



MAX PLANCK INSTITUTE
FOR SOCIAL LAW AND SOCIAL POLICY

Social Law Reports

Ingo Wolfgang Sarlet

Social Security in Brazil in Times of Crisis and Transition

Reported Period: January 2018 – May 2019

Cite as: Social Law Reports No. 6/2019

© Max Planck Institute for Social Law and Social Policy, Munich 2019.

Department of Foreign and International Social Law

All rights reserved.

ISSN 2366-7893

Max Planck Institute for Social Law and Social Policy

Amalienstraße 33, D-80799 Munich, Germany

Tel.: +49 (0)89 38602-0

Fax: +49 (0)89 38602-490

E-mail: info@mpisoc.mpg.de

<http://www.mpisoc.mpg.de>

CONTENT OVERVIEW

| | |
|---|----|
| 1. CURRENT ECONOMIC, POLITICAL AND SOCIAL DEVELOPMENTS | 1 |
| 2. EVOLUTION OF SOCIAL PROTECTION SCHEMES | 2 |
| 2.1. SOCIAL INSURANCE REFORM | 2 |
| 2.2. OLD-AGE PENSION | 4 |
| 2.3. SURVIVOR’S PENSION | 5 |
| 2.4. HEALTH CARE PROVISION UNDER THE SINGLE HEALTH CARE SYSTEM (SUS) | 5 |
| 2.4.1. WOMEN’S HEALTH | 5 |
| 2.4.2. OLDER PERSONS..... | 6 |
| 2.4.3. EXTENSION OF HEALTH CARE SERVICES | 6 |
| 2.4.4. "MAIS MÉDICOS" [MORE DOCTORS] PROGRAM | 7 |
| 2.4.5. SERVICES ORDERED BY THE COURTS | 8 |
| 2.5. SICK PAY | 9 |
| 2.6. MATERNITY BENEFIT AND MATERNITY LEAVE PROTECTION | 9 |
| 2.7. EMPLOYMENT PROMOTION POLICIES FOR PRISONERS | 10 |
| 2.8. SOCIAL WELFARE (MINIMUM INCOME SUPPORT) | 10 |
| 2.8.1. CHANGES IN PROGRAMS AND POLICIES | 10 |
| 2.8.2. HUMANITARIAN CRISIS AND MIGRATORY FLOW..... | 11 |
| 2.8.3. CONSOLIDATION OF RULES ON CHILDHOOD AND YOUTH..... | 11 |
| 2.9. BENEFITS AND SERVICES FOR PERSONS WITH DISABILITIES AND PRISONERS..... | 12 |
| 2.9.1. PERSONS WITH DISABILITIES..... | 12 |
| 2.9.2. RECLUSION AID | 12 |
| 3. ORGANIZATION, ADMINISTRATION AND FINANCING ISSUES | 13 |
| 3.1. SINGLE HEALTH CARE SYSTEM (SUS) | 13 |
| 3.2. REIMBURSEMENT TO THE SINGLE HEALTH CARE SYSTEM (SUS) | 13 |
| 4. SELECTION OF MONOGRAPHS | 14 |
| 4.1. SOCIAL INSURANCE | 14 |
| 4.2. HEALTH SYSTEM AND THE RIGHT TO HEALTH..... | 15 |
| 4.3. SOCIAL ASSISTANCE..... | 16 |
| 5. REFERENCES | 16 |

LIST OF ABBREVIATIONS

| | |
|--------|---|
| Anvisa | Agência Nacional de Vigilância Sanitária (National Agency of Sanitary Surveillance) |
| BPC | Benefício de Prestação Continuada (Continued Cash Benefit) |
| CDH | Comissão de Direitos Humanos e Legislação Participativa (Committee on Human Rights and Participatory Legislation) |
| CF | Constituição Federal (Federal Constitution, FC) |
| CNS | Conselho Nacional de Saúde (National Health Council) |
| CONASS | Conselho Nacional de Secretários da Saúde (National Council of Secretaries of Health) |
| CTC | Certidão de Tempo de Contribuição (Certificate of Time of Contribution) |
| DOU | Diário Oficial da União (National Gazette) |
| EC | Emenda Constitucional (Constitutional Amendment) |
| INSS | Instituto Nacional de Seguridade Social (National Institute of Social Security) |
| IRPF | Imposto de Renda da Pessoa Física (Personal Income Tax) |
| LOA | Lei Orçamentária (Budget Law) |
| MDS | Ministério do Desenvolvimento Social e Combate à Fome (Ministry of Social Development and Fight Against Hunger) |
| MP | Medida Provisória (Provisional Decree) |
| MPISOC | Max Planck Institute for Social Law and Social Policy |
| MS | Ministério da Saúde (Ministry of Health) |
| OMS | Organização Mundial da Saúde (World Health Organization, WHO) |
| ONU | Organização das Nações Unidas (United Nations Organization, UNO) |
| OPAS | Organização Pan- Americana de Saúde (Pan American Health Organization) |
| PAHO | Pan American Health Organization |
| PEC | Proposta de Emenda à Constituição (Proposal of Constitutional Amendment) |
| PLOA | Projeto de Lei Orçamentária (Budget Bill) |
| RE | Recurso Extraordinário (Extraordinary Appeal) |
| REsp | Recurso Especial (Special Appeal) |
| R\$ | Reais (Brazilian Currency) |
| STF | Supremo Tribunal Federal (Federal Supreme Court, FSC) |
| STJ | Superior Tribunal de Justicia |
| SUS | Sistema Único de Saúde (Single Health Care System) |

1. CURRENT ECONOMIC, POLITICAL AND SOCIAL DEVELOPMENTS¹

From the political, economic and social standpoint, Brazil is going through a time of intense instability. In a situation of severe economic depression, the year 2016 ended with the impeachment of then President *Dilma Rousseff*. The position was taken over by Vice-President *Michel Temer*. This period of presidential transition was marked by low popularity, corruption scandals that came to light in the "Lava-Jato" [Carwash] Operation, which also involved the President, and the failed attempt to reform the Social Security System. In 2019, Brazil began a new phase under the administration of the elected President, *Jair Bolsonaro*, whose public statements have been the target of many controversies and discussions. Due to *Temer's* failure, in the face of the proposal of austerity in public expenditures and because of constant controversies, it appears that the future success of the *Bolsonaro* Government depends on the reform of social insurance, whether it be in order to improve the Country's conditions, or to have a chance of being approved by society. This aspect appears to be contradictory because the reform itself is basically unpopular. The advances and setbacks of the Social Security policies are seen in this context of instability.

Not only the aspects concerning the proposals regarding Social Security reform are highlighted in this report, but also legislative measures that are already having an effect, such as Provisional Decree No. 871/2019, which is not only designed to combat fraud, but also restricts access to benefits. As to health care, advances in the health care of women, of the elderly, the inclusion of further non-biomedical methods and longer consultation hours in the Universal Health Care System (SUS) can be underscored. These advances appear to contradict the restrictions to public spending established by Constitutional Amendment No. 95/2016. Also noteworthy is the controversy involving the fact that Cuba exited the "Mais Médicos" Program (designed to meet the scarcity of doctors working in public primary health care units), and that the Federal Supreme Court (FSC) and the Superior Court of Justice (SCJ) established limits for the Court orders to supply medications. Furthermore, attention should be given to new and important decisions taken by the Brazilian Higher Courts in the field of public and private health.

As regards Social Welfare, the subject of the humanitarian crisis and of migratory flow had a relevant impact. Another relevant topic is the consolidation of rules on childhood and youth promoted by Decree No. 9.579/2018, which establishes a complex program for this field, which is not restricted to social welfare.

¹ I would like to express my gratitude to Dr. Jeferson Barbosa, Post-Doctorate Researcher under my supervision, for his most valuable help in collecting useful information that facilitated my work.

2. EVOLUTION OF SOCIAL PROTECTION SCHEMES

2.1. Social Insurance Reform

The current proposal for a social insurance reform (Proposal for Constitutional Amendment, *Proposta de Emenda à Constituição (PEC) No. 06/2019*) that is currently in the National Congress and that may change significant aspects of the Brazilian system of social security should be underscored. The reasons for the reform are, in summary (1) the announced deficit in the social insurance budget (estimated at R\$ 290 billion); (2) the aging population; (3) the drop in fertility; (4), and increasing life expectancy.² Besides the restriction in the benefits through Constitutional Amendment No. 06/2019, Bill No. 1.646/2019 seeks to improve the system of collecting debts in social insurance.

As to the announced deficit, one can object to it by highlighting the fact that Brazil has a long history of decoupling and disrespecting the purpose for which social insurance contributions are collected. Since 1994, the Brazilian Constitution has contemplated the formal possibility of decoupling part of the funds from social contributions. Through Constitutional Amendment No. 93/2016, this possibility was extended until 2023 and the decoupled percentage rate was raised from 20 to 30%.³ On the one hand, the reform has been motivated by social changes, but, on the other hand, little attention has been paid to the circumstance that the Government uses part of the social contributions to fund the general expenditures of the State.

The current proposal for social insurance reform sets the minimum retirement age at 62 years for women and 65 for men, in addition to 20 years of contributions.⁴ It is intended to include all sectors, private enterprises, government employees and politicians in general. The objective is to adopt a capital-funded pension system similar to an individual or personal savings account.⁵ For those who receive up to one minimum wage the contribution will be reduced from 8 to 7.5% of the wage; for those who receive above this level, the contribution will vary progressively.⁶

The social insurance reform also will impact on social welfare benefits. Thus, the continuous cash benefit will be granted to elderly persons who meet the requirements already at the age of 60 years, but beneficiaries below age 70 will receive only R\$ 400 a month, and only elderly persons from age 70 are entitled to an amount of one minimum wage.⁷ The problem is that the benefit granted before the age of 70 is much lower than the minimum wage; the

² BRASIL. *Nova Previdência: Por que o Brasil precisa da Nova Previdência?* Brasília: Governo Federal, 20.05.2019.

³ BARBOSA, Jeferson Ferreira. *Grenzziehung und Verhältnis zwischen der privaten Krankenversicherung und der öffentlichen Absicherung gegen Krankheit in Deutschland und in Brasilien.*

⁴ BRASIL. *Nova Previdência: conheça os pilares da Nova Previdência.* Brasília: Governo Federal, 20.05.2019.

⁵ BRASIL. *Nova Previdência: proposta da Nova Previdência é melhor para o Brasil.* Brasília: Governo Federal, 20.02.2019.

⁶ BRASIL. *Nova Previdência: A nova previdência é mais justa?* Brasília: Governo Federal, 20.05.2019.

⁷ BRASIL. *Nova Previdência: Benefício de prestação continuada.* Brasília: Governo Federal.

amount granted is much below of what is needed to ensure the minimum for existence or subsistence. The change is, therefore, of doubtful constitutionality.

Access to a survivor's pension will be restricted if at the same time pension benefits are to be paid from either the general pension scheme or from the government employees' social security system. In this case, the surviving spouse can choose the full amount (100%) of the most advantageous benefit, whereas the second pension will be reduced by a certain percentage, ranging between 20 to 80%.⁸ An old-age pension for people with disabilities will require 35 years of contribution for a mild degree of disability, 25 years for a moderate degree and 20 years for severe disability.⁹

Special rules apply for (1) civilian and federal police, prison guards or socio-educational staff; (2) primary school teachers and (3) rural workers. For the first group, the required minimum age is 55 years for both men and women to receive an old-age pension. After the transition period, 30 years of contribution will be required from both sexes, with 20 years of actual police work for women and 25 for men.¹⁰ For the second group, besides specific and transition rules, 30 years of contribution and a minimum retirement age of 60 years will be required for men and women in the public and private early education system for infants, the primary and the middle school system.¹¹ For rural workers, the minimum pension age is 60 years for men and women, the required minimum period of effective work in the rural area will increase from 15 to 20 years, and an annual contribution of R\$ 600 per family group will be required.¹²

The reform is still under discussion in Parliament, but the Federal Executive Power has already managed to establish a few rules that are in tune with the new system. This is the case with Provisional Decree No. 871 of January 18, 2019.¹³ It institutes programs to analyze benefits provision suspected of fraud or error, to review disability benefits and also incentives for the institutions responsible for monitoring and analyzing benefits and medical expert opinions on disability benefits.¹⁴ As a simple example of such measures, extraordinary medical expert opinions are required for disability benefits that have not been examined for a period of longer than six months and that do not have a final expiration date or an indication for professional rehabilitation (Art. 10 § 1 I), as well as for continuous cash benefits that have not been reviewed for more than two years (Art. 10 § 1 II).¹⁵ The aforementioned provisional decree establishes the possibility of paying a bonus to social

⁸ BRASIL. *Nova Previdência: Pensionistas*. Brasília: Governo Federal.

⁹ BRASIL. *Nova Previdência: Pessoas com deficiência*. Brasília: Governo Federal.

¹⁰ BRASIL. *Nova Previdência: policiais civis, policiais federais e agentes penitenciários ou socioeducativos*. Brasília: Governo Federal.

¹¹ BRASIL. *Nova Previdência: Professores do ensino básico*. Brasília: Governo Federal.

¹² BRASIL. *Nova Previdência: trabalhadores rurais*. Brasília: Governo Federal.

¹³ It received the suggestive nickname of "Fine-toothed Comb" Provisional Decree, SIQUEIRA, Julio Pinheiro Faro Homem de. *Notas sobre a medida provisória 871/2019*, p. 1.

¹⁴ BRASIL. *Medida Provisória 871, de 18 de janeiro de 2019 (MP 871/2019)*. Art. 25 A que alterou o IV, Art. 25 da Lei nº 8.213, de 24 de julho de 1991.

¹⁵ BRASIL. *MP 871/2019*. Art. 10 §1º I et II.

security professionals responsible for analyzing such cases.¹⁶ The objective of this legislation, however, is not simply to combat fraud, but also to establish stricter criteria to access social insurance benefits. This is clearly seen in the case of survivor's pensions, sick pay, pensions for work incapacity (*invalidez*), maternity benefit and support granted to dependent family members of a prisoner qualifying as insuree under the social insurance scheme (*auxílio-reclusão*, "reclusion benefit").¹⁷

Criteria for the recognition of non-marital unions and economic dependence have been made more restrictive. It is necessary to present initial evidence based on facts, as mere testimonial evidence is no longer accepted, except for cases of force majeure or unforeseeable circumstances.¹⁸ Such restrictions affect, for instance, the access to survivor's pension and to the "reclusion benefit". Another relevant change, which affects all those insured under the general social insurance scheme, is related to the calculation of the waiting period: If persons previously insured lose their insuree status, the entire waiting period already fulfilled will be lost, too. The waiting period is reset with the new affiliation.¹⁹

2.2. Old-Age Pension

The only change in old-age pensions refers to the retirement of rural workers. New rules were introduced that may potentially render it more difficult to access benefits. There will be a new cadaster of specific insurees, run by the Ministry of the Economy, that must be annually updated. If this period is exceeded, periods of rural work will be counted as relevant periods covered by pension insurance only if those specific insurees pay the contributions required by Art. 25 of Act No. 8.212/1991 "at the appropriate time". From 2020 onwards, the condition and exercise of rural activity will only be based on this cadaster. Before this date, evidence can be presented via a self-declaration ratified by accredited public agencies.²⁰

On the one hand, the reform requires more formalization in order to achieve efficiency and to fight against errors and frauds; on the other hand, considering the Brazilian reality of poverty and precariousness, it is possible that rural workers who work on small properties and substantially fulfill the requested periods of rural activity will not be able to prove their activity, be it due to lack of counselling from the government agencies or a lack of literacy/schooling necessary to understand the requirements. If this change is maintained and converted into a law, it will be interesting to see how the courts respond to this type of cases.

¹⁶ BRASIL. *MP 871/2019*. Art. 2º et seq.

¹⁷ An allowance paid to the family of a prisoner who at some point had a job and paid the contribution to social insurance. For details see below.

¹⁸ BRASIL. *MP 871/2019*. Art. 25 A que alterou Art. 16 da lei 8.213 de 24 de julho de 1991.

¹⁹ BRASIL. *MP 871/2019*. Art. 25 A que alterou art. 27-A da Lei 8213 de 24 de julho de 1991.

²⁰ BRASIL. *MP 871/2019*. Art. 25 A que alterou art. 38-A e 38-B da lei 8212 de 24 de julho de 1991.

2.3. Survivor's Pension

With respect to orphan's pensions, a new period to claim the benefit was introduced in 2019. The benefit has to be requested, on behalf of children below age 16, within 180 days after the insuree's death. In other cases, the period to claim a benefit became even shorter: 90 (ninety) days.²¹ If these deadlines are not complied with, the benefit will be granted only starting on the date it is requested.²² These rules apply to federal civil public employees.²³ However, the same deadlines have been established for the other benefits of the general social insurance scheme.²⁴

2.4. Health Care Provision Under the Single Health Care System (SUS)

2.4.1. Women's Health

Considering the commitment of Brazil to comply with Agenda 2030 for Sustainable Development of the United Nations Organization (UNO), which declares that by 2030 universal access to sexual and reproductive health services has to be ensured, specific government efforts are being made to integrate reproductive health into national strategies and programs, and to implement public policies specifically for women's health.²⁵

To this end, Administrative Rule No. 2.234 of July 23, 2018 instituted the "Agenda Mais Acesso, Cuidado, Informação e Respeito à Saúde das Mulheres" [Agenda for More Access, Care, Information and Respect for Women's Health]. It also provided a government investment in funds for general expenses for Municipal Health Funds based on compliance with requirements established in an official public notice. Funds are allocated according to the population of municipalities: for over 501,000 inhabitants, R\$ 250,000 are provided; from 100,000 to 500,000 inhabitants, the overall investment is R\$ 150,000; finally, if the municipality has up to 100,000 inhabitants, the investment provided is R\$ 100,000. As a counterpart, interested municipal administrations have 30 days from the time the official notice is published to send an outline of the services for sexual and reproductive health of women in the city or town.²⁶

The program aims to improve the care of women in the public health system, focusing on sexual and reproductive health, and also to provide greater access to information and family

²¹ BRASIL. *MP 871/2019*. Art. 23 A que alterou o 219 da Lei 8.112 de 11 de dezembro de 1990 (Dispõe sobre o regime jurídico dos servidores públicos civis da União, das autarquias e das fundações públicas federais).

²² SIQUEIRA, Julio Pinheiro Faro Homem de. *Notas sobre a medida provisória 871/2019*, p. 19.

²³ BRASIL. *MP 871/2019*. Art. 23 A que alterou o 219 da Lei 8.112 de 11 de dezembro de 1990 (Dispõe sobre o regime jurídico dos servidores públicos civis da União, das autarquias e das fundações públicas federais). BRASIL. *Lei 8.112 de 11 December 1990*.

²⁴ BRASIL. *MP 871/2019*. Art. 25 A que alterou o 74 da *Lei 8.213/1991*.

²⁵ BRASIL. Ministério da Saúde. *Portaria nº 2.234, de 23 de julho de 2018*. Diário Oficial da União, Brasília, n. 178. 17.09.2018, p. 25.

²⁶ BRASIL. Ministério da Saúde. *Edital de chamamento público n. 1 de 19 de setembro de 2018*. Agenda Mais Acesso, Cuidado, Informação e Respeito à Saúde das Mulheres. Diário Oficial da União, Brasília, n. 183, 21.09.2018.

planning. In practice, the offer of contraceptive methods, such as the copper intrauterine device (IUD), was expanded, as well as the availability of tests for pregnancy, syphilis and HIV that will supply faster results.²⁷

Act No. 13.770/18, published in the Federal Gazette on 20 December 2018, began to require mandatory provision of plastic surgery for breast reconstruction to victims of mutilation resulting from cancer treatment by the Single Health Care System (SUS) in cases where the technical conditions for this purpose are available.²⁸

2.4.2. Older Persons

In 2018, on the International Day of Older Persons, celebrated on October 1st, the Ministry of Health (MS) issued a study containing data on the profile of the Brazilian population. According to this publication, 75% of the Brazilian elderly depend exclusively on the services supplied by SUS.²⁹

Based on this publication, and aiming to enable the population to experience a healthy aging process, the MS released a document with technical advice for the SUS to implement comprehensive care for the elderly. In practice, the program consists of a larger investment in training and refreshment courses for professionals, in order to adapt the public service to the specific needs of the elderly, given their vulnerability. It attempts to influence preventive and monitoring practices for chronic diseases and the control of diseases such as depression and dementia.³⁰

2.4.3. Extension of Health Care Services

In 2018, the Ministry of Health included 10 new integrative practices of non-biomedical methods in the SUS, with a total of 29 recognized procedures. The new treatments use therapeutic procedures to prevent health problems such as depression and hypertension. The integrative practices include: apitherapy, aromatherapy, bioenergetics, family constellations, chromotherapy, earth therapy, hypnotherapy, hands-on healing, ozone therapy, and floral therapy. The project consists of offering more auxiliary opportunities in treating psychological illnesses to a greater part of the population.³¹

In 2019, the "Programa Saúde na Hora" [Immediate Health Care Program] was created, which implements in the SUS longer consultation hours for the Family Health Units to perform health care services such as pre-natal care, medical visits, collecting material for

²⁷ BRASIL. Ministério da Saúde. Ministério da Saúde divulga resultado final do Edital de Chamamento Público - Agenda Mais Acesso. *Agência Saúde*, Brasília, 23.11.2018.

²⁸ BRASIL. *Lei n. 13.770*, 19 December 2018.

²⁹ BRASIL. Ministério da Saúde. *Estudo aponta que 75% dos idosos usam apenas o SUS*. Agência Saúde, Brasília, 1.10.2018.

³⁰ BRASIL. Ministério da Saúde. *Saúde da pessoa idosa: prevenção e promoção à saúde integral*.

³¹ BRASIL. Ministério da Saúde. *Ministério da Saúde inclui 10 novas práticas integrativas no SUS*. Agência Saúde, Brasília, 1.10.2018.

tests and small outpatient procedures, as a way of reducing the large volume of care of patients in low-risk situations in the emergency hospital sector.³²

2.4.4. "Mais Médicos" [More Doctors] Program

The "Mais Médicos" Program was launched on July 8, 2013 by then President Dilma Rousseff to increase the low number of physicians in towns in the interior of the country and areas with extremely low infrastructure and salubrity. This included the sertão [backlands] of the Northeast, the Brazilian Amazon Region and districts with indigenous peoples.³³

However, with the changes proposed by President-elect *Jair Bolsonaro* in the agreements signed, on November 14, 2018 Cuba announced it was leaving the program, and Brazil had to seek substitutes for the 8,517 places occupied by Cuban doctors.³⁴ Part of the funds transferred by Brazil to the Pan American Health Organization (PAHO) was said to be retransferred to Cuba.³⁵ One of the President's accusations is that Cuba was appropriating a large part of the funds for itself.³⁶ The changes announced by the President included, among others, the requirement to revalidate the university diploma for physicians who had graduated abroad by applying the so-called "Revalida" [revalidation] exam.³⁷ This had already been rejected by the Federal Supreme Court (FSC) in 2017.³⁸

Statements by the President to the effect that he would "expel" the Cuban physicians from the country, that he doubted the quality of the professionals and the veracity of their respective academic training,³⁹ as reported, led the Cuban government to order them to return to their country under penalty of being considered deserters.⁴⁰

As a way of compensating for the lack of physicians, the Government published an official notice to enter the program. The Ministry of Health, on November 25, 2018, informed that 96.6% of the places had been filled⁴¹. However, by the time the deadline for the presentation of those who had enrolled had passed, many of the professionals had given up

³² BRASIL. Ministério da Saúde. *Portaria nº 930, de 15 de maio de 2019*. Diário Oficial da União, Brasília, n. 122, 17.05.2019, p. 122.

³³ BRASIL. Governo Federal. *Programa Mais Médicos. Conheça o programa*.

³⁴ Saída de profissionais cubanos afeta programa Mais Médicos. *G1*, São Paulo, 2 May 2019.

³⁵ ALVES, Cíntia. MPF brasileiro quer saber como a OPAS e Cuba gastam os recursos do Mais Médicos. *GGN*. 21.11.2018.

³⁶ Cuba decide deixar programa Mais Médicos no Brasil e cita declarações 'ameaçadoras' de Bolsonaro. *G1*. 14.11.2018.

³⁷ Saída de profissionais cubanos afeta programa Mais Médicos.

³⁸ RAMALHO, Renan. STF mantém regras do Mais Médicos e autoriza dispensa da validação de diploma de estrangeiros. *G1*, Brasília, 30.11.2017.

³⁹ CUBA. Ministerio de Salud Pública. Declaración del Ministerio de Salud Pública: Cuba anuncia salida del Programa Más Médicos de Brasil. *Granma*, Havana, 19.05.2019. *G1*. Cuba decide deixar programa Mais Médicos no Brasil e cita declarações 'ameaçadoras' de Bolsonaro.

⁴⁰ Saída de profissionais cubanos afeta programa Mais Médicos.

⁴¹ BRASIL. Governo Federal. *Programa Mais Médicos. 96,6% das vagas do Mais Médicos já foram preenchidas*.

and no longer participated.⁴² In May 2019, news indicated that more than 1,052 Brazilian physicians had given up participating in the program.⁴³

2.4.5. Services Ordered by the Courts

In an important decision of 2017, the First Section of the Superior Court of Justice (SCJ) acknowledged the right to exceptionally supply medications that are not included in the lists of the federation's entities. The Judiciary Power may determine the provision of these drugs only under restricted circumstances when the following criteria are met cumulatively: (1) existence of a medical expert opinion proving that there is an imperative need to use that medication, and also that there is a lack of effective alternatives offered by the SUS. (2) The financial incapacity to bear the costs of the drug prescribed must be proved. (3) The medication must be registered with the National Agency of Sanitary Surveillance (Anvisa).⁴⁴

The Federal Supreme Court (FSC), by a majority vote, judging the Extraordinary Appeal No. 657718, set forth the following opinion, which can be seen as a guideline for future judgments: "1. The State cannot be obliged to supply experimental medications. 2. The absence of registration with the National Agency for Sanitary Surveillance (Anvisa) as a rule prevents the supply of medication by judicial sentence. 3. Exceptionally, it is possible to obtain the judicial concession for a certain medication without a sanitary registration in case of unreasonable delay by Anvisa in appreciating the request (time longer than provided for in Act No. 13.411/2016), when three requirements are met: (i) the existence of a request for the registration of the medication in Brazil (except in the case of orphan medications for rare and very rare diseases); (ii) the existence of a registration for the medication with renowned regulatory agencies abroad; and (iii) the non-existence of a therapeutic substitute registered in Brazil. 4. Lawsuits that require the supply of medications that are not registered with Anvisa must necessarily be filed before the Union."⁴⁵

As a rule, court decisions cannot determine the supply of medications that are not registered with Anvisa. The arguments presented here are: protection of public health, the need to attest the efficacy, safety and quality of the medications, and control over the prices of the latter. In the case of medications that are still undergoing tests and whose efficacy and safety have not yet been proven, there is a complete prohibition for judicial decisions to determine their supply. If, on the contrary, there is such scientific evidence, exceptionally their supply may be determined by using the formula above. The need to comply cumulatively with requirements "i", "ii" and "iii" is underscored. Thus, the Court did not change its position regarding the existence of a right to health. What it did was to spell out explicitly the limits of this right.

⁴² BRASIL. Governo Federal. Programa Mais Médicos. Com desistentes, cerca de 200 vagas voltam a edital do Mais Médicos. *Agência Saúde*, Brasília, 4.01.2019.

⁴³ Saída de profissionais cubanos afeta programa Mais Médicos.

⁴⁴ BRASIL. Superior Tribunal de Justiça. *Recurso Especial. REsp: 1657156 RJ 2017/0025629-7*.

⁴⁵ BRASIL. Supremo Tribunal Federal. Direito à saúde e medicamento sem registro na Anvisa – 3. *Informativo 941*.

In its decision on Extraordinary Appeal 855178 ED/SE, the FSC reaffirmed, by a majority vote, the assumption of solidary responsibility of the federated entities in health-related lawsuits. The individual can propose a lawsuit against the state, municipality and/or against the Union. However, the Court determined that the judge can direct the implementation of the decision according to the distribution of competencies among the federated entities and even determine reimbursement if one of the entities is encumbered.⁴⁶

2.5. Sick Pay

Sick pay is similar to the pension for work incapacity. The difference is that it provides that the worker will return to work. Insurees receive the benefit while they recover from an illness or an accident at work.⁴⁷ In 2019, a significant change concerned the exclusion of prisoners who are in a closed prison regime. The sickness benefit of a person who is arrested will, under this condition, be suspended for sixty days. After this period, if the person remains in prison, the benefit will be terminated; if the prisoner is released, the benefit will be reestablished.⁴⁸

2.6. Maternity Benefit and Maternity Leave Protection

The most significant change was the introduction of a 180-day period from the birth or adoption of a child to request the benefit, as well as the introduction of a period of contribution (waiting period) of ten months for claiming the maternity benefit.⁴⁹

Protection linked to maternity leave has been extended by the judiciary. On November 20, 2013, in Extraordinary Appeal No. 630.733, the Federal Supreme Court had decided that there is no right to a new date for exams in a public competitive examination because of the candidate's personal circumstances, unless this is established in the official notice. On November 21, 2018, the Court acknowledged that this does not apply in the case of pregnant women (Extraordinary Appeal No. 1.058.333/PR). They have a right to the assignment of a new date for the physical aptitude test, even if this is not provided in the official notice, because of the constitutional protection of health, maternity, family and family planning. In a decision published on March 29, 2019, the Superior Court of Justice, following the tendency indicated by the Federal Supreme Court, acknowledged this right also for breastfeeding women, due to the necessary care of the newborn, and also because of their maternity leave.⁵⁰

⁴⁶ BRASIL. Supremo Tribunal Federal. Direito à saúde e medicamento sem registro na Anvisa – 3. *Informativo 941*. Available at: <http://www.stf.jus.br/arquivo/informativo/documento/informativo941.htm>. Accessed on: 2.07.2019.

⁴⁷ ASSOCIAÇÃO DOS JUÍZES FEDERAIS DO BRASIL. *Cartilha de Direito Previdenciário*, p. 37 et seq.

⁴⁸ BRASIL. *MP 871/2019*. Art. 25 A que alterou o art. 59 da *Lei 8.213/1991*.

⁴⁹ BRASIL. *MP 871/2019*, que alterou o Art. 25, III e o Art. 71 D da *Lei 8.213/1991*.

⁵⁰ BRASIL. Superior Tribunal de Justiça. Primeira Turma. *Recurso em mandado de Segurança 52.622 – MG*.

2.7. Employment Promotion Policies for Prisoners

A new National Policy of Employment within the Prison System has been established. It is aimed at the extension and qualification of job offers, at entrepreneurship and the professional training of people who are in prison or of former convicts.⁵¹ Under this program, vacant posts are to be reserved for people who are in prison or have left prison. The obligation to reserve job vacancies applies to service provision contracts involving the Federal Public Administration as a party and with annual costs exceeding R\$ 330,000.00. The objective is to rehabilitate and reeducate the convicts.⁵² The rules on the reservation of vacancies were set by Art. 6 of Decree 9.450, of 2018, as follows: 3% of the vacant posts will be reserved when the contract requires 200 employees or less; 4% of the places in the case of 200 to 500 employees; 5% in the case of 501 to 1,000 employees, and 6% when the contract involves more than 1,000 employees.⁵³ However, the legal advice department of the Union itself points out a lack of objective parameters to reserve vacancies, and indicates the possibility of the public administrator to justify not employing prisoners or former convicts using § 4 Art. 5 of Decree 9.450/2018,⁵⁴ which states that "the public administration may decide not to apply the provision of this article when, justifiably, employing the prisoner or prison leaver proves to be unfeasible."⁵⁵

2.8. Social Welfare (Minimum Income Support)

2.8.1. Changes in Programs and Policies

A Law implemented in 2019 opened the possibility of creating trust funds that can support, among others, initiatives involving social welfare, health and education. These funds are designed to collect, manage and invest resources donated by private natural and legal persons.⁵⁶

Act No. 13.714, of August 24, 2018, introduced full health care to be mandatorily provided within the Single Social Welfare System to homeless people by establishing that access of families and individuals in situations of vulnerability or social risk to the program should not be denied because of the lack of documents that prove their domicile or cadaster in the Single Health Care System (SUS). This change, set forth expressly in the law, seeks to ensure full access to health care, which includes provision of medications and other health

⁵¹ BRASIL. *Decreto 9.450, de 24 de julho de 2018.*

⁵² BRASIL. Advocacia-Geral da União. Consultoria-Geral da União. *Parecer n. 00002/2018/CPLCA/CGU/AGU.* Rio de Janeiro, 2018, p. 2.

⁵³ BRASIL. *Decreto 9.450/2018.* Art. 6, I ao IV.

⁵⁴ BRASIL. Advocacia-Geral da União. Consultoria-Geral da União. *Parecer n. 00002/2018/CPLCA/CGU/AGU,* p. 14.

⁵⁵ BRASIL. *Decreto 9.450/2018.* §4º Art. 5º.

⁵⁶ BRASIL. *Lei 13.800, de 04 de janeiro de 2019.* Art. 1º parágrafo único.

materials.⁵⁷ This new guideline regulates an intersection between health care and social welfare.

2.8.2. Humanitarian Crisis and Migratory Flow

Act No. 13.684 of June 21, 2018 provides "measures of emergency assistance to receive people who are in a situation of vulnerability as a result of a migratory flow provoked by a humanitarian crisis".⁵⁸ Here, of central importance is the need for federative (federal, state, district and municipal) cooperation, through a specific legal instrument that will establish responsibilities (Art. 4 of Act No. 13.684/18). It contains provisions for the expansion of policies, including those for social welfare, health care, educational activities, professional training and qualification, public security and strengthening of border control, distribution of immigrants over the national territory, but also repatriation (Art. 5 I, II, III, IV, VIII, X of Act No. 13.684/18). There is a possibility that the Union will reinforce the transfer of funds to the other federated bodies affected. These transfers will be directed at health care, education and social welfare. However, this depends on approving budgetary funding (Art. 8 § 4 of Act No. 13.684/18). The specific duty of transparency and dissemination of data on the internet (Art. 9 of Act No. 13.684/18) should also be highlighted.

2.8.3. Consolidation of Rules on Childhood and Youth

Decree No. 9.579, of November 22, 2018, consolidates normative acts of the Federal Government about infants, children, adolescents and apprentices. It establishes the National Council of Children and Adolescents' Rights and the National Fund for Children and Adolescents.⁵⁹

As to the fundamental rights of children and adolescents, and specifically the right to food, it establishes a number of provisions about the sale, advertisement and labelling of foods for infants and children in early childhood (Art. 3 to 18 of Decree No. 9.579/2018).⁶⁰ There is even a provision of duties applicable to government agencies and associations involved in this field for disseminating information to the public in this regard (Art. 19 and following). It provides for a program and managing committee to deal with violence against children and adolescents (Art. 30 and following). The entire Chapter IV, from Art. 42 to 75, is dedicated to the right to professional training, with provisions regarding the situation of apprentices, "persons over the age of fourteen years and under the age of twenty-four years who enter a contract of apprenticeship" (Art. 44, head provision, Decree No. 9.579/2018), with specific provisions about the contract, technical-professional training, qualified entities, mandatory contracting, types of contract, labor rights and accessory obligations. According to Art. 51 the establishments are obliged to employ and enroll in the courses of the national apprenticeship services a percentage of between five and fifteen per cent of apprentices.

⁵⁷ BRASIL. *Lei n. 13.714, de 24 de agosto de 2018.*

⁵⁸ BRASIL. *Lei 13.684, de 21 de junho de 2018.* Art. 1º Caput.

⁵⁹ BRASIL. *Decreto 9.579, de 22 de novembro de 2018 (Decreto 9.579/2018).*

⁶⁰ BRASIL. *Decreto 9.579/2018.*

This decree institutes the "Programa Criança Feliz" [Happy Child Program]. It thus implements Act No. 13.257/2016, which establishes principles and guidelines to formulate and implement public policies for early childhood, which was also considered in the previous Report.⁶¹ Aimed at early childhood, which covers people up to the age of six years, this policy establishes, for instance, support and follow-up of full child development, support to pregnant women and the family in preparation for birth and care concerning birth; home visits; training of professionals and development of support material (Arts. 99 and 100 of Decree No. 9.579/2018).

2.9. Benefits and Services for Persons with Disabilities and Prisoners

2.9.1. Persons with Disabilities

For the protection of the emotional health and well-being of persons with disabilities, Decree No. 9.404, of 11 June 2018 provided legal regulation and legal security concerning mandatory reservation of spaces and seats in theaters, movie houses, auditoriums, stadiums, gymnasiums, show sites and similar facilities for persons with disabilities.⁶²

Further, the agenda of the Committee on Human Rights and Participatory Legislation mentions Bill No. 1.254/2019, introduced by Senator *Mara Gabrilli*. The proposal addresses the possibility of deducing expenses for prostheses, orthoses and assistive technologies from the personal income tax base.⁶³

2.9.2. Reclusion Aid

This special insurance benefit is paid during the time the insuree remains in prison. The benefit is directed to the dependent family member of the insuree if the family member does not receive a salary, sick pay or a pension.⁶⁴ In 2019, a prior contribution period (waiting period) of 24 months was introduced as an additional criterion to access the benefit.⁶⁵ This waiting period is an innovation, which, according to the specialized literature, is an element that allocates this benefit closer to social insurance and reduces the character of mere welfare provision.⁶⁶

⁶¹ SLR 8/2018, p. 14, available at: https://www.mpisoc.mpg.de/1380198/SLR_8_2018_-Report-Brazil-2016--2018_final.pdf

⁶² BRASIL. *Decreto n. 9.404, de 11 de junho de 2018.*

⁶³ BRASIL. Senado Federal. *Projeto de Lei n° 1254, de 2019.*

⁶⁴ ASSOCIAÇÃO DOS JUÍZES FEDERAIS DO BRASIL. *Cartilha de Direito Previdenciário*, p. 43.

⁶⁵ BRASIL. MP 871, de 18 de janeiro de 2019. Art. 25 A que alterou o IV, Art. 25 da Lei nº 8.213, de 24 de julho de 1991.

⁶⁶ SIQUEIRA, Julio Pinheiro Faro Homem de. Notas sobre a medida provisória 871/2019, p. 10.

3. ORGANIZATION, ADMINISTRATION AND FINANCING ISSUES

3.1. Single Health Care System (SUS)

During the period from 2018 to 2019, some advances in health care policies have been enacted. However, this contradicts the funding conditions for this sector set by Constitutional Amendment No. 95, which had established a ceiling for public expenditures in 2016.⁶⁷ Based on data for the period of 2018-2019, the National Health Council criticized the Ministry of Health's programming of the Budget Bill 2019,⁶⁸ by pointing out that the amendment would entail a chronic crisis of underfunding and defunding of the SUS.⁶⁹

In practice, Constitutional Amendment 95 implies a reduction of funds for public health in Brazil from 15% to 13.95% in 2018, and to 13.85% in 2019 (estimated),⁷⁰ observing the parameters of the Budget Bill 2019 and the pertinent National Health Council Resolution. Furthermore, in 2018, despite the authorization for R\$ 130 billion to fund the system, only R\$ 108 billion were actually spent.⁷¹

In an official letter of March 2019 to the Minister of Health, *Luiz Henrique Mandetta*, the National Council of Secretaries of Health (CONASS) announced that the Single Health Care System was facing a crisis in the public stock of medications due to the low funding.⁷² The data showed that of a total of 134 medications that are mandatorily distributed by the Ministry of Health, 25 were out of stock throughout the Brazilian territory and the stock of 18 others was very low.⁷³ Among those that are out of stock are drugs used to treat breast cancer and child leukemia.⁷⁴

3.2. Reimbursement to the Single Health Care System (SUS)

The public health care system in Brazil is universal and free. However, there is controversy about the provision of health care through the public system for a person covered by a private health insurance scheme.⁷⁵ Article 32 of Act No. 9.656/1998 provided that in such

⁶⁷ BRASIL. *Emenda Constitucional n. 95, de 15 de dezembro de 2016.*

⁶⁸ BRASIL. *Lei n. 13.808, de 15 de janeiro de 2019.*

⁶⁹ BRASIL. Conselho Nacional de Saúde. *Documento 25/02/2019.* A Emenda Constitucional 95/2016 reduz recursos para o financiamento das políticas sociais, em especial do Sistema Único de Saúde (SUS).

⁷⁰ BRASIL. Conselho Nacional de Saúde. *Documento 25/02/2019.*

⁷¹ BRASIL. Na Saúde governo deve enfrentar desafio de financiar o SUS. *Agência Senado*, Brasília, 25 de janeiro de 2019.

⁷² BRASIL. Conselho Nacional de Secretários da Saúde. *Ofício Conass n. 138.* Regularização de entregas de medicamentos referentes à Assistência Farmacêutica (Grupo 1A do CEAF).

⁷³ BRASIL. Conselho Nacional de Secretários da Saúde. *Ofício Conass n. 138.*

⁷⁴ CAMPOREZ, Patrik. Falta de remédios ameaça dois milhões de pacientes no Brasil. *O Globo*, Brasília, 5.05.2019.

⁷⁵ SARLET, Ingo Wolfgang, *Direitos Fundamentais em Espécie*, in: SARLET, Ingo Wolfgang; MARINONI, Luiz Guilherme; MITIDIERO, Daniel, *Curso de Direito Constitucional*, 3. ed., São Paulo, 2014, p. 594.

cases the Government could require the private insurance company to reimburse the amount. In 2018, the Federal Supreme Court reaffirmed this possibility.⁷⁶

4. SELECTION OF MONOGRAPHS

4.1. Social Insurance

ALENCAR, Hermes Arrais. Cálculo de benefícios previdenciários: regime geral de previdência social. São Paulo: SaraivaJur, 2019.

AMADO, Frederico Augusto Di Trindade. Direito previdenciário. Salvador: JusPODIVM, 2019.
Cuéllar, Martha Elisa Monsalve; Silva, Luciana Aboim Machado Gonçalves da; Pierdoná, Zélia Luiza (eds.). Impacto das normas internacionais da OIT no direito do trabalho e da seguridade social: homenagem ao Professor Doutor Cássio de Mesquita Barros Júnior. São Paulo: LTr, 2018.

Fernandes, Ana Paula; Santos, Roberto de Carvalho; Serau Junior, Marco Aurélio (eds.). Temas relevantes e pontos controvertidos do direito previdenciário. São Paulo: Belo Horizonte: LTr ; IEPREV - Instituto de Estudos Previdenciários, 2018.

FRANCO, Alex Pereira. Reforma da previdência social: o estado contemporâneo e a reconfiguração do sistema previdenciário. Curitiba: Juruá, 2019.

GARCIA, Gustavo Filipe Barbosa. Manual de direito previdenciário. Salvador: JusPODIVM, 2019.

HERMES, Manuellita. Livre circulação de trabalhadores e seguridade social: estudo comparado entre União Europeia e Mercosul . Rio de Janeiro: Lumen Juris, 2019.

HORVATH JÚNIOR, Miguel. Direito previdenciário. São Paulo: Quartier Latin, 2018.

HUTZLER, Fernanda Souza. O ativismo judicial e seus reflexos na seguridade social. Brasília: Conselho da Justiça Federal, Centro de Estudos Judiciários, 2018.

LEAL, Bruno Bianco. Previdência em crise: diagnóstico e análise econômica do direito previdenciário. São Paulo: Revista dos Tribunais, 2018.

MARTINS, Guilherme Magalhães. Estatuto da pessoa com deficiência: comentários à Lei 13.146/2015. São Paulo: Foco, 2019.

NOCETI, Rodrigo Fagundes. Aposentadoria especial do contribuinte individual. Curitiba: Juruá, 2018.

PANCOTTI, Heloísa Helena Silva. Previdência social e transgêneros: proteção previdenciária, benefícios assistenciais e atendimento à saúde para os transexuais e travestis. Curitiba: Juruá, 2019.

PANCOTTI, Luiz Gustavo Boiam. Benefícios previdenciários: tutela e solução de conflitos à luz de princípios constitucionais. Curitiba: Juruá, 2018.

PARDO, Fabiano de Oliveira. Limbo jurídico previdenciário-trabalhista no auxílio doença: responsabilidade do empregador e INSS. São Paulo: LTr, 2018.

⁷⁶ BRASIL. Supremo Tribunal Federal. *Recurso Extraordinário. RE 597064/RJ.*

- RAMOS, Itamar de Ávila. Princípio da vedação de retrocesso e financiamento da seguridade social no Brasil. Rio de Janeiro: Lumen Juris, 2018.
- ROCHA, Daniel Machado da. Comentários à Lei de benefícios da previdência social: Lei 8.213, de 24 de julho de 1991. São Paulo: Atlas, 2019.
- ROCHA, Daniel Machado da. Direito previdenciário: fundamentos de interpretação e aplicação. Curitiba: Alteridade, 2019.
- SANTOS, Marisa Ferreira dos. Direito previdenciário. São Paulo: SaraivaJur, 2019.
- SERAU JUNIOR, Marco Aurélio. Seguridade social e direitos fundamentais. Curitiba: Juruá, 2019.
- SOARES, João Marcelino. Aposentadoria da pessoa com deficiência. Curitiba: Juruá, 2018.
- TAFNER, Paulo. Reforma da previdência: por que o Brasil não pode esperar? Rio de Janeiro: Elsevier, 2019.
- TREZUB, Cláudio José. Perícia médica previdenciária: benefícios por incapacidade. Salvador: JusPODIVM, 2019.

4.2. Health System and the Right to Health

- ALVES, Lucélia de Sena; RETES, Tiago Augusto Leite. Judicialização da Saúde. Belo Horizonte: D'Plácido, 2018.
- BARBOSA, Jeferson Ferreira. Grenzziehung und Verhältnis zwischen der privaten Krankenversicherung und der öffentlichen Absicherung gegen Krankheit in Deutschland und in Brasilien. PhD, Universität Regensburg, 2018. Available at: <urn:nbn:de:bvb:355-epub-375583>.
- CASTRO, Vinícius. Constitucionalismo e direito à saúde: o mal-estar do ativismo judicial. Rio de Janeiro: Lumen Juris, 2018.
- CONTI, José Maurício. Poder judiciário: políticas públicas: volume II. São Paulo: Almedina, 2018.
- FARIAS, Rodrigo Nóbrega. Direito à saúde & sua judicialização. Curitiba: Juruá, 2018.
- FERREIRA, Vanessa Rocha. Direito fundamenta à saúde: uma análise do posicionamento do STF à luz do liberalismo de princípios. Rio de Janeiro: Lumen Juris, 2019.
- FREITAS, Daniel Castanha de. Direito fundamental à saúde e medicamentos de alto custo. Belo Horizonte: Fórum, 2018.
- LIMA, Fernando Rister de Sousa. Saúde e Supremo Tribunal Federal. Curitiba: Juruá, 2018.
- MAGGIO, Marcelo Paulo. Saúde pública e sua tutela pelo Ministério Público. Curitiba: Juruá, 2018.
- MINICUCCI, Telma. Políticas sociais: conceitos, trajetórias e a experiência brasileira. Rio de Janeiro: Fiocruz, 2018.
- RENAULT, Felipe Kertesz. Ressarcimento ao SUS e saúde suplementar. Rio de Janeiro: Lumen Juris, 2018.
- RONEI, Danielli. A judicialização da saúde no Brasil: do viés individualista ao patamar de bem coletivo. Belo Horizonte: Fórum, 2018.

SOUSA LIMA, Fernando Rister. Saúde e Supremo Tribunal Federal. Belo Horizonte: Editora Juruá, 2018.

4.3. Social Assistance

BERWANGER, Jane Lucia Wilhelm. Constituição: um olhar sobre minorias vinculadas à seguridade social. 3. ed., ver. e atual. Curitiba: Juruá, 2018.

IAMAMOTO, Marilda Villela. Relações sociais e serviço social no Brasil: esboço de uma interpretação histórico-metodológica. 41. ed., 5. reimpr. São Paulo: Cortez, 2018.

MARTINS, Guilherme Magalhães. Estatuto da pessoa com deficiência: comentários à Lei 13.146/2015. São Paulo: Foco, 2019.

PARIJIS, Philippe Van. Renda básica: uma proposta radical para uma sociedade livre e economia sã. São Paulo: Cortez, 2018.

SANTOS, Denise Tanaka dos. As ações governamentais de assistência social. Rio de Janeiro: Lumen juris, 2018.

SERAU JÚNIOR, Marco Aurélio. Benefício assistencial: a luta pelo direito assistencial no Brasil. São Paulo : LTr, 2018.

5. REFERENCES

Alves, Cíntia. MPF brasileiro quer saber como a OPAS e Cuba gastam os recursos do Mais Médicos. GGN. 21.11.2018. <<https://jornalggn.com.br/justica/mais-medicos/>>. Accessed on: 31.05.2019.

ASSOCIAÇÃO DOS JUÍZES FEDERAIS DO BRASIL. Cartilha de Direito Previdenciário, [no date given].

BARBOSA, Jeferson Ferreira. Grenzziehung und Verhältnis zwischen der privaten Krankenversicherung und der öffentlichen Absicherung gegen Krankheit in Deutschland und in Brasilien. PhD, Universität Regensburg, 2018. <<urn:nbn:de:bvb:355-epub-375583>>. Accessed on: 31.05.2019.

BRASIL. Lei 8.213 de 24 de julho de 1991 (Lei 8.213/1991). <http://www.planalto.gov.br/ccivil_03/leis/l8213compilado.htm>. Accessed on: 29.05.2019.

BRASIL. Lei n. 13.714, de 24 de agosto de 2018. <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/Lei/L13714.htm>. Accessed on: 8.05.2019.

BRASIL. Supremo Tribunal Federal. Recurso Extraordinário. RE 597064/RJ. Relator: Gilmar Mendes. Data de Julgamento: 7.02.2018. <<http://portal.stf.jus.br/processos/detalhe.asp?incidente=2661252>>. Accessed on: 17.05.2019.

BRASIL. Advocacia-Geral da União. Consultoria-Geral da União. Parecer n. 00002/2018/CPLCA/CGU/AGU. Rio de Janeiro, 2018.

- https://www.academia.edu/37964426/Parecer_sobre_a_reserva_de_vagas_de_presos_e_egressos_do_sistema_prisional_nas_contrata%C3%A7%C3%B5es_federais_-_Uma_an%C3%A1lise_do_Decreto_9.450_de_2018>. Accessed on: 28.05.2019.
- BRASIL. Benefício de Prestação Continuada (BPC). Brasília: Governo Federal, <<http://www.brasil.gov.br/novaprevidencia/pode-perguntar/idosos-de-baixa-renda>>. Accessed on: 29.05.2019.
- BRASIL. Conselho Nacional de Saúde. Documento 25/02/2019. A Emenda Constitucional 95/2016 reduz recursos para o financiamento das políticas sociais, em especial do Sistema Único de Saúde (SUS). <<http://www.susconecta.org.br/wp-content/uploads/2019/02/A-EMENDA-CONSTITUCIONAL-95.pdf>>. Accessed on: 8.05.2019.
- BRASIL. Conselho Nacional de Secretários da Saúde. Ofício Conass n. 138. Regularização de entregas de medicamentos referentes à Assistência Farmacêutica (Grupo 1A do CEAF). <<https://www.jota.info/wp-content/uploads/2019/05/32db600f17d1f9ad4c57fd28f715d891.pdf?x79938>>. Accessed on: 18.05.2019.
- BRASIL. Constituição da República Federativa do Brasil de 1988 (CF). http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm>. Accessed on: 6.06.2019.
- BRASIL. Decreto 9.450, de 24 de julho de 2018 (Decreto 9.450/2018). http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/Decreto/D9450.htm>. Accessed on: 28.05.2019.
- BRASIL. Decreto 9.579, de 22 de novembro de 2018 (Decreto 9.579/2018). <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/decreto/D9579.htm>. Accessed on: 7.06.2019.
- BRASIL. Decreto n. 9.404, de 11 de junho de 2018. <https://www2.camara.leg.br/legin/fed/decret/2018/decreto-9404-11-junho-2018-786845-publicacaooriginal-155826-pe.html>>. Accessed on: 8.05.2019.
- BRASIL. Emenda Constitucional n. 95, de 15 de dezembro de 2016. Altera o Ato das Disposições Constitucionais Transitórias, para instituir o Novo Regime Fiscal, e dá outras providências. <http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc95.htm>. Accessed on: 17.05.2019.
- BRASIL. Governo Federal. Programa Mais Médicos. 96,6% das vagas do Mais Médicos já foram preenchidas. <<http://maismedicos.gov.br/noticias/287-96-6-das-vagas-do-mais-medicos-ja-foram-preenchidas>>. Accessed on: 19.05.2019.
- BRASIL. Governo Federal. Programa Mais Médicos. Com desistentes, cerca de 200 vagas voltam a edital do Mais Médicos. Agência Saúde, Brasília, 04 de janeiro de 2019. <<http://maismedicos.gov.br/noticias/284-com-desistentes-cerca-de-200-vagas-voltam-a-edital-do-mais-medicos>>. Accessed on: 8.05.2019.
- BRASIL. Governo Federal. Programa Mais Médicos. Conheça o programa. <http://maismedicos.gov.br/conheca-programa>>. Accessed on: 18.05.2019.

- BRASIL. Lei 13.684, de 21 de junho de 2018. http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/Lei/L13684.htm. Accessed on: 7.06.2019. Art. 1º Caput.
- BRASIL. Lei 13.800, de 04 de janeiro de 2019. http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13800.htm. Accessed on: 28.05.2019. Art. 1º parágrafo único.
- BRASIL. Lei 8.112 de 11 de dezembro de 1990. http://www.planalto.gov.br/ccivil_03/leis/l8112cons.htm. Accessed on: 29.05.2019.
- BRASIL. Lei 8.742, de 7 de dezembro de 1993. Dispõe sobre a organização da Assistência Social e dá outras providências. http://www.planalto.gov.br/ccivil_03/LEIS/L8742compilado.htm. Accessed on: 06.06.2019.
- BRASIL. Lei n. 13.770, de 19 de dezembro de 2018. <https://legis.senado.leg.br/norma/30753482>. Accessed on: 08.05.2019.
- BRASIL. Lei n. 13.808, de 15 de janeiro de 2019. Estima a receita e fixa a despesa da União para o exercício financeiro de 2019. <https://www.camara.leg.br/internet/comissao/index/mista/orca/orcamento/or2019/Lei/Lei13808-2019.pdf>. Accessed on: 08.05.2019.
- BRASIL. Medida Provisória 871, de 18 de janeiro de 2019 (MP 871/2019). http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/Mpv/mpv871.htm. Accessed on: 28.05.2019.
- BRASIL. Ministério da Saúde. Edital de chamamento público n. 1 de 19 de setembro de 2018. Agenda Mais Acesso, Cuidado, informação e Respeito à saúde das mulheres. Diário Oficial da União, Brasília, n. 183, 21.09.2018.
- BRASIL. Ministério da Saúde. Estudo aponta que 75% dos idosos usam apenas o SUS. Agência Saúde, Brasília, 01 de outubro de 2018. <http://portalms.saude.gov.br/noticias/agencia-saude/44451-estudo-aponta-que-75-dos-idosos-usam-apenas-o-sus>. Accessed on: 08.05.2019.
- BRASIL. Ministério da Saúde. Ministério da Saúde divulga resultado final do Edital de Chamamento Público - Agenda Mais Acesso. Agência Saúde, Brasília, 23.11.2018. <http://portalms.saude.gov.br/noticias/sas/44763-ministerio-da-saude-divulga-resultado-final-do-edital-de-chamamento-publico-agenda-mais-acesso>. Accessed on: 17.05.2019.
- BRASIL. Ministério da Saúde. Ministério da Saúde inclui 10 novas práticas integrativas no SUS. Agência Saúde, Brasília, 01 de outubro de 2018. <http://portalms.saude.gov.br/noticias/agencia-saude/42737-ministerio-da-saude-inclui-10-novas-praticas-integrativas-no-sus>. Accessed on: 8.05.2019.
- BRASIL. Ministério da Saúde. Portaria no 2.234, de 23 de julho de 2018. Diário Oficial da União, Brasília, n. 178. 17.09.2018
- BRASIL. Ministério da Saúde. Portaria no 930, de 15 de maio de 2019. Institui o Programa "Saúde na Hora", que dispõe sobre o horário estendido de funcionamento das Unidades de Saúde da Família, altera a Portaria nº 2.436/GM/MS, de 2017, a Portaria

- de Consolidação nº 2/GM/MS, de 2017, a Portaria de Consolidação nº 6/GM/MS, de 2017, e dá outras providências. Diário Oficial da União, Brasília, n. 122. 17.05.2019. P. 122.
- BRASIL. Ministério da Saúde. Saúde da pessoa idosa: prevenção e promoção à saúde integral. Disponível em: <<http://portalms.saude.gov.br/saude-de-a-z/saude-da-pessoa-idosa>>. Accessed on: 18.05.2019.
- BRASIL. Na Saúde governo deve enfrentar desafio de financiar o SUS. Agência Senado, Brasília, 25 de janeiro de 2019. <<https://www12.senado.leg.br/noticias/materias/2019/01/25/na-saude-governo-deve-enfrentar-desafio-de-financiar-o-sus>>. Accessed on: 8.05.2019.
- BRASIL. Nova Previdência: A nova previdência é mais justa? Brasília: Governo Federal, 20.05.2019. <<http://www.brasil.gov.br/novaprevidencia/noticias/a-nova-previdencia-e-mais-justa>> Accessed on: 27.05.2019.
- BRASIL. Nova Previdência: Benefício de prestação continuada. Brasília: Governo Federal. <<http://www.brasil.gov.br/novaprevidencia/pode-perguntar/idosos-de-baixa-renda>>. Accessed on: 29.05.2019.
- BRASIL. Nova Previdência: conheça os pilares da Nova Previdência. Brasília: Governo Federal, 20.05.2019. <<http://www.brasil.gov.br/novaprevidencia/noticias/conheca-os-pilares-da-nova-previdencia>>. Accessed on: 29.05.2019.
- BRASIL. Nova Previdência: Pensionistas. Brasília: Governo Federal. <<http://www.brasil.gov.br/novaprevidencia/pode-perguntar/pensionistas>> Accessed on: 29.05.2019.
- BRASIL. Nova Previdência: Pessoas com deficiência. Brasília: Governo Federal. <<http://www.brasil.gov.br/novaprevidencia/pode-perguntar/pessoa-com-deficiencia>> Accessed on: 29.05.2019.
- BRASIL. Nova Previdência: policiais civis, policiais federais e agentes penitenciários ou socioeducativos. Brasília: Governo Federal. <<http://www.brasil.gov.br/novaprevidencia/pode-perguntar/policiais-civis-federais-e-agentes-penitenciarios-e-socioeducativos>>. Accessed on: 27.05.2019.
- BRASIL. Nova Previdência: Por que o Brasil precisa da Nova Previdência? Brasília: Governo Federal, 20.05.2019. <<http://www.brasil.gov.br/novaprevidencia/noticias/por-que-o-brasil-precisa-da-nova-previdencia>>. Accessed on: 28.05.2019.
- BRASIL. Nova Previdência: Professores do ensino básico. Brasília: Governo Federal. <<http://www.brasil.gov.br/novaprevidencia/pode-perguntar/professores>> Accessed on: 29.05.2019.
- BRASIL. Nova Previdência: proposta da Nova Previdência é melhor para o Brasil. Brasília: Governo Federal, 20.02.2019. <<http://www.brasil.gov.br/novaprevidencia/noticias/proposta-da-nova-previdencia-e-melhor-para-o-brasil>> Accessed on: 27.05.2019.
- BRASIL. Nova Previdência: trabalhadores rurais. Brasília: Governo Federal. <<http://www.brasil.gov.br/novaprevidencia/pode-perguntar/trabalhadores-rurais>>. Accessed on: 27.05.2019.

- BRASIL. Portaria do Ministério do Desenvolvimento Social e Combate à Fome nº 951, de 9 de março de 2018 (Portaria MDS nº 951, de 9 de março de 2018). <<http://blog.mds.gov.br/redesuas/portaria-no-951-de-9-de-marco-de-2018/>>. Accessed on: 7.06.2019.
- BRASIL. Senado Federal. Projeto de Lei nº 1254, de 2019. Altera a Lei nº 9.250, de 26 de dezembro de 1995, para facultar a dedução, da base de cálculo do IRPF, de despesas com próteses, órteses e tecnologias assistivas específicas para pessoas com deficiência. <<https://www25.senado.leg.br/web/atividade/materias/-/materia/135508>>. Accessed on: 18.05.2019.
- BRASIL. Superior Tribunal de Justiça (STJ). Primeira Seção. Recurso Especial 1.720.805/RJ. Acórdão. Relator: Regina Helena Costa. Julgado em 22.08.2018. Publicado: DJe: 26.09.2018. <https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&s equencial=1705875&num_registro=201800206322&data=20180926&formato=PDF>. Accessed on: 29.05.2019.
- BRASIL. Superior Tribunal de Justiça. Primeira Seção. Tema Repetitivo 1007. Com ralação ao REsp 1674221/SP e ao REsp 1788404/PR. Relator: Napoleão Nunes Maia Filho. 22.03.2019. <http://www.stj.jus.br/repetitivos/temas_repetitivos/pesquisa.jsp>. Accessed on: 30.05.2019.
- BRASIL. Superior Tribunal de Justiça. Primeira Turma. Recurso em mandado de Segurança 52.622 – MG. Acórdão. Relator: Gurgel de Faria. DJe: 29.03.2019.
- BRASIL. Superior Tribunal de Justiça. Recurso Especial. REsp: 1657156 RJ 2017/0025629-7. Relator: Benedito Gonçalves. Judgment of 25.04.2018. <https://ww2.stj.jus.br/processo/revista/inteiroteor/?num_registro=201700256297 &dt_publicacao=04/05/2018>. Accessed on: 8.05.2019.
- BRASIL. Supremo Tribunal Federal. Decisão do STF desobriga Estado de fornecer medicamento sem registro na Anvisa. 22.05.2019. <<http://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=411857>>. Accessed on: 31.05.2019.
- Camporez, Patrik. Falta de remédios ameaça dois milhões de pacientes no Brasil. O Globo, Brasília, 05.05.2019. <https://oglobo.globo.com/sociedade/falta-de-remedios-ameaca-dois-milhoes-de-pacientes-no-brasil-23642541?fbclid=IwAR2x_WLRUhOr-zRPAZNigg0-kc5pCfH_5KaWJoWSg3rAnoz2mLepg9qn-Ig>. Accessed on: 8.05.2019.
- CUBA. Ministerio de Salud Pública. Declaración del Ministerio de Salud Pública: Cuba anuncia salida del Programa Más Médicos de Brasil. Granma, Havana, 19 de maio de 2019. Disponível em: <<http://www.granma.cu/cuDeclaración del Ministerio de Salud Pública: Cuba anuncia salida del Programa Más Médicos de Brasilba/2018-11-14/declaracion-del-ministerio-de-salud-publica-14-11-2018-09-11-05>>. Accessed on: 19.05.2019.
- G1. Cuba decide deixar programa Mais Médicos no Brasil e cita declarações 'ameaçadoras' de Bolsonaro. G1. 14.11.2018.

<<https://g1.globo.com/mundo/noticia/2018/11/14/cuba-decide-deixar-programa-mais-medicos-no-brasil.ghtml>>. Accessed on: 31.05.2019.

G1. Saída de profissionais cubanos afeta programa Mais Médicos. G1, São Paulo, 02 de maio de 2019. Disponível em: <<https://g1.globo.com/profissao-reporter/noticia/2019/05/02/saida-de-profissionais-cubanos-afeta-programa-mais-medicos.ghtml>>. Accessed on: 8.05.2019.

RAMALHO, Renan. STF mantém regras do Mais Médicos e autoriza dispensa da validação de diploma de estrangeiros. G1, Brasília, 30 de novembro de 2017. <<https://g1.globo.com/politica/noticia/por-maioria-stf-valida-regras-do-programa-mais-medicos.ghtml>>. Accessed on: 8.05.2019.

Sarlet, Ingo Wolfgang. Direitos Fundamentais em Espécie. In: Sarlet, Ingo Wolfgang; Marinoni, Luiz Guilherme; Mitidiero, Daniel. Curso de Direito Constitucional. 3. ed. São Paulo, 2014. pp. 363-701.

SIQUEIRA, Julio Pinheiro Faro Homem de. Notas sobre a medida provisória 871/2019. <https://www.researchgate.net/publication/330570074_Notas_sobre_a_Medida_Provisoria_8712019>. Accessed on: 28.05.2019.

Prof. Dr. Ingo Wolfgang Sarlet
Escola de Direito da Pontifícia Universidade Católica
do Rio Grande do Sul (PUCRS)
Porto Alegre, RS
Brasil
Email: iwsarlet@gmail.com
