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Article

Therapeutic use of cannabidiol in Brazil through judicial means: an integrative literature review

Uso terapêutico do canabidiol no Brasil pela via judicial: uma revisão integrativa da literatura

Uso terapéutico del cannabidiol en Brasil por la vía judicial: una revisión integradora de la literatura

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Abstract

Objective: To analyze the national scientific production on the judicialization of the therapeutic use of cannabidiol in Brazil through an integrative literature review. **Methodology:** An exploratory study with a qualitative approach, based on an integrative literature review. The databases LILACS, PubMed/MEDLINE, SciELO, and Google Scholar were reviewed based on the definition of the guiding research question. **Results:** The findings indicate that litigation constitutes a central mechanism for accessing cannabidiol in the absence of the technology's incorporation into the Unified Health System and amid persistent regulatory gaps. The prominence of the Judiciary in granting requests, including *contra legem*, is evident in severe clinical in situations and refractory conditions, sometimes contrary to technical opinions issued by advisory bodies. **Conclusion:** The judicialization of cannabidiol is configured as a multidimensional phenomenon that goes beyond the legal field and requires integrated approaches involving public health, health regulation, and legislative policy, with the aim of reducing reliance on the Judiciary and strengthening public health policy.
Keywords: Judicialization of Health; Cannabidiol; Right to Health; Public Health Policy; Health Care Coordination and Monitoring.

Resumo

Objetivo: analisar a produção científica nacional sobre a judicialização do uso terapêutico do canabidiol no Brasil, por meio de uma revisão integrativa da literatura. **Metodologia**: estudo exploratório, de abordagem qualitativa, baseado em revisão integrativa da literatura. Foram revisadas as bases de dados LILACS, PubMed/MEDLINE, SciELO e Google Scholar a partir da definição da pergunta norteadora da pesquisa. **Resultados**: os achados indicam que a judicialização constitui mecanismo central de acesso ao canabidiol diante da ausência de incorporação da tecnologia ao

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Sistema Único de Saúde e de lacunas regulatórias persistentes. Evidencia-se o protagonismo do Poder Judiciário na concessão de pedidos, inclusive *contra legem*, diante de situações clínicas graves e condições refratárias, contrariando, em alguns casos, pareceres técnicos emitidos pelos órgãos de assessoramento. **Conclusão**: a judicialização do canabidiol configura-se como fenômeno multidimensional, que extrapola o campo jurídico e demanda abordagens integradas entre saúde pública, regulação sanitária e política legislativa, com vistas à redução da dependência do Judiciário e ao fortalecimento da política pública de saúde.
Palavras-chave: Judicialização da Saúde; Canabidiol; Direito à Saúde; Políticas Públicas de Saúde; Regulação e Fiscalização em Saúde.

Resumen

Objetivo: analizar la producción científica nacional sobre la judicialización del uso terapéutico del cannabidiol en Brasil mediante una revisión integradora de la literatura. **Metodología:** estudio exploratorio, de enfoque cualitativo, basado en una revisión integradora de la literatura. Se revisaron las bases de datos LILACS, PubMed/MEDLINE, SciELO y Google Scholar a partir de la definición de la pregunta orientadora de la investigación. **Resultados:** los hallazgos indican que la judicialización constituye un mecanismo central de acceso al cannabidiol ante la ausencia de incorporación de esta tecnología al Sistema Único de Salud y la persistencia de vacíos regulatorios. Se evidencia el protagonismo del Poder Judicial en la concesión de solicitudes, incluso contra legem, frente a situaciones clínicas graves y condiciones refractarias, contrariando, en algunos casos, los pareceres técnicos emitidos por los órganos de asesoramiento. **Conclusión:** la judicialización del cannabidiol se configura como un fenómeno multidimensional que trasciende el ámbito jurídico y exige enfoques integrados entre la salud pública, la regulación sanitaria y la política legislativa, con el fin de reducir la dependencia del Poder Judicial y fortalecer la política pública de salud.
Palabras clave: Judicialización de la Salud; Cannabis medicinal; Derecho a la Salud; Políticas Públicas de Salud; Regulación y Fiscalización en Salud.

Introduction

The judicialization of health in Brazil constitutes one of the most debated phenomena in the contemporary legal-health field, reflecting the structural tension between the constitutional promise of universal and equal access to health services and the budgetary, administrative, and organizational limitations that permeate the public and private systems. As provided for in Article 196 of the Federal Constitution, the right to health is recognized as a duty of the State and a right of all, and must be guaranteed through social and economic policies that promote the reduction of disease risk and ensure access to health actions and services in a universal and equitable manner[1].

However, as noted by Freitas, Fonseca, and Queluz[2], the realization of this right depends on a coordinated set of public policies, the implementation of which faces regional inequalities, management inefficiencies, and severe fiscal constraints. In this context, the judicial route has established itself as an important instrument for the individual realization of the right to health, being invoked both to ensure the provision of medications and treatments not included in the official lists of the Unified Health System (SUS) and to guarantee procedures whose coverage is controversial under private health plans[2].

This growing judicialization in the field of health reflects not only the shortcomings and failures of public authorities, but also the growing social awareness of fundamental rights and the role of the judiciary in ensuring their realization [3]. The scientific literature on the subject reveals a diversity of theoretical and methodological approaches, ranging from normative analyses to empirical studies and critical . Oliveira *et al.*[3] highlight that, in addition to the immediate effects of judicial decisions —

such as timely access to medications and treatments — there is a growing concern with understanding their systemic repercussions, especially regarding the reorganization of budgetary priorities and interference in resource allocation.

Diniz, Machado, and Penalva[4] reinforce this perspective by demonstrating that most legal claims involve high-cost medications, often unavailable in the public health system, revealing a selective dimension of judicialized access and contributing to the deepening of existing inequalities.

The literature also indicates the coexistence of two distinct regimes of judicialization — the public and the private — whose dynamics and impacts vary significantly. In the public system, judicialization frequently challenges health policy planning and creates tensions between collective planning and the satisfaction of individual demands[5]. In the private sector, however, litigation generally revolves around contractual interpretation and the regulation exercised by the National Supplementary Health Agency (ANS), especially in matters related to coverage of procedures or the exclusion of certain diseases and therapies[6].

This duality requires distinct regulatory and jurisprudential approaches, though linked by a unified understanding of the right to health as a fundamental legal right. In the legal framework of judicialization, the role of the Federal Supreme Court (STF) is central. Santos[7] notes that the Court has reaffirmed the non-absolute nature of the right to health, requiring that its realization comply with current public policies and that judicial decisions be guided by technical criteria and scientific evidence.

In exceptional situations, however, the STF allows for the relativization of clinical protocols and therapeutic guidelines, especially when the indispensability and efficacy of the requested treatment are proven and in the face of imminent risk to the patient's life or physical integrity[7].

In light of these contributions, the judicialization of health care emerges as a multifaceted phenomenon in which legal, administrative, political, and ethical dimensions are intertwined. On the one hand, it represents the concrete realization of rights in contexts marked by state omission or inadequacy and the inertia of private providers. On the other hand, it sparks debates on financial sustainability, equity, and rationality in the management of health systems, while also highlighting the need for a more effective institutional dialogue between the Judiciary, the Executive, and regulatory bodies to align individual protection with collective health planning and mitigate the paradoxical effects of judicial litigation[8,9].

The judicialization of health in Brazil has thus established itself as a structural phenomenon that reflects the tensions between the constitutional right to health and the regulatory, administrative, and financial limitations of the public system. It is in this context that the judicialization of the therapeutic use of cannabidiol (CBD) is taking on growing relevance in Brazil, emerging as a legal, social, and health phenomenon of strategic importance. This involves the judicial pursuit of access to medications derived from Cannabis sativa, often denied due to regulatory barriers imposed by the National Health Surveillance Agency (Anvisa), the absence of inclusion in the SUS lists, or the lack of specific federal legislation[10,11].

This study thus aims to analyze how the Brazilian scientific literature has addressed the judicialization of the therapeutic use of cannabidiol, considering its legal aspects, procedural patterns, impacts on public policies, and social, economic, and ethical implications.

The relevance of this study lies in the significant increase in legal cases related to CBD, persistent regulatory gaps, and the need to understand this phenomenon in light of academic research, in order to

inform strategies that reconcile the individual right to health with the equity and sustainability of the public health system.

Methodology

In conducting this study, an integrative literature review was performed to understand the state of the art on the topic addressed. The integrative literature review allows for structuring, synthesizing, and interpreting the state of the art on the specific topic of interest, facilitating the connection of information and the construction of a broad conceptual framework grounded in previous studies[12]. In the health context, this method — as Evidence-Based Practice — has gained strength to assist decision-making by managers and professionals for the better formulation of health policies, programs, and actions[13].

This study is based on the six stages established by Ganong[12] for its development: (i) formulation of hypotheses or a guiding question; (ii) selection of the sample; (iii) definition of the characteristics of the collected data; (iv) analysis of the included studies; (v) interpretation and discussion of the results; (vi) presentation of the integrative review.

Based on the initial stage, the following research question was established: how has the scientific literature addressed the judicialization of the therapeutic use of cannabidiol in the Brazilian context?

The Biblioteca Virtual em Saúde (BVS) databases, which aggregate information from various sources, were used as the search tool for sample selection. For this study, the LILACS and MEDLINE databases were specifically selected, as they offer greater coverage and relevance to the topic at hand. Additionally, searches were also conducted in the Scientific Electronic Library Online (SciELO), PubMed, and Google Scholar. The terms that guided the strategy were extracted from the Health Sciences Descriptors (DeCS) and combined using the Boolean operator AND, as shown in Table 1. The searches took place between March 31 and April 21, 2025.

Table 1. Representative of the combined descriptors used in the search strategy

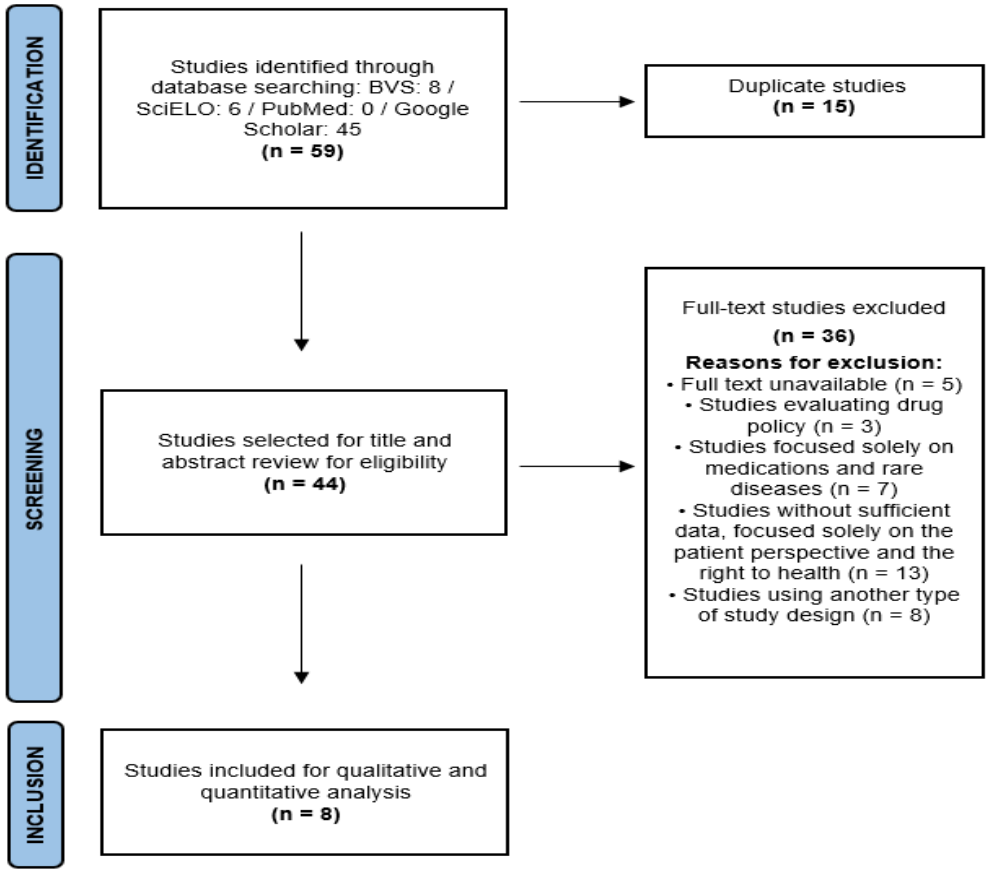
DESCRIPTORS	SCOPE NOTE / DEFINITION DeCS	
Judicialization of Health	Seeking recourse through the judicial system as a last resort to obtain medication or treatment currently denied by the public or private healthcare system. Reflects structural failures.	
Cannabidiol	A compound isolated from the extract of Cannabis sativa.	
Medical Marijuana	Products derived from the Cannabis plant, cannabinoids, or synthetic derivatives, used in the treatment of a wide variety of clinical symptoms.	
SEARCH COMBINATION		
Group of Descriptors	**Cannabidiol**	**Medical Marijuana**
Judicialization of Health	Judicialization of Health AND Cannabidiol	Judicialization of Health AND Medical Marijuana
Judicialization of Public Health	Judicialization of Public Health AND Cannabidiol	Judicialization of Public Health AND Medical Marijuana

Judicialization of Health Policies	Judicialization of Health Policies AND Cannabidiol	Judicialization of Health Policies AND Medical Marijuana
Litigation Over Access to Healthcare	Litigation Regarding Access to Healthcare AND Cannabidiol	Litigation over Access to Healthcare AND Medical Marijuana
Judicialization of the Right to Health	Judicialization of the Right to Health AND Cannabidiol	Judicialization of the Right to Health AND Medical Marijuana

Source: prepared by the author

Regarding eligibility criteria, original studies were included that were available in full, in Portuguese, and that explored the judicialization of the therapeutic use of cannabidiol. No time frame was established in order to include a larger number of studies. Exclusion criteria included the removal of duplicate studies, those developed from a perspective unrelated to judicialization, and those in which the subject of study was not cannabidiol. Figure 1 represents the eligibility and classification flowchart for the selection of studies included in the review, totaling 8 (eight) documents.

Figure 1. Methodological flowchart of the search and study selection strategy for the integrative review



Source: Prepared by te author.

All stages were documented, organized, and summarized using Microsoft® Excel® (version 2409), from which the following characteristics were extracted from the selected studies: authorship; year of publication; scientific journal in which it was published; the location (regional or national) of the subject of analysis in each study; the sample; the methodological approach used in the study; the research objective; and the main results.

The analysis and interpretation of the included studies were conducted by comparing and/or juxtaposing classical theoretical authors with other bibliographic sources not included in the review. Thematic categories were established to group the themes and to correlate and discuss the findings.

As this is a study of an exclusively bibliographic nature, involving research using publicly accessible databases, approval by the Research Ethics Committee (CEP) was waived, in accordance with Resolution No. 510, dated April 7, 2016, of the National Health Council (CNS)[14].

Results and Discussion

The scientific literature reviewed included eight studies published between 2014 and 2024 and related to the judicialization of cannabidiol in Brazil (Table 2). We observed the presence of studies with a national scope and studies with local foci: Salvador/BA[11], Paraíba[8,9], and the Federal District [15], highlighting the specificities of the judicialization of cannabidiol in different federal contexts.

Table 2. Selected articles classified by title, authorship, year, and study objective

Study Title	Authors	Year	Journal	Objective
The Enforcement of the Right to Health by the Judiciary: The Case of Anny Fischer	Bueno FS [15]	2014	Repositório do Centro Universitário de Brasília	To study the realization of the right to health by the judiciary in the case of patient Anny Fischer.
The Judiciary as a rights desk: reflections on legal strategies to guarantee the medicinal use of marijuana	Lambert L, Martins L[16]	2018	Revista Em Sociedade	Analyze legal strategies used to guarantee the medical use of marijuana.
An analysis of the application of human rights treaties and conventions in cases involving the right to access medical	Silva LN, Oliveira LL[9]	2020	Revista Eletrônica do Curso de Direito (UFSM)	Analyze how international human rights treaties apply to access to *cannabis*-

marijuana: a study based on legal claims involving cannabis derivatives in Paraíba				*derived* medications.
The clash between the constitutional right to health and the provision of cannabidiol for medicinal use: an approach in light of current Brazilian judicial precedents	Araújo GF [17]	2021	Repositório do Instituto Brasileiro de Ensino, Desenvolvimento e Pesquisa	Analyze the treatment afforded by the Brazili y legal system to CBD-based medications.
Judicialization of cannabidiol-based products in Brazil: an analysis from 2019 to 2022	Portela R, Mota DM, Ferreira PJG, Lula MD, Reis BB, Oliveira HN, Ruas CM [18]	2023	Cadernos de Saúde Pública	To analyze lawsuits filed by patients against the SUS (Brazilian Unified Health System) related to CBD-based products (2019–2022), with support from NatJus technical notes.
When the State is Divided: Morality and Politics in the Case of Cannabis Derivatives	Cruz VP, Coutinho MJV [10]	2023	Revista de Direito Sanitário	Analyze how the potential therapeutic effects of cannabis derivatives are confronted with moral and political aspects in Brazil.
Federal inaction regarding the regulation of medical	Medeiros CSC [8]	2023	Repositório da Universidade	Exploring the construction of

marijuana in Brazil and the autopoiesis of law: the future is cannabic, but what about the present?			Federal da Paraíba	the right to health in Brazil in light of federal inaction regarding the regulation of medical marijuana.
Judicialization in health and public defender action in cases of non-incorporated supplies: the demand for Cannabidiol at the Federal Public Defender's Office in Salvador, Bahia, over the past decade	Villas-Bôas ME [11]	2024	Cadernos Ibero-Americanos de Direito Sanitário	To evaluate the performance of the Federal Public Defender's Office and the effectiveness of the juridification of health as an instrument for guaranteeing access to the CBD.

Source: Prepared by the author.

The first study, published in 2014[15], analyzed the first judicial decision that authorized the importation of cannabidiol in Brazil, which was prohibited by law at the time. The case of Anny Fischer, a landmark decision for the importation of CBD prior to health registration, exemplifies judicial activism through a decision contra legem, supported by medical reports and scientific evidence.

In the 2018-2024 period, methodological expansion and diversification are observed, with an emphasis on documentary analyses, cross-sectional studies, and socio-legal approaches. This trend parallels Anvisa's regulatory trajectory and the intensifying public and judicial debate on the medicinal use of cannabidiol[16,17].

From a thematic perspective, the literature presented distinct approaches, such as the role of the Public Defender's Office and the Judiciary[11]; analysis of the topic in light of human rights[9]; health regulation and the role of Anvisa[8]; and political morality and legal strategies[9,10,11], demonstrating the complexity of the phenomenon and its relevance as a subject of study.

Legal framework and procedural foundations of the judicialization of cannabidiol

Studies converge in indicating that the judicialization of cannabidiol in Brazil is legally complex, articulating constitutional principles — human dignity, universality, and comprehensiveness — subconstitutional norms, and case law, within a regulatory environment strained by criminal drug policy and the scientific recognition of the therapeutic use of Cannabis sativa derivatives[11,16].

Starting from the constitutional core (Articles 6, 196, and 197 of the 1988 Federal Constitution), Villas-Bôas[11] argues that health, as a fundamental right, imposes a duty of provision on the State, allowing for the judicial provision of medications not included in the SUS when clinically and technically justified. The author links this basis to Law No. 8,080/1990 (comprehensive therapeutic care) and Law No. 11,343/2006 (cultivation for medicinal and scientific purposes upon authorization), in addition to mentioning issues adjudicated by the Federal Supreme Court (STF) and the Superior Court of Justice (STJ), which form a persuasive framework for the provision of cannabidiol in cases of refractory epilepsy. His analysis, based on the work of the Federal Public Defender's Office in Salvador, Bahia, indicates that a broad interpretation of the right to health, grounded in human dignity, may override the e lack of health registration or administrative approval when there is individualized technical evidence[11].

In addition, Araújo[17] emphasizes the procedural dimension: ordinary actions, public civil actions, and writs of mandamus are handled under the principles of universality, comprehensiveness, and equality, as well as federal solidarity. The author also highlights the invocation of human rights treaties, such as the Universal Declaration of Human Rights (1948), the European Social Charter (1961), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which Brazil incorporated into its domestic law in 1992, thereby lending transnational weight to the claims. The typical argumentative pattern includes medical prescriptions and expert reports, proof of the ineffectiveness of conventional therapies, and financial hardship, thereby circumventing the restriction of the "reserve of the possible" when there is a risk to life and physical integrity.

The contribution by Portela *et al.*[18] highlights the tension between technical-regulatory rationality and judicial decision-making. By retracing Anvisa's trajectory — from the removal of cannabidiol from the list of prohibited substances to RDCs No. 17/2015 and No. 327/2019 — the authors show that the conflict intensifies when there is off-label use, lack of registration, or limited scientific evidence. In this scenario, the Judicial Technical Support Centers (NatJus/e-NatJus) take center stage, using Health Technology Assessment (HTA) to substantiate opinions, even when prescriptions did not align with the product indications registered with Anvisa. Furthermore, a misalignment was observed between the recommendations of the National Commission for the Incorporation of Technologies in the SUS (Conitec) and judicial decisions, with the granting of non-recommended medications, indicating a disconnect between cost-effectiveness criteria and judicial values[18].

From another perspective, Cruz and Coutinho[10] analyze the relationship between the branches of government in the context of the debate over the regulation of cannabis for therapeutic purposes and interpret judicialization as a response to legislative gaps and administrative inaction — a case of "non-decision." They highlight the role of the Federal Public Prosecutor's Office in public civil actions for the inclusion of cannabis products in the SUS and the adoption of atypical instruments, such as preventive habeas corpus, sought by patient associations, to authorize domestic cultivation, balancing criminal law (Law No. 11,343/2006, Art. 33, §1, II) and the rights to health and human dignity.

In light of systems theory, Medeiros[8] describes a structural coupling between the legal and political systems in the face of regulatory inertia that prevents the incorporation of these products into the National Pharmaceutical Assistance Policy. Preliminary injunctions and emergency injunctions become structural mechanisms for the realization of social rights, invoking the prohibition against regression and the principle of human dignity.

In the criminal-health nexus, Lambert and Martins[16] demonstrate that, despite the reclassification of CBD and THC, the prohibition on domestic cultivation and import bureaucracy maintain barriers to access, leading to the use of preventive habeas corpus as a strategy to access the product through self-cultivation, with the validation of the Judiciary, which reinterprets the criminal law in light of the specific case, prioritizing human health and dignity.

In summary, there is consensus on the centrality of the right to health, human dignity, and federal solidarity, but with distinct emphases: Villas-Bôas[11] and Araújo[17] detail the normative and procedural framework; Portela *et al.*[18] and Cruz and Coutinho[10] explore the tensions between technical and judicial bodies; Medeiros[8] proposes a systemic reading; Lambert and Martins[16] address the criminal law interface; and Bueno[15] highlights the inaugural precedent.

Pattens and trends in legal claims

The integrated reading of Villas-Bôas[11], Araújo[17], Silva e Oliveira[9], Portela et al.[18], Cruz and Coutinho[10], Medeiros[8], Lambert and Martins[16] and Bueno[15] indicates that the judicialization of cannabidiol is a complex phenomenon marked by quantitative growth, specific litigant profiles, central pathologies, and recurring procedural strategies.

Quantitatively, there has been an upward trend in legal proceedings on the subject since the second half of the 2010s, with an acceleration between 2019 and 2022[11,18]. The judicial route has established itself as a mechanism for access in the face of regulatory gaps and shortcomings in public policies[16,17].

Regarding the profile of plaintiffs, individual lawsuits filed by highly vulnerable patients and their families predominate, focusing on refractory epilepsy, rare syndromes (Dravet, West, tuberous sclerosis), autism spectrum disorder, and, to a lesser extent, neurodegenerative diseases, psychiatric disorders, and refractory chronic pain[9,11]. Specialized prescriptions, prior treatment failure, and invocation of the rights to life, health, and therapeutic freedom constitute the argumentative framework of these claims[16,17,18].

Judicial decisions regarding the provision of cannabidiol in Brazil tend to follow an incremental and case-by-case model. In this context, the incremental nature of these decisions can be understood as a process in which the judiciary, by repeatedly adjudicating similar cases, gradually consolidates legal understandings through the accumulation of precedents, without this resulting in an immediate structural change in public health policies. This decision-making pattern, described in the analysis of lawsuits involving cannabis derivatives, highlights judicial action as a progressive response to existing regulatory and administrative gaps[9]. Thus, in the absence of a national standard, each individual ruling becomes part of a collective process of regulatory induction, pressuring administrative bodies, such as Anvisa, to revise standards and protocols. Concrete examples of this regulatory induction effect include judicial authorization for collective cannabis cultivation and Anvisa's partial regulation in 2019, which established parameters for products derived from the plant. Nevertheless, as demonstrated

by the analysis of the Federal Public Defender's Office in Salvador, reliance on judicial channels persists even in places where municipal regulations exist[11].

From a procedural standpoint, emergency measures play a central role in ensuring the right to health. In numerous cases, preliminary injunctions are subsequently upheld in final judgments, including through the adoption of coercive measures, such as the freezing of public funds, to ensure compliance with court orders[11]. The use of alternative legal strategies — such as preventive habeas corpus for the self-cultivation of the plant — is also observed as a mechanism to circumvent the high costs of importation and the slowness of administrative procedures[16].

With regard to technical guidance, the opinions issued within the e-NatJus system are based on general parameters, such as the availability of clinical evidence, the existence of registration or health authorization, and the appropriateness of use for recognized therapeutic indications. These opinions, however, are not uniform in nature nor are they, as a rule, favorable to the provision of cannabidiol-based products[9,10,18].

In decision-making practice, even in the face of unfavorable or cautious technical opinions, factors such as the severity of the clinical condition and the lack of effective therapeutic alternatives tend to prevail in judicial reasoning. This dynamic highlights the persistent tensions between technical-health rationality, the systemic coherence of the SUS, and regional inequalities in access to health technologies[9,10,11].

Finally, the literature points to significant disparities in access to health-related litigation, associated not only with economic factors but also with unequal possession of relational, informational, and institutional resources. In this context, social capital — understood as the set of support networks, legal knowledge, and ties to health professionals — enhances the ability of certain groups to mobilize the justice system, reinforcing inequalities in access to the realization of the right to health[2,3].

Although all individuals filing lawsuits have some form of formal legal support, not all have the same level of technical assistance or institutional coordination, which impacts the success of their claims. Patients with higher levels of education, active support networks, or organized collective representation tend to achieve more favorable outcomes.

These inequalities, coupled with the high cost of imported products and low domestic production capacity, reinforce the understanding that the judicialization of cannabidiol constitutes a field of multiple disputes, where individual urgencies, institutional limitations, and ethical-political tensions intertwine[16,18]. Thus, the consolidation of the right to health in this context depends not only on isolated judicial decisions but on an integrated response between public authorities and regulatory bodies, capable of transforming precedents into structural policies.

In this context, it is noteworthy that only in January 2026 did Anvisa establish rules aimed at regulating cannabis cultivation, limited to plants containing up to 0.3% tetrahydrocannabinol (THC), exclusively by legal entities; updated the rules for the manufacture, import, and sale of cannabis-based medicinal products, and expanded the scope for the medicinal use of these products [19].

Interactions between judicial decisions and public health policies

The judicialization of cannabidiol establishes dialectical relationships with public policies, oscillating between regulatory induction and fragmentation of governance[8,9,11]. Although Anvisa has regulations regarding import/marketing authorization, the absence of the product from the National

List of Essential Medicines - Rename keeps CBD out of the regular supply of the SUS at the national level, causing judicial decisions to operate as de facto incorporations, straining the formal Conitec process and exposing operational gaps in already approved local laws [11].

For Araújo[17], such decisions do not violate the separation of powers when they aim to ensure the constitutional right to health in the face of policy inadequacies. Examples such as the authorization for associative cultivation granted to the Brazilian Association for Cannabis Support and Hope (Abrace) transcend the direct beneficiaries and drive regulatory debates at Anvisa, in a dynamic of institutional feedback.

In quantitative terms, Portela *et al.*[18] demonstrate a discrepancy between Conitec and judicial decisions. The authors' study found that 29% of the cases involved cannabis-based products that had already been evaluated by Conitec, and yet more than half were successful, despite the fact that the vast majority of the agency's recommendations were unfavorable. This fact indicates that, although the Judiciary recognizes the technical authority of numerous agencies such as Conitec, NatJus, etc., it does not fully submit to them, especially when the cases analyzed involve clinical emergencies. Opinions from NatJus and Anvisa's regulatory approval increase the likelihood of approval, but do not guarantee it[18].

According to Cruz and Coutinho[10], the absence of comprehensive legislative regulation and the technical resistance of agencies such as Anvisa shift the leading role in defining the parameters for access to cannabidiol-based products to the Judiciary, which entails budgetary risks and distortions in the allocation of public resources, since court orders may require the procurement of medications outside the therapeutic guidelines of the SUS.

In this context, the study by Barroso Júnior and Alves[20], which analyzed the regulation of medical cannabis by Brazilian states, concluded that the federal legislature remains in a position of "non-decision," frequently influenced by moral and religious motivations, which perpetuates reliance on the judicial route as the primary means of enforcing the right to health in the field of medical cannabis, and leads to a silent explosion of state legislative activity.

Medeiros[8], in turn, describes how court decisions compel the adoption of emergency measures (extraordinary tenders, reallocations), which may evolve into a substitute for normative/administrative action, posing risks to the separation of powers. Even so, regulatory changes at Anvisa and state laws frequently stem from judicial precedents.

For Lambert and Martins[16], judicialization functions as a corrective mechanism in the face of omissions, but with limited scope: safe-conducts for cultivation or import authorizations put pressure on protocols, without necessarily promoting structural changes in drug policy or systemic expansion of access. Bueno[15] illustrates the regulatory anticipation driven by the Anny Fischer case, which led to the adaptation of exceptional import procedures; however, he warns of fragmentation, inequality, and budgetary pressures when individual orders replace collective planning.

In short, there is consensus on the transformative role of judicialization, but divergences regarding its systemic effectiveness and budgetary impact: a driver of innovation for some; an obstacle to equity and sustainability for others[9,16,18].

Social, economic, and ethical implications

The implications of the judicialization of cannabidiol are multifaceted: it expands access to innovative therapies and, at the same time, may reinforce inequalities and strain the sustainability of

the SUS[11]. For patients with severe and refractory conditions — severe epilepsy and ASD — the judicial route is often the only concrete alternative; however, it depends on legal mobilization, robust documentation, and procedural resilience, favoring more organized groups[11].

Economically, there are significant budgetary impacts, including due to judicial injunctions and emergency procurements; even with some degree of domestic production, costs remain high[11]. Ethically, a dilemma arises between individual beneficence and distributive justice in a scenario of limited resources and slow updates to SUS waiting lists.

According to Araújo[17], judicialization guarantees rights in the short term but exacerbates structural inequalities, as judicial success is more likely for those with information and support. From a budgetary perspective, the obligation to cover high-cost imports may divert resources from collective programs; conversely, judicial decisions may stimulate domestic production and reduce external dependence [17].

Portela *et al.*[18] highlight regional inequalities in access to justice and point out that concessions outside approved indications or without registration burden the SUS and, in some cases, are based on limited evidence, compromising cost-effectiveness. Ethically, they warn against decisions with low robustness, which can distort expectations and affect equity when access depends on the ability to litigate.

For Cruz and Coutinho[10], judicialization expands access, but selectively: it benefits organized groups and leaves the marginalized vulnerable. There are risks of market distortions and opportunistic entry by companies into an incipient regulatory environment. The conflict between the precautionary principle and the judicial logic of beneficence is permeated by moral and cultural values.

Medeiros[8] emphasizes that unequal access is central: without resources or organizational support, patients tend not to pursue legal action. Prices remain high due to imports and low domestic competition. Ethically, there is criticism of substitute litigation, which produces ad hoc solutions without structured collective responses; the stigma attached to marijuana, linked to prohibitionist policies and structural racism, hinders evidence-based policies.

Lambert and Martins[16] highlight the public reframing of medical cannabis — distinguishing "patient-users" from "recreational users" - which faces stigma. The economic effects are ambivalent: authorized self-cultivation tends to reduce costs, while state funding of imports may increase them. Ethically, the current model favors groups with greater mobilization power and reinforces biomedical/legal control over who accesses treatment.

Finally, Bueno[15] shows that emblematic cases, such as that of Anny Fischer, reveal therapeutic urgency prevailing over regulatory caution, potentially foreshadowing regulatory changes. However, without inter-institutional coordination, judicialization tends to perpetuate an unequal, costly, and fragmented model.

Taken together, the studies point to a common core: the judicialization of cannabidiol enforces rights, but also destabilizes the equity and rationality of the system. The balance between access, safety, cost-effectiveness, and sustainability requires institutional redesign that integrates judicial decisions, public policies, and technical criteria[9,16].

Final considerations

The literature review demonstrated that the judicialization of the therapeutic use of cannabidiol in Brazil has emerged as a consistent response to regulatory gaps, administrative shortcomings, and

disparities in access to health technologies, functioning simultaneously as a mechanism for enforcing rights and a factor exerting pressure on public governance and the public budget. The findings converge in the sense that judicial action, although supported by constitutional principles such as dignity, universality, and comprehensiveness, has occurred predominantly on a case-by-case and incremental basis, producing incorporations and inducing normative adjustments without, however, replacing a technical, transparent, and equitable decision-making process for incorporation by the SUS

At the same time, the literature highlights access disparities — determined by social capital, legal support, and mobilization capacity - that tend to reinforce preexisting inequalities in the system.

Another key point is that the persistence of legislative omissions and regulatory delays keep the judiciary in a leading role with decisions that, on the one hand, guarantee the immediate protection of suffering patients - legitimizing judicial action in contexts of state ineffectiveness - and, on the other, produce distributional and cost-effectiveness tensions that challenge the sustainability of the SUS and the coherence of national therapeutic guidelines.

As a practical contribution, the results reinforce the need to (i) strengthen expedited, evidence-based processes for the evaluation and eventual incorporation of cannabidiol-based products, with transparency regarding effectiveness, safety, and budgetary impact; (ii) expand interinstitutional coordination among the Judiciary, the Executive Branch, CONITEC, ANVISA, and NATJUS, with clearer information flows and decision-making parameters; and (iii) adopt policies that mitigate inequalities in access, including through national guidelines and regulatory arrangements that reduce dependence on individual decisions.

Limitations of the research include the methodological heterogeneity of the included studies and the lack of consolidated national databases on costs and long-term clinical outcomes, which calls for caution in generalizing the findings. Future research should prioritize multicenter studies with primary data from legal proceedings, comparative economic analyses of budgetary impact, and real-world effectiveness evaluations following judicial decisions, as well as international comparisons that inform good regulatory practices.

In summary, the judicialization of cannabidiol has played a significant role in ensuring immediate access in critical contexts; however, its institutionalization as a permanent “shortcut” tends to perpetuate selectivity and systemic costs. The balance between individual protection and collective rationality requires an institutional redesign that integrates technical-scientific criteria, distributive justice, and legal certainty, reducing reliance on litigation as the primary means of accessing therapies.

References

1. Brasil. Constituição (1988). Constituição da República Federativa do Brasil [Internet]. Brasília: Presidência da República; 2024 [cited Jan 30, 2024]. Available from: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

2. Freitas BC, Fonseca EP, Queluz DP. A judicialização da saúde nos sistemas público e privado de saúde: uma revisão sistemática. Interface (Botucatu) [Internet]. 2020 [cited Apr 20, 2025];24:e190345. Available from: https://www.scielo.br/j/icse/a/wMrQzjzYts8wnBfmdPNhwNK/?lang=pt doi: 10.1590/Interface.190345

3. Oliveira MRM, Delduque MC, Sousa MF, Mendonça AVM. Judicialização da saúde: para onde caminham as produções científicas? Saúde debate [Internet]. 2015 [cited Apr 18, 2025];39(105):525-535. Available from: https://doi.org/10.1590/0103-110420151050002019 doi:10.1590/0103-110420151050002019

4. Diniz D, Machado TRC, Penalva J. A judicialização da saúde no Distrito Federal, Brasil. Cienc Saude Coletiva [Internet]. 2014 [cited Apr 18, 2025];19(2):591-598. Available from: https://www.scielo.br/j/csc/a/PTXJ9db6bfHCrntkz4cfvsH/abstract/?lang=pt doi:10.1590/1413-81232014192.23072012

5. Carlini A. Judicialização da saúde pública e privada. Porto Alegre: Livraria do Advogado Editora; 2014. 216 p.

6. Asensi FD, Pinheiro R, coordenadores. Judicialização da saúde no Brasil: dados e experiência [Internet]. Brasília: Conselho Nacional de Justiça; 2015 [cited Feb 19, 2026]. 142 p. Available from: https://www.cnj.jus.br/wp-content/uploads/2011/02/6781486daef02bc6ec8c1e491a565006.pdf

7. Santos L. Judicialização da saúde: as teses do STF. Saúde Debate [Internet]. 2021 [cited Apr 28, 2024];45(130):807-818. Available from: https://saudeemdebate.org.br/sed/article/view/5124 doi: 10.1590/0103-1104202113018

8. Medeiros CSC. A omissão federal quanto à regulamentação da maconha medicinal no Brasil e a autopoiesis do direito: o futuro é canábico, mas e o presente? [Dissertação]. João Pessoa: Universidade Federal da Paraíba; 2023. Available from: https://repositorio.ufpb.br/jspui/handle/123456789/31776?locale=pt_BR

9. Silva LN, Oliveira LL. Uma análise da aplicação dos tratados e convenções sobre direitos humanos nos casos envolvendo o direito ao acesso à maconha medicinal: um estudo a partir das demandas judiciais envolvendo derivados de Cannabis na Paraíba. Rev Eletr Curso Direito UFSM [Internet]. 2020 [cited Nov 5, 2025];15(2):e37744. Available from: https://periodicos.ufsm.br/revistadireito/article/view/37744 doi:10.5902/1981369437744

10. Cruz VP, Coutinho MJV. Quando o Estado se divide: moral e política no caso dos derivados da Cannabis. Rev Direito Sanit [Internet]. 2023 [cited Apr 10, 2025];23:e0007. Available from: https://revistas.usp.br/rdisan/pt_BR/article/view/185693 doi:10.11606/issn.2316-9044.rdisan.2023.18569

11. Villas-Bôas ME. Judicialização em saúde e atuação defensorial em caso de insumo não incorporado: a demanda de Canabidiol na Defensoria Pública Federal de Salvador/BA durante a última década. Cad Ibero Am Direito Sanit [Internet]. 2024 [cited Apr 10, 2025];13(1):51-68. Available from: https://www.cadernos.prodisa.fiocruz.br/index.php/cadernos/article/view/1223 doi:10.17566/ciads.v13i1.1223

12. Ganong LH. Integrative reviews of nursing research. Res Nurs Health [Internet]. 1987 [cited Jul 12, 2025];10(1):1-11. Available from: https://pubmed.ncbi.nlm.nih.gov/3644366/ doi: 10.1002/nur.4770100103

13. Brasil. Ministério da Saúde. Política nacional de gestão de tecnologias em saúde [Internet]. Brasília: Ministério da Saúde; 2010 [cited Apr 8, 2025]. 48 p. Available from: https://bvsms.saude.gov.br/bvs/publicacoes/politica_nacional_gestao_tecnologias_saude.pdf

14. Conselho Nacional de Saúde. Resolução nº 510, de 7 de abril de 2016. Dispõe sobre as normas aplicáveis a pesquisas em Ciências Humanas e Sociais cujos procedimentos metodológicos envolvam a utilização de dados diretamente obtidos com os participantes ou de informações identificáveis ou que possam acarretar riscos maiores do que os existentes na vida cotidiana. Diário Oficial da União, Brasília, DF, 24 maio 2016 [cited Apr 10, 2025]. Available from: https://www.gov.br/conselho-nacional-de-saude/pt-br/atos-normativos/resolucoes/2016/resolucao-no-510.pdf

15. Bueno FS. A concretização do direito à saúde pelo poder judiciário: o caso de Anny Fischer [Monografia]. Brasília: UniCEUB; 2014. Available from: https://repositorio.uniceub.br/jspui/bitstream/235/6135/1/21171188.pdf

16. Lambert L, Martins L. O poder judiciário como balcão de direitos: reflexões sobre as estratégias jurídicas para a garantia do uso medicinal da maconha. Em Sociedade [Internet]. 2018 [cited Apr 10, 2025];1(1):190-207. Available from: https://periodicos.pucminas.br/emsociedade/article/view/18605 doi:10.5752/P.2595-7716.2018v1n1p190-207

17. Araújo GF. O confronto entre a tutela constitucional à saúde e o fornecimento de canabidiol para uso medicinal: abordagem à luz da atual jurisprudência brasileira [Monografia]. Brasília: Instituto Brasiliense de Direito Público; 2021. Available from: https://repositorio.idp.edu.br/handle/123456789/3602

18. Portela R, Mota DM, Ferreira PJG, Lula MD, Reis BB, Oliveira HN, et al. Judicialização de produtos à base de canabidiol no Brasil: uma análise de 2019 a 2022. Cad Saude Publica [Internet]. 2023 [cited Nov 3, 2025];39(8):e00024723. Available from: https://www.scielo.br/j/csp/a/WbXqLtJsN8RhKSMpCqgCxBB/ doi: 10.1590/0102-311XPT024723

19. Agência Nacional de Vigilância Sanitária. Anvisa aprova por unanimidade regras que cumprem decisão do STJ para produção de cannabis medicinal [Internet]. 28 jan. 2026 [cited Feb 2, 2026]. Available from: https://www.gov.br/anvisa/pt-br/assuntos/noticias-anvisa/2026/anvisa-aprova-por-unanimidade-regras-que-cumprem-decisao-do-stj-para-producao-de-cannabis-medicinal

20. Barroso Júnior M, Alves SMC. Regulamentação estadual e distrital da cannabis medicinal no Brasil: uma análise normativa e política. Cad Ibero Am Direito Sanit [Internet]. 2025 [cited Nov 2, 2025];14(2):24-40. Available from: https://www.cadernos.prodisa.fiocruz.br/index.php/cadernos/article/view/1327 doi:10.17566/ciads.v14i2.1327

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