

The Brazilian government's actions against the CoViD-19

Sthéfano Bruno Santos Divino

Professor of Civil law, Universidade Federal de Lavras – UFLA.

Mail: sthefanodivino@ufla.br.

One of the main actions of the Brazilian Government to control, prevent and eradicate cases involving CoViD-19 (Coronavirus) was the drafting of Law 13.979/2020¹. The objective of the Law is to solve possible legal problems existing between the exercise of civil liberties (for example: freedom of movement and individual health) and public interest (collective health), for the maintenance of social order.

Among the justifications used to create the legislation under analysis, it appears that all the actions contained therein aim to protect the community (art. 1, § 1). This is because the government considered that this disease is considered a national and international public health emergency.

To deal with the public health emergency of international importance resulting from the coronavirus, the Brazilian government authorizes some actions by public authorities (arts. 2 and 3):

1. Isolation: separation of healthy from sick or contaminated persons, or luggage, goods or affected postal parcels, in order to avoid contamination or the spread of the Coronavirus;
2. Quarantine: restriction of activities or separation of persons suspected of being infected by persons who are not sick, or of luggage, containers, animals or goods suspected of being

- contaminated, in order to avoid possible contamination or the spread of the coronavirus;
3. Compulsory performance of: a) medical examinations; b) laboratory tests; c) collection of clinical samples; d) vaccination and other prophylactic measures; or e) specific medical treatments;
4. Epidemiological study or investigation;
5. Exhumation, necropsy, cremation and corpse management;
6. Exceptional and temporary restriction on entering and leaving the country by highways, ports or airports, according to technical and reasoned recommendation by the National Health Surveillance Agency (Anvisa);
7. Requisition of goods and services from natural and legal persons, in which case the subsequent payment of fair compensation will be guaranteed; and
8. Exceptional and temporary authorization for the import of products subject to health surveillance without registration with Anvisa, provided that: a) registered by a foreign health authority; and b) provided for in an act of the Ministry of Health.

All the actions mentioned above will only be taken when there is sufficient evidence that the person may be infected. For this, the government make a research about the route of the possible infected person to verify if there was contact with risk areas. In this way it becomes possible to avoid situations that cause unnecessary fear in the population.

It is observed that, although it is an extreme measure, patients' rights are safeguarded. Firstly, it is emphasized that the treatment will be considered free of charge (art. 3, §2, II). Thus,

¹ Law 13.979 of February 6, 2020, available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/L13979.htm (last visited: 29/02/2020).

the possible infected person will have all the treatment paid for by the State. Another important right is linked to the indispensable communication of patients about their health status, as well as the assistance to the family of the possible infected (art. 3, §2, I). In this case, although CoViD-19 (Coronavirus) is classified by the Brazilian Government as a national and international emergency, the Right to Health is protected by art. 6 of Brazilian Federal Constitution². Therefore, it is up to the State to inform the patient about the real risks that affect his life and that of his family members, and must offer all the support necessary to solve that situation.

Finally, the entire procedure must be carried out with respect to the dignity, human rights and fundamental freedoms of people (art. 3, §2, III). One should not treat potential infected persons with rejection. On the contrary. During the entire process of detection and treatment, the government must respect the human rights. Any violation of the aforementioned actions can be considered an unlawful act of segregation and may result in civil liability of those involved in the treatment (art. 3, §4).

Another observation must be made regarding people who have an employment relationship. The right to be absent from work is guaranteed when patients are under the care of the State (art. 3, §3). In this case, the employer cannot reduce the salary due to the absence of the worker in the work environment. This guarantees job stability and, consequently, the exercise of the patient's right to take care of their health.

In addition, as we are facing a national and international emergency situation, it would be difficult for the State to verify which people may or may not have CoViD-19 symptoms. It is for this

reason that Law 13.797, in its art. 5, I and II, determines that everyone will collaborate with the health authorities in the immediate communication about possible contacts with infectious agents of the coronavirus and about circulation in areas considered as regions of contamination by the coronavirus. This action aims to ensure that the infection does not spread. For this, an active and positive behavior of the population must be taken into account in order to go to the health centers to perform the test.

According to the legal provision, it is essential to share data essential to the identification of people infected or suspected of having a coronavirus infection between the government entities (Municipal, State and Federal), with the purpose of preventing its spread (art. 6). When detecting the possible existence of the virus, the responsible professional must notify the Center for Strategic Information in Health Surveillance (CIEVS) within 24 hours after knowledge of the fact (Ministry of Health, 2020).

Regarding the dissemination of news on the internet, the Brazilian Ministry of Health has been cautious. In order to prevent the arbitrary use of the right to freedom of expression, all possible fake news is posted on the government website with their justifications for falsehood³. Information such as (1) the possibility of bubble wrap coming from China to contain CoViD-19, (2) homemade recipes to prevent and combat CoViD-19, and (3) possible cures are among the list of news demystified by the Ministry of Health. The adoption of this conduct is extremely important, as this type of information is quickly shared by users of social networks and can cause an uproar in the population as a whole.

² Brazilian Federal Constitution of 1988, available at: <https://bit.ly/3cUvamR> (last visited: 29/02/2020).

³ Ministry of Health, available at: <https://coronavirus.saude.gov.br/?limitstart%20=%200> (last visited: 29/02/2020).

Another action taken by Brazil in this emergency period was *Operação Regresso*. On February 5, two Brazilian Air Force aircraft departed for Wuhan, China. Among Brazilians and family members of other nationalities, 34 arrived in Brazil on February 9. In addition to the returnees (process of voluntarily returning a person to their place of origin or citizenship.), 24 professionals who were part of the rescue were also fulfilling the quarantine initially planned to last 18 days.

During that time, patients had to comply with obligations imposed by the local government based on Law 13.979. Among them: 1) use of surgical mask; 2) use of Personal Protective Equipment (PPE) to prevent aerosol transmission (N95/PFF2 – The PPE mask known as N95 refers to an aerosol filter classification adopted in the USA that, in Brazil, is equivalent to PFF2 or semi-facial EPR with P2 filter; PFF2 is recommended for respiratory protection against aerosols containing biological agents in agricultural or industrial areas, and for other types of particles dispersed in the air, such as dust), procedure gloves, waterproof apron, goggles or face shield and cap; 3) Perform mask change N95/PFF2 whenever it is dirty or sweaty; 4) carry out a complete admission examination when landing the aircraft; 5) assessment (3 times a day) of vital signs, temperature and the presence of symptoms in all returnees; 6) sample collection for a new coronavirus at admission, on the seventh and 14th day; and 7) blood sample collection on the 14th day. Patients will leave the quarantine after the negative result for the new coronavirus in the serial samples and compliance with the 18 quarantine days.

During quarantine, the Secretariat of Primary Health Care – SAPS/MS created an intervention support group to mitigate psychological distress and prevent Post-traumatic Stress Disorder (PTSD). The SAPS/MS team is composed of: a psychiatrist and a psychologist; and the local team is composed of: a doctor (regardless of specialty) and a health professional with a college degree. An instrument for assessing psychological distress will be applied, classifying the risk and evaluating the line of therapeutic approach (psychotropic, psychotherapy, observation). Assessment will be made at admission and weekly follow-up, depending on the need.

All 58 returnees involved in *Operação Regresso*, which was quarantined at Anápolis Air Base, were released on February 23, 2020, four days ahead of schedule, as the results presented were reliable. However, all Brazilians in Danger Areas (Germany; Australia; United Arab Emirates; Philippines; France; Iran; Italy; Malaysia; Cambodia; China; North Korea; South Korea; Japan; Singapore; Thailand; and Vietnam) must perform by the procedure described.

The actions used by the Brazilian Government are in line with Human Rights. Although there are compulsory actions, they are provisional. The purpose of these actions is precisely the maintenance of individual and collective health. It is intended to prevent the spread of the virus in society. Thus, in view of all the infrastructure offered by the Brazilian government, it appears that the citizens' right to freedom is not being violated.

(16 March 2020)