DOI: http://dx.doi.org/10.11606/issn.2316-9044.v19i1p7-10 

# ENOUGH! NO UNCONSTITUTIONALITY IS CONVENIENT!

It is undeniable that the liberal countercurrent is acquiring momentum. The social accomplishments of the first half of the 20th century have been gradually withheld, and the argument is always the economy, claiming that the States income is insufficient to implement them. In certain occasions large popular demonstrations react to the threat of the withdrawal or reduction of the so-called social rights. This is happening in France right now, with the interruption of important public services in an attempt to preserve the current retirement system. In other occasions the changes in the law are assimilated without such opposition, but always in the middle of intense parliamentary debate.

However, it is not possible to accept, the dissolution of the right to health in the midst of administrative measures implemented in the exclusive sphere of the Judiciary, as it is in Brazil today. In fact, there is no legitimacy or even a shade of legality in alleging that the word **everyone** could be understood as **some** in the spelling of article 196 of the Brazilian Constitution of 1988 resulting from an internal regulatory act of the Judiciary. Meanwhile, this is what was intended with the judgment of the repetitive appeal registered with no. 106 in the respective registration system of the Brazilian Superior Court of Justice.

It is convenient to verify what this is about.

Through Law no. 11.672, of 2008, it was created the procedure to process a special appeal whenever there are multiple appeals based on an identical question of law, adding article 543-C to the old Civil Procedural Code of 1973. The intention was to give celerity to the jurisdictional service. The same intention was maintained in the current Civil Procedural Code, which came into effect on March 16, 2016, ruling judgment of extraordinary and special repetitive appeals on articles 1.036 and subsequent. Nothing against the adopted objective and form, both conforming to popular aspirations of a faster administration of justice and perfectly compliant with the formalities required to the creation juridical norms since Modernity: the elaboration of general norms by the Legislative. The establishment of the repetitive thesis broadened the standardization role of jurisprudence, providing juridical predictability and safety to those within the jurisdiction.

On the other hand, in Brazil in 1988 it was affirmed that health was everyone's right. It is true that the Federal Constitution (CF/1988) attuned its warranty to public policies that were intended to reduce the risk of diseases and to ensure the access to actions and services to promote, protect and recover health. Public policies for everyone, to ensure everybody's health. This has never meant that any product, good or innovations,

supposedly active in the field of reducing diseases risk or promoting, protecting and recovering health should be guaranteed. No. It was always desired that public policies were capable to identify the best means and safe and efficient products, making them immediately available for all those that need them. Presumably, then, there is a need for a complex health system, technically able to respond to such demands.

Nevertheless, technical competency of the system is not enough, in a Democratic State under the rule of Law, it is necessary that it respond to the popular will expressed directly, and not just through their elected representatives. Particularly in the case of Brazil, the health system should be organized, according to the constitution, with the participation of the community. In this way, each one of the decisions made with the objective of identifying the best means and safe and efficient products, or making them available for all those in need, should pass through the sieve of popular will, directly voiced in the instances provided for that purpose, within the structure of the health system.

Therefore, there are no obstacles to eventual limitations in the offer of actions, services, goods and products of interest for everyone's health. It would be enough that these limitations be technically justified and agreed by the community. What is absolutely unconstitutional and should not exist is the limitation to the right to health to some. The right to health is for everyone. Nothing is more obvious. Any interpretation excluding a singe person from being granted this right is absurd and should be reported. **Everyone** means **everyone**.

It is scandalous that an organism of the Judiciary leadership has ventured through a path so far removed from the Law and the Constitution. In fact, it was the decision of the First section of the Superior Court of Justice that the patient prove their financial inability to afford the cost of the prescribed medicine, for the Judiciary to determine the supply of medicines outside of the Brazilian National Health System list. Well, everyone does not mean only those who do not have good financial conditions. Health is a right of everyone, without distinction of any nature, including financial solvency.

By all means, it is regrettable that an organism of the very Judiciary clearly infringes such explicit constitutional devices: "all are equal before the law, without distinction of any nature" (art. 5$^{th}$, CF/1988); "Health is everyone's right". Enough! No unconstitutionality is convenient!

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