

The lawsuits against Health Surveillance: can one speak of ‘judicialization’?

As ações judiciais contra a Vigilância Sanitária: pode-se falar de ‘judicialização’?

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ABSTRACT The objective of this study is to analyze the lawsuits filed against a municipal Health Surveillance service, in the light of the phenomenon of health judicialization. It is a case study that had as documentary source the judicial processes related to Health Surveillance of the municipality of Salvador, from 2000 to 2017. Fifty actions were analyzed, 90% of which were in the form of injunctions, 28% reported the presence of tax debts as the main object of discussion and 72% requested the granting of the health permit, which was granted in most decisions. It was evidenced that the particular economic interest pervades the motivations, the arguments and the reasoning of the authors, as well as the basis of the decisions and sentences. The results indicate that one cannot speak of ‘judicialization of the Health Surveillance service’, in the sense that the Judiciary branch of the government is assuming some protagonism in the definition of Health Surveillance actions. In addition, they indicate that it is necessary to restructure the Health Surveillance way of working, in order to provide administrative alternatives for the resolution of conflicts.

KEYWORDS Sanitary Surveillance. Judicial decisions. Judicialization of health. Right to health.

RESUMO O estudo tem por objetivo analisar as ações ajuizadas contra um serviço de Vigilância Sanitária municipal, à luz do fenômeno da judicialização da saúde. Trata-se de um estudo de caso que teve como fonte documental os processos judiciais relativos à Vigilância Sanitária do município de Salvador, no período de 2000 a 2017. Foram analisadas 50 ações, sendo que 90% tiveram a forma de mandados de segurança, 28% referiram a presença de débitos tributários como principal objeto de discussão e 72% pleitearam a concessão do alvará de saúde, que foi concedido na maioria das decisões. Evidenciou-se que o interesse econômico particular perpassa as motivações, os argumentos e a fundamentação dos autores, assim como a fundamentação das decisões e sentenças. Os resultados indicam que não se pode falar de ‘judicialização da Visa’, no sentido de que o Poder Judiciário estaria assumindo algum protagonismo na definição das ações de Vigilância Sanitária. Ademais, indicam que é necessário reestruturar o modelo de atenção da Vigilância Sanitária, a fim de proporcionar alternativas administrativas para a resolução de conflitos.

PALAVRAS-CHAVE Vigilância Sanitária. Decisões judiciais. Judicialização da saúde. Direito à saúde.

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Introduction

The actions of the Health Surveillance (Visa) involve historically constructed juridical-political, economic and medical-sanitary relationships. Its performance is a typical activity of the State, belonging to the Public Administration and not delegable to private entities, with police power, of a preventive nature, that has the purpose of assuring the supremacy of the public and social interest on the individual^{1,2}.

Visa, as a component of the Unified Health System (SUS), is understood as a set of health practices and knowledge capable of eliminating, reducing or preventing health risks arising from the production-circulation-consumption of goods and services process, which, directly or indirectly, relate to health, denoting, therefore, its coverage and its essentially preventive nature and with regulatory activity when acting in the control of these risks³⁻⁵.

From this perspective, surveillance seeks, from the elaboration of normatives, to establish rules for the exercise of a sanitary practice focused on the evaluation, management and communication of real and potential risks, in its diversity of objects, anchored in the ethics of responsibility of practices of the Visa, which are based on the principles and guidelines of the health system instituted through articles 196, 198 and 200 of the Federal Constitution of 1988 (CF/88)⁶⁻⁸.

Surveillance seeks, also, the expansion of its action to promote health, improve the quality of life of individuals and full exercise of citizenship, with a view to guaranteeing the right to health by intensifying actions on social determinants in their practice, overcoming the model focused on meeting the spontaneous demand, originated from the productive segment or from health denunciations and emergencies, constituted, basically, by particular economic and political interests that overlap, in most cases, the interests and needs of the majority of the population⁹⁻¹¹.

The relationship between Visa and service providers or producers of goods of health

interest is permeated, often, by tensions and conflicts, since the public interest in health protection must prevail over the particular interest, even if the actions developed by the Visa for the protection of health impact on economic losses of individuals. However, it can be observed that, sometimes, the private economic interest overlaps with the collective health interest, controlling the activities of Visa and, thus, increasing the risks to the health of the population¹².

Finally, these conflicts, as Sá¹³ rightly points out, can be intense, given the potential magnitudes of economic gains and health risks. These conflicts, when not resolved by the agents directly involved or in the absence of mechanisms for their effective management, can be brought to the Judiciary Branch.

The appeal to the Judiciary for the discussion of political-social conflicts can be defined as judicialization. This discussion in the field of law confers on the Judiciary the centrality in the process of resolving political and social conflicts, and can be used as an instrument for the formation of public policies for the guarantee of rights¹⁴. It can be seen in this definition a double dimension: the judicialization as the entry into court of a certain cause, indicating a certain preference of the author for this type of route, and the judicialization as a protagonist of the Judiciary in the scope of social and political relations¹⁵.

The question that arises, then, is: to what extent have the character of these lawsuits has made the Judiciary a protagonist of Visa, allowing to talk about judicialization of the Visa?

Accordingly, the purpose of this study was to analyze the lawsuits filed against Visa in the municipality of Salvador, from 2000 to 2017. This analysis included: (a) a description of the activity developed by the author, the subject of litigation and the request of the author; (b) the appreciation of the motivations that drove the authors to file lawsuits against Visa in the municipality of Salvador, in the period; and (c) discussion of the influence of the Judiciary Branch in the development of surveillance activities.

Methods

It is a case study whose units of analysis were the lawsuits filed against the Visa of the Municipality of Salvador, from 2000 to 2017. The data were collected from primary sources, that is, from the available legal actions, in full content, on the website of the Court of Justice of the State of Bahia, by electronic consultation, constituting itself as a public consultation.

The keywords used for the search were: health surveillance, health secretariat, surveillance, health, Salvador, combined, both for the specific field of the first instance and the second instance. The cases that had not yet passed through the process of digitization by the Court of Justice, during the period of data collection, were granted by the Office of the General Prosecutor of the Municipality of Salvador.

The information was collected from October 2017 to January 2018 through a roadmap for data collection constructed from another instrument already validated¹³. The legal proceedings were analyzed according to the categories: characterization of the authors and the process, the application and the decision, the manifestation of the defense and the judgment.

The Microsoft Office Excel software was used for the construction of the database and its subsequent tabulation, with the elaboration of graphs and tables through the distribution of simple and relative frequencies.

As it is a documentary analysis research, the execution of the data collection procedures was initiated after the formal authorization of the Health Secretariat of the Municipality of Salvador and the Office of the General Prosecutor of the Municipality of Salvador.

It is worth mentioning that the research was limited to judicial processes, and it is not possible to estimate what they represent in terms of the proportion of actions developed as permits of licenses or the number of facilities subject to these actions, since this information is not available.

Characterization of lawsuits against Health Surveillance

With the analysis of lawsuits, it is observed that 90% had the form of security mandates and that prevailed medium and large companies as proponents of the actions. In 62% of the actions filed, the activities developed by the authors are classified as a health service. Of these services, 48.4% are optometry, 22.6% are clinics and 19.3% are drugstores. Among the services of interest to health, the food retail trade (21%), followed by the wholesale trade in medical products and medicines (15.8%) and the hotel segment (10.5%) were the most prevalent.

It is worth noting that 46% of the activities carried out by medium and large companies – the ones that most participated in actions against the Visa of Salvador – are in high-risk health activities, in accordance with the Resolution of the Collegiate Directorate (RDC n° 153/2017)¹⁶. These are facilities that, as a result of the exercise of their economic activity, have the potential to cause harm to individuals and the environment.

According to Bastos¹⁷, until 1998, the municipal Visa developed activities of low complexity only. As of that date, other activities were subject to the monitoring of Visa of Salvador, such as health control of the transportation and trade of products – sanitizers, cosmetics, personal hygiene, medicines –, optics and health services that did not develop invasive procedures. In 1999, with the publication of Law n° 5.504/1999, the Municipal Health Code was established which governs the actions and contains information regarding the monitoring of services that are subject to the control of the Visa¹⁸.

From the analysis of the collected data, it can be inferred that the process of decentralization of the actions of the Visa system influenced the object of the claims demanded in the Judiciary. In effect, until 2006,

lawsuits were filed in the drugstore industry and other segments of low complexity, such as a club, restaurant, supermarket and medical clinic without invasive procedures.

From 2006, the municipal Visa expands its range of performance to activities inserted in the medium and high complexity and of high technological density agreed with the state Visa through the Term of Adjustment and Targets (TAM)¹⁹. At that moment, actions arise from sectors of medium or high complexity, such as clinics, laboratories, immunization services, wholesale trade, hospital laundry, among others, arise.

This decentralization process triggers the need to structure the services of Visa in terms of their organizational and operational capacity, management and allocation of financial resources²⁰. For Cohen, Moura and Tomazelli²¹, linked to decentralization, there is an increase in the supply of services, a reorganization of the care model, or a review of the forms of public-private relations.

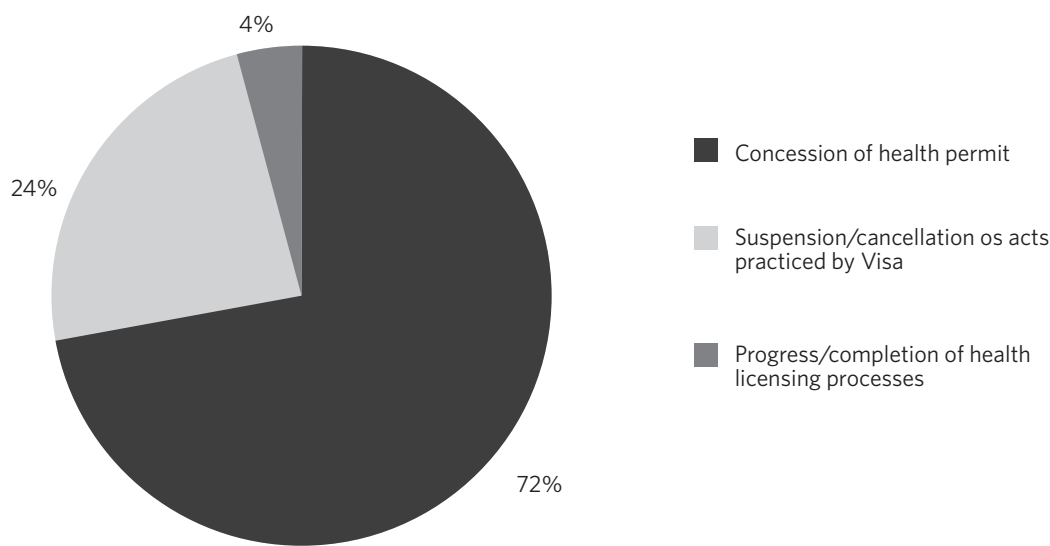
Effectively, the decentralization process

of the Visa's actions places a greater number of companies with greater technological complexity under the responsibility of the municipality, requiring municipal surveillance to modify its operational and organizational routines to meet the new demands.

Up to 2010, the absolute majority of actions (58.3%) had litigation questions regarding conducts adopted by Visa, while in the period from 2012 to 2015, the majority (34.5%) had as main complaint requirement of the discharge of municipal tax debts for the concession of permits. The years of 2016 and 2017 presented, in 87.5% of the actions, questions by optometric professionals. Of the total number of actions, in the whole period (2000-2017), 28% had as main demand the issue of tax debts.

With respect to the request of the author, 72% of the lawsuits filed for the grant of health permit, 24% for suspension or annulment of acts practiced by the Public Administration and 4% requested the progress and completion of health licensing processes (*graph 1*).

Graph 1. Request of the author for actions filed against Health Surveillance of the municipality of Salvador, from 2000 to 2017. (n = 50)



Source: Own elaboration, based on judicial processes related to Health Surveillance of the municipality of Salvador, from 2000 to 2017.

The Public Administration, in the exercise of its function, practices administrative acts that produce immediate legal effects, with observance of the law. At Visa, the license is the unilateral and binding administrative act granted to those who meet the legal requirements inherent to the exercise of an activity subject to the supervision of Visa. This license is granted by means of an instrument, the Permit².

For Visa, the health permit is a document that formalizes that the facility has sanitary license for the exercise of economic activity. This license is requested in negotiations of companies to contract health plans, to sign an agreement with the SUS; is a requirement for participation in bidding processes and necessary for the acquisition of some medicines and health products, among others.

In the municipality of Salvador, according to article 218 of Municipal Law n° 5.504/1999, the health license is issued with the issue of the Health Permit, which is valid for one year. In this way, all facilities subject to the supervision of Visa must pass the licensing process annually. In addition, the

procedural rite of the municipal administrative health process is disciplined by said law in articles 220 to 264¹⁸.

This large volume of demands related to the concession of a permit indicates that the Public Administration is failing to fulfill one of the basic duties of its competence. It should be noted that these demands do not mention any elements related to the health issues of the services. On the contrary, they present, above all, elements related to tax debts. The high frequency of this situation can overestimate the health license, to the detriment of the real role of the Visa, the health control.

Among the analyzed processes, 64% of the actions obtained results in an injunction, being prevalent, in 75% of the causes, favorable results to the author. Of the results favorable to the author, 75% were to obtain health permits, which were granted on a preliminary basis. These data confirm the overvaluation of the health license and the issuance of the document, to the detriment of the monitoring of the activities carried out by the establishments (*table 1*).

Table 1. Procedural characteristics of the lawsuits filed against the Health Surveillance of the municipality of Salvador, from 2000 to 2017

Procedural characteristics	N	(%)
Result of lawsuits in preliminary decision	32	64
Favorable to author	24	75
Favorable to Visa	8	25
Result of actions in judgment	28	56
Well-founded	9	32,2
Partially well-founded	1	3,6
Unfounded	12	42,8
Dismissal of the process	6	21,4
Time of Decision and Judgment (n=50)		
Before Visa's contestation	22	44
After Visa's contestation	26	52
No contestation from Visa	02	4

Table 1. (cont.)

Conduct of proceedings (n=50)		
With preliminary decision	14	28
With sentence	28	56
No decision or judgement	08	16
Appeals	17	34
1st Instance	03	17,6
2nd Instance	11	64,7
STJ* e STF**	03	17,6

Source: Own elaboration, based on legal proceedings related to Health Surveillance of the municipality of Salvador, from 2000 to 2017.

* Superior Court of Justice (STJ).

** Federal Supreme Court (STF).

A few magistrates emphasized, in their decisions, the need to comply with the healthy conditions of the establishment, preserving the autonomy of the Visa body in exercising its attribution. They emphasize that if all legal requirements have been met, there are no impediments to health licensing. However, what prevailed were decisions determining the immediate issuance of health insurance.

Having established that, I grant the injunction pleaded, stipulating that the Health Surveillance Sub-coordinator, renew, provisionally, the health permit of the company [...] within 48 (forty-eight) hours. (Judicial action 18).

That being said, I GRANT THE INJUNCTION to determine that the claims filled, within 24hrs, grant the Location and Functioning Permit, as well as the Health Permit in favor of the claimants [...]. (Judicial action 29).

In return, at the time of judgment, in 42.8% of cases, the request of the author was dismissed, in some cases, repealing the injunctions. The justifiable judgments were around 35.8%, granting the requests made by the authors. These findings are similar to those of Sá¹³, who presented, in 51.35% of actions, favorable judgments to the National Health Surveillance Agency (Anvisa) and, in 33.6% of

sentences, favorable results to the author.

Extinct processes were of the order of 21.4%, resulting from the resolution of the claim filed by means external to the judicial, the loss of the object of litigation or non-compliance with the procedural requirements required by the type of action filed. This value is higher than that found by Sá¹³, which was 11%.

Regarding the moment of decision and judgment, in 52% of cases, the decision came after the challenge of the Visa, in which it presents arguments and grounds that may subsidize the decision of the judge. This value is not significant, since a large percentage of the actions (44%) was decided before the Public Administration filed its defense, and, in 4%, there was no challenging from Visa. Then, the high percentage of decisions can be perceived without this procedural document, not giving opportunity, previously, for that coercive authority to provide the necessary information for, subsequently, there to be the examination of the request. The results show that 63.6% of the actions that had injunctions favorable to the author, with a decision before the manifestation of Visa, were rejected in the sentences.

It is evident that, in some situations, the authors have omitted information, such as

the existence of Visa's notification regarding an on-site inspection, presenting only elements related to tax debts, with the possible intention of obtaining undue advantages in the process. This attitude should be refuted as being characterized as litigation in bad faith, and its proponents should be held accountable.

When analyzing the conduct of proceedings, it is verified that only 56% have a sentence. Many actions (28% of the total of 50) receive results on preliminary basis. The most important thing to note is that, of the judgments not yet judged on merit, 78.6% had unfavorable injunctions to Visa, with the majority determining the issuance of health permit.

The reasoning used in the decisions and sentences was dominated by the CF of 1988, with references to the principles of Public Administration and articles that assure fundamental rights and guarantees related to economic activity. This rationale evidences the relevance given to individual economic issues to the detriment of the discussion of the public interest – the health requirements of the facilities. The freedom to exercise activity and free trade prevails so that companies are not affected by financial losses. However, reservations are not made, in the great majority of cases, to the practice of these activities in accordance with the health requirements for the proper functioning of the facilities.

These decisions and sentences may be influenced by traditional model of performance of the Visa, which is characterized by health practices focused on meeting spontaneous demand – licensing of establishments –, to the detriment of risk management. For Araújo²², this model is marked by bureaucratic and monitoring characteristics, performance with rigidity, centralizing and without risk prioritization, reducing its practices to police power. In effect, this conformation compromises the effectiveness of health protection actions, contributing to the inefficiency of Visa services.

In this traditional model, the practices are focused on the product or service, disarticulated, decontextualized and individualized. They reflect the fragility of planning and organization of practices, and do not consider the social and cultural context in which the object is inserted, nor the subjects involved in the process, as relevant to its direction, besides the economic context.

Thus, it can be inferred that prevails in the Judiciary the understanding that the relationship established between the companies and Visa is predominantly a mercantilist relationship. This positioning places in a lower level of discussion the particularities and complexity of the health practice for the reduction of risks and damages to the health of the population and the environment.

Specific regulations of the Visa are little used by the Judiciary Branch. Both the Court of Justice of Bahia and other courts rely on more general and comprehensive legislation in the basis of the judgments and seek to value the free exercise of economic activity and free competition.

In some sentences, the reasons on which their judgment was based were not discussed by the magistrates. There is the narration of the history of the procedural debate and the presentation of the position adopted referencing the decision and opinionative evaluation of the Public Ministry, which were already in the case file, to ratify its understanding.

However, it is up to the judge to justify his decision, being necessary to explain the legal and factual grounds that gave rise to his conviction, for the construction of logical bases of the decision-making parts of the sentences. In spite of a dissent between the jurisprudence of the Federal Supreme Court (STF) and the Superior Court of Justice (STJ), Theodoro Júnior²³ agrees with the guidance of the STJ, considering it to be more in line with the requirements of the fair constitutional process, in making the reservation that it is the responsibility of the

judge to make the framework of the lawsuit in the applicable legal norms, even if it is to exclude the appropriateness of its use in the specific case, transparently relating his motivation and his decision.

A percentage of 16% of the claims were without a decision or judgment. This figure is bigger, almost four times, than that presented by Sá¹³, which was the proportion of 3.9% of the proposed actions. These data may mean that the author has abandoned the case or that the judge has not yet met the necessary conditions for the issuance of his/her judgment, or they may, still, evidence the slowness in the Judiciary Branch.

The appeal to higher court was little used in the actions, being present only in 34% of them. Of the total resources, 64.7% were filed in the second instance and only 17.6% progressed to the federal level.

Motivations of the authors of the lawsuits

The motivations of the authors can be classified in three categories: aspects of the health practice – related to the disagreement of the author with the acts practiced or the behaviors adopted by Visa; organizational aspects – linked to the slowness of the Public Administration in meeting the application for licensing of the establishment; and administrative or bureaucratic aspects – related to the denial or refusal to file a license application due to lack of documents, lack of a formal and established mechanism for resolving conflicts or divergences within the administrative scope and omission of the Visa regarding attempts to clarify the progress of proceedings of licensing, as well as conduct adopted (*chart 1*).

Chart 1. Motivations of the authors, by category, present in the lawsuits against the Health Surveillance of the municipality of Salvador, from 2000 to 2017

Aspects of the health practice	Disagreement of the author with respect to the acts practiced by the Health Surveillance	<p>Seizure of products, with prohibition of commercialization and/or disposal.</p> <p>Operation of another establishment licensed by Visa, but which, for the author, works in an irregular manner, compromising, moreover, its billing or causing economic losses.</p> <p>Prohibition of exposure and commercialization of products because they are divergent from the authorized activity.</p> <p>Withdrawal of anodyne drugs from internal shelves in establishments not authorized to market medicinal products.</p> <p>Interdiction of establishment and/or equipment.</p> <p>Prohibition of remote sale of drugs subject to special control.</p> <p>Excesses practiced by the professionals who carried out the inspection, characterizing abuse of power.</p>
	Disagreement of the author with respect to the measures adopted by Visa in the situations	<p>Refusal of health licensing for the optometry segment.</p> <p>Refusal of the application for licensing because the establishment does not meet the minimum distancing (between drugstores and pharmacies) required by the Municipal Law nº 5.504/1999 (Art. 92).</p> <p>Non-acceptance of the technical person declared by the company because he has a formation that is different from that required by the Municipal Law nº 5.504/1999 (Art. 80).</p> <p>Performance of the Visa on the physical structure of the environment and health of the worker, which the author claims to be an extrapolation of the attributions of the body.</p>

Chart 1. (cont.)

Organizational aspects	Alleges that there was delays in the Public Administration in complying with the permit application of the establishment	<p>After five months of the license application and after a formal request on the progress of the process, a statement was issued that the proceeding was in progress.</p> <p>Establishment for 12 months awaiting final opinion on the health licensing process.</p> <p>After 16 months, with successive issuances of notifications and extensions of term, the licensing process was not completed, but only issued statement that it is in process.</p> <p>After two months of the request for licensing without inspection and after successive attempts to obtain information about the progress of the process, he/she is informed that its object of demand was sent to the opinion of the Office of the General Prosecutor of the Municipality of Salvador (PGMS).</p>
Administrative or bureaucratic aspects	The author alleges that there was a refusal to file a license application or the request was denied for lack of documents.	<p>Negative Certificate of Debits (CND).</p> <p>Certificate of Technical Responsibility (CRT).</p> <p>Proof of payment of the annuity of the company with the class council.</p> <p>Operating permit issued by the Treasury Office (Sefaz) of the municipality.</p>
	Alleges that Visa does not have a formal and established mechanism for the resolution of conflicts or disputes within the administrative sphere.	Absence of formal manifestation of the Visa, with the denial of the request verbally informed.
	Alleges omission of the Visa in attempts to clarify the progress of the licensing processes, as well as the conduct adopted.	<p>Report that Visa does not issue any document proving the denials of filing documents and/or requests.</p> <p>Administrative request filed, however, with no reply.</p> <p>Absence of an opinion that presents or not approval of the license application.</p>

Source: Own elaboration.

Of the 50 actions analyzed, the most prevalent motivation was related to the health practice adopted by the Public Administration, with 32 citations. Subsequently, with very close value, motivations tied to the administrative and bureaucratic aspects of the service, having been cited 27 times. And, lastly, organizational motivations, cited only six times by the authors.

The number of motivations related to administrative and bureaucratic issues is high, almost equal to the value found for motivations linked to the development of health practice. These findings demonstrate that there are flaws in the administrative organization of the municipal Visa system, as well

as there is excess or impertinence of formal requirements. This shows that the work process of the Visa has notarial characteristics, being centralized, bureaucratic and verticalized, focused on an action supported by a monitoring approach, with an emphasis on inspection, which is deployed in the reduction of its practices to police power and in overvaluation of documents to the detriment of health risk control^{22,24}.

The failures in the administrative organization described in the initial petitions point to the public service as the most fragile in the system, which reflects the gaps in the planning and management of municipal surveillance. It is possible to identify arbitrary and

illegal conduct, such as the refusal to file applications, requirements and, consequently, the issuance of health permits, linking such actions to the presentation of documents, as explained in the parts below, extracted from the processes:

However, the aforementioned Sub-coordination even refused to receive such requirement, [...], even unable to petition before the aforementioned body, the Claimant was obliged to send it a telegram. (Judicial action 12).

The time has come for the Claimant to renew her Health Permit and she has not, even, been able to file her application, since the coercive authority only admits receiving such an informed petition from the Certificate of Municipal Tax Debts from the interested person, issued by Sefaz. (Judicial action 18).

The requirement for the presentation of the Negative Certificate of Debts (CND), according to municipal Visa, is based on art. 323 of Municipal Law n° 7.186/2006, which establishes the Tax and Income Code of the Municipality of Salvador²⁵, and in art. 34 of Municipal Law n° 8.421/2013, which adds provisions to the Municipal Tax Code²⁶. However, the authors of the actions allege that this requirement violates constitutional principles, such as reasonableness, proportionality and freedom to exercise a profession, trade or economic activity.

These allegations are in line with the jurisprudence of higher courts that have the understanding that the collection of taxes should be promoted by means of own means, without directly or indirectly impeding the professional activity of the taxpayer, without using coercive means transversally to the execution of debits. This municipal regulation evidences the priority given to the collection of taxes by the Executive and Legislative Branches of Salvador.

Influence of the Judiciary Branch in the development of Health Surveillance activities

With the analysis of the results, it is observed that all the claims that requested the concession of the permit without the requirement of the presentation of the CND were granted. Although the initial claim relates to the difficulty in filing an application for the licensing process without the said document, the claim contained the request for the concession of the license, suppressing the other stages of the process.

In a few decisions, the magistrates determined the continuity of the licensing process even without the presentation of the CND. The permit was not granted immediately, the judge only not linked the CND to the progress of the process. In other decisions, there was a determination to issue the permit as long as the absence of the CND was the only obstacle and other technical and health requirements were met. These positions of the magistrates, although they contradict the administrative rule adopted by the Visa of Salvador to demand the CND, demonstrate the respect to the autonomy of the Executive Branch regarding *stricto sensu* health rules.

In other situations, it was reported that the refusal or denial of the request was expressed only verbally, without formalization of the administrative act, which suggests that the body is aware of the fragility of the legal basis of its refusal or denial.

It occurs that, the municipal health authorities have been denying the above mentioned requirement, without formal manifestation, under the VERBAL claim that the concession of the license would be pending AUTHORIZATION OF THE REGIONAL COUNCIL OF [...]. (Judicial action 36).

[...] it was approximately 05 months of the most complete silence, without any response, neither positive nor negative [...] the Claimant does not grant, but also does not dismiss, remaining inert and indifferent, despite the various provocations he received, by means of insistent collection of the Claimant [...]. (Judicial action 32).

These conduct contravene the constitutional principles of the Public Administration, which are necessary for the proper functioning of the body before the regulated segment. The way of acting of the Visa may interfere with the economic condition of the company and weaken its own performance.

Although the motivations regarding organizational aspects are much less frequent, they are still relevant. Undoubtedly, the slowness in the progress of the licensing processes, linked to the refusal or the difficulty in filing an application with the agency, can harm both the economic activity and the control of health risks.

It is observed that slowness is related to the very (de)structuring of work process of the Visa, in particular, with regard to the conduct of the licensing procedures, either by inertia issues, without presenting any justification for that time gap without any monitoring, or by repeated site inspections that do not result in a position on licensing.

He asked the municipal Health Surveillance body, connected to the Municipal Health Secretariat of the Municipality of Salvador - Bahia State, twelve months ago, NEW HEALTH PERMIT LICENSE [...]. (Judicial action 36).

[...] there was a new visit on January 22, 2014 (7th INSPECTION), more than one year since the application protocol for renewal of the permit. That, as incredible as it seems, resulted in a new extension of the term, for another 15 days, [...] being in the process of renewal of the permit for more than one year and a half. (Judicial action 32).

In all of these situations, it stresses the subjection of the regulated segment to Visa, which, when acting with slowness, can cause damages to economic relations. Such conduct contravenes the fundamental right and guarantee that the reasonable length of the proceedings and the speed of proceedings will be assured to all^{7,27}.

With regard to aspects of health practice, only 12 (37.5%) of the motivations are related to acts practiced by Visa – equipment interdiction and the establishment and seizure of products. Most of them are linked to the refusal behavior adopted in relation to the optometry service and to those who have technical personnel with different training than is provided for in Municipal Law n° 5.504/1999.

It should be noted that the motivations of the proponents of the actions were based, in general, on the principles, rights and guarantees established in the CF of 1988, in defense of the right to work, free initiative and free exercise of economic activity.

In addition, it is possible to verify that there has been very frequent use of jurisprudence of state and federal courts to justify the petitions. There has also been much citation of doctrines, sometimes lengthy, to the detriment of discussions about specific legislation to the object and health legislation. This reality evidences the distancing of the regulated segment from the specificities of the Visa system.

Summaries, even if little used, include discussions regarding the inadmissibility of coercive acts by the Public Administration as a mechanism for the collection of taxes. These data corroborate those of Sá¹³, when finding that the main reasons that direct the search of the Judiciary to settle the conflicts and litigations related to the performance of Visa are directly linked to the economic issues.

In sum, most of the lawsuits were filed by companies with activities classified as health services. The most prevalent request was the granting of the health permit, which was granted in most preliminary decisions.

In contrast, in the sentences, almost half of the actions were dismissed, with revocation of the injunction. A significant percentage of actions were extinguished as a result of the resolution of the administrative claim, loss of the subject matter of litigation or non-compliance with procedural requirements.

The work model of the Visa, based on traditionalism, and the decentralization of the actions of the Visa system acted as determinants of aspects of health practice, organizational aspects and administrative or bureaucratic aspects that, in turn, determined the direct motivations of actions. The way how the work of the Visa is structured, with operational difficulties, causes slowness in the proceeding of licensing processes. In practice, there are processes that have been in progress for more than three years, without conclusion. And, in some cases, permit applications that have been in progress for five years or more without finalization.

Particular economic interest was the element that most influenced the motivations, directing the allegations and justifications presented by the authors of the actions. It is observed that the reason for the search of the Judiciary to resolve the conflicts is related to the guarantee that there is no damages and losses to the economic activity of the establishment, even if, for that, technical health requirements are neglected.

It can be verified that the aspects related to the particular economic interest lead, even, the judgments of the magistrates, which prioritize the rights of economic activity to the detriment of the health conditions of operation of the facilities. Thus, this interest permeates the entire procedural relationship, from the motivation of the admission of actions to judgments rendered by the judges, inducing Visa to consider more the economic activity than the health security.

Effectively, the search for the realization of the right to the free exercise of economic activity prevails, subordinating everything

and everyone to economic interests. As a result, it is perceived, on the one hand, that there is a weakening of the relationship established between Visa and companies providing services or producers of goods of interest to health, and, on the other hand, the very structuring of municipal surveillance already allows the deterioration of this relationship, fomented by feelings of discredit and distrust, which is only enhanced by the results of legal actions.

In this sense, although judicial decisions must be and are being complied with by the Municipal Health Secretariat and, therefore, in some way, influencing the development of activities of the Visa, it cannot be said that this is a determining influence of the way of acting of the Visa, either by contributing to its improvement, or by compromising a previously well-structured (allegedly) routine.

Final considerations

The results show that there are many weaknesses in the work mode of the municipal Visa, which reproduces a Visa system permeated by traditional characteristics: notarial, centralizing, bureaucratic, vertical and surveillance/inspector. In this way, Visa cannot efficiently execute its attributions, driving the search for the Judiciary Branch so that the demands are met. The need to conducting processes in a swift and dynamic way, so that there is no undue burden on the administration and, on the other hand, the population and the environment, is emphasized.

The findings show, also, that the particular economic interest pervades the motivations, the arguments and the reasoning of the authors, as well as the basis of the decisions and sentences. And judicial decisions, as a rule, favor the private economic interest at the expense of the public health interest.

Finally, the analysis of the case shows

that the lawsuits filed against the Visa of Salvador were, to a great extent, due to the failures of the executive branch itself, even though the motivations of the authors and the decisions of the magistrates were, mainly, based on particular economic interests.

In this sense, one cannot speak of the influence of the Judiciary Branch in the development of the Visa activities in the sense of 'judicialization of the Visa', understood as the protagonism of the Judiciary Branch on the conduct of a policy which should have as main responsibility the Executive Branch. The City of Salvador, through its health secretary, maintains the role of protagonist of the actions of Visa, despite all the flaws.

Consequently, it is clear the need to acknowledge the limitations of the work of the Visa by the managers and technicians

of the municipal surveillance system, so that there is an evaluation of the work process and health risk monitoring that, allied to planning and social communication technologies, can subsidize a restructuring of the Visa care model with a reorganization of its practices. While the process of decentralization of actions advances, this inadequate organization of the system can propel new demands to be judicialized.

In the organizational and administrative sphere, it is the responsibility of the municipal Visa to formalize administrative alternatives, without departing from risk management, for the resolution of conflicts, among which, the due establishment of administrative health processes, in compliance with the principles of Public Administration. ■

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