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Federal response to covid-19 in Brazil: criminal liability of authorities with privileged jurisdiction before the Federal Supreme Court (2020-2023)

Resposta federal à covid-19 no Brasil: responsabilização penal de autoridades com prerrogativa de foro junto ao Supremo Tribunal Federal (2020-2023)

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Abstract

This article presents preliminary research results aimed at mapping lawsuits seeking to hold public and private agents administratively, civilly or criminally accountable for violations committed in the context of the response to covid-19, framed as a matter of memory, truth, justice, reparation and non-repetition. Based on documentary research, with a focus on the criminal liability of authorities with privileged jurisdiction before the Federal Supreme Court (STF), this article presents the progress of petitions and criminal investigations that have reached the Attorney General's Office between 2020 and 2023. In the second part, it offers a qualitative analysis of nine filing requests in the context of petitions due to the Federal Senate's Parliamentary Inquiry Committee on covid-19, using the current legal order in public health matters and elementary technical knowledge of this multidisciplinary field as parameters. The article points to impunity as a major risk for the future of public health in Brazil, particularly in emergency responses.

Keywords: Covid-19; Public Health; Criminal Liability.

Resumo

Este artigo apresenta resultados preliminares de pesquisa destinada a mapear as ações que visam responsabilizar administrativa, civil ou criminalmente agentes públicos e privados por violações cometidas no bojo da resposta à covid-19, enquadradas como tema de memória, verdade, justiça, reparação e não-repetição. Com base em pesquisa documental, tendo como recorte a responsabilização criminal de autoridades com prerrogativa de foro perante o Supremo Tribunal Federal (STF), o texto apresenta o andamento de petições e inquéritos criminais que passaram pela Procuradoria-Geral da República (Attorney General's Office) entre 2020 e 2023. A seguir, oferece análise qualitativa de nove pedidos de arquivamento de petições criminais protocoladas em decorrência da Comissão Parlamentar de Inquérito da covid-19 no Senado Federal, tendo como parâmetros a ordem jurídica vigente em matéria de saúde pública e conhecimentos técnicos elementares deste campo multidisciplinar. O artigo aponta a impunidade como elevado risco para o futuro da saúde pública no Brasil, sobretudo na resposta às emergências.

Palavras-chave: Covid-19; Saúde Pública; Responsabilização Penal.



1. Introduction

In Brazil, among the pernicious legacies of the covid-19 pandemic is the deterioration of trust in health's authorities, the cornerstone of state action to prevent and control epidemics. Beyond hundreds of thousands of deaths from covid-19 that could have been avoided, and millions of cases of the disease whose longstanding effects cause agony to population and overcharge the Unified Health System (SUS), it must be recognized that there had been a crack in the successful tradition of Brazilian public health, especially with regards to the primacy of scientific evidence as a guide for public policies and respect for health institutions. Misinformation about health and the insurgency against preventive measures were widely disseminated during that period also by public agencies. Acts and omissions by high-ranking authorities shocked both the operators of the Unified Health System (SUS) and public opinion, bringing additional obstacles to the day-to-day labor of health workers and impairing Brazil's capacity to prevent and answer to the next emergencies. These behaviors, time and again seen as anomalies, or as part of a legitimate political-electoral strategy, were gradually stripped of their seriousness, overshadowing their potential or actual harmfulness.

Impunity for the actions and omissions of public officials for alleged crimes and infractions committed all along the pandemic is crucial to establish these actions and compromise the future of Brazil's public health. Thus, rebuilding the national capacity to answer to emergencies depends on the debate about criminal liability in scenarios of epidemics. In this context, the evaluation of the results of the management of the federal response to the pandemic - which is often referred to as mistaken, inefficient or negligent - with the investigation of the individual conduct of the agents who intentionally defined and implemented, by various means, a public policy that led to serious violations of human rights, in particular the Right of Life and the Right of Health.

Between 2020 and 2021, the Center for Health Law Research at the University of São Paulo (CEPEDISA/USP) and Conectas Human Rights conducted a research that was one of the inspirations for the creation of the Parliamentary Inquiry Commission (CPI) on covid-19 in the Federal Senate (RODRIGUES; COSTA, 2022, p.31-34). Afterwards, following a request from the Parliamentary Inquiry Commission, the research was updated, expanded, also included in the commission's final report, and contributing to an understanding of what actually happened in Brazil during the pandemic: the



implementation by the federal government of a strategy to spread COVID-19 throughout the country, which can be associated with economic, electoral and ideological motivations (VENTURA; AITH; REIS et al., 2021).

CEPEDISA/USP and Conectas Human Rights are now conducting a new research to scan the actions aimed at making public and private agents administratively, civilly or criminally liable for violations committed as part of the response to COVID-19. This research is also part of the international research network *Contributions de l'Amérique latine à l'esquisse d'un droit commun* (ALCOM) of the *Conseil National de la Recherche Scientifique* (CNRS) from French, led by the *Institut des sciences juridique et philosophique de la Sorbonne* - CNRS/Université de Paris 1, as part of the thematic area entitled Transitional Justice Mechanisms in face of new and old crises.

Based on documental research, a literature review and interviews with relevant informants, this investigation is justified by the demand to support civil society on addressing the rights violations committed during covid-19 as an issue of memory, truth, justice, reparation, and non-replay.

This article presents the preliminary results of this research. The chosen section corresponds to the investigation of what happened with the numerous attempts at criminal liability related to covid-19 that have been reported. The text is structured in two parts.

The first section presents the progress of petitions and criminal investigations that have been handled by the Attorney General's Office (in Portuguese, Procuradoria Geral da União – PGR), relating to alleged crimes committed by authorities with privileged jurisdiction before the Federal Supreme Court (STF).

The second section shows a qualitative analysis of nine requests for archiving formulated by the Attorney General's Office in the context of the complaints filed by it because of the COVID-19 Parliamentary Inquiry Commission. The parameters of this analysis are the current legal order in public health's subject and basic technical knowledge of this multidisciplinary field. Considering the restricted space of this article, other aspects, especially dogmatic and procedural, will be developed separately in future publications. Whereas high risks to the health of the Brazilian population that the theses defended in these documents imply, we understand that the Attorney General Office's manifestations cannot avoid the rigorous scrutiny of the Brazilian State and society,



especially the legal community, health authorities and social entities committed to defending the rule of law and fundamental rights.

2. Lawsuit related to alleged crimes committed by authorities with privileged jurisdiction towards the Supreme Court

In August 2023, the Attorney General's Office published the book “Actions that save - How the Public Prosecutor's Office reinvented itself to face covid-19”¹, with a specific section on “The performance of the Attorney General's Office in the criminal prosecution of crimes in the context of Covid-19 pandemic”, in which it informs: “thousands of criminal complaints were filed, before all units of the Public Prosecutor's Office, involving alleged crimes committed in the context of covid-19 pandemic”; “within the scope of the Federal Public Prosecutor's Office (MPF) itself, the system records a total of 25. 825 News of Fact”, of which 288 before the Attorney General's Office itself; ‘before the Supreme Federal Court, about 75 Criminal Complaints (*notitia criminis*) were handled, in which alleged criminal conduct involving the covid-19 pandemic and attributed to authorities with a privileged jurisdiction before the Supreme Court were indicated’; and ‘the preliminary investigations performed in these petitions later led to four criminal inquiries’ (BRASIL, 2023a, p. 136-137).

Adorned with color photos and epigraphic sentences by Attorney General in that moment, Antônio Augusto Brandão de Aras, the official publication highlights the “tireless work” of the Public Prosecutor's Office in “the pursuit for accountability for those who violated sanitary, administrative and criminal rules” (Ibid., p.10). According to press sources, at the time, Aras was making lobby for reappointment (among many others, SOUZA; PATRIOLINO, 2023; GAYER, 2023; While [...], 2023). Asked about the kind of this publication, in a press release, the National Council of the Public Prosecutor's Office (CNMP), the oversight part of the Public Prosecutor's Office headed by the General Prosecutor, declared that the work was coordinated by the CNMP and the Attorney General's Office, this one through its Integrated Office for Monitoring the Covid-19

¹ However, the publication's cataloging data (CIP) shows a different title: “The Public Prosecutor's Office in the fight against Covid-19: Attorney General's Office/CNMP 2020-2023” (Ibid, p.6).



Epidemic (Giac); and that the CNMP financed the printing of 1,500 copies, at a cost of R\$135,649.42 (TALENTO, 2023).

Among the information already brought in this article, the reference to more than 25,000 News of Fact (NF) related to the topic is noteworthy. Regulated by the Resolution n. 174/2017 of the CNMP, the NF is defined, in its article 1, as any demand addressed by citizens to the Public Prosecutor's Office, submitted for appraisal by the Prosecutor's Offices according to their respective subjects of activity, including the performance of assistance, and the entry of news, documents, requests or representations (BRASIL, 2017)². The Criminal Petition (PET), on the other hand, is the kind of complaint submitted by individuals or legal entities directly to the STF, notifying the alleged commission of a crime committed by an authority with prerogative jurisdiction.

The Public Prosecutor's Office and the Attorney General's Office are in charge of the institution of the criminal lawsuit against public authorities with prerogative jurisdiction. Under the current rules, it is not possible for a citizen, or any other institutional agent beyond the Attorney General's Office, to start the criminal prosecution of these individuals with prerogative jurisdiction before the STF. So, it is legally unconventional for the Court to be notified of the alleged commission of a crime by these authorities, as article 230-B of the STF's Internal Rules explains: “The Court will not process a crime report but will refer it to the Attorney General's Office” (BRASIL, 2023c). Thus, it is to the Attorney General's Office, through the NFs, that citizens must submit information regarding the alleged commission of crimes by authorities with prerogative of jurisdiction.

For this reason, in the case of the investigation into the crimes and infractions that are the subject of this article, some PETs filed before the STF were preliminarily rejected. However, we found that, over time, some of the reporting ministers began to judge that, despite the illegitimacy of the petitioners, the Attorney General's Office should comment on the information presented. The practice of directly calling on the STF to report crimes committed by public officials during the Bolsonaro government is harshly criticized by the Attorney General's Office, which alleges the “judicialization of politics” and “the

² When the Public Prosecutor's Office identifies reasonable cause in the facts narrated, that is, minimal probative evidence of irregular or criminal conduct, it then sets up investigative procedures, such as the civil inquiry (CI); the preparatory procedure (PP); the administrative procedure (PA); or the criminal investigative procedure (PIC) (LAURIA; BARROS; QUEIROZ, 2018).



indiscriminate use of this procedure for personal promotion with the press” (BRASIL, 2023a, p.140).

Given the Attorney General's Office's “evident retraction in filing lawsuits against acts of the federal government”, other legitimate actors have taken the lead in trying to control the acts of the Bolsonaro administration through constitutionality control lawsuits (ALMEIDA; FERRARO, 2023, p.6). In this sense, it is likely that the direct appeal to the STF, through PETs, is also an attempt to circumvent the inaction of the Attorney General's Office, which is perceived as a blocked avenue in terms of criminal accountability.

2.1. Research Methodology

The definition of the research sample was based on the data contained in the aforementioned book, in which the Attorney General's Office reports having acted in “around 75 PETs” on the subject. However, the book only lists 58 of them. In order to identify the missing cases, we searched the STF portal, using the names of authorities with prerogative of jurisdiction as descriptors. The inclusion criterion was that the alleged crime or infraction was related to an act carried out by a public official with prerogative of forum before the STF, in the context of the covid-19 pandemic. This search resulted in the identification of another 15 PETs. This brings us to the preliminary number of 73 PETs.

However, it was necessary to exclude from the sample nine PETs and one Writ of Injunction mentioned by the Attorney General's Office which, contrary to what the book suggests, do not correspond to initiatives to hold public officials accountable for irregularities related to the covid-19 pandemic, but in fact concern crimes against honor³, crimes related to the National Security Law and the Defense of the Democratic Rule of Law⁴, and the breach of telephone confidentiality by the Pandemic Investigative Committee⁵. This left 63 PETs.

Furthermore, we studied the four INQs mentioned by the Attorney General's Office in the book; however, one of them corresponds to a PET, which is also under secrecy⁶.

³ PETs 9.238, 9.804, 10.021 and 10.053.

⁴ PETs 8.792, 8.793, 8.795, 8.796, and 8.832.

⁵ Writ of injunction 37.976.

⁶ INQs 4.852, 4.875 and 4.888, and PET 11.511.



Due to these inconsistencies in the information provided by the book, as well as the lack of data on the NFs, a Request for Information was submitted to the Office of the Attorney General's Office, based on the Access to Information Law, requesting access to the content of the NFs submitted to the Attorney General's Office, as well as a list of the PETs and INQs that were processed by the Attorney General's Office. In December 2023, although the Attorney General's Office acknowledged that there was no legal obstacle to complying with the request, it denied the request on the grounds that the information contained in the files could be classified as confidential, which would make it necessary to sort through all the NFs, criminal requests and inquiries mentioned in the publication, requiring extensive additional work. At least with regard to the list of PETs and INQs, considering that access was not requested to the case files, but to public information (class, numbering, applicants, defendants, crimes and procedural progress), the justification of the need for extensive work does not seem pertinent, except in the hypothesis that an official publication presents such relevant data without carrying out a prior and rigorous procedural survey. With regard to secrecy, it would be enough to indicate in the list only the class and numbering of the files that are being processed under secrecy, in line with the STF's practice on its portal.

Yet, our research revealed that only five PETs are covered by secrecy, which is why they were excluded from the sample⁷. **In summary, the sample of this report consists of 58 PETs and three INQs**, about which all the information available on the STF portal was collected and systematized.

2.2 Results

In terms of status, **of the 58 PETs included in the sample, 14 are in progress, 38 have been archived, and six have been attached, rejoined to another case or extinguished** due to the investigation of the same facts in another case.

In terms of where it began, **we found that the only initiatives for criminal accountability coming from the Attorney General's Office included in the research sample were the ten petitions filed because of the final report of the Pandemic Investigative Committee⁸**, whose extensive media coverage is well-known by the Attorney

⁷ PETs 8.742, 9.851, 9.863, 10.056 and 11.511.

⁸ PETs 10.056, 10.057, 10.058, 10.059, 10.060, 10.061, 10.062, 10.063, 10.064 and 10.065.



General's Office itself (BRASIL, 2023a, p.137). As for the authorship of the petitions, almost all of them were presented by parliamentarians, political parties, social organizations, and citizens.

Table 1 shows the main data relating to closed cases, including incomplete data from a case that is not part of the sample because it is being handled confidentially.

Table 1 - Cases closed and reopened (as of December 2023)

Class, number and origin	Rapporteur	Defendant(s)	Applicant(s)	Theme(s)	Alleged crimes or criminal offenses
Pet 8.740 DF	Marco Aurélio	Jair Messias Bolsonaro (JMB)	André Magalhães Barros	Discouragement or non-compliance with preventive measures	Violation of preventive health measure (art. 268, CP); Disobedience (art. 330, CP)
Pet 8.742	Edson Fachin	Legal confidentiality			
Pet 8.746 DF	Marco Aurélio	JMB	Rafael Duarte Moya	Parallel office; Discouragement or non-compliance with preventive measures	Danger of infection and serious illness (art. 131, CP); Danger to the life or health of others (art. 132, CP); Epidemic (art. 267, CP); Infringement of a health measure (art. 268, CP); Failure to notify a disease (art. 269, CP)
Pet 8.749 DF	Marco Aurélio	JMB	André Magalhães Barros	Parallel cabinet; fake news; early treatment and ineffective drugs; irregularities in the purchase of vaccines	Epidemic (art. 267, CP); Apology for a crime or criminal (art. 287, CP)
Pet 8.755 DF	Marco Aurélio	JMB	André Magalhães Barros	Parallel office; Discouragement or non-compliance with preventive measures	Apology for a crime or criminal (art. 287, CP); Epidemic (art. 267, CP)
Pet 8.756 DF	Alexandre de Moraes	Antônio Augusto Brandão Aras	Instituto de promoção, apoio, desenvolvimento e proteção à cidadania, saúde, educação, meio ambiente e projetos sociais (PROMOVERDE)	Discouragement or non-compliance with preventive measures	Prevarication (art. 319, CP)
Pet 8.757 DF	Alexandre de Moraes	Antônio Augusto Brandão Aras	Karina Freitas Costa; Marco Aurélio Fischer Ruela	Discouragement or non-compliance with preventive measures	Prevarication (art. 319, CP)
Pet 8.759 DF	Marco Aurélio	JMB	Partido Democrático Trabalhista (PDT), Partido dos Trabalhadores (PT), Partido Socialismo e Liberdade (PSOL), Partido Comunista do Brasil (PC do B), Partido Socialista Brasileiro (PSB) e Rede	Discouragement or non-compliance with preventive measures	Danger to the life or health of others (art. 132, CP); Infringement of a health measure (art. 268, CP); Incitement to crime (art. 283, CP); Prevarication (art. 319, CP)



			Sustentabilidade (Rede)		
Pet 8.761 DF	Marco Aurélio	JMB	Karleno Barbosa Dias	Discouragement or non-compliance with preventive measures	Prevarication (art. 319, CP); Danger of contagion or serious illness (art. 131, CP); Apology for crime or criminal (art. 287, CP); Incitement to crime (art. 283, CP); Danger to the life or health of others (art. 132, CP)
Pet 8.778 DF	Rosa Weber	JMB	Ricardo Bretanha Schmidt	Discouragement or non-compliance with preventive measures	Violation of a preventive health measure (art. 268, CP)
Pet 8.791 DF	Marco Aurélio	JMB	Kelly Jansen de Amorim	Discouragement or non-compliance with preventive measures	Violation of a preventive health measure (art. 268, CP)
Pet 8.797 DF	Marco Aurélio	JMB	Érica Acosta Plak; Felipe Mendonça	Parallel office; Discouragement or non-compliance with preventive measures	Violation of a preventive health measure (art. 268, CP); Danger to the life or health of others (art. 132, CP); Epidemic (art. 267, CP)
Pet 8.798 DF	Marco Aurélio	JMB	Associação Advogados e Advogadas pela Democracia – ADJC; Associação Brasileira de Juristas pela Democracia; Sindicato dos Advogados de São Paulo	Discouragement or non-compliance with preventive measures	Danger to the life or health of others (art. 123, CP); Epidemic (art. 267, CP); Violation of a preventive health measure (art. 268, CP); Incitement to crime (art. 286, CP)
Pet 8.837 DF	Cármén Lúcia	JMB; Nelson Luiz Teich	Bruno José Silvestre de Barros	Fake news; Discouragement or non-compliance with preventive measures; irregularities in the purchase of vaccines; care for indigenous populations	Epidemic (art. 267, CP); Genocide (Law no. 2.889/56, art. 1, “a” and “c”)
Pet 8.838 DF	Ricardo Lewandowski	JMB	José Gabriel Avila Campello	Discouragement or non-compliance with preventive measures	Infringement of a preventive health measure (art. 268, CP)
Pet 8.923 DF	Luís Roberto Barroso	Eduardo Pazuello	Pedro Paulo Carvalho Teixeira	Discouragement or non-compliance with preventive measures	Prevarication (art. 319, CP); Crimes of responsibility (LC 101/2000); Administrative improbity (Law 8429/92))
Pet 8.937 DF	Rosa Weber	JMB, Lorenzo Pazolini, Vandinho Leite, Torino Marque, Danilo Bahiens, Carlos Von	Felipe Torello Teixeira Nogueira	Discouragement or non-compliance with preventive measures; Incitement to invade hospitals.	Infringement of a preventive health measure (art. 268, CP); Incitement to crime (art. 286, CP); Danger to the life or health of others (art. 132, CP)
Pet 8.938 DF	Rosa Weber	JMB	Carlos Roberto Lupi	Discouragement or non-compliance with preventive measures; Incitement to invade hospitals.	Attack against the safety of a public utility service (art. 265, CP); Infringement of a preventive health measure (art. 268, CP); Incitement to crime (art. 286, CP); Disobedience (art. 330, CP)
Pet 8.942 DF	Rosa Weber	JMB	Partido Comunista do Brasil (PCB)	Discouragement or non-compliance with preventive measures; Incitement to invade hospitals.	Danger to the life or health of others (art. 132, CP); Violation of a preventive health measure (art. 268, CP); Incitement to crime



					(art. 286, CP); Apology for a crime or criminal (art. 287, CP)
Pet 8.948 DF	Marco Aurélio	JMB	Alfredo Marques Sobrinho	Discouragement or non-compliance with preventive measures	Administrative advocacy (art. 321, CP); Violation of a preventive health measure (art. 268, CP); Ideological falsehood (art. 299, CP); Prevarication (art. 319, CP)
Pet 8.990 DF	Dias Toffoli	JMB	Ricardo Bretanha Schmidt	Discouragement or non-compliance with preventive measures	Danger to the life or health of others (art. 132, CP)
Pet 9.002 DF	Marco Aurélio	JMB	Ivan Valente, Luzia Erundina, Guilherme Boulos	Discouragement or non-compliance with preventive measures	Violation of a preventive health measure (art. 268, CP)
Pet 9.029 DF	Celso de Mello	JMB	Ricardo Bretanha Schmidt	Discouragement or non-compliance with preventive measures	Danger to the life or health of others (art. 132, CP)
Pet 9.032 DF	Nunes Marques	JMB	Ricardo Bretanha Schmidt	Distribution of public resources during the pandemic	Unspecific
Pet 9.137 DF	R.Lewandowski	JMB	Carlos Alexandre Klomfahs	Discouragement or non-compliance with preventive measures	Crime of epidemic (art. 267, CP); Violation of preventive health measure (art. 268, CP)
Pet 9.378 DF	Dias Toffoli	JMB	Partido Democrático Trabalhista (PTB)	Irregularities in the purchase of vaccines	Prevarication (art. 319, CP); Infringement of a preventive health measure (art. 268, CP)
Pet 9.387 DF	Marco Aurélio	JMB	Fábio de Oliveira Ribeiro	Fake news; irregularities in the purchase of vaccines; discouragement or non-compliance with preventive measures; early treatment and ineffective drugs; crisis in Manaus	Genocide (Law No. 2.889/56)
Pet 9.394 DF	R.Lewandowski	JMB; Eduardo Pazuello	Jandira Feghali, Márcio Jerry, Marcivania Flexa, Orlando Silva e Renildo Calheiros	Crisis in Manaus	Danger to the life or health of others (art. 132, CP); Prevarication (art. 319, CP)
Pet 9.433 DF	Rosa Weber	JMB	Partido Democrático Trabalhista (PTB)	Early treatment and ineffective medicines	Irregular call for tenders (art. 89 of Law No. 8666/93); Danger to the life or health of others (art. 132, CP); Irregular use of public funds or income (art. 315, CP)
Pet 9.449 DF (reautuada)	R.Lewandowski	JMB	Reginaldo Lázaro de Oliveira Lopes	Crisis in Manaus	Prevarication (art. 319, CP); Danger to the life or health of others (art. 132, CP)
Pet 9.504 DF	André Mendonça	JMB	Jaques Wagner	Fake news; irregularities in the purchase of vaccines; discouragement or non-compliance with preventive measures; early treatment and ineffective medicines; crisis in Manaus	Danger of contagion of a serious disease (art. 131, CP); Danger to the life or health of others (art. 132, CP); Infringement of a preventive health measure (art. 268, CP); Charlatanism (art. 283, CP); Prevarication (art. 319, CP)
Pet 9.549 DF	Luís R. Barroso	JMB	Elias Vaz, Alessandro Molon, Denis Bezerra, Lindice da Mata, Vilson Luiz da Silva, Aliel Machado, Marcelo Nilo, Gervásio Maia, Rogério Paz Lima	Irregularities in the purchase of vaccines	Homicide by improper omission (art. 121 c/c art. 113, § 2, CP); Prevarication (art. 319, CP)
Pet 9.564 DF (reautuada)	André Mendonça	JMB	Reginaldo Lázaro de Oliveira Lopes	Fake news; irregularities in the purchase of vaccines; discouragement or non-	Charlatanism (art. 283, CP); Prevarication (art. 319, CP);



				compliance with preventive measures; early treatment and ineffective medicines.	Irregular use of public funds or income (art. 315, CP)
Pet 9.642 DF	Rosa Weber	JMB	Partido Democrático Trabalhista (PTB)	Early treatment and ineffective medicines	Charlatanism (art. 283, CP); Prevarication (art. 319, CP)
Pet 9.701 DF	Rosa Weber	JMB	Jefferson de Jesus Rocha	Discouragement or non-compliance with preventive measures	Danger to the life or health of others (art. 132, CP); Charlatanism (art. 283, CP); Genocide (Law no. 2.889/56); Procedural fraud (art. 347, CP)
Pet 9.759 DF	Ricardo Lewandowski	JMB	Talíria Petrone, Áurea Carolina, Ivan Valente, Viviane da Costa Reis, David Miranda, Fernanda Melchionna, Luiza Erundina, Glauber Braga, Sâmia Bomfim, André Maimoni	Discouragement or non-compliance with preventive measures	Danger to the life or health of others (art. 132, CP); Infringement of a preventive health measure (art. 268, CP); Subjection of a minor to vexation or embarrassment (art. 232, Statute of the Child and Adolescent)
Pet 9.760 DF (reatuada)	Rosa Weber	JMB	Randolph Friedrich Rodrigues Alves, Fabiano Contarato, Jorge Kajuru	Irregularities in the purchase of vaccines	Prevarication (art. 319, CP)
Pet 9.765 DF (reatuada)	Rosa Weber	JMB e Roberto Ferreira Dias	Natália Bonavides, Magnus Marques	Irregularities in the purchase of vaccines	Prevarication (art. 319, CP); Administrative advocacy (art. 321, CP); Passive corruption (art. 317, CP); Criminal association (art. 288, CP)
Pet 10.004 DF (reatuada)	Alexandre de Moraes	JMB	Talíria Petrone; Fernanda Melchionna; Ivan Valente; Viviane Reis; Áurea Carolina; David Miranda; Luiza Erundina; Glauber Braga; Sâmia Bomfim; Túlio Gadêlha	Fake news; Discouraging vaccination; Irregularities in the purchase of vaccines	Violation of a preventive health measure (art. 268 caput and sole paragraph CP); Danger to the life or health of others (art. 132 caput and sole paragraph, CP)
Pet 10.007 DF (reatuada)	Alexandre de Moraes	JMB	ATTORNEY GENERAL'S OFFICE/ PANDEMIC INVESTIGATIVE COMMITTEE	Fake news; parallel cabinet; irregularities in the purchase of vaccines; early treatment and ineffective drugs	Epidemic (art. 267, CP); Violation of a preventive health measure (art. 268 caput and sole paragraph CP); Prevarication (art. 319, CP)
Pet 10.058 DF	Rosa Weber	Ricardo José Magalhães Barros	ATTORNEY GENERAL'S OFFICE / PANDEMIC INVESTIGATIVE COMMITTEE	Irregularities in the purchase of vaccines	Administrative advocacy (art. 321, CP)
Pet 10.062 DF	R. Lewandowski	Wagner de Campos Rosário	ATTORNEY GENERAL'S OFFICE/ PANDEMIC INVESTIGATIVE COMMITTEE	Irregularities in the purchase of vaccines	Prevarication (art. 319, CP)
Pet 10.124 DF	Rosa Weber	JMB; Marcelo Queiroga	Alessandro Vieira; Tabata Amaral	Irregularities in the purchase of vaccines	Prevarication (art. 319, CP)
Pet 10.125 DF	R. Lewandowski	JMB	Reginaldo Lázaro de Oliveira Lopes	Discouraging vaccination, persecution of technicians from the National Health Surveillance Agency	Incitement to crime (art. 286, CP)



Pet 10.294 DF	Luís R. Barroso	JMB	Associação de Vítimas e Familiares da covid-19 (AVICO)	Fake news; irregularities in the purchase of vaccines; discouragement or non-compliance with preventive measures; early treatment and ineffective drugs	Incitement to crime (art. 286, CP); Danger to the life or health of others (art. 132 caput and sole paragraph, CP); Subtraction, concealment or rendering useless of salvage material (art. 257, CP); Epidemic resulting in death” (art. 267, § 1, CP); Violation of a preventive health measure (art. 268, CP); Charlatanism (art. 283, CP); Falsification of a private document (art. 298, CP); Irregular use of public funds or income (art. 315, CP); Prevarication (art. 319, CP)
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Of the PETs filed, five were filed by the rapporteur minister⁹, and 33 were filed at the request of the Attorney General's Office. It should be noted that the Attorney General's Office requested the filing of the nine PETs originating from the Committee of Investigation that are part of the sample. Table 2 shows the data relating to ongoing proceedings, including incomplete data for four cases which are not part of the sample because they are being dealt with in secret.

Table 2 - Ongoing proceedings (in December 2023)

Class, number and origin	Rapporteur	Defendant(s)	Applicant(s)	Theme(s)	Alleged crimes or criminal offenses
Pet 8.744 DF	André Mendonça	Jair Messias Bolsonaro (JMB)	Reginaldo Lázaro de Oliveira Lopes	Early treatment and ineffective drugs; Crisis in Manaus; Vaccination discouraged	Violation of a preventive health measure (art. 268, CP); Danger to the life or health of others (art. 132, CP); Incitement to crime (art. 283, CP); Prevarication (art. 319, CP)
Pet 8.992 DF	Luiz Fux	JMB	Associação Brasileira de Imprensa (ABI)	Discouragement or non-compliance with preventive measures	Violation of a preventive health measure (art. 268, CP); Danger to the life or health of others (art. 132, CP)
Pet 8.994 DF	Dias Toffoli	JMB	Paulo Fernando dos Santos, Enio José Verri, Gleisi Helena Hoffmann, e outros.	Discouragement or non-compliance with preventive measures	Violation of a preventive health measure (art. 268, CP); Disobedience (art. 330, CP); Danger of contagion of a serious disease (art. 131, CP); Danger to the life or health of others (art. 132, CP)
Pet 9.020 DF	Cármén Lúcia	JMB	André Magalhães Barros	Care for indigenous populations	Genocide (Law No. 2.889/56, art. 1, “a, ‘b’ and ‘c’)
Pet 9.218 DF	Luís R. Barroso	Francisco de Assis Rodrigues	Federal Police	Distribution of public resources during the pandemic	Money laundering (Law No. 9.613/1998, art. 1, caput); hindering the investigation of a criminal offense involving a criminal

⁹ PETs 8.757, 8.838, 9.378, 9.549 and 10.125.



					organization (Law No. 12.850/2013, art. 2, §1)
Pet 9.588 DF	Nunes Marques	JMB	David Miranda, Fernanda Mlechionna, Sâmia Bomfim, Viviane da Costa Reis	Attempt to obstruct the work of the PANDEMIC INVESTIGATIVE COMMITTEE	Administrative advocacy (art. 321, CP); Active corruption (art. 333, CP)
Pet 9.695 DF	Rosa Weber	JMB	Partido dos Trabalhadores (PT)	Discouragement or non-compliance with preventive measures	Irregular use of public funds or income (art. 315, CP); Infringement of a preventive health measure (art. 268, CP)
Pet 9.851	Dias Toffoli	Legal confidentiality			
Pet 9.863	R. Lewandowski	Legal confidentiality			
Pet 10.056	Cármén Lúcia	Legal confidentiality			
Pet 10.057 DF	Dias Toffoli	JMB	ATTORNEY GENERAL'S OFFICE/ PANDEMIC INVESTIGATIVE COMMITTEE	Discouragement or non-compliance with preventive measures	Violation of a preventive health measure (art. 268 caput and sole paragraph CP)
Pet 10.059 DF	Dias Toffoli	JMB; Osmar Terra; Eduardo Pazuello; Élcio Franco Filho; Braga Netto; Heitor Freire de Abreu; Hélio Angotti Neto; Marcelo Queiroga	ATTORNEY GENERAL'S OFFICE/ PANDEMIC INVESTIGATIVE COMMITTEE	Fake news; irregularities in the purchase of vaccines; discouragement or non-compliance with preventive measures; early treatment and ineffective drugs	Epidemic, qualified by the result of death (art. 267, §1, CP)
Pet 10.060 DF	Luiz Fux	JMB; Eduardo Pazuello	ATTORNEY GENERAL'S OFFICE/ PANDEMIC INVESTIGATIVE COMMITTEE	Early treatment and ineffective medicines	Irregular use of public funds (art. 315 CP)
Pet 10.061 DF	Luiz Fux	JMB	ATTORNEY GENERAL'S OFFICE/ PANDEMIC INVESTIGATIVE COMMITTEE	Early treatment and ineffective medicines	Charlatanism (art. 283, CP)
Pet 10.063 DF	Nunes Marques	Ricardo Barros; Francisco Emerson Maximiano; Danilo Berndt Trento; José Ricardo Santana; Roberto Ferreira Dias	ATTORNEY GENERAL'S OFFICE/ PANDEMIC INVESTIGATIVE COMMITTEE	Irregularities in the purchase of vaccines	Criminal Organization (art. 2, caput, of Law 12.850/2013)
Pet 10.064 DF	Luís R. Barroso	JMB; Onyx Lorenzoni; Hélio Angotti Neto; Flávio Bolsonaro; Ricardo Barros; Eduardo Bolsonaro; Osmar Terra; Bia Kicis; Carla Zambelli; Carlos	ATTORNEY GENERAL'S OFFICE/ PANDEMIC INVESTIGATIVE COMMITTEE	Fake news; Desincentivo ou descumprimento de medidas preventivas	Incitement to crime (art. 286, CP)



		Jordy; Carlos Bolsonaro; Allan Lopes dos Santos; Hécio Bruno de Almeida; Oswaldo Eustáquio; Bernardo Kuster; Paulo de Oliveira Eneas; Richards Pozzer; Leandro Ruschel; Carlos Wizard; Luciano Hang; Otávio Oscar Fakhoury; Filipe G. Martins; Tércio Arnaud Tomaz; Ernesto Araújo; Roberto Goidanich			
Pet 10.065 DF	Luiz Fux	JMB; Eduardo Pazuello; Elcio Franco Filho; Marcelo Queiroga	ATTORNEY GENERAL'S OFFICE/ PANDEMIC INVESTIGATIVE COMMITTEE	Irregularities in the purchase of vaccines	Prevarication (art. 319, CP)
Pet 11.511	Gilmar Mendes	Legal confidentiality			

Among the 58 PETs analyzed, the Attorney General's Office requested that 46 be archived, which represents around 79% of the cases¹⁰. As for the reasons behind the requests to close the case, in nine of them the Attorney General's Office claimed that it would file or had already filed a NF to investigate the facts narrated by the Petitioners¹¹. In 24 cases, the agency requested that the case be closed based on arguments of fact and law, arguing, in most cases, that there was no evidence to justify further investigative measures or that the conduct in question was atypical¹². In the other 13 requests for closure, the Attorney General's Office claimed to have already opened and closed a NF related to the facts narrated by the Petitioners¹³. In these cases, the Attorney General's Office also manifested itself materially contrary to the possibility of criminal liability, but limited itself to reproducing excerpts and arguments that were already included in the internal filing of the NFs.

Thus, in 80% of the filing requests, the Attorney General's Office presented material arguments against investigating authorities who may have committed crimes against public health during the health emergency in Brazil, while in 20% it claimed that it would investigate, or that it was still investigating, the facts pointed out by the Petitioners.

¹⁰ PETs 8.740, 8.744, 8.746, 8.749, 8.755, 8.756, 8.759, 8.761, 8.778, 8.791, 8.797, 8.798, 8.837, 8.923, 8.937, 8.938, 8.942, 8.948, 8.990, 8.992, 8.994, 9.002, 9.020, 9.029, 9.032, 9.137, 9.387, 9.394, 9.433, 9.504, 9.588, 9.642, 9.695, 9.701, 9.759, 10.057, 10.058, 10.059, 10.060, 10.061, 10.062, 10.063, 10.064, 10.065, 10.124 and 10.294.

¹¹ PETs 8.923, 8.937, 8.938, 8.942, 9.387, 9.029, 9.394, 9.433 and 9.642.

¹² PETs 8.744, 8.761, 8.797, 8.837, 8.990, 8.992, 8.994, 9.020, 9.032, 9.137, 9.588, 9.695, 9.701, 9.759, 10.057, 10.058, 10.059, 10.060, 10.061, 10.062, 10.063, 10.064, 10.065 and 10.294.

¹³ PETs 8.740, 8.746, 8.749, 8.755, 8.756, 8.759, 8.778, 8.791, 8.798, 8.948, 9.002, 9.504 e 10.124.



Finally, with regard to the procedural status of the INQs included in the sample, two are in progress and one has been closed. Table 3 shows the data on the INQs.

Table 3 - Progress of inquiries (in December 2023)

Class and number	Inq 4.852 DF	Inq 4.875 DF	Inq 4.888 DF
Rapporteur	Luís Roberto Barroso	Rosa Weber	Alexandre de Moraes
Secrecy	No	No	No
Defendant(s)	Senators Francisco de Assis Rodrigues and Telmário Mota	Jair Messias Bolsonaro	Jair Messias Bolsonaro
Requerente(s)	Federal Police	Attorney General's Office	Attorney General's Office
Theme(s)	Misuse of public resources during the pandemic	Inaction in the face of irregularities in the purchase of vaccines	Fake news; Discouraging vaccination
Crime/criminal offense	Embezzlement (art. 312, CP), fraudulent bidding and overbilling (art. 90 and 96, Law no. 8.666/93; art. 337-F and 337-L, V, CP) and criminal organization (art. 2, Law no. 12.850/13)	Prevarication (art. 319, CP)	Causing alarm, announcing disaster or non-existent danger, or practicing any act capable of producing panic or turmoil (art. 41, Law of Criminal Contraventions) and incitement to crime (art. 286, CP)
Situation	Ongoing	Archived	Ongoing
Comments	On October 24, 2023, the Attorney General's Office expressed its support for the continuation of the action, and was in favor of extending the deadline for the implementation of the remaining investigative measures, as requested by the Federal Police	On February 18, 2022, Attorney General's Office requested that the case be archived due to the atypical nature of the conduct, which enabled the Judge to reject the request for archiving. Attorney General's Office appealed the decision, this time alleging a lack of just cause, a hypothesis exempt from the magistrate's judgment. On April 24, 2022, the Reporting Justice ordered that the case be archived	On February 16, 2023, the Attorney General's Office filed a motion to close the case, claiming that Bolsonaro's false statements about vaccination were "consistent with his political actions" since the beginning of the pandemic, with no intention of "generating panic in the population"; and that there was no evidence that the former president's statements caused turmoil or alarm in the population.

It is highlighted that in two of the three INQs, the defendant is former President Jair Messias Bolsonaro; in the third one, the defendants are the Senators Francisco de Assis Rodrigues and Telmário Mota. The Attorney General's Office has requested that the two INQs investigating Jair Bolsonaro should be closed and it is *pro* continuing the investigations against the senators.

3. The requests to close criminal petitions filed because of the COVID-19 Commission's investigation: a qualitative analysis

Among the attempts to hold the Attorney General's Office accountable for crimes related to COVID-19, we highlight the 10 PETs filed by the Attorney General's Office because of the Final Report of the Federal Senate's Pandemic Investigative Committee, in the wake of the wide



repercussion of the Commission's work on public opinion. As a sample, we had access to the filing requests made by the Attorney General's Office in nine cases, one of which is under legal confidentiality (PET 10.056). In all of them, the Attorney General's Office requested that the case file be archived, and the statements were signed by Lindôra Maria Araújo, the Vice-Prosecutor General at the time.

After reading completely the Attorney General's Office's statements that are part of the sample, we identified the arguments presented *pro* filings. First, we describe elements that may indicate a non-individualized treatment of the PETs under analyze (3.1). Next, we present the results of the discussion of the Attorney General's Office main arguments in view of basic technical and legal knowledge in the field of public health, occasionally comparing these arguments with other Attorney General's Office statements (3.2.).

3.1 The signs of block treatment on PETs resulting from the covid-19 IPC

The analysis of the sample pointed to indications that the Attorney General's Office may have dealt with the PETs filed by the Attorney General's Office as a result of the Pandemic Investigative Committee *en bloc*, at the expense of a proper in-depth individual assessment of each crime report.

First of all, seven of the nine requests for closure under analysis were filed on July 25, 2022. It should be remembered that several of the potential candidates under investigation were running for elected positions that year. For example, on July 24, 2022, the day before the Attorney General's Office 's demonstrations, Jair Messias Bolsonaro was officially presented as a candidate for President of the Republic, and General Walter Braga Netto as a candidate for Vice-President, at a party convention held in Rio de Janeiro (PLATONOW, 2022).

Beyond the time factor, another indication of block treatment is the content of the requests to file, where there is constant repetition of literal passages. For example, the topic "Introduction", which lists doctrine on topics of criminal law, is identical in PETs 10.057, 10.059, 10.060, 10.061, 10.062, 10.064, in other words, in six of the nine filing requests analyzed. Taking up around 45 pages, they do not contain any specific comments on the supposed applicability of this general knowledge to specific cases. The arguments that actually concern the facts and the possible classification of the crimes or infractions in question only take up around 15 to 20 pages of each manifestation, without any kind of subdivision or thematic organization. Thus, despite the factual and legal complexity of the situations in question, a generic compilation covers around two thirds of each request analyzed.



It is worth remembering that the PETs in question were elaborated by the Attorney General's Office itself, when it processed the information from the final report of the Pandemic Investigative Committee.

Faced with the requests to close the case *en bloc*, members of the Federal Senate's Pandemic Investigative Committee¹⁴ asked the Supreme Court to investigate **the crime of prevarication (art. 319 of the Criminal Code), which was allegedly committed by the then Attorney General and Deputy Attorney General**, the aforementioned Augusto Aras and Lindôra Araújo, respectively, as well as the initiation of administrative proceedings to investigate functional and administrative conduct, which would constitute non-compliance with the duty to proceed with the criminal investigation. According to the Senators, the “modus operandi of the shielding” of members of the federal government by the Attorney General's Office consisted of “opening preliminary procedures so as not to involve the Federal Police”, and “after the case has cooled down, ask for it to be shelved” (BRASIL, 2022k, p.2). The case was quickly dismissed by the Rapporteur, Judge Dias Toffoli, who considered that the STF did not have the power to open criminal investigations or administrative proceedings into common crimes allegedly committed by the Attorney General and his Deputy, which would fall exclusively to the Superior Council of the Public Prosecutor's Office.

In a statement, the Attorney General's Office said that “all the manifestations sent to the Supreme Court are duly motivated, comply with technical criteria and the specific rules that regulate criminal law,” and that “in almost nine months of work, the entity requested and conducted diligence, heard witnesses and analyzed the defense manifestations of the respective indictees, among other typical investigative measures” (BRASIL, 2022j, s/p). However, these statements do not seem to find support in the qualitative analysis of the Attorney General's Office's requests, discussed below.

3.2 The public health's protection perspective

In this section, we will present the results of the qualitative analysis of the content of the requests for dismissal from the point of view of public health protection, mobilizing basic technical and legal knowledge in this field. In an effort to systematize, the Attorney General's Office's arguments were classified into three categories: presentation of the *contra legem* conduct of members of the federal government as an alleged exercise of discretion in the public policy of responding to health emergencies; disfigurement of the criminal types relating to public health,

¹⁴ Senators Omar Aziz (President), Randolfe Rodrigues (Vice-President), Renan Calheiros (Rapporteur), Humberto Costa, Otto Alencar and Tasso Jereissati (full members). Senator Fabiano Contarato was also a plaintiff in this action.



making it impossible to typify, process and punish them, especially in an emergency context; and possible political-ideological alignment with the federal government.

Table 4 summarizes the Attorney General's Office's main arguments and the conclusions resulting from its study from the point of view of protecting public health.

Category	ATTORNEY GENERAL'S OFFICE's main arguments	Conclusions from a public health perspective
Presentation of the conduct of members of the government as a legitimate exercise of discretion within the framework of public policy in response to the covid-19 emergency	<ul style="list-style-type: none"> - The federal government's perspective and logic for dealing with the pandemic scenario, different from that defended by the conductors of the work of the Investigative committee and by some representatives of the medical community, cannot in itself be a reason to attract the incidence of Criminal Law - The Chief Executive did so not because he disregarded the seriousness of the disease or the health crisis, but because, in his understanding, several other factors were at play in a macro scenario, such as the country's economy - Disagreement with the government's position should be settled in the political arena - Criminalizing acts of management would encourage managerial absenteeism and constrain managers in their duty to decide well 	<ul style="list-style-type: none"> - Omission in the face of the contra legem actions of members of the federal government, in particular the systematic violation of health legislation, in which we highlight the failure to comply with the duties to act to prevent and contain the spread of diseases; the duty of the Ministry of Health to plan and coordinate the national response to covid-19; and the duty of public agents to base their actions on scientific evidence and reliable health data. - Omission in the face of the arbitrary character of the conduct of members of the federal government (exceeding the reasonable limits of discretion), resulting from an affront to the institutionality in charge of emergency response and its specific regulation (see table n.5), as well as the systematic affront to scientific evidence and WHO recommendations.
The disfigurement of criminal types relating to public health, making it impossible to typify, prosecute and punish them, especially in an emergency context	<ul style="list-style-type: none"> - The behavior of those who may have been investigated did not pose a risk to public health; their publications did not go beyond the limits established for the exercise of freedom of opinion and politics inherent to elected officials. - There was no incitement to commit specific crimes; there was encouragement for a public inspection of resources - In order to classify the crime of epidemics, it is necessary to identify the generator of the chain of infection; there must also be proof that the alleged perpetrator was contaminated and contaminated a third party - Anyone who spontaneously attends a crowd is responsible for the possible consequences of their decision 	<ul style="list-style-type: none"> - Lack of basic technical knowledge about public health communication during emergencies, including the legal and ethical obligations of health authorities - Lack of basic technical knowledge of the field of public health in the debate on the definition of the crime of epidemics, especially the difference between disease (infection by a pathogen), outbreak (localized increase in the number of cases of a disease) and epidemic (increase in the number of cases of a disease in several regions, states or cities) - therefore, what "causes an epidemic" (art.267 CP) is not the introduction of a pathogen into the territory, but the spread of a disease. - Contradiction between denying and recognizing the risks of people gathering together during a pandemic of a contagious respiratory disease
Possible political-ideological alignment with the federal government regarding the response strategy to covid-19	<ul style="list-style-type: none"> - Jair Bolsonaro had a legitimate belief in chloroquine and ivermectin as effective treatments for covid-19 - The federal government adopted several other measures in response to the disease - There was no delay by public managers in acquiring immunizers to combat covid-19 in Brazil - Comments that sound contrary to the measures to contain the disease, including describing them as unsustainable; in relation to the use of masks, questioning their effectiveness, defending the sufficiency of the administrative penalty and the low harmfulness of the conduct in cases of flagrant infraction, and referring to the relaxed behavior of the President of the Republic when interacting with children 	<ul style="list-style-type: none"> - Absence of a timeline of the facts in question in the discussion of the classification of crimes, which is essential especially with regard to acts involving so-called early treatment (analysis of acts after the ineffectiveness of these treatments for covid-19 has been proven) and the purchase of immunizers. - Refusal to deepen the investigations initiated by the Pandemic Investigative Committee, and systematic devaluation of the committee's control functions and investigative powers, seeking to reduce it to its political role. - Similarity with the actions of the Attorney General's Office in the concentrated constitutionality control actions related to the Bolsonaro government's acts between 2019 and 2021, in the sense that they mobilize legal arguments favorable to the government's acts, contributing to the apparent legality of such acts (ALMEIDA; FERRARO 2022).



However, it is important to note that these manifestations also deserve to be analyzed from other angles, including dogmatic and procedural ones, in which they present various inconsistencies. The choice that was made in this section is justified both by the limited space available for this article and by the need to highlight the field of public health, which was surprisingly ignored or affronted by the Attorney General's Office in its treatment of the petitions in question.

The presentation of the results follows the classification of the arguments. Data on applicants, defendants, the crimes and/or offenses in question and the procedural progress of the PETs cited throughout the text can be found in tables 1 and 2 above.

3.2.1 The alleged use of discretionary power

In political, electoral and judicial fierce scenario there were clashes between, on the one hand, the federal government and, on the other, a large part of the state and municipal governments, the debate on the competence of the federal entities in the response to covid-19 has become one of the most important legal issues of the pandemic. It was also an opportunity for the Supreme Court to express its understanding in the scope of discretionary power in the context of the health crisis. Roughly speaking, it is possible to say that the Supreme Court's jurisprudence ensured that state, district and municipal governments exercised their powers to adopt measures to contain the disease, but refrained from determining which measures the Federal Government should adopt - with possible exceptions, such as the protection of indigenous communities. The Supreme Court's understanding is based on the principle of discretion. For example, in a decision handed down in the context of the Claim for Failure to Comply with a Fundamental Precept (ADPF) No. 672, Justice Alexandre de Moraes takes the view that,

No exercício de suas atribuições, ao Presidente da República está assegurado o juízo de conveniência e oportunidade, podendo, **dentre as hipóteses legais e moralmente admissíveis**, escolher aquelas que entender como **as melhores para o interesse público no âmbito da saúde, da assistência e da economia** (BRASIL, 2020e, p.7, grifo nosso).

In the exercise of his powers, the President of the Republic is guaranteed the judgment of convenience and opportunity, and may, **among the legal and morally admissible hypotheses**, choose those that he deems **to be in the best public interest in the field of health, assistance and the economy** (BRASIL, 2020e, p.7, emphasis added).

Therefore, the Justice continues, it is unacceptable for the Judiciary to replace the discretionary judgment of the Executive and order the President of the Republic to implement specific administrative measures. However, the discretionary nature of the measures adopted, as well as



any omissions, is subject to judicial control and requires the authorities to obey the law. It is therefore the constitutional duty of the judiciary:

... exercise judgment to verify the correctness of the exercise of this executive discretion in relation to the constitutionality of the measures taken, checking the reality of the facts and also the logical coherence of the decision with the concrete situations. If coherence is absent, the measures will be vitiated by an infringement of the constitutional legal order and, more specifically, of the principle **prohibiting the arbitrariness of public powers, which prevents the reasonable limits of discretion from being exceeded**, preventing it from becoming the cause of **decisions that lack factual justification and, consequently, are arbitrary** (Ibid., p. 7-8, emphasis added).

In fact, an essential part of the defense of the then President of the Republic, Jair Bolsonaro, consists of presenting his actions as a legitimate exercise of discretionary power, sustaining the legality of the response to covid-19 that he led. In the manifestations for the filing of PETs 10.057 and 10.064, for example, the Attorney General's Office states:

His **perspective and rationale** for dealing with the pandemic scenario, different from that defended by the leaders of the aforementioned investigative committee and by **some representatives of the medical community**, cannot in itself be a reason for attracting the incidence of criminal law. As far as we can tell, the Chief Executive did so not because he disregarded the seriousness of the disease or the health crisis, but because, in his understanding, **several other factors were at play in a macro scenario, such as the country's economy**. Disagreement with this position, if it deserves any reproach, should be settled in the political field, not in criminal proceedings (BRASIL, 2022a, p. 71; BRASIL, 2022h, p. 76, emphasis added).

The Attorney General's Office then seeks to reduce Bolsonaro's "perspective and logic", which is manifestly opposed to the world and Brazilian scientific community, to a "distinct" position of "some representatives of the medical community", referred to as if they formed the same bloc with parliamentarians opposed to the federal government. The Attorney General's Office then places the position of the then President of the Republic in the "political field" in the face of the health crisis, bringing **the false opposition between protecting health and protecting the economy** into the debate on criminal liability, which was one of the main elements of Bolsonaro's propaganda in the face of COVID-19. A lot of respectable international studies evidence the opposite, since countries that implemented a strict containment plan not only had a more effective response to the disease, but also a faster economic recovery (INDEPENDENT PANEL FOR PANDEMIC PREPAREDNESS AND RESPONSE, 2021).

However, for the purposes of the debate on accountability, prior to assessing the effectiveness of the measures adopted, it is important to identify the nature of the acts undertaken, which is decisive for assessing the intentionality of their practice. Thus, the proper conduct of Brazilian public agents in the face of a health emergency does not correspond to a "position to be settled in the political field", but rather to a set of clearly established legal duties,



associated with the need to adopt appropriate and technically based actions to deal with the health risks that exist in a health emergency.

3.2.1.1 Acting contra legem

It is worth noting that, in the entire Brazilian regulatory framework in force at the time of the events, be it general on health emergencies, or the specific one elaborated on covid-19, there is no doubt about the presence of three elements: **the duty of the Union to act in favor of the prevention and containment of diseases in general, and covid-19 in particular; the duty of the Ministry of Health to plan and coordinate the national response to covid-19; and the need to base state action on scientific evidence and reliable health data.**

In fact, Brazilian public health is a densely regulated field. From the constitutional law on the subject comes a complex and fragmented set of rules, ranging from the legal framework that establishes and regulates the Brazilian Unified Health System (SUS), to the infra-legal norms of huge volume and significant detail. These rules consolidate the sanitary, technical and administrative standards that **must** be followed by public authorities in order to guarantee the protection of the population's health.

Article 196 of the Federal Constitution stipulates that “health is everyone's right and the duty of the state, guaranteed through social and economic policies aimed at reducing the risk of disease and other illnesses and universal and equal access to actions and services for its promotion, protection and recovery”. According to the Supreme Court's repeated understanding, the right to health is an unavailable constitutional prerogative, to be guaranteed through the application of public policies, imposing on the state the obligation to create objective conditions that enable effective access to this service (Supreme Court, 2010). This obligation is reflected in the infra-constitutional order, particularly with regard to health surveillance and the regulatory framework for national health emergencies.

Brazilian epidemiological legislation is extensive and fragmented, having evolved as a result of previous emergencies (VENTURA; AITH; RACHED, 2021). The table 5 (below) summarizes the main elements of the regulation of the response to health emergencies in Brazil.

Table 5 - Legal duty to contain the disease: main relevant rules

Norma	Legal duties and obligations
Law n. 8.080/1990, establishing the SUS (BRASIL, 1990)	<ul style="list-style-type: none"> - The State's duty to guarantee health consists of formulating and implementing economic and social policies aimed at reducing the risk of disease and other illnesses and establishing conditions that ensure universal and equal access to actions and services for their promotion, protection and recovery (emphasis added), art. 2 § 1 - the national management of the system, exercised within the Union by the Ministry of Health (MS) (Art. 9 I), must define and coordinate the epidemiological surveillance system



	<p>(Art. 16, III, c), in addition to coordinating and participating in the execution of epidemiological surveillance actions (VI, emphasis added); the Union can directly execute epidemiological and sanitary surveillance actions “in special circumstances, such as the occurrence of unusual health problems that represent a risk of national dissemination” (Art. 16 § 1, emphasis added)</p> <p>- included in the scope of action of the SUS, execution of epidemiological surveillance actions (art. 6, b), public health actions and services and private contracted or agreed services that are part of the SUS must obey, among others, the principle of “using epidemiology to establish priorities, allocate resources and program guidance” (art. 7 VII, emphasis added).</p>
<p>National Health Surveillance Policy (PNVS) - Resolution no. 588/2018 (AITH, 2019)</p>	<p>- Through the SVS/MS and ANVISA, the Ministry of Health is responsible for coordinating the PNVS, including health surveillance actions in public health emergencies of national and international importance, in line with the International Health Regulations (art. 11, h).</p> <p>- Endowed with normative force and binding on the entire SUS, the PNVS has as its first guiding principle “Knowledge of the territory: use of epidemiology and risk assessment to define priorities in planning processes, resource allocation and programmatic orientation” (Art. 7, I, emphasis added).</p> <p>- Its guidelines include detecting, monitoring and responding to public health emergencies, in compliance with the International Health Regulations, and producing evidence based on an analysis of the population's health situation, in order to strengthen management and collective health practices (emphasis added) (Art. 8, VII and VIII).</p> <p>- The strategies for organizing Health Surveillance must include: (...) Timely and proportional responses to public health emergencies, with the establishment of a response plan, to be drawn up by each sphere of management, taking into account the vulnerabilities of its territory and risk scenarios. When responding to a public health emergency, coordinated action is required between the various governmental and non-governmental organizations involved, coordinating and organizing efforts to minimize its effects (art. 9, X, emphasis added).</p>
<p>International Health Regulations (ANVISA, 2009)</p>	<p>- The purpose of the IHR is to contain the international spread of disease (art. 2), which it does through the legal category called a Public Health Emergency of International Concern (ESPII), defined as an “extraordinary event which, under the terms of these Regulations, is determined to: (i) constitute a public health risk to other States due to the international spread of disease and (ii) potentially require a coordinated international response” (art. 1).</p> <p>- The RSI and the WHO guidelines are mandatory in Brazil as a way of realizing the constitutionally enshrined right to health, according to STF case law (see item 3.2.1.2 below).</p>
<p>Specific rules on health emergencies</p>	<p>- The legal category of Public Health Emergency of National Concern (ESPIN) was established in Brazil by Presidential Decree 7.616/2011, regulated by MS Directive 2.952/2011. The ESPIN legal category is defined as “an event that presents a risk of spreading or disseminating diseases to more than one Federated Unit - States and the Federal District” (Ordinance MS n. 104/2011, art. 1, IV, emphasis added).</p> <p>- The ESPIN will be declared by act of the Minister of State for Health “in the event of an epidemiological situation that requires the adoption of measures to, among other things, stop the spread or dissemination of diseases or illnesses” (Directive MS 2.952/2011, art. 3 I, emphasis added).</p>
<p>Public Health Emergency Response Plan (BRASIL, 2014b)</p>	<p>Based on Ordinance MS/GM No. 1378 of July 9, 2013, the Health Surveillance Secretariat (SVS-MS) established the Public Health Emergency Response Plan, regulating the actions of the federal sphere of the SUS in responding to public health emergencies, and adopting a coordination and control system for a timely, efficient and effective response. As well as defining guidelines, this management model details the command, control and coordination structure for response operations in critical situations. It also recommends drawing up specific Contingency Plans for the different health threats.</p>
<p>National Immunization Program (PNI) - Law n. 6.259/1975, Decree n. 78.321/1976 and other infralegal norms (BRASIL, 2014a)</p>	<p>Coordination of the PNI falls to the SVS-MS, including the definition of vaccines in the national vaccination calendars and campaigns, strategies and technical regulations on their use; the provision of immunobiologicals defined by the PNI, considered strategic inputs; and the management of the PNI information system, including the consolidation and analysis of national data and the feedback of information to the state level.</p>
<p>Law No. 13,979/2020, which provides for measures to deal with the public health emergency of international importance</p>	<p>It provides for measures to contain the spread of the disease, including isolation; quarantine; compulsory medical examinations, laboratory tests, collection of clinical samples, vaccination and other prophylactic measures; compulsory use of personal protective masks; exhumation, necropsy, cremation and handling of corpses; exceptional and temporary restrictions on entering and leaving the country, and on interstate and intercity travel. The definitions of quarantine and isolation, provided for in art. 2, both</p>



resulting from the coronavirus responsible for the 2019 outbreak (BRASIL, 2020)	end with the affirmation of their purpose, which is to prevent the possible contamination or spread of the coronavirus . According to art. 3 § 1, such measures could only be determined “ on the basis of scientific evidence and analysis of strategic health information ” (emphasis added).
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The recognition of the public duty emanating from the Brazilian health system is relevant, among other things, to the debate on the classification of the crime of malfeasance. With the support of doctrine, the Attorney General's Office argues: “there is no need to speak of prevarication when the official has discretion in the choice to be made in the exercise of his functions”, nor “within the scope of the political and institutional autonomies of the heads and members of the constituted powers” (BRASIL, 2022f, p. 66); thus, the “crime is characterized by infidelity to the functional duty and partiality in its performance” (Ibid.; BRASIL, 2022i, p.26).

Since it is impossible to go into the legal framework of public health in this article, we are content to highlight the difference between the public policy for responding to covid-19 adopted by Luiz Henrique Mandetta, when he was in charge of the Ministry of Health (MoH), and the policy adopted by successive administrations, especially with regard to the principle of legality. Mandetta's administration, among other measures, declared a Public Health Emergency of National Importance (ESPIN) (BRASIL, 2020c), giving rise to the enforceability of the duties listed in Table 5 above. However, from March 2020 onwards, as can be deduced from the research carried out, federal management of the crisis has been characterized by arbitrariness.

3.2.1.2 The conformation of arbitrariness

Considering the good management practices of federal agencies with extensive experience in responding to epidemics, it is clear that the actions taken by members of the federal government in the context of the response to COVID-19 did not correspond to what was technically expected of the executive branch. Until then, Brazil had been an international benchmark in the field of public health, including the response to infectious diseases. An analysis of the timeline and chain of command of the decisions taken by the federal government, as well as their implementation by the Ministry of Health and other agencies, may indicate indifference or an attack on the institutional framework previously created for emergency response, as well as the absence of reasonable justification for the response policy.

With regard to behavior that can be understood as a direct affront to health institutionalism, we immediately see the removal of the Ministry of Health from the leadership of the response to covid-19, through a series of presidential decrees, which shift the federal chain of command towards the Civil House (VENTURA; AITH; REIS et al., 2021, p.28). Thus, the agents established by specific rules on health emergencies, which were inspired by the best national and international practice, were replaced by a crisis committee coordinated by the Chief of Staff's



Office, with its own operations center, which became the decision-making body on priorities, guidelines and strategic aspects related to the impacts of COVID-19, made up of only two representatives from the Ministry of Health.

Under the command of General Walter Braga Netto, at the time headman of the Civil Office, the response to Covid began to follow the designs of the President of the Republic, in turn guided, as the final report of the Pandemic Investigative Committee showed, by a “parallel cabinet”, made up of a “close circle of advisors” with “ideological attachment to chloroquine” (Investigative committee [...], 2021, s/p). Instead of providing reliable scientific evidence and guidance based on the public interest, this informal body sought to subsidize the political strategy pre-defined by the federal government, providing the President of the Republic with wrong sides of scientific controversies and fake news. The strategy of rapidly spreading COVID-19 to obtain the supposed herd immunity through contagion, with economic motivation, was presented in detail by these informal advisors at a public hearing held in the Chamber of Deputies (BRASIL, 2020a), among other occasions.

There has been countless pressure from Brazilian state bodies, international organizations and social actors for Brazil to return to its health tradition and offer a coordinated technical response to COVID-19. In June 2020, for example, the Federal Court of Auditors warned the Civil Office about the lack of a clear strategic guideline, as well as a coordinated and comprehensive communication plan, which could compromise public spending and the results of tackling the pandemic, as well as preventing effective political coordination and coordination between federal entities; it was also recommended, unsuccessfully, the inclusion of health authorities and specialists in the committee (BRASIL, 2020f).

At this point, it should be pointed out that, unlike in most countries, the Brazilian state has never had a national scientific committee, made up of experts of notorious knowledge, capable of providing scientific support for the complex decision-making process. Prominent Brazilian scientists and health professionals were left to participate in international committees of excellence, or to contribute at local levels of government, in a notorious position of adversity with the federal level.

At the time, there were false controversies about the source of the scientific evidence that should be the parameters for the answer to covid-19. In April 2020, however, the Supreme Court had already expressed its understanding, later reiterated, that:

The right to health is guaranteed through the obligation of States Parties [to the WHO] to adopt the necessary measures to prevent and treat epidemic diseases and **public entities must adhere to WHO guidelines, not only because they are obliged to do so under Article 22 of the WHO Constitution** (Decree 26.042 of December 17, 1948), but above all because they have the necessary expertise to give full effect to the right to health. As the purpose for which the federal entities act is common, the resolution of conflicts over the exercise of competence must be guided by the **best realization of the**



right to health, supported by scientific evidence and WHO recommendations (STF, 2020d, p.2, emphasis added).

Thus, according to the Supreme Court, the duty to follow the WHO guidelines stems not only from their intrinsic mandatory nature, but also from their status as a vehicle for realizing the right to health.

Nevertheless, in its daily press conferences, as well as in documents and guidelines relating to the pandemic, the WHO has always emphatically opposed the search for herd immunity, based on scientific evidence and broad consensus in the international community. As recently as 2020, the organization's Director-General, Tedros Adhanom Ghebreyesus, maintained: "Never in the history of public health has collective immunity been used as a strategy to respond to an outbreak, let alone a pandemic" (WHO, 2020, s/p). According to the WHO's highest authority, this strategy would also be unacceptable from an ethical point of view, given that reinfections by the virus do occur, including in severe forms, because

Allowing the virus to circulate unchecked means unnecessary infections, suffering and death (...) Allowing a dangerous virus whose mechanisms we do not know to circulate fully, unchecked, is contrary to ethics. This is not an option (...) there is no choice between letting the virus circulate freely or paralyzing our societies (Ibid.).

Still according to the Director-General, it would be essential to "prevent gatherings" and persevere with the recommendations made by the WHO from day one: "detection, isolation, testing and care of people, location and quarantine of their contacts. This is what countries are demonstrating every day is working" (Ibid.).

Therefore, comparing the Supreme Court's opinion with the unequivocal position of the WHO, **containing the spread of the disease was the only valid solution to the ongoing health crisis**. This is clearly a situation in which the field of discretionary freedom, abstractly fixed in the legal rule, does not agree with the possible field of freedom of the administrator in face of concrete situations. This is what Celso Antônio Bandeira de Mello referred to as "a real, specific situation, requiring administrative pronouncement" in which "only one behavior" is, "in all probability, capable of fulfilling the legal purpose" (2009, p.161).

3.2.2 The hollowing of the criminal sphere of public health in an emergency context

In the debate on criminalizing the conduct of authorities with privilege jurisdiction, the absence of references from the field of public health is striking. In addition to the aforementioned normative framework, there is a lack of epidemiological data and basic knowledge about emergency response, which is essential for a rigorous assessment of elements such as authorship, materiality and intent.



It is especially noteworthy that the criminal doctrine mobilized in the Attorney General's Office's statements on crimes related to public health concerns periods of normality, which is completely removed from the normative framework of an ESPIN, and even more distant from the reality of a pandemic of unprecedented dimensions such as covid-19.

In fact, judging by the Attorney General's Office's understanding, the classification of crimes against public health is practically impossible in Brazil, especially during emergencies. Considering the space limits of this article, we have chosen to highlight two aspects: the statements made by authorities that could be elements in the commission of various crimes (3.2.2.1) and the specific debate on the crime of epidemics (3.2.2.2).

3.2.2.1 The limits on freedom speech and public health

A rudimentary knowledge of crisis management reveals that statements made by authorities during an emergency are not anodyne. In the field of health, a vast technical and scientific literature has explored the impact of official communication on the conduct and outcome of health crises, especially when it comes to the spread of diseases whose control depends decisively on human behavior, in its individual and collective dimensions. There is a consensus that, in order to ensure adherence to the recommendations of health authorities, the public needs to trust them (HOLROYD; OLOKO; SALMON et al, 2020).

For decades, based on scientific evidence, technical advice and lessons learned from major disasters, the WHO has turned to those responsible for managing health crises to provide manuals, training modules and other forms of guidance related to emergency risk communication (ERC), which it defines as the “real-time exchange of information, advice and counseling between experts, community leaders or officials and people at risk” (WHO, 2018, p.1). In summary, among the most important elements of ERC are building, maintaining or restoring public trust in those responsible for managing the crisis and reporting on the issue; transparency, which can be defined as communication that is accessible, coordinated and reliable; and advance planning, vital for effective communication, which should be included in crisis management planning from the outset. This knowledge is included in any basic health surveillance course module. Thus, the discrediting of health authorities can be decisive for a disease to spread and even become endemic in a given territory. In a context of political polarization, the **confirmation bias** is exacerbated, leading individuals to seek information that ratifies their own beliefs (FREIRE, 2021).

According to the Pan American Health Organization (PAHO), there is an important difference between: (a) **infodemic**, defined as “an excess of information, some of which is accurate and some of which is not, that makes it difficult to find reputable sources and reliable guidance when you need it”, focused therefore on the “large increase in the volume of information



associated with a specific subject, which can multiply exponentially in a short time due to a specific event”; and (b) **disinformation**, which consists of “false or inaccurate information whose deliberate intention is to mislead”, also referred to as “manipulation of information with dubious intent” (PAHO, 2020, p. 2).

In a previous study, we concluded that members of the federal government systematically promoted a specific form of disinformation during the covid-19 pandemic, namely **propaganda against public health**, defined as

“the political discourse that mobilizes economic, ideological and moral arguments, as well as fake news and technical information without scientific proof, with the purpose of discrediting health authorities, weakening popular adherence to health recommendations based on scientific evidence, and promoting political activism against the public health measures necessary to contain the advance of covid-19” (VENTURA; AITH; REIS et al., 2021).

In its statements, such as the one on PET 10.059, the Attorney General's Office recognizes the context of the infodemic in which the possible investigated parties were moving, but seems to interpret it against the grain:

With a polarized society and the chaotic exercise of freedom of expression, enhanced by very accessible and widely spread technological means that maximize the social arena of debates, reactions, antagonism and criticism, it is not given to Criminal Law to criminalize acts of management (BRASIL, 2022c, p.84).

Thus, the Claimants are presented as just any people, expressing themselves in the midst of chaos and polarization, as if they were not among the highest authorities in the Republic, including three former Ministers of Health. Instead of demanding that they perform their public duties, they seem to see their status as managers as a condition for criminal immunity. However, it is notorious that the dissemination of false news and information with no scientific or technical basis has occurred even in official pronouncements, and also through official channels, such as the profiles of public bodies and authorities on social networks.

Later, when expressing its opinion for the filing of Petition 10.064, regarding incitement to crime (art. 286 CP) by Jair Bolsonaro and allies, the Attorney General's Office refers to the evidence presented by the Pandemic Investigative Committee as a “narrative”, from which it would not be possible to extract any act of instigation or incitement to commit specific crimes (BRASIL, 2022h, p.79-80). Citing a report by the Federal Police that allegedly evaluated the social media profiles of the possible offenders, the Attorney General's Office goes so far as to state that they “do not directly incite disobedience to social isolation and the use of masks as measures to combat the coronavirus, although they do share studies and reports that reveal that such measures are not very effective” (Ibid., p.68, emphasis added). The Attorney General's Office does not, however, assess the intention of the disseminators, the reliability of their sources or the timing of the reports, which include peaks in the transmission of the disease. Thus, the statement concludes,



...the content of the publications, although controversial and subject to criticism and questioning, did not go beyond the limits established for the exercise of freedom of opinion and politics inherent to the representatives, and is not a case of curtailment, either because of violation of other fundamental rights and guarantees, or because it comes up against the limits to the exercise of freedom of expression (Ibid., p.80).

In the same manifestation, among the few publications that deserve specific reference from the Attorney General's Office, is the live in which the then President of the Republic, in a context of ostensible attacks on governors and mayors who were committed to containing the spread of the virus, addresses his supporters as follows:

I may be wrong, but for the most part no one has lost their life for lack of a respirator or ICU bed. There may have been one case or another. It would be good for you, at the end of the line, if you have a field hospital near you, a public hospital, to find a way to get in and film it. A lot of people are doing this, but more people need to do it to show whether the beds are occupied or not, whether the spending is compatible or not (transcribed by GOMES, 2020, s/p).

Then, the current President stated that he would pass on the material resulting from these raids to the Federal Police and the Brazilian Intelligence Agency. In that epidemiological week (07-06/13/20), the accumulated cases of covid-19 were 850,514, and deaths had already reached 42,720. However, according to the Attorney General's Office,

We do not see in the President of the Republic's speech any incentive to "invade" hospitals or engage in conduct that would put people's lives in danger. In fact, in the statement in question, **Jair Bolsonaro tells the population to check "whether the spending is compatible or not"**, in other words, he is encouraging a public inspection of the resources that were actually spent during the pandemic (BRASIL, 2022h, p.88, emphasis added).

In view of the facts, Justice Gilmar Mendes stated differently:

Invading hospitals is a crime - so is stimulating them. The Public Prosecutor's Office (the ATTORNEY GENERAL'S OFFICE and the state prosecutors) must act immediately. It's shameful - not to say ridiculous - that public officials lend themselves to feeding conspiracy theories, **putting public health at risk** (CONJUR, 2023, emphasis added).

From the point of view of public health, it goes without saying how serious it is to legitimize conduct that puts the invaders themselves at risk, as well as health professionals, patients and other staff at health facilities.



3.2.2.2 The typification of the crime of epidemic in the context of a health emergency

Among the theses supported by the Attorney General's Office with the greatest potential to damage public health, especially the control of infectious diseases, is its interpretation of the criminal type of epidemic (art. 267 CP), according to which “causing an epidemic by spreading pathogenic germs” carries a penalty of imprisonment from 10 to 15 years; if death results, the penalty is doubled (§ 1); and in the case of guilt, the penalty is imprisonment from one to two years, or, if death results, from two to four years”. According to the ATTORNEY GENERAL’S OFFICE:

However, it would not be enough to demonstrate the effective spread of pathogenic germs (means), but also, in order for the type provided for in article 267, paragraph 1, of the Penal Code to have incidence, **the identification of the person who would have caused the national epidemic**, in the context of a pandemic, something that, of course, is not considered (BRASIL, 2022c, p.74).

Considering the Attorney General's Office's arguments, it seems that only the act of an individual carrying a test tube with the intention of introducing a new pathogen into national territory could be considered an epidemic crime. This position is linked to a misinterpretation of the verb “cause”, detached from the context of the covid-19 pandemic or any other epidemic, since causing an epidemic does not mean introducing a pathogen into a territory.

A rudimentary knowledge of epidemiology teaches us that the introduction of a pathogen into a given territory can lead to the existence of cases of a disease, resulting from infection by that pathogen. The spread of the disease can cause an outbreak, which is a localized increase in the number of cases of a disease. An outbreak, in turn, can become an epidemic, defined as an increase in the number of cases of a disease in several regions, states or cities (“Understand [...]”, n.d.).

Therefore, the pre-existence of cases or outbreaks of a disease does not prevent an individual from causing an epidemic, since the mere introduction of a pathogen into national territory will not necessarily be successful in relation to the propagation intent that its agent might have. On the other hand, **the pre-existence of cases and an outbreak of a disease greatly favors the intention to cause an epidemic**. This is exactly what happened in the case of COVID-19 in Brazil, which is clear from the timeline that compares epidemiological data on the evolution of the disease with normative acts, management



acts and statements by members of the federal government (VENTURA; AITH; REIS et al., 2021).

The criminal type in article 267 is clear: it is not a question of introducing a pathogen, but of spreading it with the intention of causing an epidemic, i.e. causing an increase in the number of cases of a disease in various regions, states or cities. According to the criminal law, this is done by spreading pathogens.

Thus, by encouraging infection in various ways, members of the federal government sought to deceive the population with the prospect of early treatment for the disease, in order to achieve supposed herd immunity through contagion. Based on this guideline for the federal response to the health crisis, according to the conclusion of the Pandemic Investigative Committee's final report, one of the strategies used to spread the disease was the systematic organization of gatherings. In the form of official ceremonies and political demonstrations, in closed or open spaces, many of them brought together thousands of people, who were encouraged to forgo basic preventive measures. They also involved the constant movement of federal authorities throughout the country, accompanied by significant apparatus, even during peaks of the disease, often at public expense.

However, as already mentioned, "preventing crowds" was an express directive of the WHO. Despite the scientific and normative value of this recommendation, or even its reasonableness, the Attorney General's Office's understanding is that:

Without proof that those indicted have personally transmitted the disease, there is no crime [of epidemic]. As for those indicted by the Investigative committee, in order for them to be punished for this criminal offense, it would therefore be necessary to **have proof that, by carrying the virus (through some form of direct contact with the pathogenic agent), they had promoted its diffusion or propagation**, transmitting it to an uncertain number of people (BRASIL, 2022c, p.74, emphasis added).

And also:

The correlation made in the Final Report [of the Pandemic Investigative Committee] between the presence of the President of the Republic and the increase in cases of COVID-19 in the places visited is fragile, without verification in elementary data, such as **the identification of hospitalized patients and their direct or indirect contact with people who gathered due to the presence of Jair Messias Bolsonaro** (BRASIL, 2022a, p.68, emphasis added).

Therefore, according to the Attorney General's Office, the Pandemic Investigative Committee should have presented the list of people admitted to the



hospitals where Bolsonaro passed through, as if all infected people were necessarily hospitalized. In return, it would have been necessary to prove the direct contact of each of the hospitalized people with the former President of the Republic, as if the organization of an agglomeration during a pandemic did not favor the massive encounter between infected and uninfected people. Thus, according to the Attorney General's Office, and in a manner antagonistic to the rudiments of science, the only possible materiality of this crime would be tangible contact between the alleged criminal and the people he intended to infect. Such an understanding has the effect of legitimizing the organization of agglomerations during epidemics or pandemics, encouraging insurgency against the health authorities, in a context aggravated by misinformation.

This effect is even clearer when, in a break with the line of argument it had been adopting, the Attorney General's Office recognizes the existence of “possible consequences” of the “accumulation of people”:

As for the gatherings, the accumulation of people cannot be attributed exclusively and personally to the President of the Republic. **Everyone who attended the reported events, even though they had sufficient knowledge about the covid-19 epidemic, spontaneously took responsibility for the possible consequences of the decision taken** (BRASIL, 2022a, p.87; 2021a, p.14; 2021b, p.16, emphasis added).

Therefore, the responsibility for the possible contagion, although acknowledged by the Attorney General's Office, should nevertheless be shared among those present at the demonstrations, and not attributed to those who intentionally called for, encouraged, organized or led them. In this way, the Attorney General's Office approaches the covid-19 pandemic as a juxtaposition of independent individual behaviors, rather than collectively, the only way possible when discussing the materiality of an epidemic. Against all logic, it becomes necessary to prove that the circulation of a virus in a locality is not favored exponentially by the movement of entourages between regions and enhanced by agglomerations.

The hundreds of thousands of avoidable deaths, as well as the millions of Brazilians subjected to suffering from the disease and its sequelae, demonstrate our duty to prevent such an affront to public health from being repeated in our country. For the sake of combating future epidemics and pandemics, a correct interpretation of criminal doctrine is essential, taking into account the reality of public health.



3.2.3 The potential political-ideological alignment with the Federal Executive Branch

The Attorney General's Office states that “Criminal Law does not help political-ideological differences” (BRASIL, 2022c, p.84). We believe that it shouldn't help convergences of this nature either. In a different area, solid studies on the constitutionality control actions brought against acts of the Bolsonaro government show that there is alignment (agreement on admissibility, preliminary injunctions and merits) between the positions of the Federal Attorney General's Office and the Attorney General's Office on the government's acts, contributing to their apparent legality and normalization, including with regard to the spread of the COVID-19 pandemic (ALMEIDA; CUNHA; FERRARO, 2021; ALMEIDA; FERRARO, 2022; ALMEIDA; FERRADO, 2023). In our research, we found important indications that the Attorney General's Office's statements on criminal matters studied here are part of this practice. These indications deserve specific and detailed publication.

For now, within the limits of this article, we will give some examples which, in our opinion, cannot be normalized, under penalty of threatening the balance between the Powers of the Republic, especially in future periods of health crisis.

Firstly, the Attorney General's Office does not need an investigation in order to firmly state that Jair Bolsonaro legitimately believed in the efficacy of early treatment for Covid-19. When discussing the classification of the crime of charlatanism, it ponders:

...the President, in declaring, on October 23, 2020, that “in Brazil, taking chloroquine at the onset of symptoms, **100% cure**”, exposed a **personal and empirical perception**, showing his full conviction in the use of this drug as a possible therapeutic intervention in the fight against the disease (BRASIL, 2022e, p.75, emphasis added).

Disinformation that owns a high risk to public health is presented here as a legitimate personal and empirical perception, based on the presumption of sincerity. According to the Attorney General's Office, the “total confidence in the drug treatment” would “per se, have the power to de-characterize the crime of charlatanism in the absence of intent” (Ibid., p.75-76). Thus, the Attorney General's Office enters the intimate forum of the then President to reiterate that he “sincerely believed that the use of these drugs would help fight the disease, with several studies underway to confirm this effectiveness, already defended at the time by countless medical professionals” (Ibid., p.77). Such statements ignore the timeline that demonstrates the persistence of the then



President's position, even after the ineffectiveness of these treatments for covid-19 had been proven.

In July 2022, the Attorney General's Office still insisted that early treatment could be considered a valid measure in response to COVID-19, citing references from March 2020 (BRASIL 2022c, p.77-78), as if the conduct of possible offenders had not extended throughout the pandemic. The Attorney General's Office fails to address the plethora of scientific evidence and institutional manifestations that quickly discredited early treatment, which was even recognized in Terms of Conduct Adjustment sponsored by the Federal Public Prosecutor's Office itself. Regarding the expansion of chloroquine production in Brazil, the Attorney General's Office ponders: the correctness or incorrectness of the decision is not the subject of a crime, but “falls within the orbit of public management” (BRASIL, 2022d, p.76).

What sounds like solidarity on the part of the parquet in relation to early treatment already appeared in a previous manifestation, not related to the Pandemic Investigative Committee, regarding the classification of the crime of subjecting a minor to vexation or embarrassment (art. 232 of the Statute of the Child and Adolescent). At issue were two ostentatious acts by Jair Bolsonaro: removing a mask from the face of a child who was on his lap, while posing in front of cameras in the middle of a crowd; and inciting a child to remove the mask from his face, during a public ceremony that was also filmed. In this case, the Attorney General's Office's position had the effect of legitimizing such conduct: “The children also did not demonstrate, with attitudes or gestures, that they were embarrassed, humiliated or ashamed in the presence of the President of the Republic, who, when interacting with them, did so in a **relaxed manner**” (BRASIL, 2021b, p.17, emphasis added). The resourcefulness associated with possible health infractions is then presented as “relaxation”, disregarding the vulnerability of the children, exposed to the public and to the political, media and security apparatuses that surrounded the then President.

On the other hand, the Attorney General's Office mentions, in several of its manifestations, indiscriminately in time and randomly in relation to authorship, response measures adopted by the federal government at the time, which would prove the absence of intentionality regarding the spread of the disease. At this point, it is worth remembering an essential element of the defense strategy of Jair Bolsonaro and his supporters, which is the confusion between the adoption of measures to contain the



disease and the adoption of measures to respond to the spread of the disease. In other words, depending on the interlocutor and the occasion, members of the federal government of the time admit to having contributed to the spread of the disease, for which there would be early treatment, in order to quickly achieve the supposed herd immunity by contagion and thus protect the economy, a narrative especially directed at the strongholds of government supporters; or they deny the purpose of spreading the disease, which would supposedly be proven by the numerous measures to assist people already ill (such as the expansion of beds), social protection in general (such as emergency aid), compliance with the duty to make budgetary transfers, as well as other measures that are not in the field of disease prevention, or are the initiative of managers removed from office precisely because they adopted them. This is the case of Law 13.979/2020, promoted by former Health Minister Luiz Henrique Mandetta, who was later dismissed by Jair Bolsonaro, but presented by the Attorney General's Office as an argument to dismiss the former President's criminal liability (BRASIL, 2022c, p.75).

As for the public immunization policy, whose evolution has been witnessed by millions of Brazilians, the Attorney General's Office maintains: “contrary to what was argued in the Pandemic Investigative Committee Report, there is no talk of a delay by public managers in the acquisition of immunizers to combat covid-19 in Brazil (Ibid, p.79, emphasis added). Among countless episodes that warrant investigation of this topic, we are content to mention the one that took place in October 2020, recorded on video, in which the then Minister of Health, Eduardo Pazuello, claiming to be infected with the Sars-Cov-2 virus, appears without a mask next to Jair Bolsonaro. He confirms that the then President disallowed the ministerial decision to purchase 46 million doses of CoronaVac, a vaccine against Covid-19 produced by the Butantan Institute in partnership with the Chinese laboratory Sinovac and emphasizing: “One commands and the other obeys” (transcript from MENDONÇA, 2020, s/p). At that time, Brazil had around 600 daily deaths from Covid-19 and had already surpassed the figure of 150,000 accumulated deaths. But the Attorney General's Office ponders:

... even if there had been a delay in the purchase of vaccines by Brazilian public authorities, this conduct does not meet the legal command incriminating the type provided for in article 267 of the Penal Code, as it **does not represent active behavior to spread pathogenic agents** that cause an epidemic (BRASIL, 2022c, p.82, emphasis added).



Preventing immunization when it has already been provided by the competent authority, only to authorize it weeks later due to the imminent start of vaccination in the state of São Paulo, in a context of public and fierce political confrontation between government leaders, would not be active behavior in the spread of agents that cause an epidemic.

We conclude this section by recalling some of the many excerpts from the demonstrations studied that sound contrary to the measures adopted by subnational governments to contain the disease. The Attorney General's Office goes so far as to state that the “initial isolation **proved to be unsustainable in the medium and long term**” (BRASIL, 2022a, p.73). Incidentally, there is a confusion here between isolation (separating infected people) and quarantine (restricting activities, among other measures).

Another example is the use of masks. In a statement unrelated to the Pandemic Investigative Committee, in the context of PET 9.695, the Attorney General's Office had already argued, in August 2021:

... in relation to the use of protective masks, there are no scientific studies with a high degree of reliability regarding the level of effectiveness of the prevention measure. It is not possible to carry out rigorous tests that prove the exact effectiveness of the protective mask as a means of preventing the spread of the new coronavirus. **It would be impossible to involve people in a scientific study and leave them without face masks for a certain period of time**, i.e. possibly exposed to the spread of a potentially deadly disease, just to measure the effectiveness of such personal protective equipment. **The studies that exist on the effectiveness of face masks, therefore, are only observational and epidemiological.** As such, there is and will be no research with high scientific precision on the subject. In this context of uncertainty about the degree of effectiveness of the equipment, although it is recommended and prudent to require the population to wear a face mask, there is no way to consider the conduct of those who fail to comply with the precept criminal (BRASIL, 2021a, p.7-8, emphasis added).

This and other statements of a similar technical level led Judge Rosa Weber to order the reopening of the file to the Attorney General's Office. The Rapporteur weighed in:

To clarify the technical-legal discourse used, not least because the issue is of undeniable public interest, I would like to point out that the ministerial proposal is to interpret the crime in article 268 of the Penal Code [breach of a preventive health measure] as a crime that is not consummated by merely breaching a public health order, but also requires concrete proof of the danger to public health generated by the offending behavior. This premise is precisely what supports the conclusion that any breach of the order to wear a face mask “does not have the seriousness of a crime, because it is not



possible to say that, by itself, it really does not prevent the introduction or spread of covid-19". This theoretical construction, analyzed contextually, generates some perplexity. Firstly, because it adopts a doctrinal understanding **that goes against the majority view of the typical characteristics of the crime in question.** (...) The very discussion about the effectiveness of wearing a mask as a preventive health measure, which is dispensable if the majority view is adopted, which recognizes in the criminal type a legal presumption of danger in the conduct, was placed at the center of the debate by the Public Prosecutor's Office. For this very reason, without prejudging the issue, I believe it is pertinent for the Attorney General's Office **to better clarify the basis of its conclusion in the sense of the questionable "degree of reliability surrounding the level of effectiveness of the protection measure"** (BRASIL, 2021c; p.4 and 10, emphasis added).

However, the Attorney General's Office continued to insist on the sufficiency of the administrative penalty and the low harmfulness of the conduct in the case of a health infraction related to the use of masks. In another version of the aforementioned formula about chaos and polarization, it maintained:

With a **polarized society and the chaotic exercise of freedom of expression**, through very accessible and widespread technological solutions that **maximize the social arena of debates, reactions, antagonism and criticism**, the administrative penalty against those who disobey the rule imposing the use of a mask is sufficient (BRASIL, 2022a, p.83).

Still, it is precisely in the context of the infodemic that the duty of public officials to comply with and enforce the measures adopted by the health authorities, including the use of masks, must be strictly monitored. If this understanding were to prevail in our legal community, it would bring to the field of public health the fearful risk that authorities would encourage the infodemic so that the punishment of health infractions could be relaxed.

Moreover, in this case, it is not a question of an occasional violation, but of a **systematic, notorious and confessed infraction, which persists despite the successive application of penalties by state and municipal authorities**, including the repeated filing of criminal complaints against the President and other members of the federal executive, but which, above all, **has the purpose of applauding non-compliance with health regulations, and of popular incitement to affront the state and municipal authorities** committed to containing the disease. Therefore, there is no need to talk about the low harmfulness of the behavior of the offenders, but rather high harmfulness, marked by recidivism and conscious violation of the rules, whose political and ideological content is revealed, among other ways, by the subsequent amnesty for fines for sanitary infractions, granted by co-religionist rulers.



4. Conclusion

The actions of the federal government through COVID-19 did not even remotely correspond to the legal and morally admissible hypotheses of administrative management, let the best ones for the public interest alone, as determined by good doctrine. As a result of this action, which was contrary to the tradition of the Brazilian state in the field of public health, Brazil was notoriously and systematically singled out as one of the worst responses to covid-19 in the world.

Unlike to what the Attorney General's Office advocates, it is clear that the motivation of members of the federal government in their public policy response to the pandemic is not related to scientific controversies or epidemiological data, which are commonplace in health management. It is, in fact, the implementation of a public policy operated outside the framework of science and health governance, malleable enough to accommodate the contradictions arising from the political clash, whose advances and setbacks were determined by electoral calculations and sectoral interests.

The first part of the article shows that various actors have tried to make up for the Attorney General's Office's inaction, multiplying initiatives to investigate criminal responsibility for crimes and infractions committed as part of the federal response to covid-19. It also indicates that, despite the Attorney General's Office's efforts, mostly in the opposite direction, several cases are still ongoing. It is worth noting that new evidence has since come to light. In addition, a change in the institutional environment could favor new incriminating testimonies, which would evoke the possibility of reopening closed cases. In this sense, in July 2023, an important nationwide opinion poll, promoted by the SoU_Ciência Center and the Ideia Institute, found that 62% of respondents blame the Bolsonaro government for the increase in deaths; and 52% are in favor of the trial and conviction of the perpetrators of crimes related to deaths in the pandemic (ARANTES; SÍGOLO; GHISLENI, 2023).

On the other hand, an analysis of the requests to close the PETs resulting from the investigative committee leads to the conclusion that, contrary to what was stated by the Attorney General's Office, the manifestations sent to the Supreme Court do not strictly comply with the “technical criteria and specific rules that regulate criminal law” (PGR, 2022j, s/p). In addition to the public health prism developed here, future



publications will explore other inconsistencies in this collection. In this regard, the work of the Attorney General's Office should not be confused with the important role that the Federal Public Prosecutor's Office, as a whole, has played in tackling the covid-19 pandemic, through various initiatives.

All of the above indicates the urgent need for an independent and in-depth criminal investigation into the authorship and materiality, as well as the motivation of the acts carried out by members of the federal government and their supporters during the covid-19 pandemic.

It is the duty of the Brazilian legal community to ensure that the population is never exposed to aberrations such as the use of herd immunity by contagion as a response strategy to a pandemic, an episode that tarnishes Brazil's history as an inhumane act promoted on a large scale. It is also necessary to ensure that no public official, whoever they may be, feels authorized to promote propaganda against public health, placing their arbitrariness, "empirical perceptions" and private interests above their constitutional duties to protect the life and health of the Brazilian population.

References

AGÊNCIA NACIONAL DE VIGILÂNCIA SANTÁRIA (Brasil). **Regulamento Sanitário Internacional**. Versão em português aprovada pelo Congresso Nacional por meio do Decreto Legislativo 395/2009. Brasília: ANVISA, 2009.

AITH, F. M. A. **Manual de direito sanitário com enfoque em vigilância em saúde**. Brasília, DF: CONASEMS, 2019.

ALMEIDA, E.M.; CUNHA, L.G.; FERRARO, L.P. STF e a pandemia: controle constitucional concentrado durante o primeiro ano da pandemia de covid-19 no Brasil. **Anais do 45o Encontro da ANPOCS**, 2021.

ALMEIDA, E.M.; FERRARO, L.P. Embate entre Jair Bolsonaro e o Supremo Tribunal Federal: uma análise dos quatro anos de mandato (2019-2023). **VI Mare Incognitum**. São Paulo, 2023, 6ª edição.

ALMEIDA, E.M.; FERRARO, L.P. Arquitetura jurídica da desresponsabilização: Advocacia Geral da União e Procuradoria Geral da República nas ações contra o governo Jair Bolsonaro no Supremo Tribunal Federal. In: VIEIRA, O.V. et al. (Org.). **Estado de Direito e Populismo Autoritário: Erosão e Resistência Institucional no Brasil (2018-2022)**. São Paulo: Editora FGV, 2022, p. 236.



ARANTES, P. F.; SÍGOLO, V.; GHISLENI, P. Necropolítica e memória na pandemia de Covid-19: Análise das iniciativas de justiça e reparação no Brasil. **Revista ARA**, [S. l.], v. 15, n. 15, p. 287-315, 2023.

BRASIL. Congresso Nacional. Câmara dos Deputados. **Ata Sessão 60054 – Orador Ricardo Barros**. Brasília, 28 out. 2020a.

BRASIL. Lei n. 13.979/2020, de 6 de fevereiro de 2020. Dispõe sobre as medidas para enfrentamento da emergência de saúde pública de importância internacional decorrente do coronavírus responsável pelo surto de 2019. Brasília, DF: **Diário Oficial da União**, 2020b.

BRASIL. Lei n. 8.080, de 19 de setembro de 1990. Dispõe sobre as condições para a promoção, proteção e recuperação da saúde, a organização e o funcionamento dos serviços correspondentes e dá outras providências. Brasília, DF: **Diário Oficial da União**, 1990.

BRASIL. Ministério da Saúde. Portaria n. 188, de 3 de fevereiro de 2020. Declara Emergência em Saúde Pública de importância Nacional (ESPIN) em decorrência da Infecção Humana pelo novo Coronavírus (2019-nCoV). **Biblioteca Virtual do Ministério da Saúde**. Brasília, 3 fev. 2020c.

BRASIL. Ministério da Saúde. Secretaria de Vigilância em Saúde. Departamento de Vigilância das Doenças Transmissíveis. **Manual de Normas e Procedimentos para Vacinação**. Ministério da Saúde, Secretaria de Vigilância em Saúde, Departamento de Vigilância das Doenças Transmissíveis. Brasília, 2014a.

BRASIL. Ministério da Saúde. Secretaria de Vigilância em Saúde. Departamento de Vigilância em Saúde Ambiental e Saúde do Trabalhador. **Plano de Resposta às Emergências em Saúde Pública**. Brasília: Ministério da Saúde, 2014b.

BRASIL. Ministério Público. Conselho Nacional Do Ministério Público. Resolução n. 174. Disciplina, no âmbito do Ministério Público, a instauração e a tramitação da Notícia de Fato e do Procedimento Administrativo. **Portal Conselho Nacional do Ministério Público**. Brasília, de 4 de julho de 2017.

BRASIL. Procuradoria Geral Da República. **Ações que salvam - Como o Ministério Público se reinventou para enfrentar a covid-19**. PGR/CNMP 2020-2023. Brasília: MPF, 2023a. Available in: <https://www.mpf.mp.br/pgr/documentos/pet-10057>. Access in: 18 jan. 2024.

BRASIL. Procuradoria Geral Da República. **Manifestação da PGR na PET 9.695**. Brasília, 17 ago. 2021a.

BRASIL. Procuradoria Geral Da República. **Manifestação da PGR na PET 9.759**. Brasília, 17 ago. 2021b.



BRASIL. Procuradoria Geral Da República. **Manifestação da PGR na PET 10.057**. Brasília, 25 jul. 2022a.

BRASIL. Procuradoria Geral Da República. **Manifestação da PGR na PET 10.058**. Brasília, 10 jun. 2022b.

BRASIL. Procuradoria Geral Da República. **Manifestação da PGR na PET 10.059**. Brasília, 25 jul. 2022c.

BRASIL. Procuradoria Geral Da República. **Manifestação da PGR na PET 10.060**. Brasília, 25 jul. 2022d.

BRASIL. Procuradoria Geral Da República. **Manifestação da PGR na PET 10.061**. Brasília, 25 jul. 2022e.

BRASIL. Procuradoria Geral Da República. **Manifestação da PGR na PET 10.062**. Brasília, 25 jul. 2022f.

BRASIL. Procuradoria Geral Da República. **Manifestação da PGR na PET 10.063**. Brasília, 25 jul. 2022g.

BRASIL. Procuradoria Geral Da República. **Manifestação da PGR na PET 10.064**. Brasília, 7 nov. 2022h.

BRASIL. Procuradoria Geral Da República. **Manifestação da PGR na PET 10.065**. Brasília, 25 jul. 2022i.

BRASIL. Procuradoria Geral Da República. **Manifestação da PGR no INQ 4.888**. Brasília, 16 fev. 2023b.

BRASIL. Procuradoria Geral Da República. Nota pública: Manifestações por arquivamento de petições decorrentes da CPI da Covid-19 seguem requisitos legais. **Portal do Ministério Pública Federal**. Brasília, 26 jul. 2022j. Available in: <https://www.mpf.mp.br/pgr/noticias-pgr/nota-publica-manifestacoes-por-arquivamento-de-peticoes-decorrentes-da-cpi-da-covid-19-seguem-requisitos-legais>. Access in: 12 dez. 2023.

BRASIL. Supremo Tribunal Federal. ADI 6.341 DF. Relator: Ministro Marco Aurélio. Requerente: Partido Democrático Trabalhista (PDT), Interessado: Presidente da República, referendo na medida cautelar, 15/04/2020. **Portal Jurisprudência do STF**. Brasília, 15 abr. 2020d. Available in: <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=754372183>. Access in: 18 jan. 2024.

BRASIL. Supremo Tribunal Federal. ADPF: 672. Relator: Ministro Alexandre de Moraes. Requerente: Conselho Federal da Ordem dos Advogados do Brasil. Brasília, 8 abr. 2020e. **Lex: Jurisprudência do STF, Distrito Federal**. Available in: <https://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/ADPF672liminar.pdf>. Access in: 18 jan. 2024.



BRASIL. Supremo Tribunal Federal. Agravo Regimental no Agravo de Instrumento 734.487 - Paraná. Relatora: Ministra Ellen Gracie. **Portal Jurisprudência do STF**. Brasília, 3 ago. 2010, 2ª T, DJE de 20 ago. 2010.

BRASIL. Supremo Tribunal Federal. PET 9.695 DF. Despacho. Relatora: Ministra Rosa Weber. Brasília, 01 out. 2021c.

BRASIL. Supremo Tribunal Federal. PET 10.489 DF. Decisão Monocrática. Relator: Ministro Dias Toffoli. Brasília, 31 ago. 2022k.

BRASIL. Supremo Tribunal Federal. **Regimento interno**. Brasília: STF, Secretaria de Altos Estudos, Pesquisas e Gestão da Informação, 2023c.

BRASIL. Tribunal de Contas da União. Acórdão 1616/2020. Plenário, Relator Vital do Rego, Processo TC 016.708/2020-2. **Portal TCU**. Brasília, 24 jun. 2020f.

CPI DA PANDEMIA: principais pontos do relatório. **Agência Senado**. Brasília, 20 out. 2021. Available in: <https://www12.senado.leg.br/noticias/materias/2021/10/20/cpi-da-pandemia-principais-pontos-do-relatorio>. Access in: 4 dez. 2023.

ENQUANTO tenta se cacifar à recondução, Aras cita suposta 'sabotagem' interna e abre investigação na PGR. **O Globo**. [S./], 21 jul. 2023. Available in: <https://oglobo.globo.com/politica/noticia/2023/07/21/enquanto-tenta-se-cacifar-a-reconducao-aras-cita-suposta-sabotagem-interna-e-abre-investigacao-na-pgr.ghtml>. Access in: 19 jan. 2024

ENTENDA o que é uma pandemia e as diferenças entre surto, epidemia e endemia. **Portal do Butantan**. Available in: <https://butantan.gov.br/covid/butantan-tira-duvida/tira-duvida-noticias/entenda-o-que-e-uma-pandemia-e-as-diferencas-entre-surto-epidemia-e-endemia>. Access in: 8 dez. 2023.

FREIRE, N. P. et al. A infodemia transcende a pandemia. **Ciência & Saúde Coletiva**, v. 26, n. 9, set. 2021, p. 4066.

GAYER, Eduardo. Aras intensifica campanha por recondução e nomeia 33 novos procuradores para região amazônica. **Estadão**. [S./], 29 jul. 2023. Available in: <https://www.estadao.com.br/politica/coluna-do-estadao/aras-intensifica-campanha-por-reconducao-e-nomeia-33-novos-procuradores-para-regiao-amazonica/>. Access in: 19 jan. 2024.

GILMAR CHAMA DE CRIMINOSO pedido de Bolsonaro para invadir hospitais. **Consultor Jurídico**. [S./], 14 jun. 2020. Available in: <https://www.conjur.com.br/2020-jun-14/gilmar-critica-pedido-invasao-hospitais-bolsonaro/>. Access in: 8 dez. 2023.

GOMES, B. Bolsonaro incentiva invasão de hospitais para filmar leitos. **Terra**. [S./], 11 jun. 2020. Available in: <https://www.terra.com.br/noticias/coronavirus/bolsonaro-incentiva-invasao-de-hospitais-parafilmar-leitos,d6d91d6b5d4ede0c0afeaa23f1b5d16fuukb4x1w.html>. Access in: 8 dez. 2023.



HOLROYD, O. K.; SALMON, D. A.; OMER, S. B.; LIMAY, R. J. Communicating Recommendations in Public Health Emergencies: The Role of Public Health Authorities. **Health security**, 18(1), 21–28, 2020.

INDEPENDENT PANEL for pandemic preparedness and response. **The Independent Panel**. Covid-19: make it the last pandemic. 2021. Available in: <https://theindependentpanel.org/>. Access in: 8 dez. 2023.

LAURIA, M.P.; BARROS, M.A.F.; QUEIROZ, N.F.R. **Procedimentos extrajudiciais e instrumentos de atuação Ministério Público** (e-book). Natal: Sedis-UFRN, 2018.

MELLO, Celso Antônio Bandeira de. **Grandes temas de direito administrativo**. São Paulo: Malheiros Editores, 2009.

ORGANIZAÇÃO MUNDIAL DA SAÚDE. **Comunicação de riscos em emergências de saúde pública**: Um guia da OMS para políticas e práticas em comunicação de risco de emergência. Genebra: Organização Mundial da Saúde, 2018. Available in: <https://apps.who.int/iris/bitstream/handle/10665/259807/9789248550201por.pdf?ua=1> Access in 12/12/2023.

ORGANIZAÇÃO MUNDIAL DA SAÚDE. **Alocución de apertura del Director General de la OMS en la conferencia de prensa sobre la COVID-19 del 12 de octubre de 2020**. Traducida pelos autores. Available in: <https://www.who.int/es/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-Covid-19---12-october-2020>. Access in: 7 dez. 2023.

ORGANIZAÇÃO PANAMERICANA DA SAÚDE. **Entenda a infodemia e a desinformação na luta contra a COVID-19**. Washington: OPAS, 2020.

PLATONOW, Vladimir. PL oficializa Jair Bolsonaro como candidato à reeleição. **Agência Brasil**. Rio de Janeiro, 24 jul. 2022. Available in: <https://agenciabrasil.ebc.com.br/geral/noticia/2022-07/pl-oficializa-jair-bolsonaro-como-candidato-reeleicao>. Access in: 18 jan. 2024.

RODRIGUES, R; COSTA, H. **A política contra o vírus: Bastidores da CPI da covid-19**. São Paulo: Companhia das Letras, 2022.

SOUZA, Renata; PATRIOLINO, Luana. Na reta final de mandato, Aras inicia campanha de recondução à PGR. **Correio Braziliense**. [S.l.], 17 jul. 2023. Available in: <https://www.correiobraziliense.com.br/politica/2023/07/5109418-na-reta-final-de-mandato-aras-inicia-campanha-de-reconducao-a-pgr.html>. Access in: 19 jan. 2024.

TALENTO, Aguirre. Acusado de omissão, Aras diz em livro que 'salvou vidas' na pandemia. **Portal de Notícias Uol**. [S.l.], 10 out. 2023. Available in: <https://noticias.uol.com.br/colunas/aguirre-talento/2023/10/10/acusado-de-omissao-aras-diz-em-livro-que-salvou-vidas-na-pandemia.htm>. Access in 12 dez. 2023.

VENTURA, D.F.L.; AITH, F.M.A.; RACHED, D.H. A emergência do novo coronavírus e a “lei de quarentena” no Brasil. **Revista Direito e Práxis**, v. 12, n. 1, p. 102–138, jan. 2021.



VENTURA, D.F.L.; AITH, F.M.A.; REIS, R.R.; FERREIRA, A.B.; ROSA, A.V.; FARIAS, A.S.; VALENTIM, G.D.S.; HERZOG, L. B. **A linha do tempo da estratégia federal de disseminação da covid-19**. CEPEDISA: São Paulo, 28 maio 2021.

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