

Article


The Interface between Federal Supreme Court Decisions and the Ministry of Health's annual management reports: reflections on changes in public health policies prompted by judicial decisions

A interface entre as decisões do Supremo Tribunal Federal e os relatórios anuais de gestão do Ministério da Saúde: reflexões sobre alterações em políticas públicas de saúde motivadas por decisões judiciais

La interfaz entre las decisiones del Supremo Tribunal Federal y los informes anuales de gestión del Ministerio de Salud: reflexiones sobre cambios en políticas públicas de salud motivados por decisiones judiciales

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Abstract

Objective: this article analyzes the influence of decisions issued by the Plenary of the Federal Supreme Court on the implementation of public health policies in Brazil during the years 2022 and 2023, based on the 2023 Annual Management Report of the Ministry of Health. **Methodology:** a qualitative approach was adopted, employing exploratory techniques and document analysis. A total of 215 the Federal Supreme Court Plenary decisions were examined, filtered to 81 judgments related to public health, in search of evidence of judicial influence on health policy implementation. Results: Among the 81 analyzed judgments, six decisions contained direct commands to the Ministry of Health, reinforcing legal mandates and demanding specific actions, such as coordination and financial support for the implementation of the nursing minimum wage, expansion of access to Indigenous health services, tobacco control and prevention, combating fake news about the National Immunization Program, and pesticide regulation. However, in conjunction with the 2023 Annual Management Report, no evidence was found that the Ministry's actions in these areas were solely motivated by the Federal Supreme Court decisions. **Conclusion:** the Federal Supreme Court decisions reaffirm the Ministry of Health's responsibilities, highlighting issues of collective relevance and reinforcing the principle of separation of powers. While these decisions contribute to the enforcement of the right to health, they may also compromise planning and the sustainability of public policies. The study underscores the need for greater dialogue between the Judiciary and the Executive to align judicial decisions with the demands of the Brazilian Unified Health System, fostering sustainable, equitable, and efficient health actions.

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Keywords: Right to Health; Judicialization of Health; Health Policy.

Resumo

Objetivo: este artigo analisa a influência das decisões do Plenário do Supremo Tribunal Federal sobre a implementação das políticas públicas de saúde no Brasil nos anos de 2022 e 2023, considerando o Relatório Anual de Gestão de 2023 do Ministério da Saúde. **Metodologia:** adotou-se uma abordagem qualitativa, com técnicas exploratórias e análise documental. Foram analisados 215 acórdãos do Plenário do Supremo Tribunal Federal, filtrados para 81 decisões relacionadas à saúde pública, em busca de evidências da influência das decisões judiciais nas políticas de saúde. **Resultados:** dos 81 acórdãos analisados, seis decisões apresentaram comandos diretos ao Ministério da Saúde, reforçando competências legais e demandando ações específicas, como a coordenação e o dever de apoiar financeiramente a implementação do piso salarial da enfermagem, ampliação do acesso à saúde indígena, controle e prevenção do tabagismo, combate à *fake news* sobre o Programa Nacional de Imunizações e controle de agrotóxicos. Contudo, em análise conjunta com o Relatório Anual de Gestão de 2023, não foram encontradas evidências de que as ações do Ministério nos temas observados tenham sido exclusivamente motivadas pelos acórdãos do Supremo Tribunal Federal. **Conclusão:** as decisões do Supremo Tribunal Federal reafirmam competências do Ministério da Saúde, destacando temas de relevância coletiva e reforçando a importância da separação de Poderes. Embora contribuam para a efetividade do direito à saúde, as decisões podem comprometer o planejamento e a sustentabilidade das políticas públicas. O estudo evidencia a necessidade de maior diálogo entre Judiciário e Executivo para alinhar decisões judiciais às demandas do Sistema Único de Saúde, promovendo ações sustentáveis, equitativas e eficientes.

Palavras-chave: Direito à Saúde; Judicialização da Saúde; Política de Saúde.

Resumen

Objetivo: este artículo analiza la influencia de las decisiones del Pleno del Supremo Tribunal Federal en la implementación de políticas públicas de salud en Brasil durante los años 2022 y 2023, considerando el Informe Anual de Gestión 2023 del Ministerio de Salud. **Metodología:** se adoptó un enfoque cualitativo, con técnicas exploratorias y análisis documental. Se analizaron 215 sentencias del Pleno del Supremo Tribunal Federal, filtradas a 81 decisiones relacionadas con la salud pública, con el objetivo de identificar evidencias de la influencia del Poder Judicial en la formulación de políticas sanitarias. **Resultados:** de las 81 decisiones analizadas, seis presentaron órdenes directas al Ministerio de Salud, reforzando competencias legales y exigiendo acciones específicas, como la coordinación y el apoyo financiero para la implementación del piso salarial de la enfermería, la ampliación del acceso a la salud indígena, el control y la prevención del tabaquismo, el combate a las noticias falsas sobre el Programa Nacional de Inmunizaciones y la fiscalización de agroquímicos. Sin embargo, al analizarse juntamente con el Informe Anual de Gestión 2023, no se encontraron evidencias de que las acciones del Ministerio en los temas observados hayan sido motivadas exclusivamente por las decisiones del Supremo Tribunal Federal. **Conclusión:** las decisiones del Supremo Tribunal Federal reafirman las competencias del Ministerio de Salud, destacan temas de relevancia colectiva y refuerzan la importancia de la separación de poderes. Aunque contribuyen a la efectividad del derecho a la salud, estas decisiones pueden comprometer el planeamiento y la sostenibilidad de las políticas públicas. El estudio evidencia la necesidad de un mayor diálogo entre el Poder Judicial y el Poder Ejecutivo para alinear las decisiones judiciales con las demandas del Sistema Único de Salud, promoviendo acciones sostenibles, equitativas y eficientes.

Palabras clave: Derecho a la Salud; Judicialización de la Salud; Política de Salud.

Introduction

The Constitution of the Federative Republic of Brazil, promulgated in 1988 (FC/88), brought advances in the protection of fundamental rights and the organization of the state and society. In this established paradigm, among the wide range of rights and freedoms, the right to health stands out as a fundamental right of Brazilians and a duty of the State, exercised through the provision of public social and economic policies aimed at protecting and promoting the well-being of the population, as recorded in Art. 196 of the Magna Carta⁽¹⁾.

However, the realization of these rights faces significant challenges, marked by insufficient coverage, underfunding, inequalities in access to essential services, which has served as an argument for the growing judicialization of the right to health^(2,3,4). In this context, citizens are looking to the courts to guarantee access to treatments, products and medicines as a way of making their rights effective.

Ferraz⁽²⁾ believes that judicialization *per se* is not all bad, when viewed from the perspective of the maturing of the Democratic Rule of Law, the assumption of rights and the action of the Judiciary, both to control the administration and to protect social rights. On the other hand, the author also points out that the Federal Supreme Court (STF), by employing the expansive interpretation of the right to health guaranteed in Article 196 of the FC/88, discarding the possible financial limitations of the state, has transformed the right to health into something practically absolute, an “everything for everyone”.

It is in this scenario that the phenomenon known as “judicial activism” resides, where the STF often intervenes to correct or compensate for legislative and executive failures in the area of health. STF Justice Luiz Roberto Barroso teaches that this form of activism is a necessary response to the shortcomings of the political and administrative system, even though it provokes intense debates about the separation of powers and the fiscal consequences for the health system. He also understands that there is legitimacy to activism when it stems from administrative failures or legislative omissions, insofar as it does not usurp the powers of other Powers, but acts to guarantee the constitutional will with regard to the realization of fundamental rights⁽⁵⁾.

The tension between individual and collective rights to health is a central aspect of Vieira's analysis⁽³⁾ for whom judicial decisions, in trying to secure individual rights through specific interventions, can jeopardize resources intended for the collective, affecting the equitable distribution of health services. Under these arguments, he highlights the importance of exercising macro-justice, which observes the need for more balanced governance on the part of the judicial system, which considers individual and collective demands in a fair and sustainable way, assessing the impacts of its decisions on health policies, based on expanding its understanding of health planning and the macroeconomic policies that support it.

This understanding of the need for a balance between the protection of individual rights and the sustainability of public health policies is corroborated by Ferraz⁽²⁾ based on the argument that, although the tendency to seek rights seems quite positive, it can result in significant distortions in the health system, including inequalities in access and negative impacts on the public health budget.

It should be noted, however, that the studies mentioned above predate the Covid-19 pandemic and therefore do not include measures adopted by the National Council of Justice (CNJ) and the most recent positions of the Supreme Court that have influenced the actions of the judiciary in the area of health. The CNJ's Technical Note N° 24/2020⁽⁶⁾ for example, recommended strategies to public managers to prevent excessive judicialization during the health crisis, promoting greater coordination

in the allocation of resources. Recommendation N° 66/2020⁽⁷⁾ instructed judges to consider public policy guidelines and the essentiality of measures to deal with the pandemic when deciding on health-related lawsuits. Within the scope of the STF, the judgments on general repercussion issues N° 6 and N° 1234^(8,9) established parameters for the judicialization of health, reinforcing the need to balance individual rights to health with the sustainability of the public system. These initiatives may indicate greater restraint on the part of the Judiciary, or even greater progress in understanding public health policies and preserving their planning and control mechanisms.

The demands that come before the courts in relation to the Unified Health System (SUS) do not always take into account applicable rules, inter-federative agreements and the financing of the system, causing damage to the budgetary and operational planning of public policy⁽¹⁰⁾. Faced with this scenario, the STF's general repercussion issues N° 6 and N° 1234, which refer to the supply of medicines by the SUS, represent a step forward in the way the Judiciary treats judicialization related to the SUS, based on the search for greater alignment with the applicable rules, inter-federative agreements and system planning, in order to respect the competencies of the inter-management committees and reduce the budgetary impact of individual judicial decisions.

This stance can be seen in Ruling RE 1366243⁽¹¹⁾ where the STF's plenary ruling established clearer parameters for the supply of non-standardized medicines by the SUS, defining objective criteria for their judicial granting. In addition, the formation of a special commission, with the participation of federal entities and institutions involved, made it possible to build consensus understandings. This work resulted in the definition of clearer guidelines on the division of responsibilities between the federated entities, the criteria for funding lawsuits and the rules for reimbursing amounts in cases where medicines are supplied by court decision.

This type of action reaffirms the importance of the STF in controlling the interpretation of the right to health, in setting the limits in the complex dynamic between judicialization, judicial activism and the implementation of public health policies.

Along these lines, this article was prompted by an interest in investigating whether there are decisions by the Full Court of the STF in the field of health, containing express orders to the Ministry of Health and to what extent they have been able to promote changes in the implementation of public health policies in Brazil.

Methodology

This research was concerned with identifying possible links between decisions by the STF's full bench, with orders to the Ministry of Health and issued between 2022/2023, and the Ministry of Health's Annual Management Report, which is an official document providing accounts to external control⁽¹²⁾, which is the Legislative Branch, through the Federal Court of Auditors (TCU), under the terms of article 70 of the FC/88⁽¹⁾.

Given this objective, the research adopted a qualitative approach, using the exploratory technique and documentary analysis^(13,14). The study focused on analyzing the STF's plenary decisions, issued in 2022 and 2023, in relation to the field of public health and their respective influence on the Ministry of Health's Annual Management Report (RAG), prepared by the Undersecretariat of Planning and Budget/Executive Secretariat/Ministry of Health (SPO/SE/MS) and presented to the Federal Court of Auditors (TCU) in 2024.

The influence of the STF was considered to be a direct command to the Ministry of Health that resulted in an action not foreseen in its original planning and that reverberated in an accountability document, such as compliance with a court decision - like determining the incorporation of medicines, creating an organizational structure, establishing a line of care, among others.

Data was collected through official websites (Ministry of Health, STF and TCU), forming a set of data organized in spreadsheets, used for analysis. The STF rulings were identified using exploratory techniques⁽¹³⁾ and documentary analysis, whose consultation on the official website⁽¹⁵⁾ made it possible, using the descriptors 'Unified Health System', 'right to health' and 'public health policy', to select a set of documents to be filtered and analyzed.

In the first stage of the search, a total of 706 records were obtained, which, after excluding duplicate entries, resulted in 465 judgments handed down in 2022 and 2023, distributed as follows: 155 decisions from the First Panel, 95 from the Second Panel and 215 from the Full Court.

For the purposes of this article, the analysis focused on the judgments of the Full Court, considering its competence to judge actions with a greater impact, such as Direct Actions of Unconstitutionality (ADI) and Claims for Failure to Comply with a Fundamental Precept (ADPF)^(16,17). The exploratory analysis, using descriptors, identified 215 rulings issued by the STF Plenary. Of these, 134 were excluded because they did not meet the requirements of thematic relevance, in that they did not deal with issues related to health, the Ministry of Health or the SUS, or were linked to branches of law other than health (e.g. criminal, environmental, social security or labor law).

Once selected, the judgments were read in full and in detail, with a view to identifying, in terms of relevance to the merits, the recommendations or obligations to make to the Ministry of Health, within the scope of its powers, and with the potential to cause changes in the public policies implemented by the SUS.

The decisions were then categorized into three major groups: (1) Access to Health Actions and Services: Outpatient, Hospital, Pharmaceutical Assistance and Health Technologies; (2) SUS Management and Financing; and (3) Health Promotion and Surveillance.

As can be seen in Table 1, the didactic option was to value the content of the judgement, organizing them into macro-categories and breaking them down, in order to demonstrate to the reader the issue brought before the Constitutional Court. Unlike health policy, which justifiably segments primary care, specialized care and other segments, the Judiciary does not act in this way, and it is possible to extract conceptual confusions from the pleadings and decisions, but which - in the end - end up constituting the matrix between the fields of health action.

Joint and integrated actions are commonplace in the health field and the detailed categorization has been able to demonstrate that the STF's decision-making process ends up reverberating this understanding.

Table 1. Categorization of issues dealt with in STF rulings

| Macrocategory | Category | Subcategory 1 | Subcategory 2 | Quantity |
|---------------------------------------|----------------------|---------------------|---|-----------|
| Access to Health Actions and Services | Specialized Care | | | 4 |
| | Specialized Care | SUS Management | | 2 |
| | Primary Care | Specialized Care | | 27 |
| | Primary Care | | | 16 |
| | Primary Care | Specialized Care | SUS Management | 2 |
| | Primary Care | Specialized Care | Health Promotion, Health Surveillance, SUS Management | 1 |
| | Primary Care | SUS Management | | 2 |
| | Primary Care | Surveillance | | 1 |
| | Covid-19 | | | 2 |
| | Judicialization | Medicines | | 2 |
| | Total | | | 59 |
| SUS Management and Financing | Financing | SUS Management | | 1 |
| | Financing | SUS Management | Salary Floor | 1 |
| | Financing | SUS Management | Reimbursement | 1 |
| | SUS management | | | 3 |
| | Supplementary Health | | | 3 |
| | Total | | | 9 |
| Health Promotion and Surveillance | Health Promotion | | | 2 |
| | Health Promotion | Health Surveillance | | 3 |
| | Health Promotion | Health Surveillance | SUS Management | 2 |
| | Health Promotion | Health Surveillance | Smoking | 1 |
| | Health Surveillance | | | 5 |
| | Total | | | 13 |

Source: prepared by the authors based on documentary analysis

After analyzing the set of decisions of the STF Plenary, we went on to analyze the RAG 2023, obtained from the official website of the Ministry of Health⁽¹²⁾ and the TCU⁽¹⁸⁾ and used, as with the judgments, the technique of document analysis⁽¹⁹⁾ in order to identify links, divergences and absences that could indicate the influence of the STF's decisions on the management of public health policies. With regard to the RAG analyzed, it is important to clarify that it refers to planning and management for the year 2023, the content of which prepared by the SPO/SE/MS⁽¹²⁾ is presented to the Court of Auditors in 2024⁽¹⁸⁾, for due consideration. for due assessment, in its own form. The purpose of the TCU's assessment is to demonstrate the effectiveness and efficiency of the implementation of health policies, in accordance with article 70 of the Federal Constitution of 1988⁽¹⁾.

Once the document analysis phase was over, the data obtained was systematized in an electronic spreadsheet, and then we proceeded to evaluate the data obtained using a qualitative approach^(13,14) to identify 'if' and 'in what way' the decisions of the STF Plenary were able to influence decisions by

the Ministry of Health to alter the implementation of public health policies, considered the official accountability document of the federal component of the SUS.

This text is based on an analysis of selected rulings issued by the STF Plenary, 35 in 2022 and 46 in 2023, the results of which will be demonstrated and debated in the following section.

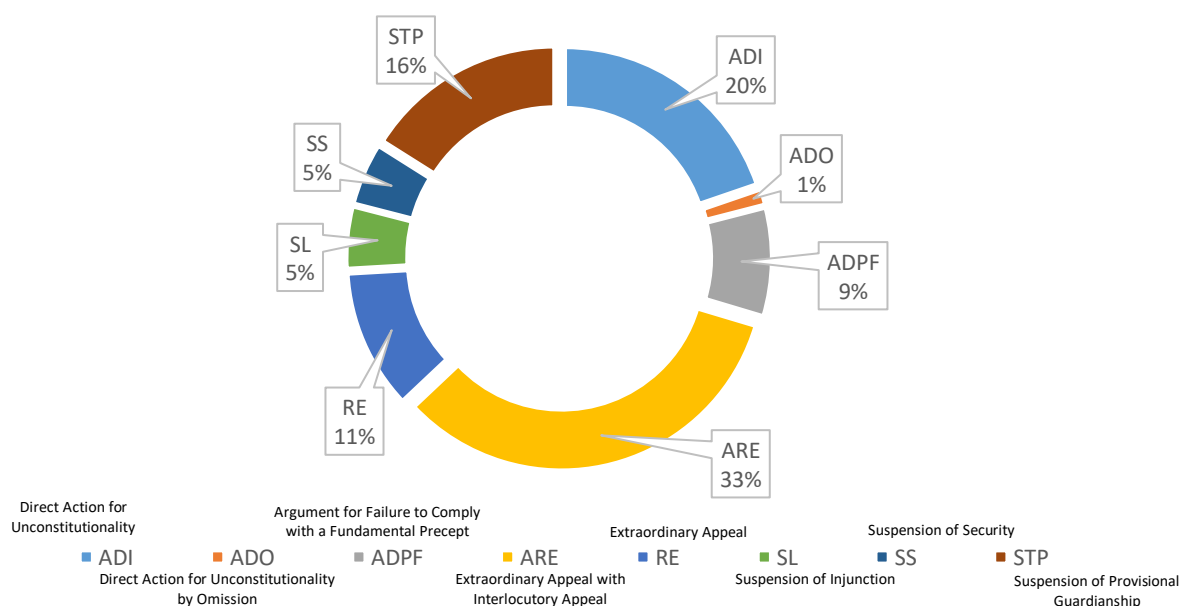
It should be made clear that all the documents used are public, and are freely accessible on the official websites of the respective bodies. Therefore, as stated in Law N° 14.874, of May 28, 2024⁽²⁰⁾ and Resolution N° 510, of April 7, 2016, of the National Health Council⁽²¹⁾ the prior analysis of the research project by the Research Ethics Committee (CEP)/National Research Ethics Council (CONEP) system is waived. Likewise, the data obtained, even if public, was used in a manner compatible with the General Data Protection Law⁽²²⁾ without any personal identification of the proponents of the lawsuits analyzed.

Results and discussion

Based on an analysis of the STF's Plenary judgments, we identified the different procedural types judged in the years under analysis and their scope (Graph 1), characterizing a lack of procedural uniformity in the objects brought before the Constitutional Court.

In this area, there are those of abstract control of constitutionality⁽²³⁾ such as: (i) direct actions of unconstitutionality (ADI - 20%), the object of which is to declare a law or normative act unconstitutional, the norm being analyzed in the abstract; (ii) direct actions for unconstitutionality by omission (ADO - 1%), the purpose of which is to guarantee the effectiveness of a constitutional rule, in the event of an omission, lack or failure by the public authorities to provide the means for the constitutional precept to be enforceable⁽²⁴⁾; and actions for breach of fundamental precept (ADPF - 9%), which, according to Law N° 9.882, of December 3, 1999, have “the purpose of preventing or repairing damage to a fundamental precept resulting from an act of public authority”⁽²⁵⁾.

Graph 1. Types of Proceedings - STF Plenary - Years 2022 and 2023



Source: prepared by the authors

The initial hypothesis was the concentration of findings in ADPF and was based on the fact that this type of action acts on a very serious constitutional injury of national importance and is fully acceptable for judicial debates in the field of health, as can be seen from Zavascki's lesson:

Despite the greater extension achieved by the objective aspect of constitutional jurisdiction with the creation of the new type of constitutional action, Law 9.882/99 required that the acts impugned by means of it contain a type of constitutional injury qualified, simultaneously, by its (a) relevance (because in direct contravention of a constitutional paradigm of fundamental importance) and (b) difficult reversibility (because there is no subsidiary procedural technique capable of causing the alleged injury to cease with equal effectiveness)" (ADPF 127, rel. min. Teori Zavascki, monocratic decision, judgment on 25-2-2014, DJE of 28-2-2014.)⁽²⁶⁾

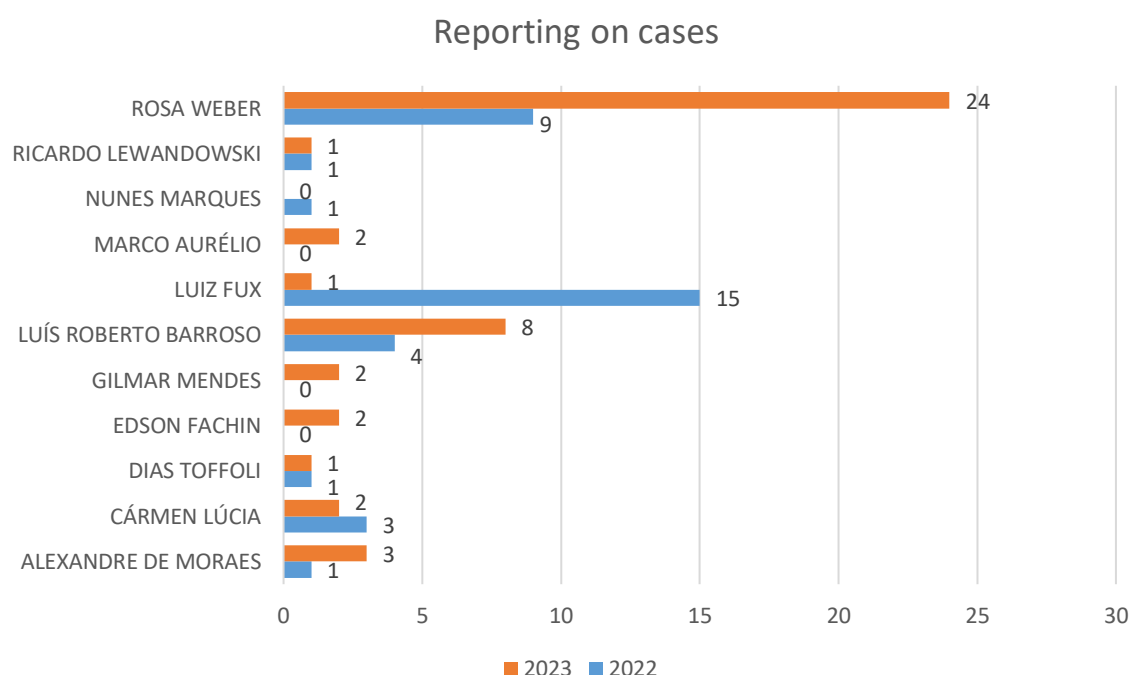
However, these actions - ADI, ADO and ADPF - considered to be collective, accounted for 30% of the total number of judgments analyzed over the time period surveyed, indicating a lower representation in relation to the other procedural classes, especially appeals

In this group, judgments were identified in Extraordinary Appeals (RE), which are exceptional appeals brought before the STF at the sole or final instance, in the event of an offense against a constitutional rule; and Extraordinary Appeals with Interlocutory Appeal (ARE), which is the appropriate form for challenging a decision by the president or vice-president of the court appealed against which did not admit the extraordinary appeal⁽²⁴⁾. Most of the judgments identified are within the scope of the ARE (Graph 1), in the appeal phases of internal appeals or embargoes, the judgment of which is within the competence of the plenary. The sum of these types of appeal - RE and ARE - 44%, may indicate the higher incidence of individual actions on the 'health' agenda brought before the Constitutional Court. This inference can be corroborated by the types that refer to the suspension of precautionary measures, such as the Suspension of Preliminary Injunction (SL), Suspension of Security (SS) and Suspension of Provisional Guardianship (STP), which account for 27% of the total analyzed.

Although the findings confirm the predominance of individual actions in the doctrinal environment^(2,4,5) the importance of further studies into the potential impact of these lawsuits - repetitive or not - on changing public policies, based on decisions issued by the STF's panels and plenary.

When it comes to the frequency of rapporteurship among STF Justices, Graph 2 shows that the Presidents of the STF, respectively and in absolute numbers (35 judged by Justice Rosa Weber, president from September 12, 2022 to September 28, 2023, and 16 judged by Justice Fux, who presided from September 10, 2020 to September 12, 2022), assume the largest number of decisions. This situation can be explained by a provision in the STF's Rules of Procedure which determines that the president of the house has the power to decide on requests to suspend injunctions, preliminary injunctions or writs of mandamus.

Graph 2. Frequency of Reporting by STF Justices - Years 2022 and 2023

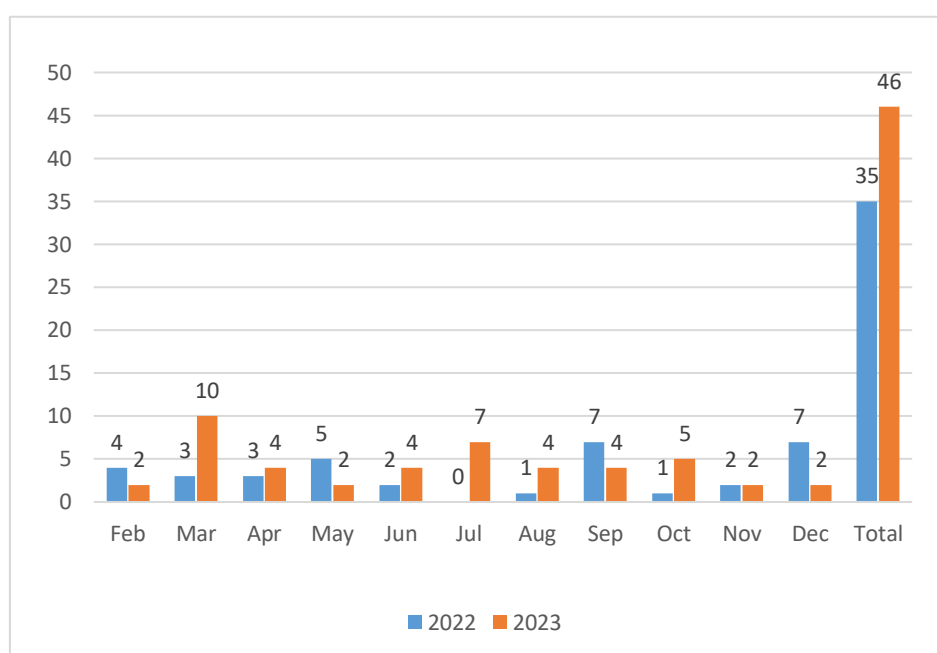


Source: prepared by the authors, based on document analysis

The analysis of the distribution of judgments showed that there is a quantitative variation, without any standardization between the months of the year, as can be seen in Graph 3, according to which the month of March 2023 recorded the highest number of judgments in the period under analysis. It is also possible to infer that, in a possible analysis of a more comprehensive historical series, the hypothesis would be of annual growth in the number of judgments, especially considering the upward trend in new demands registered per month indicated by the statistics available on the CNJ panels⁽²⁷⁾ and corroborated by the literature^(2,3,4).

In this context, the perception of temporal variability, added to the signs of continuous growth in the number of judgments in the field of health, means that this is an aspect that is promising for further research.

Graph 3. Monthly distribution of STF Plenary judgments Years 2022 and 2023



Source: prepared by the authors based on documentary analysis

The categorization adopted in the study sought to reflect the multifaceted nature of the decisions analyzed, showing connections between health issues and the institutional contexts in which they are inserted. Oliveira⁽²⁸⁾ points out that public health problems are complex, involving multiple actors, institutions and processes. In order to understand policies, it is necessary to consider the interactions between the actors and the institutional dynamics.

Matrix action in the field of health is essential to ensure the effectiveness and efficiency of public health policies, as it allows for a more systemic approach, which considers the interdependencies between different areas of care and management, in order to develop and implement comprehensive and sustainable solutions.

Chaves⁽²⁹⁾ points out that the health sector has imprecise boundaries and is closely interconnected with other social sectors, making it necessary to carry out a multidimensional analysis in order to have a more complete view of reality, and an integrative approach in order to determine the best ways of acting on this reality.

This complexity can be seen especially in the content of the ruling in ADI 7222 MC-Ref⁽³⁰⁾ questioning Law N° 14.434, of August 4, 2022⁽³¹⁾ amending Law N° 7.498, of June 25, 1986⁽³²⁾ to establish the national salary floor for nursing professionals. This judgment contains, among other things, elements dealing with: (i) the financial autonomy of the federal entities (management of the SUS); (ii) the viability and quality of health services provided by states and municipalities; (iii) the financing of the SUS and (iv) employment in the health sector.

Looking at the macro-categories, the ‘Access to Health Actions and Services: Outpatient, Hospital, Pharmaceutical Assistance and Health Technologies’ one stands out, which recorded the largest number of rulings (59) and refers to issues related to guaranteeing the state's jurisdictional provision of medicines, treatments, outpatient and hospital care, etc. Costa⁽⁴⁾ considers that the quantitative growth in the judicialization of health, registered in individual or collective lawsuits,

results in an increase in the number of cases which, in the end, come before the STF for evaluation, in order to determine some parameterization⁽⁹⁾.

Of the 81 decisions analyzed, 51 did not involve the federal government as a party, allowing us to infer that the state and municipal entities of the SUS have been quantitatively more demanding.

The analysis of the Direct Actions of Unconstitutionality (ADI) addresses issues such as the transfer of resources, federal and state competence, financing and the provision of public health services, highlighting the importance of meeting minimum investment percentages and promoting equity in the financing of the sector.

In general, the votes of the ministers support a constitutional interpretation that limits or confirms the scope of action of the federative entities, establishing a regulatory line for the fulfillment of legal and fiscal competencies. In more specific cases, the judgments present recommendations or considerations that can guide the Ministry of Health, generally reinforcing the competence of the federal entities.

Finally, it was found that six of the rulings directly ordered the Ministry of Health to do something (Table 2) and that these make up the set of elements that were sought in the Annual Management Report (RAG), 2023, highlighting the fact that the STF reinforces and reaffirms the competences of the federal entity of the SUS, without acting contrary to the health positions historically adopted.

In order to identify a possible relationship between the decisions handed down by the STF in the lawsuits and the analysis of the RA⁽¹²⁾ the emphasis was on the following contents: (i) 'Tobacco control', 'smoking' and 'prevention of tobacco use', referring to the determinations contained in ADI 3311⁽³³⁾ and ARE 1348238 RG⁽³⁴⁾; (ii) 'Nursing floor', contained in the terms of ADI 7222^(30,35,36); (iii) 'Sanitary barrier on indigenous lands' and 'indigenous health', given the provisions of ADPF 709⁽³⁷⁾; (iv) 'National Immunization Program', 'PNI' and 'Fake News' about vaccines, as determined in ADPF 754⁽³⁸⁾; and finally, (vi) 'Control of soil quality (agrotoxics)' and 'agrotoxics', referring to ADPF 910⁽³⁹⁾.

Table 2. Relationships between STF Plenary Judgments and RAG 2023

| Content/Topic | Case | Command to the MS | Registration in the RAG |
|---|---------------------------------|---|--|
| Tobacco control, smoking and prevention of tobacco use. | ADI 3311 ⁽³³⁾ | The Ministry of Health is legally responsible for specifying the health warnings that must appear on the packaging of smoking products. | No mention was found in RAG 2023 of tobacco control or prevention of tobacco use. It should be noted that the concentration on regulating use and distribution is associated with the competencies of the National Health Surveillance Agency (Anvisa), whose administrative subordination is to the Ministry of Health. |
| | ARE 1348238 RG ⁽³⁴⁾ | Reaffirms the competence of ANVISA, which is linked to the Ministry of Health, to regulate products that are harmful to health. This decision strengthens the national tobacco control strategy promoted by the Ministry of Health and validates the implementation of strict regulations to reduce the impact of smoking on public health. | |
| Nursing wage floor | ADI 7222 ^(30, 35,36) | It ordered the Ministry of Health (together with the National Health Council (CNS), the National Council of Health Secretaries (Conass), the National Council of Municipal Health Secretariats (Conasems) and the Brazilian Hospitals Federation (FBH) to submit information on the impacts of the rule that set the salary floor for nurses, technicians and midwives on the quality of health services, within 60 days. | The mention of the nursing wage floor was identified in section I. Statement of Compliance by the Federal Government with the Minimum Application in Public Health Actions and Services, which shows the significant impact on appropriations for expenditure on public health actions and services (ASPS), with the sanction of Law N° 14,581/2023, which opened a special credit in the amount of R\$ 7.3 billion with the aim of providing financial assistance to states, municipalities and the Federal District for the payment of the salary floor. The RAG records that the source was reallocated in 2023 so that the appropriation was fully configured as ASPS. |
| | | It determined that compliance with the salary floor for nursing professionals, technicians and midwives would be conditional on the existence of compatible federal resources. It determined that the Ministry of Health must financially support sub-national entities and SUS | |

| | | | |
|--|--------------------------|---|--|
| | | <p>entities to make the salary floor viable, establishing that insufficient resources may temporarily suspend the enforceability of the floor in certain circumstances. This decision reflects directly on the role of the Ministry of Health, as it reinforces the need for planning and budgetary provision to ensure the continuity of services without jeopardizing public health care.</p> <p>It reiterates that the Ministry of Health must coordinate and support the implementation of the salary floor so that it is complied with without compromising the quality of health services, especially for entities that serve the SUS.</p> <p>No direct determinations were made to the Ministry, but the decision implies the need to liaise with the National Congress to guarantee adequate resources to enable compliance with Law 14.434/2022.</p> | |
| Health barriers on indigenous lands and indigenous health. | ADPF 709 ⁽³⁷⁾ | It ordered the Ministry of Health to expand indigenous access to health services on all lands, including those that have not been ratified, in addition to establishing and maintaining sanitary barriers with a view to reducing contagion by COVID-19. | In section VIII - Statement of the implementation of objectives and targets, which deals with the implementation of the National Health Plan (PNS), for the period 2020 - 2023, it was identified that indigenous health appears as PNS Objective 6 - Strengthen the protection, promotion and recovery of indigenous health, related to indigenous health. The goal has 16 targets, which are monitored by the Ministry of Health's Secretariat for Indigenous Health Care (SESAI). |

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|---|---------------------------------|---|--|
| | | | <p>In 2023, the Ministry of Health carried out actions to expand drinking water supply coverage in indigenous villages and to intensify water quality monitoring (MQAI). It implemented structural improvements and emergency actions in vulnerable indigenous territories, such as the Yanomami territory. It also identified the adoption of preventive measures to tackle diseases, promoting integrated health and sanitation actions that respect the cultural specificities of indigenous communities.</p> <p>In response to the Public Health Emergency of National Importance (ESPIN) - which is the point of relation with the judgment analyzed - as a result of the lack of health care for the Yanomami population, epidemiological surveillance actions, nutritional support and infrastructure initiatives were carried out, with the aim of reducing the health inequalities faced by indigenous populations.</p> |
| <p>National Immunization Program, PNI and "<i>Fake News</i>" about vaccines. ADPF 754</p> | <p>ADPF 754 ⁽³⁸⁾</p> | <p>It ordered the Ministry of Health to: a) adjust the technical notes to clarify that compulsory vaccination does not imply forced vaccination and that it can be implemented by indirect measures, such as restrictions on access for the unvaccinated; b) prohibit the use of "Dial 100" to promote actions that may discourage vaccination.</p> | <p>Actions to combat Covid-19 are related to PNS Goal 3: Reduce or control the occurrence of preventable and controllable diseases and conditions. Low adherence to vaccination has been attributed to multiple factors including misinformation, distrust of messenger RNA vaccines, and the influence of anti-vaccine groups on social media. In response, the Ministry of Health</p> |

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|--|--------------------------|--|--|
| | | | has promoted campaigns to clarify and combat misinformation, in order to mitigate its negative impact. |
| Soil quality control and pesticides. ADPF 910 | ADPF 910 ⁽³⁹⁾ | Gives the Ministry of Health powers to monitor and inspect pesticides, insofar as it reaffirms the Ministry's responsibility for defining safety criteria for the use of these substances, ensuring that protective standards are maintained to protect public health. | Related to PNS Goal 3, targets were identified in the PNS 2020-2023 related to the Health Surveillance Program for Populations Exposed to Pesticides (VSPEA), implemented in 121 priority municipalities. The program aims to carry out integrated health actions, involving health promotion, surveillance, prevention and control of illnesses and diseases resulting from exogenous poisoning by pesticides. The study "Rapid Review of Biomarkers Used to Monitor Health and the Limit of Exposure to Pesticides" was identified as being related to PNS Goal 4: Encourage the production of scientific knowledge, promoting the population's access to health technologies in a fair, equal, progressive and sustainable manner. |

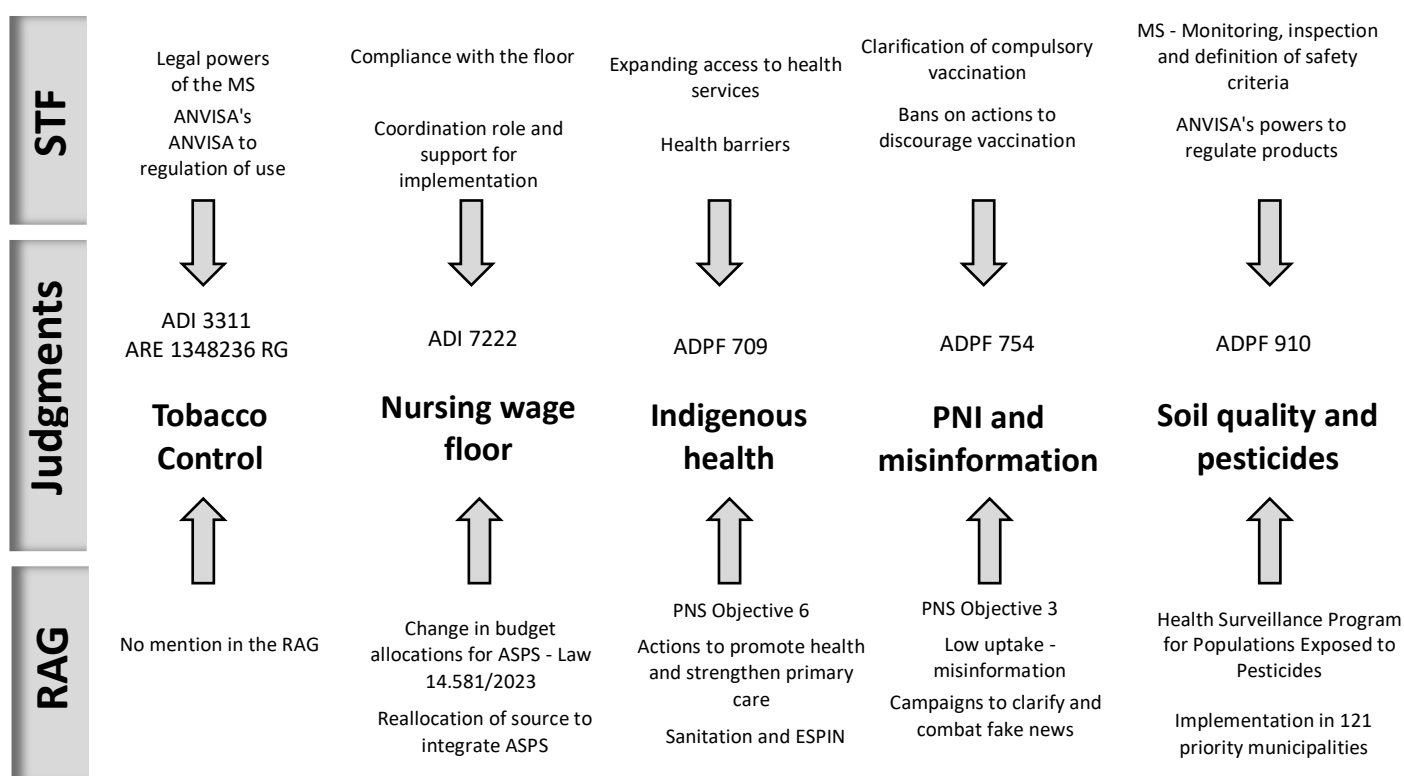
Source: prepared by the authors

Although there were actions in the RAG that were related to the themes of the selected rulings, a detailed analysis of the rulings, their sentences and decisions did not identify a direct relationship between the STF Plenary's commands and the Ministry of Health's actions in implementing public health policies.

Among the topics analyzed, it was identified that 2 of them interact with the competencies of the National Health Surveillance Agency (Anvisa) (tobacco control and pesticides), which strongly suggests the need to expand studies on the judicialization of the competencies of the aforementioned regulatory agency.

For didactic purposes, the above content is summarized in Figure 1:

Figure 1. Summary of Relationships between STF Plenary Decisions (2022 and 2023) and Ministry of Health RAG (2023)



Source: prepared by the authors

Figure 1 summarizes the relationship between STF Plenary rulings handed down in 2022 and 2023 and the Ministry of Health's RAG 2023 records. The analysis revealed that, although the court rulings address issues with a significant impact on public health policy, there was no direct mention of them in the annual accountability document. The relationship between the rulings analyzed and the RAG records highlights the continuity of the practices and competencies already attributed to the federal entity of the SUS, without the STF being considered to have interfered in any way contrary to established health policies.

The content of the rulings, such as the determination to expand health barriers on indigenous lands (ADPF 709), the regulation of tobacco control (ADI 3311), the implementation of the nursing salary floor (ADI 7222), and the inspection of the use of pesticides (ADPF 910), shows that the STF

has acted to strengthen the competencies already assigned to the Ministry of Health and its affiliates, such as Anvisa, without making substantial changes to the programs in force.

Although the Ministry of Health's RAG 2023 did not explicitly mention these court decisions, the Ministry's actions reveal the continuity of programs and policies in line with the court decisions, such as intensifying health surveillance and expanding access to health care for vulnerable populations, implementing the Nursing Wage Floor and promoting campaigns to combat misinformation about vaccines.

Conclusion

This study sought to analyze the influence of the STF's Plenary decisions (2022 and 2023) on the implementation of public health policies in Brazil, based on the results presented in the Ministry of Health's RAG (2023), which is the main instrument for accounting for health actions carried out by the federal government. The results showed that the STF, in the years studied, confirmed and corroborated the legal competencies of the federal entity of the SUS with regard to the issues identified.

The analysis made it possible to glimpse possible points of interface between the decisions of the STF Plenary and the actions of the Ministry of Health and, although no direct and unequivocal relationships were identified between the judicial commands and the execution of actions by the federal SUS entity, the findings point to the relevance of investigating how, when and under what conditions the Judiciary can influence the formulation and implementation of public health policies.

Rather than offering definitive answers, this research sought to pave the way for reflection on the limits and possibilities of judicial control in the health field. The fact that some of the decisions analyzed reaffirm competences already legally attributed to the Ministry of Health does not undermine their institutional importance, but on the contrary, instigates the questioning of how these reaffirmations are inserted into concrete political, budgetary and operational contexts.

The results obtained are therefore indicative of the complexity involved in identifying causal links between judicial decisions and changes in public administration. In this sense, they are promising for future research that incorporates broader historical series, multiple documentary sources, and comparative analyses between decisions of the STF's Plenary and Panels, as well as exploring the role of intermediary bodies, such as Anvisa and the Health Councils, in mediating between judicial decisions and administrative responses.

This study confirms the complexity of the analysis aimed at determining the relationship between judicial decisions and health policies, both to highlight their benefits and to emphasize the challenges. It reiterates that the relationship between the Judiciary and the Executive in the context of health policies must be continually evaluated, with the aim of ensuring the effectiveness of the right to health, prioritizing the sustainability of public policies and avoiding the deterioration of social relations.

Conflict of interest

The authors declare that there is no conflict of interest.

Authors' contribution

Denicol PLE contributed to the conception/design of the article, data analysis and interpretation, writing of the article, critical revision of its content and approval of the final version. Santos AO contributed as co-author to the conception/design of the article, data analysis and interpretation, writing of the article, critical review of its content and approval of the final version.

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