administratively referred 35.26% of cases (373 cases), a rate that increased to 66.02% in 2018 (10,977 cases) and, although it fell slightly, remained at 62.23% between January and August 2023 (5,895 cases). It was also observed that litigation involving medications has a lower rate of success in solutions administrative services (69.99% in 2022) when compared to consultations (81.61%) and exams (83.20%) (Xavier; Mello, 2022, p. 38).

A similar experience in Goiânia (Vieira, 2020, p. 42-43) between 2010 and 2015 showed that 42.6% of demands involved items on the SUS list, while 37.8% referred to drugs not covered by the system, with no therapeutic substitutes. Another 19.5% required the purchase of medications that could be replaced by alternatives already available in the SUS, highlighting the risk of administrative solutions that are not aligned with the technical guidelines of the health system.

Interinstitutional dialogue, on the other hand, with the participation of patients in the resolution of their conflicts, also yielded significant results in the state of Amazonas (Secretaria de Estado da Saúde do Amazonas, [s. d.]), with the implementation of the Chamber for Extrajudicial Resolution of Health Disputes (CRELS), which,

according to official data, concluded its first year of implementation in September 2024 with 89.7% of claims resolved.

Similarly, health mediation, with the promotion of a space for dialogue on public health, was implemented through "SUS MEDIADO," a program launched in 2012 through a partnership between the state and federal public defenders, the state and municipal prosecutors of Natal, and the state and capital health departments (Sturza; Dutra, 2023, p. 176). The promotion of interinstitutional consensus solutions in public health matters can also be observed in other entities of the federation, such as in the case of the "Technical Cooperation Agreement for the management of Ranibizumab and Aflibercept drugs" in the state of Minas Gerais, implemented in 2021, and aimed at establishing communication flows and procedures to deal with demands involving the drugs Ranibizumab and Aflibercept, whose effective impact on judicialization, however, according to Castro's analysis, Silva Netto, Santos, Castro, and Figueiredo (Castro et al., 2024, p. 103), still needs to be studied after the initiatives proposed in the agreement have been completed.

The experiences presented above reveal the adoption of different institutional strategies to promote administrative consensus as a mechanism for resolving disputes in public health matters. These strategies, although based on common premises – notably the removal of disputes from the courts and the promotion of dialogue between the various federal entities and public institutions – take on different organizational and operational configurations, depending on the local context and the federal-institutional arrangement of each unit of the federation.

In the case of Rio de Janeiro, the Health Dispute Resolution Chamber (CRLS), created in 2013, is a robust initiative for inter-federal and inter-institutional coordination, bringing together the federal government, states, and municipalities, as well as public defenders and health departments. The success of this strategy can be measured by the progressive growth in the rate of administrative resolution of cases,

which reached 66.02% in 2018 and remained at a high level in 2023 (62.23%). This performance suggests institutional maturity and the consolidation of efficient administrative mediation flows, although with variations depending on the nature of the demand—with lower effectiveness in cases involving medications, possibly due to technical complexity, the absence of therapeutic alternatives in the SUS, or greater resistance to mediation on the part of applicants.

The experience of Goiânia (2010–2015) contributes to a qualitative analysis of the type of demand faced by administrative channels. The finding that 42.6% of requests involved items on the SUS list, while almost 38% referred to unlisted drugs with no substitutes, reveals a mismatch between judicialization and official clinical guidelines, pointing to the need to reinforce the technical alignment of consensual solutions with current public health policies.

In turn, CRELS in Amazonas presents an innovative model focused on rapid resolution, whose success rate of 89.7% in its first year of operation (2024) suggests a high capacity for administrative absorption of demands. Although no further details about this case have been disclosed, the data collected highlights the potential of consensus as an effective tool, especially in contexts with lower judicialization density or with administrative channels that are more accessible to the population.

The case of the SUS Mediado program, launched in 2012 in Rio Grande do Norte, demonstrates a commitment to institutionalized health mediation, involving public defenders, prosecutors, and health departments. This initiative incorporates the idea of a "public space for dialogue," prioritizing shared solutions and agreements between public entities and citizens, which contributes to building institutional trust and rationalizing access to health care. Finally, the Minas Gerais Technical Cooperation Agreement, focused on the management of specific drugs (Ranibizumab and Aflibercept), introduces a preventive and technical planning model aimed at structuring administrative flows even before litigation arises. Unlike previous experiences, the

impact of this initiative is still being evaluated, as indicated by Castro *et al.* (Castro et al., 2024, p. 103), demonstrating that consensus can also be thought of as an *ex ante* public policy strategy, and not just as a reaction to judicialization.

Thus, the experiences analyzed allow us to glimpse the diversity of possible strategies for institutionalizing administrative consensus in public health: from the creation of formal chambers with multiple actors (CRLS), through integrated health mediations (SUS Mediado), to technical agreements with a preventive focus (Minas Gerais). The common factor in all successful initiatives is the ability to bring together public actors and promote institutionalized dialogue with users, seeking administrative rationality that respects fundamental rights while safeguarding the sustainability of the health system.

In fact, these examples of the concrete application of administrative consensus in public health, with significant success in providing access to this fundamental right, demonstrate the assertiveness of the measure, with its ability to help reduce the congestion of court cases and ensure that conflicting cases adhere to public policy guidelines. However, as we have seen, this does not happen automatically. The data regarding the lower success rate in administrative claims involving drugs indicates the permanence and, especially, the findings regarding administrative decisions granting drugs, in a representative percentage (19.5%), that had therapeutic substitutes demonstrate the need for administrative action to be guided by greater rigor in adhering to the technical guidelines of the health system, under penalty of repeating the errors found in the judicial sphere.

A proposal for improvement in this regard, incidentally, was consolidated in the aforementioned General Repercussion Theme No. 1234 (Brasil. Supremo Tribunal Federal, 2024), when the thesis established the need for federal entities to create a national platform, in collaborative governance with the Judiciary, to centralize judicial and administrative information related to access to medications, enabling greater transparency and control, including social control.

Such a platform, associated with the necessary judicial deference, has the potential to make administrative conflict resolution in the health area even more attractive, by facilitating the transparency of measures and providing social control, in addition to allowing for the study of this data. Another area for improvement to be explored is the incorporation of technological means of conflict mediation, such as generative artificial intelligence, facilitating the analysis of large volumes of data produced by the Administration and providing more assertive responses in online dispute resolution systems (known as ODR).

Such systems, widely used in the private sector in consumer relations, especially since the success of the SquareTrade platform of the US e-commerce company eBay (Souza; Reyna, 2021, p. 60), have the potential, with the use of artificial intelligence technology, to be widely applicable to public administration as well, including as a standard option for conflict resolution (Souza; Reyna, 2021, p. 60), in order to make these methods even more efficient and sustainable. This is the path that began to be traced, in fact, by the Federal Attorney General's Office, which, through AGU Normative Ordinance No. 144, of July 1, 2024, created a technological tool called the Platform for Immediate and Final Self-Composition of Administrative Conflicts - PACIFICA, intended for self-composition and the conclusion of extrajudicial agreements involving individual conflicts (Brasil. Advocacia-Geral da União, 2024). No data is available on its implementation, as it is a recent innovation, but its forecast may also serve as a guide for solutions to conflicts in public health.

Initiatives for the extrajudicial resolution of conflicts in public health, even without the use of advanced technologies, already promote the reorganization of administrative flows, optimize services through databases, and reintegrate patients into the SUS (Bucci, 2017, p. 76). This process streamlines care, even though the solution offered does not always correspond exactly to the patient's initial claim, as it is based on previously established technical and scientific criteria.

Furthermore, by basing itself on SUS guidelines, administrative consensus increases transparency and standardizes conflict resolution, contrasting with the variability of judicial decisions and promoting greater equity in the treatment of demands. Thus, this mechanism benefits both the State and patients, reserving judicial intervention only for questions about the legality of public choices.

5 CONCLUSION

This study analyzed administrative consensus as an instrument of good governance to mitigate the impacts of litigation on Brazilian public health. Based on the concept of the fundamental right to good administration, it was evident that public governance, as an efficient and participatory management mechanism, points to the adoption of consensual models of conflict resolution, especially in a context in which excessive judicialization compromises the implementation of planned public policies.

Throughout the research, it was demonstrated that the judicialization of public health, although a legitimate means of claiming fundamental rights, has become an obstacle to good governance, promoting distortions in the allocation of resources and the effectiveness of public health policies. The data presented show that the actions of the Judiciary, often occurs without due consideration of the normative guidelines of the Unified Health System (SUS), creating a scenario of institutional insecurity and compromising administrative efficiency. In this context, administrative consensus has proven to be a viable and necessary path for restructuring conflict resolution in the field of public health. The research pointed to successful experiences with alternative dispute resolution methods. Models such as the Health Dispute Resolution Chamber (CRLS) in Rio de Janeiro, the "SUS Mediado" program in Rio Grande do Norte, the CRELS in Amazonas, and the Technical Cooperation Agreement in Minas

Gerais point to a growing institutionalization of consensus, with significant results in terms of resolution, speed, and alignment with public policies.

These experiences, although distinct in their operational arrangements, are based on common premises: interinstitutional coordination, the leading role of public defenders and health departments, and the search for consensual solutions that respect the normative and technical guidelines of the SUS.

However, the research findings indicate that the effectiveness of administrative consensus depends on some essential conditions. The first of these refers to the need to ensure that consensus mechanisms respect the technical and scientific guidelines of the SUS, preventing administrative conflict resolution from reproducing the same problems as judicialization, such as the granting of treatments without technical support. In this sense, it is important to create platforms for managing health demands, as provided for in General Repercussion Theme No. 1234, enabling greater transparency and social control over administrative decisions.

It was also identified that the adoption of emerging technologies, such as online dispute resolution (ODR) systems and artificial intelligence, can contribute significantly to the expansion and efficiency of consensual methods in public administration. The implementation of the "PACIFICA" platform, developed by the Federal Attorney General's Office, for example, is a relevant innovation in this regard and can serve as a model for the extrajudicial resolution of health disputes.

Finally, it is concluded that administrative consensus in public health should be understood as a means to promote more efficient, transparent, and sustainable public administration. Its adoption does not eliminate the need for judicial recourse, but allows the judiciary to act in a more strategic and subsidiary manner, reserving itself for cases that effectively demand intervention jurisdicional. A implementation of well-structured consensual mechanisms well-structured consensus mechanisms has the potential to strengthen public governance,

ensuring greater adherence to health policies and ensuring more equitable and effective care for the population.

Thus, it is reaffirmed that the construction of a governance model based on consensus represents a necessary step forward for the improvement of public health management, mitigating the negative effects of judicialization and promoting the effectiveness of fundamental social rights. Continuing research on the topic, especially with regard to the incorporation of new technologies and the concrete impact of consensus initiatives, will be fundamental to consolidate this model in the Brazilian legal and administrative scenario.

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Data Availability

The authors declare that all data used in this research are available in a public repository, in accordance with open science practices. Revista Sequência encourages the sharing of research data to ensure the transparency, reproducibility and verification of published results, while respecting applicable ethical principles. Accordingly, disclosure of information that would allow research subjects to be identified or would compromise their privacy is not required. Data sharing should therefore prioritize scientific integrity and the protection of sensitive data, so that results are made public without undue exposure of participants.



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