DOI: http://dx.doi.org/10.12957/demetra.2014.10213

The fundamental right to food in the courts: an analysis

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Abstract

The legalization of public health policies has been addressing an increasingly comprehensive list of lawsuits and services, particularly in the realm of Human Right to Food. In view of this context, this research study aimed to examine and analyze lawsuits over the Human Right to Food filed in courts of five Brazilian regions. The research used primary data collected from copies of court proceedings. The period of analysis ranged between 2005 and 2008. The objective was to gather information on lawsuits resolved through transit in rem judicatam in a court of first instance. There were 62 requests for special dietary supplements, with particularly more cases in the southeastern region of the country. The plaintiffs were mostly children with different pathologies declared in the records, and no collective lawsuits were found in the sample. The study showed no evidence of prescriptions given by professional nutritionists or expert examinations requested by the judges. There were judgments made solely upon medical prescriptions. From the total court decisions analyzed, 91.77% of the decisions were favorable to the plaintiff and 8.33% of the decisions were unfavorable to the complaint. It was concluded that there is a strong growth trend of lawsuits on the issue of right to food because it is guaranteed by the Constitution.

Key words: Right to Health. Right to Food. Supplementary Feeding.

Introduction

In recent years, steps have been taken to ensure the right to food in Brazil. In September 2006, the Organic Law of Nutrition and Food Safety – LOSAN (Law no. 11.346/2006) was passed.[1] It established the National Food and Nutrition Security System (SISAN).

Brazil has always been a signatory to relevant international human rights treaties that dealt with this matter, e.g., the Universal Declaration of Human Rights (1948),[2] which highlighted the right to food in the first place in Article XXV, and also the International Covenant on Economic, Social and Cultural Rights (ICESCR)[3] and the International Convention on the Rights of the Child, which directly address the human right to food.

The Committee on Economic, Social and Cultural Rights is a United Nations (UN) body established to monitor the Covenant. It approved General Comment No. 12, in 1999, which details the concept of Human Right to Food and makes practical proposals for the adoption of viable means to enforce it both nationally and internationally.[4] It has highlighted two dimensions of this right: the right to be free from hunger and the right to adequate food. As for the former, national states have an obligation, under the ICESCR, to establish actions to mitigate and alleviate hunger. Such activities should be undertaken in a phased manner, through the application of the most appropriate and diligent actions.

But it was on February 4, 2010, by Constitutional Amendment No. 64[5] (EC 64), that the Brazilian Constitution, through the change in its art. 6, introduced feeding as a social right. The right to food, established in the Constitution and recognized in international documents, joined the list of fundamental rights of individuals and the community; therefore, it is inalienable and must be fulfilled by the State. Thus, when structural or situational factors of economic and social processes do not allow for the realization of the right to food, the Government can be legally sued for due compliance. Legally claiming the right to food is also demanding the right to health, not only because it is a social right guaranteed by the Constitution, but also because good health and adequate food cannot be separated.

The judiciary power, in all its instances, has been faced with an increasing volume of individual and collective lawsuits claiming various actions and health services by the state. Repeated judgments based on legal provisions that guarantee the fundamental right to health and food end up giving those who access the Judiciary many different benefits focused on individual needs registered in the records. These judgments consequently expect the public sector policy to ensure such social rights under the collective and distributive perspectives. This phenomenon is usually referred to as the legalization of public policy.

The main objective of this study was to investigate, in the Brazilian courts, case-law decisions on the demands over the right to food that, as above-mentioned, has been recently provided in the Constitution of Brazil, although it is one of the oldest and most basic rights of the human beings.

Methodology

This was an analytical and qualitative, descriptive and retrospective study that used the methodology of case-law analysis. The unit of analysis was the copies of the entire content of lawsuits, containing the following parts: complaint by the plaintiff; defendant's rights; injunction from the judge, when applicable, and final judgment. Some evidence and documents entered in the records were also analyzed.

Case-law analysis is a methodology used to identify a decision-making moment about a legal problem. In this methodology, decisions made by one or more judges on a legal issue are analyzed and from this analysis, one can document what is being decided about a particular subject.[6]

Copies of the lawsuits consulted are part of the collection of research data on legalization of the Oswaldo Cruz Foundation - Brasilia, developed by its Health Law Program*. After proper authorization was granted, the available data were consulted. There were 62 lawsuits over a specific demand for the protein hydrolyzate nutraceutical food product. After the information of interest for the research was read and identified, the data were organized on a Microsoft Excel spreadsheet.

The decision to focus on the lawsuits over the product Neocate® is due to the greater amount of court orders where the product was listed in the period studied. Thus, a methodological choice was made to disregard lawsuits over other products and nutritional formulas, because they were in negligible amount for this research at the time of field survey.

The chosen subsamples for analysis were comprised of lawsuits filed between 2005 and 2008, in view of a guaranteed sentence, essential element of analysis for this research. The following courts were selected: Court of Minas Gerais, Court of São Paulo, Court of Rio de Janeiro, Court of Pernambuco, Court of Rio Grande do Sul and Court of the Federal District and Territories. These are courts where lawsuits were filed over the nutraceutical food product Neocate®.

After identification of the lawsuits of interest to the research, the documents were read (complaint, the defendant's defense and decision of the judge) and specific data were extracted on profile of the plaintiff, medical-scientific and health elements and other procedural elements of the lawsuits (injunctions and advance legal protections), and such data were arranged on a Excel 2010 spreadsheet. Next, a quantitative analysis was made of the data.

For the qualitative analysis, the method of content analysis was used.[7] This is a set of techniques that seeks, through systematic and objective procedures, the clarification and systematization of the content of documents or messages through the construction of indicators that allow the inference of knowledge concerning the conditions of production of these messages.

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* Lawsuits from the Project"Access to medicines through the courts and their impact on national policy for pharmaceutical care", funded by Notice MCT/CNPq/MS-SCTIE-DECIT 33/2007 - Technology Assessment in Health Care registered under 551063/2007-6, already completed.

Because the work eminently focused on documents of a public nature, the research was exempted from submission to the Ethics Committee.

Results

The sample comprised a total of 62 decisions over lawsuits judged in courts located in the Brazilian regions above-mentioned. The largest number of lawsuits, 41% (n=25) was found in the state of São Paulo, followed by Minas Gerais, with 24% (n=15). The remaining lawsuits were spread among the other states surveyed.

According to the analysis of the sample, it was found that the majority (n=45) of judgments did not mention the age of the plaintiffs, while it was mentioned in 17 cases. In the lawsuits where no information on age was provided (n=45), the age group of the patient-plaintiff could be deduced, because it was indicated that they were being represented in 67.7% (n=42) of all lawsuits analyzed; therefore, it was inferred that they were minors. Thus, in only three out of the total number of analyzed cases (n=62) there is not any reference to the age of the patient-plaintiff.

There were 17 decisions where the age of the patient-plaintiff was directly mentioned; in 82.3% of them (n=14), their age was specified while in 17.7% (n=3), they were referred to as "newly born". 50% (n=7) of lawsuits with mention of age group were from individuals aged below one year; 21.5% (n=3) from individuals between 1 and 2 years old and 28.5% (n=4) from individuals between 2 and 3 years old.

In 51.6% (n32) of the 62 decisions analyzed, the plaintiffs were represented only by their mother, while in 9.6% (n=6) of them, they were represented only by their father and in 6.4% (n=4), they were represented by both parents. In 32.3% of the lawsuits, (n=20) this was not mentioned.

The gender of the plaintiff was informed in the complaint in 82.3% (n=51) of the cases, while in 17.7% (n=11) there was no mention of it. 58.82% (n=30) of the decisions that have cited the plaintiff's gender refer to males and 41.17% (n=21), to females.

The socioeconomic status of the plaintiffs could be inferred by whether or not they requested for free legal aid in their complaint. Therefore, reference to the economic conditions of the plaintiffs was not identified in 64.6% (n=40) of the lawsuits, while such a reference was found in 35.4% (n=22) of them. Lack of monetary sufficiency of the plaintiffs was explicitly mentioned in 90.9% (n=20) of the lawsuits, while in 9.1% (n=2), individuals failed to demonstrate suck lack of sufficiency.

The qualitative analysis revealed many terms used to define the Neocate® product in the material content of decisions. Table 1 lists the terms that have been cited at least once in the text of the judgments analyzed, exactly as they were written.

Table 1. List of terms used to name the material object demanded in lawsuits* over food supplements, judged between 2005-2008. Brazil, 2008.

Designations	
01 Amino acid (neocate)	30 Input
02 Formula-based amino acids 00000 "Neocate"	31 Input feed
03 Food Formula	32 Milk
04 Special milk	33 Neocate milk
05 Neocate milk	34 Amino acid-based milk
06 Special diet named "neocate"	35 Neocate powder milk
07 Amino acid-based special food product	36 Special milk
08 Food	37 Special milk named neocate
09 Neocate food	38 Special hypoallergenic milk
10 High-cost food	39 Neocate special milk
11 Special food	40 Hypoallergenic milk
12 Special powdered food	41 Medical milk
13 Medical food	42 Medication
14 Neocate food supplement	43 Medicine
15 Nutritional supplements	44 Neocate-enteral diet
16 Food product	45 Preparation
17 Special food product	46 Neocate preparation
18 Diet	47 Product
19 Neocate special diet	48 Neocate product
20 Neocate diet	49 Remedy
21 Food formula	50 Supplement
22 Elementary formula	51 Food supplement
23 Protein hydrolyzate elementary formula	52 Neocate food supplement
24 Hydrolyzed formula	53 Nutritional supplement
25 Neocate children's formula	54 Nutritional supplements
26 Medical formula	55 Food aid
27 Amino acid formula	56 Amino acid solution
28 Formula containing amino acid complex	57 Nutritional aid
29 Protein hydrolyzate	

* Lawsuits arising from Brazilian Courts of Justice where demands were found for nutraceutical food Neocate®, judged between 2005 and 2008.

Considering these different designations, in 62.90% (n=39) of the studied sentences, the product was referred to as a "medicine", while in 37.09% (n=23), it was referred exclusively as a food supplement. The use of the word "medicine" in quotes was identified, in some lawsuits, as apparently indicative of irony in naming a food product as medicine and using the term "medical milk", in upper case, a neologism written in the plaintiff's complaint.

The illness of the plaintiffs was mentioned in 75.8% (n=47) of the documents, compared with 24.2% (n=15) of lawsuits where there was no mention of their illness. Table 2 shows the list of illnesses of the plaintiffs identified in the sample analyzed.

Table 2. Illnesses or symptoms of plaintiffs described in the sentences of lawsuits* judged by courts between the years 2005 to 2008 on demand for food supplement. Brazil, 2008.

Illness or symptoms	Number of cases	
	(n)	(%)
Food allergy	26	55.3
Anaphylaxis	1	2.1
Heart disease	2	4.3
Colitis	6	12.8
Gastroesophageal Reflux Disease	4	8.5
Enterorrhagia	1	2.1
Gastroschisis	1	2.1
Short Bowel Syndrome	6	12.8
Total	47	100.0

* Lawsuits arising from Brazilian Courts of Justice where demands were found for nutraceutical food Neocate®, judged between 2005 and 2008.

83.9% (n=52) of the universe of the sample did not mention the plaintiffs' nutritional status; 11.3% (n=7) referred to malnutrition and 4.8% (n=3) cited the plaintiffs as being at nutritional risk.

According to the analysis of sentences, it was observed that 66.2% (n=41) of the sample referred to the prescribing professional, particularly the doctor in charge, while 33.8% (n=21) did not mention any professional. Only 3.3% (n=2) of lawsuits in the sample presented expert examinations as evidence, while 96.7% (n=60) used the prescription as evidence.

32.26% (n=20) and 19.35% (n=12) of the total litigations analyzed were filed against the Secretary of Health and the State Public Treasury, respectively. Table 3 shows the distribution of decisions per defendants.

Table 3. Organizations and bodies sued in lawsuits judged by Brazilian courts from 2005 to 2008 on demand for food supplement. Brazil, 2008.

Organization	Frequency	
	(n)	(%)
Director of Pharmaceutical Services	1	1.6
State	5	8.1
Public Treasury	12	19.4
Municipal Health Foundation	1	1.6
Municipality	12	19.4
Municipal Government	9	14.5
Secretary of Health	20	32.3
Unified Health System	1	1.6
Unimed	1	1.6
Total	62	100.0

* Lawsuits arising from Brazilian Courts of Justice where demands were found for nutraceutical food Neocate®, judged between 2005 and 2008.

Discussion

Whereas the Southeast region is the most economically developed and had the greatest number of decisions found in the study, there may be a correlation between economic status and access to the Judiciary. This relationship was found in the study by Vieira and Zucchi,[8] who analyzed the places of residence of the plaintiffs of lawsuits in São Paulo and found that the population who accessed the Judiciary resides in more affluent areas of the city, i.e., individuals with better income.

Chieffi & Barata,[9] in a study that characterized the lawsuits over provision of medicines against the Secretary of Health of São Paulo, based on the geographic region of residence of the plaintiffs, found data indicating that the population with higher purchasing power has benefited from the lawsuits. Thus, it can be inferred that wealthier individuals are the ones who benefit most from the phenomenon of legalization of health.

However, Medeiros, Diniz & Schwartz[10] questioned the identification of the social class of individuals based on their region of residence. They stated that place of residence is not the most appropriate indicator of income, because it is not possible to make reliable statements about the distributional pattern of legalization of health.

Regarding the socioeconomic status of patients-plaintiffs, it is important to note, in this study, the large number of statements of lack of monetary sufficiency by the plaintiffs, causing free legal aid to be provided throughout the lawsuits. The economic factor has considerable implications and it is decisive in the access to the court system for obtaining high-cost products and services as well as a favorable judgment. Judges tend to decide more generously when faced with low-income plaintiffs.[8-10] Moreover, the economic aspects involved in the phenomenon of legalization of health are directly and indirectly relevant. Access to the courts by private lawyers is an example of an indirect economic aspect. It is a common negotiation with private lawyers that their fees will be paid by the losing party in the lawsuit. This is called *defeated party's fees,* i.e., amounts arbitrated by the trial judge that shall be paid by the losing party to the lawyer of the prevailing party of the dispute. Because health-related lawsuits against the State Public Treasury are expected to be successful, lawyers are hired easily by this method, especially by low-income people.

The value of the supply sought is an economic factor that is directly associated with the need for access to the judiciary so that it can be achieved. Although the definition of high-cost medication is not a consensus, Souza et al.[11] proposed a definition that may extend to other supplies needed to

restore the health of individuals. They stated that "high-cost medicines are those whose monthly unit value is above minimum wage" [our translation]. According to this proposal, the financial impact due to the acquisition of Neocate® is considerable in a country in economic progression, since the cost of a can almost match up the minimum wage, and a diet exclusively based on this product would require consumption of up to 20 cans in a single month.

One aspect that stood out in the analysis results was the diversity of names assigned to the product. Different names were used but they do not clarify the real features of the product. Likewise, in the study by Petean et al.,[12] the requested dietary supplements were referred to by their brand names, without information about their formula or possibilities of alternative compounds. Thus, the authorities could not offer another product in return, otherwise they would be liable for civil disobedience.

The misnomer of the product Neocate® as a medicine, both in the complaints and in contestations and sentences, shows the complete ignorance of the actual function of the product and the lack of technical criteria in the preparation of pleadings. The mistakes made by the judges were corroborated by documents supplied by the parties to the proceedings containing such improprieties in the name of the product. They also show that the magistrates have not had specific technical support.

For the sake of legality, the body responsible for defining medications is the Brazilian Health Surveillance Agency (ANVISA). According to the legal definition established by ANVISA and mentioned in Law no. 5.991/73,[13] a medicine is a pharmaceutical product that is technically obtained or prepared with prophylactic, curative, palliative or diagnostic purposes. In the literature, Schenkel[14] emphasizes that "medicines are substances or preparations that are used as remedy, prepared in pharmacies or pharmaceutical companies that meet legal and technical specifications" [our translation]. Contrary to the provisions and strengthening their real feature as food supplement , the registration of Neocate® at Anvisa describes it as a food product (record of imported food and beverages: Neocate Advanced – RE nº 116, 19/07/2002; Neocate – RE nº 51, 17/03/2004; Neocate LCP – RE nº 2625, 31/07/2008).

This fact is consistent with the findings from Romero,[15] who highlighted the difficulty faced by the judges in dealing with the technical concepts involved in the lawsuits when describing the conformation and characteristics of the Court of Justice of the Federal District and Territories (TJDFT) regarding lawsuits that were claiming the supply of medicines. This results in a low or mediocre level of technical content to the pleadings, due to lack of technical advice and also the defendants' inability or disinterest in explaining them.

An example of initiative to reduce these difficulties comes from the Court of Rio de Janeiro, which experimentally established the Center for Technical Assistance in Health Activities (NAT) in February 2009. This center was organized to provide technical support to judges in lawsuits against the State, whereby the plaintiffs seek the supply of medicines, health and nutrition supplies, and diagnostic tests and medical treatments whether or not provided by System Unified Health (SUS).. This technical support is given through reports that are issued within 48 hours, providing judges with input for deciding sentences safely, based on highly technical information. The center is composed of professionals from various fields of health care, especially dietitians, nurses, pharmacists and physicians.[11]

One example is the Health Department of the Federal District. The Technical Regulation for Supply of Formulas for Special Purposes for Home Care was established by Decree No. 94 of May 20, 2009, by the State Department of Health.[16] This regulation defines standards and criteria for registration of patients and outpatients, provision of formulas for special purposes, and home care provision.

The decree states that the doctor should advise on and prescribe the feeding pathway, while nutritionists should be in charge of dietary prescription, including the most appropriate enteral formula and nutritional assessment. It also requires registered patients to be reassessed every three months. The program includes patients receiving enteral feeding orally and by tubes; patients with cystic fibrosis, epidermolysis bullosa, inborn errors of metabolism, malabsorption syndrome; pediatric patients up to two years old, allergic to heterologous protein with a confirmed clinical diagnosis; severely malnourished patients; patients with chronic kidney disease (CKD), cancer, acquired immunodeficiency syndrome (AIDS) and the elderly.

The illnesses listed under patients' requests and transcribed in the sentences are worth of notice. Food allergy is seen as the most recurrent illness in the lawsuits studied. Petean et al.[12] described their findings in Mato Grosso, after analysis of 28 judgments. They also found that food allergies had the highest percentage of occurrence (17.8%) cited in the judgments they analyzed (n = 5).

These results, together with the age of patients-plaintiffs in this study, raises the importance of breastfeeding. Breastfeeding is a necessary dietary practice to guarantee the health and proper development of children, as provided in the National Food and Nutrition Policy (PNAN), which follows international recommendations on the subject. Importantly, according to the Brazilian Consensus on Food Allergy, 2007, exclusive breastfeeding up to six months proves to be effective in preventing the onset of allergic symptoms and more specifically in reducing the cumulative incidence of allergy to cow's milk protein until the first eighteen months of life.[8,12]

Moreover, it was noticed that some lawsuits did not mention the patient's illness, and the medical prescription was considered as sufficient evidence for granting a favorable decision to the claim. This is at least abnormal, because it is not acceptable to grant an expensive product to an individual who filed in court without evidence of a possible disease or nutritional status that deserves attention.

Studies by Petean et al.,[12] based on the data found, reinforce the common finding that dietitians are hardly ever mentioned in lawsuits. In their study, only one process contained a document prescribed by a nutritionist whereas in the present study, few lawsuits have privileged the role of dietitians, either by prescribing dietary supplements, or providing expert judgment. Medical prescriptions prevailed, taking the central and hegemonic role in the litigations and being irrefutable evidence for the prosecution of the lawsuit.

There were no lawsuits filed collectively. This has given rise to a deep discussion of the phenomenon of legalization of health.[8,9,17] On the one hand, an individual in search of being granted the Right to Food, fits into Medeiros, Diniz and Schwartz's[10] classification as a compensation case, because the representatives that filed the lawsuit did nothing more than seek compensation or indemnity for neglectful policies that did not include the high cost of food supplies required for special cases. On the other hand, the reality is that the realization of this right may jeopardize the right of the collectivity.

Lawsuits remain individual in the belief that the judiciary has not decided positively on collective demands. When jurisprudence of major courts in Brazil is observed, this statement is perceived as true. Most judges have not been granting favorable decisions for health-related lawsuits pleaded collectively.

Although many achievements have already occurred in the relationship between the political system and the legal system, including the implementation of the Supreme Court Public Hearing, the fact is that legalization of health still finds inconsistency between the performance of the judiciary and the organization of SUS. Romero[15] exemplifies this judicial interference by citing the involvement of "regular provision of priority care and implementation of approved pharmaceutical care policies" [our translation]. In other words, the legalization of health imposes unplanned procurement, beyond the regular plan of the health sector, and it ultimately leads to extraordinary expenses with administrative proceedings for bidding waivers. Such situations compete with the normal supply of the Unified Health System (SUS), and cause irregular share of material, human and budgetary resources so that legalization efforts can be met.

The courts whose decisions were analyzed judged in favor of the plaintiff. Petean et al.[12] also reached the same result in their investigations, thus corroborating the view that the courts tend to judge to the detriment of the Public Treasury when it comes to health-related lawsuits and services. All literature on the subject reinforces that the judiciary, in the last ten years, has been making favorable decisions for lawsuits by plaintiffs over health services and supplies.[15]

The study found that the documents in the sample analyzed did not share a common format. While they are organized and consistent in some courts, others courts still have not systematized document preparation.

Conclusion

The findings of this study suggest that the courts and the legal system are not prepared to judge lawsuits over the Right to Food, in view of the inadequacies in dealing with the matter, the absence of requests for expert examination, and the fact that a foodstuff product is treated as medication. Such evidence determines the necessity of understanding the Brazilian judiciary for proper judicial performance, as in the cases presented. Although the product reviewed here has no major side effects, it is an expensive nutritional supplement, and deferral based on flimsy evidence may lead, but a harm to users, a financial disarray for SUS.

The near absence of a registered dietitian in the records is noteworthy because such professional is responsible for assessing people's nutritional status as well as prescribing nutritional supplements. The judges did not request expert examination by a professional nutritionist to evaluate any of the cases. It is the responsibility of the Federal Board of Nutrition and their regional bodies to make their professionals available to the respective regional courts and federal courts for any expertise examination or information required for a court decision.

The occurrence of decisions awarding food supplements upon lawsuits devoid of information on the disease or the nutritional status of the patient was cause for concern. There were many sentences with such omission, which suggests that even without suffering from a disease, one can obtain health products or supplies without any mention or evidence of the need for them. Although judges are overworked as it is well-known, they must be very attentive to this type of request, as they may be victims of ill-intentioned people.

There were no legal grounds on which the judgments analyzed were based, but in view of other studies,[18-20] the literature of Health Law was certainly not taken into account. It is completely unknown to most Brazilian judges, who also lack awareness of the public policy on food and nutrition and the public health policy based on non-statutory regulation. It is generally unknown to the judges, who end up judging based solely on Article 196 of the Constitution.

There is little doubt that access to the courts is a fundamental right of every citizen, but there must be extra-judicial mechanisms for resolving these conflicts, because high costs are incurred for the Brazilian state when these conflicts are taken to judicial forums that require skilled personnel, intervention of lawyers, public defenders, etc. One has to consider mechanisms that are less expensive and closer to citizens, with greater flexibility and economy for the pacification of these conflicts.

The judiciary power still does not cater for the needs of the population. In recent times, there have been appeals for decisions about social rights, notably, rights to health and food, which imposes a new obligation. It is time for this third power of the Republic to gain awareness of social rights, while maintaining due respect, of course, for individual rights as traditionally done. It has, however, to understand this new face of the rights of the XXI century.

There is still an aura of excessive proceduralism over the judiciary, as well as flowery language that is incomprehensible to those not acquainted with Law, and inaccessibility of magistrates and judicial clerks. Health is everyone's right and food also became a social right guaranteed by the Constitution. This new constitutional order must be disseminated to all levels of government and organs of the State, all branches of government and every citizen. The fight for health and proper nutrition must be the main objective of the country.

Finally, it was observed that the recent inclusion of Feeding as a social right in the Constitution of 1988 is likely to encourage an increase in the number of lawsuits and make them more evident in the national political-legal scenario. In contrast, there are not enough academic research studies on the legalization of the right to food. Such studies can effectively outline the real scenario of this situation in Brazil.

References

1. Lei nº 11.246. Cria o Sistema Nacional de Segurança Alimentar e Nutricional-SISVAN. 2006,set 15. DOU 1 (Set 18 2006)
2. Organização das Nações Unidas. Declaração dos Direitos Humanos. Ucrânia: 10 de dezembro de 1948.
3. Organização das Nações Unidas. Pacto Internacional dos Direitos Econômicos, Sociais e Culturais, de 16 de dezembro de 1966.
4. Valente, FLS. Direito Humano à Alimentação: Desafios e Conquistas. São Paulo: Cortez; 2002. 272p.
5. Emenda Constitucional nº 64. Altera o art. 6º da Constituição Federal, para introduzir a alimentação como direito social. 2010, fev 4. DOU 1 (Fev 4 2010)
6. Anais do XIX Encontro Nacional do CONPEDI; 2010; Fortaleza. Fortaleza: UFCE, 2010
7. Bardin, L. Análise de conteúdo. Lisboa: Edições 70; 2004.
8. Vieira FS.; Zucchi P. Distorções causadas pelas ações judiciais à política de medicamentos no Brasil. Revista de Saúde Pública 2007; 41(2):214-222.
9. Chieffi AL.; Barata RB. Judicialização da política pública de assistência farmacêutica e equidade. Cadernos de Saúde Pública 2009 ago; 25 (8):1839-1849.
10. Medeiros M.; Diniz D.; Schwartz IVD. A tese da judicialização da saúde pelas elites: os medicamentos para mucopolissacaridose. Ciência & Saúde Coletiva 2013; 18(4):1089-1098.
11. Souza, MV. *et al*. Medicamentos de alto custo para doenças raras no Brasil: o exemplo das doenças lisossômicas Ciência & Saúde Coletiva, 2010; 15(supl.3): 3443-3454.
12. Petean E. *et al*. Direito à saúde: demanda por suplementos no Tribunal de Justiça. Goiânia: 2012. p. 68-76, 14(1) Revista. Eletrônica de Enfermagem Disponível em: URL: <. http://www.fen.ufg.br/revista/v14/n1/v14n1a08.htm.>
13. Lei 5991. Dispõe sobre o Controle Sanitário do Comércio de Drogas, Medicamentos, Insumos Farmacêuticos e Correlatos, e dá outras Providências. 1973, dez 17. DOU,1 (Dez 21 1973)
14. Schenkel, EP. Cuidado com os medicamentos. Porto Alegre: UFRGS, 1991. 256p.
15. Romero, LCA Jurisprudência do Tribunal de Justiça do Distrito Federal em Ações de Medicamentos. Revista de Direito Sanitário Jul./Out. 2010; 11(2): 11-59.
16. Portaria 94. Regulamenta tecnicamente o fornecimento de Fórmulas para Fins Especiais para o Atendimento Domiciliar. 2009, mai, 20. DODF, 1 (Mai 20 2009)
17. Delduque, MC.; Marques SB.. A Judicialização da política de assistência farmacêutica no Distrito Federal: diálogos entre a política e o direito. Brasília. Tempus Actas de Saúde Coletiva 2011;5 (4): 97-106

18. Werneck Vianna, L. *et al*. A judicialização da política e das relações sociais no Brasil. Rio de Janeiro. Revan, 1999.

19. Amaral G. Direitos, escassez & escolha**.** Em busca de critérios jurídicos para lidar com a escassez de recursos e as decisões trágicas. Rio de Janeiro: Renovar; 2001.

20. Faria, JE. O sistema brasileiro de Justiça: experiência recente e futuros desafios. São Paulo. Revista de Estudos Avançados 2004; 18(51):103-125.

Received on: April 01, 2014
Reviewed on: June 11, 2014
Approved on: July 01, 2014