SOCIAL EUTHANASIA, RIGHT TO HEALTH AND PERSONALITY RIGHTS: A LOOK ON EXTREME POVERTY

EUTANÁSIA SOCIAL, DIREITO À SAÚDE E OS DIREITOS DA PERSONALIDADE: UM OLHAR SOBRE A POBREZA EXTREMA

DIRCEU PEREIRA SIQUEIRA[1]
BRUNA CAROLINE LIMA DE SOUZA[2]

ABSTRACT

Right to health is one of the most important rights, once it is necessary to preserve human life itself. It also has a close connection with the dignity of the human person. However, the current scenario shows a great state neglect about this right effectuation. It generates, among others consequences, mysthanasia, or in other words, death anticipation in a miserable and suffered way. Thus, this paper will show problems using questions about: What is the effectuation of this right importance to everyone? How is mysthanasia still invisible in legal debates without charge the violator agent? How this phenomenon can hold as a social exclusion form institutionalized from poor people's layers and extremely poor? Therefore, there is, as a main goal, a critical analysis about social euthanasia as a state inefficiency fruit and as an institutional phenomenon of populational layer exclusion connected to extreme poverty. And also, as specific objective, this paper aims to analyze the right to health, its relation with the dignity of the human person and with personality rights, and the necessity of its state effectuation, enabling, then, the analysis of mysthanasia in a critical way and of how this phenomenon can be shown as a social exclusion, mainly of the poorest population layers. Therefore, it used the hypothetical-deductive method and the literature review methodology.

KEYWORDS: Mysthanasia. Public abandonment. Reserve of the possible. Deaths. Poor people.

1 Coordinator and Permanent Professor of the Doctoral and Master's Program in Law at Centro Universitário Cesumar (UniCesumar); Post-doctor in Law from the Faculty of Law of the University of Coimbra (Portugal), Doctor and Master in Constitutional Law from the Toledo Educational Institution - ITE / Bauru, Lato Sensu Specialist in Civil and Civil Procedural Law from the University Center of Rio Preto, Researcher Scholarship - Research Productivity for PhD - PPD - from the Cesumar Institute of Science, Technology and Innovation (ICETI), Professor in law courses at the University of Araraquara (UNIARA) and at the Unifafibe University Center (UNIFAFIBE), Guest Professor at Master's Program University Missouri State - USA, Editor of the Journal Social Rights and Public Policies (Qualis B1), Legal Consultant, Opinion, Lawyer. E-mail: dpsiqueira@uol.com.br.

2 Master's student in Legal Sciences at Centro Universitário de Maringá (UNICESUMAR), as a CAPES Scholarship Holder (Scholarship / PROSUP modality); Bachelor of Laws from the same institution, as a PROUNI fellow. brunacarolinelimadesouza@gmail.com.
Development agency: Cesumar Institute of Science, Technology and Innovation (ICETI)

Como citar esse artigo/How to cite this article:
SIQUEIRA, Dirceu Pereira. SOUZA, Bruna Caroline Lima de. *Social euthanasia, right to health and personality rights: a look on extreme poverty*. Revista Meritum, Belo Horizonte, vol. 15, n. 1, p. 182-202, jan./apr. 2020. DOI: https://doi.org/10.46560/meritum.v15i1.7873.

RESUMO

O direito à saúde se configura entre os direitos mais importantes, na medida em que ele se faz necessário para a preservação da própria vida humana, além de encontrar íntima ligação com o princípio da dignidade da pessoa humana. Todavia, o cenário atual demonstra um grande descaso estatal com relação a efetivação desse direito, que acaba gerando, entre outras consequências, a ocorrência da mistanásia, ou seja, a antecipação da morte de uma forma miserável e sofrida. Deste modo, o artigo terá como problemáticas os questionamentos sobre: qual a importância da efetivação desse direito à todos? Como a mistanásia ainda permanece invisível nos debates jurídicos e sem uma responsabilização ao agente violador? Como esse fenômeno pode vigorar como forma de exclusão social institucionalizada das camadas pobres e extremamente pobres? Assim, tem-se como objetivo geral fazer uma análise crítica da eutanásia social como fruto da ineficiência estatal e como fenômeno institucional de exclusão da camada populacional abarcada pela pobreza extrema, e de modo específico, objetivará fazer uma análise acerca do direito à saúde e da sua relação com a dignidade da pessoa humana e com os direitos da personalidade e da necessidade de sua efetivação por parte do Estado, para posteriormente ser possível analisar a mistanásia de forma crítica, e como tal fenômeno pode se mostrar como fator de exclusão social principalmente das camadas mais pobres da população. Para tanto, se utilizará o método hipotético-dedutivo e a metodologia de revisão bibliográfica.

PALAVRAS CHAVE: *Mistanásia. Abandono público. Reserva do possível. Mortes. Pobres.*

MERITUM MAGAZINE • v.15 • n.1 • p. 182-202 • Jan./Apr. 2020

INTRODUCTION

In the postmodern world, the principle of the dignity of the human person has unparalleled importance within the national and international legal scene, radiating its effects for the recognition of numerous fundamental rights, including the right to health. Such a right appears not only as a fundamental (social) right but also as a human right, that is, a right that must be guaranteed to each and every person throughout the world.

Such importance is due to the close connection that the right to health has with the right to life, mainly to a dignified life, which may infer its importance even among the rights that protect the full development of the human personality, given its correlation with the guiding nucleus of the dignity of the human person.

However, due to this right falling within the fundamental social rights, that is, among the rights that depend on the State's interference to become effective, there are many times when the public power alleges the lack of resources to guarantee material access to health to all, causing a cruel problem to arise: social euthanasia or mysthanasia, a phenomenon that anticipates the death of countless people, in a miserable, cruel and painful way, mainly due to public abandonment in relation to the effectiveness of a right to health that is, in fact, accessible to all.

Thus, the present article has as problematic the questions about: what is the importance of realizing the right to health for all? How does mysthanasia, which is commonplace in Brazil, remain almost invisible among the legal debates on the contemporary scene? And, how can such a phenomenon prevail as a form of institutionalized social exclusion of the poor and extremely poor?

In view of the issues surrounding this article, the first hypothesis is: the fact that the legal debate on social euthanasia is infrequent, since the responsible for such an act is pre-

cisely the State, which is no longer held responsible for reasons to have protection, under the cover of the absence of financial resources and the reserve of the possible, protection that is accepted and approved by a significant part of the jurists. Furthermore, with regard to how mysthanasia can prevail as a form of institutionalized social exclusion of the poor, the hypothesis indicates that people who depend exclusively on the public health system to treat diseases are essentially the poorest population that, in addition to being financially vulnerable, when ill, they also have an external physical vulnerability, so that the State's omission or recklessness in relation to these lives, to the point of promoting a suffered death, also end up promoting social exclusion of these people, either before death, when making access to health or qualitative treatment unfeasible, or after, with death that occurred before or outside of the time.

To this end, this research will have as a general objective to make a critical analysis of social euthanasia as a result of state inefficiency with regard to the realization of the right to health for all, and as an institutional phenomenon of exclusion of the poorest from the social scenario, through state promotion. (or at least a permit) of unworthy, unfortunate and anticipated deaths. And it will aim, in a specific way, to make an analysis about the right to health and its relation with the right to life and the dignity of the human person, as well as the issues related to it as a human, fundamental and personality right, And it will aim, in a specific way, to make an analysis about the right to health and its relation with the right to life and the dignity of the human person, as well as the issues related to it as a human, fundamental and personality right, and the need for it to be implemented by the State, so that it's possible to analyze social euthanasia (or mysthanasia), critically, addressing the main characteristic aspects of it and its occurrence as a result of not realizing the right to health for all, as well as the way in which this phenomenon can show itself as a factor of social exclusion, mainly of the poorest groups of the population.

In order to carry out the analysis of the theme, the hypothetical-deductive method will be used, which starts from general premises, such as fundamental rights (right to life, health, ...) and the principle of human dignity, to later enter a specific analysis, which is that of social euthanasia and the aspects that permeate it.

Regarding the methodology adopted, the article will be based on the literature review method, making use of articles, books and book chapters, whether physical, coming from national electronic magazines or contained in Brazilian platforms, in order to assess which ones understandings about the rights that involve social euthanasia (life, health, the principle of human dignity, etc.), how and why this occurs, the state's performance in its occurrence, how it prevails as a factor of social exclusion, among others, as well of articles available on international platforms, such as Ebsco and SSRN, aiming to analyze international debates about aspects that will be outlined in this article, such as the right to health, human rights and human dignity.

1 THE RIGHT TO HEALTH: FUNDAMENTAL, HUMAN AND PERSONALITY

1.1 RIGHT TO HEALTH: FROM FUNDAMENTALITY TO THE EFFECTIVENESS OF THIS RIGHT

Initially, before entering specifically the right to health, it's necessary to highlight the importance that the principle of the dignity of the human person has for the entire legal system, insofar as it consists of "At the core point where all the fundamental rights of the human person unfold" (SZANIAWSKI, 2005, p. 142), including the right to health.

The dignity of the human person, in its most current conception, is still very well founded and even conceptualized based on Kantian thought (SARLET, 2009-a, p. 37), which maintains that in the kingdom of the end everything has a price or a dignity (KANT, 1980, p. 140) and that "the Man, and, in general, every rational being, exists as an end in itself, not simply as a means for arbitrary use of this or that will" (our translation into english) (KANT, 1980, p. 134-135). Thus, Kant weaves that the peculiar and irreplaceable quality of the human, as rational, is to be endowed with a dignity, which unfolds in this capacity to exercise the autonomy of the will.

The dignity of the human person is thus revealed to be the greatest among the principles and in that which should be used as an interpretive parameter for all the others (MORAES, 2019, p. 19), and whose conceptualization is difficult or impossible, because dealing with a "fluid, multifaceted and multidisciplinary" concept (SZANIAWSKI, 2005, p. 140), but it's essentially based on "the assumption that each human has an intrinsic value and enjoys a special position in the universe" (BARROSO , 2014, p. 14) and whose primary function is "to attribute normative force to the Constitution and to give maximum effectiveness to negative and installmental fundamental rights" (WEDY, 2018, p. 206). (Our translations into english)

In this perspective, the dignity of the human person[3] is used as a fundamental principle 'matrix, generator of other fundamental rights (SZANIAWSKI, 2005, p. 143), as it always shows a connotation of respect for human (MORAES, 2019, p. 21). In this sense, Ingo Wolfgang Sarlet (2009-b, p. 37) teaches that:

> It has for dignity of the human person the intrinsic and distinctive quality recognized in each human being that deserves the same respect and consideration by the State and the community, implying, in this sense, a complex of fundamental rights and duties that ensure the person both against any degrading and inhumane act, as well as guaranteeing the minimum existential conditions for a healthy life [...]. (Our translation into english)

3 Regarding the protection of the dignity of the human person at the international level, Mary Neal defends: "The idea of dignity is, of course, very intimately associated with rights, but no specific 'right to dignity' is enumerated either in international or in UK domestic law. Instead, dignity seems usually to be regarded as an underpinning justification for substantive rights, or a 'source of rights', implying (i) that dignity is not a substantive right in itself, and (ii) that dignity is more overarching, and more fundamental, than any of the individual rights it grounds". (NEAL, 2014, p. 31)

Furthermore, and evidencing its importance within the Brazilian legal system, the Federal Constitution of 1988 brought the dignity of the human person in its art. 1º, III[4], as one of the foundations of the Federative Republic of Brazil, treating it as the "axiological epicenter of the constitutional order, radiating effects over the entire legal system" (SARMENTO, 2004, p. 109).

Thus, the principle of the dignity of the human person can be seen in two aspects, because on the one hand it represents a substantial quality of the human person and expression of the essence of human dignity, and on the other, as the foundation of the political order and national peace, that makes it be a source of rights (SZANIAWSKI, 2005, p. 143).

In this perspective, we have that: the right to health and all other fundamental rights, whether individual, social or diffuse, must always be analyzed from the perspective of the dignity of the human person, especially with regard to their generating matrix of rights that guarantee minimum existential conditions for the exercise of a dignified life, since "social, economic and cultural rights, whether in the condition of defense rights (negative), or in their service dimension (acting as positive rights), constitute demand and realization of the dignity of the human person" (SARLET, 2009-a, p. 100).

Thus, it's clear that the right to health, given its importance for the realization of the dignity of the person, has its tutelage both in the international legal system, being provided for in documents such as the Universal Declaration of Human Rights (*Declaração Universal dos Direitos Humanos* - 1948)[5] and the International Covenant on Economic, Social and Cultural Rights (*Pacto Internacional Sobre Direitos Econômicos, Sociais e Culturais* - 1966)[6], as well the national, provided for in article 6º of the Federal Constitution of 1988[7] and in art. 196[8] to 200 of the same legal diploma, thus constituting itself as a legitimate human and fundamental (social) right.

However, the mere international and constitutional forecasts of this right aren't enough for it to materialize, it's necessary to go further, creating public policies that make them effective, a task that is primarily the responsibility of the State, especially in the presence of a Social Democratic State of Law, which "presents itself as a guarantor of minimum resources for a dignified life" (OTERO; MASSARUTTI, 2016, p. 856). In this sense, there are the teachings of Cleber Sanfelici Otero and Marcelo Luiz Hille (2013, p. 490):

4 Art. 1º The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, constitutes a Democratic State of Law and is based on: [...] III - the dignity of the human person; [...]. (Our translation into english)

5 Universal Declaration of Human Rights, Article XXV: 1- Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. [...].

6 International Covenant on Economic, Social and Cultural Rights, Article 12 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

7 Art. 6º, CF/1988: These are social rights to education, health, food, work, housing, transportation, leisure, security, social security, maternity and child protection, assistance to the destitute, in the form of this Constitution. (Our translation into english)

8 Art. 196. Health is the right of all and the duty of the State, guaranteed through social and economic policies aimed at reducing the risk of illness and other diseases and universal and equal access to actions and services for their promotion, protection and recovery. (Our translation into english)

> When defending the principle of dignity, we seek: respect for life, physical integrity and moral integrity of human beings.
>
> It's therefore up to the Democratic Rule of Law to provide the means to ensure the minimum guarantees for the dignified existence of every human, through the recognition and protection of fundamental rights, such as freedom, equality, access to health and education, among others. (Our translation into english)

Thus, for the concreteness of the principle of the dignity of the human person, there must be minimum guarantees, which is the own essence of fundamental rights, which bind "public power as a whole, as well as private, natural or legal persons" (SZANIAWSKI, 2005, p. 142). Thus, Cleide Aparecida Gomes Rodrigues Fermentão (2007, p. 73) teaches that: they are configured "attacks on human dignity, the absence of dwelling house, habitation, education, health [...]" (our translations), imposing mainly on power public to make them effective.

In this same sense, Luis Roberto Barroso teaches (2003, p. 38):

> The legal content of the principle is associated with fundamental rights, involving aspects of individual, political and social rights. Its elementary material nucleus is composed of the existential minimum, a phrase that identifies the set of basic goods and utilities for physical and indispensable subsistence to enjoy one's own freedom. Below that level, even when there is survival, there is no dignity. The list of benefits that make up the existential minimum includes variation according to the subjective view of those who prepare it, but there seems to be a reasonable consensus that it includes: minimum income, basic health and basic education. (Our translation into english)

As noted, the right to health is always specified among the main rights that constitute the minimum existential that must be guaranteed to all, which is precisely because of the close connection it has with the right to life and especially with the right to a dignified life[9].

However, the question of the realization of fundamental social rights, such as the right to health, necessarily involves the indispensability of positive actions by the State (VIDAL DE SOUZA; SANOMIYA, 2017, p. 394), since it's configured as "a subjective public right, enforceable against the State, since its exercise and effectiveness depend on the contribution of material and human resources to be implemented through public health policies" (BAHIA; ABUJAMRA, 2009, p. 303), which consequently implies a debate about the limitations of the Government budget. (Our translation into english)

However, such a debate "is aggravated in the Brazilian scenario due to the economic, political and social crisis that is currently evident in Brazil" (SELAYARAN; MACHADO; MORAIS, 2018, p. 10), thus having the acceptance by the doctrine and jurisprudence on the application of the so-called "reserve of the possible", which consists of an "original concept – and ontologically unpretentious –, in the argumentative-factual limitation to the implementation of social rights due to insufficient budget for such" (BERNARDI; LAZARI In SIQUEIRA; LEÃO JUNIOR, 2011, p. 254), used by the public authorities as a way of "exempting themselves from health care responsibilities, as well as in others, within the context of social rights" (TASCA, 2013, p. 100). (Our translation into english)

9 In this sense: "The existential minimum works with the effectuation of fundamental rights considered as minimum for the reach of a dignified life, links state activity in the execution of public policies for the materialization of the right to health, safety, housing, education, among others". (MACIEL-LIMA; OLIVEIRA; DOMINGOS, 2018, p. 239)

It happens that, without denying the existence of state financial limitations for the realization of all social rights, such an argument cannot be used by the State to not offer benefits and services, even when it's in question: the minimum necessary for people to live and survive with respect and dignity (OTERO; HILLE, 2013, p. 501); which is the case with the right to health, because "even if the budgetary resource is small, it's essential to ensure budgetary provision for this minimum considered essential" (BERTOLAIA; PALAZZOLO, 2016, p. 296) . In this sense, Sarlet and Figueiredo (2007, p. 201) outline that:

> [...] in terms of protection of the existential minimum (which in the field of health, due to its connection with the most significant assets for the person), it's necessary to recognize a definitive subjective right to benefits and a coherent defensive protection, in such a way that, as a rule , reasons linked to the reserve of the possible shouldn't prevail as an argument to, by itself, remove the satisfaction of the right and the requirement of the fulfillment of duties, both related and autonomous, since neither the principle of parliamentary reserve in budgetary matters nor that of separation of powers take on absolute features. (Our translation into english)

Furthermore, the reserve of the possible can only appear as a valid argument when it's effectively demonstrated by the public authorities that any restriction to social rights was the result of a weighting exercise between conflicting principles, in which the proportionality requirements were met, and with the preservation of the minimum content necessary to guarantee a dignified life (KELBERT, 2011, p. 106) or "for those situations that go beyond the existential minimum and that refer to individuals who have the means to obtain the intended benefit by themselves" (RIBEIRO, 2011, p. 89) (our translation into english). The teachings of Otero and Massarutti (2016, p. 856-857) are also added, that:

> [...] dignified life has a nucleus within the principle of human dignity, which is the minimum of conditions or assurance instruments for a dignified existence, which cannot be affected under any circumstances. If the public administrator or the legislator has to make a choice between fundamental rights to be realized, he may even make this option with suppedaneous in the reserve of the possible clause, but will never be allowed to reach the minimum capable of providing a dignified existence.
>
> In this sense, at least from a theoretical point of view, health, as an integral part of the minimum resources necessary for a dignified existence, couldn't be restricted in any way [...] (Our translation into english)

Thus, the need for state action to invest in public health policies that satisfy everyone's needs is imperative, not only with regard to the scope of reparations, but also with regard to prevention and promotion thereof, under the terms of art. 196 of the Brazilian Federal Constitution of 1988, as well as in line with the WHO (World Health Organization) definition of health, which defines it as "a state of complete physical, mental and social well-being, and not just the absence of disease or infirmity"[10], that is, "the concept of health encompasses the biopsychosocial balance of the human person" (SIQUEIRA; LAZARETTI, 2019, p. 310) and cannot be seen only as the absence or cure of diseases, but in a broader perspective of prevention disease and promoting quality of life (MASSAFRA, 2004, p. 66), and the State cannot argue – due to its inertia, inefficiency or inefficiency in the realization of the right to health (in its broad

10 Definition contained in the preamble to the Constitution of the World Health Organization. Available in: http://www.direitoshumanos.usp.br/index.php/OMS-Organiza%C3%A7%C3%A3o-Mundial-da-Sa%C3%BAde/constituicao-da-organizacao-mundial-da-saude-omswho.html. Accessed on: November 20, 2019.

concept) and in the correct application of public money – the justification of the reserve of the possible as a legitimizing mechanism of non- material guarantee of this essential right for the preservation of human (dignified) life.

1.2 RIGHT TO HEALTH: A LEGITIMATE RIGHT TO PERSONALITY

As previously highlighted, the right to health has a close relation with the right to life and with the dignity of the human person, configuring itself as necessary to guarantee the minimum existential humans and, with provision in the legal system as much as a human rights as a fundamental right. However, it's also possible to classify it as a personality right, that is, belonging to the list of rights so "essential to the development and fulfillment of the person, which, based on the dignity of the human person, guarantee the enjoyment and respect for their own being, in all dimensions, spiritual and physical" (FOLLONE; RODRIGUES *In* SIQUEIRA; AMARAL, 2017, p. 317).

With regard to the rights of the personality, our Constitution didn't insert a specific provision that protects them, but ends up recognizing and protecting the general right of personality through the principle of human dignity, which is in force as a general clause of concretization of protection and development of the personality of the individual, since this principle, figuring as a fundamental guiding principle that should serve as an interpretation for the entire legal system, and ends up constituting the general clause of protection of the personality, insofar as the natural person is the first and last addressee of the legal order (SZANIAWSKI, 2005, p. 137).

Personality rights are so important that Adriano de Cupis argues that without them "the personality would remain a completely unrealized susceptibility, deprived of all full value: rights without which all the other subjective rights would lose all interest to the individual - which is to say that if they didn't exist, the person wouldn't exist as such" (CUPIS, 2004, p. 24) (our translation into english).

Thus, we have that: the rights of the personality are based on the principle of the dignity of the human person, which is what allows to defend the protection of a general right of the personality, and they are rights that have a primary connection with the very possibility of full development of the person and his personality, thus guaranteeing the exercise of "be" in all its various dimensions.

Thus, the protection of the full development of each person's personality shouldn't take into account only individual rights, such as life and freedom, and leave aside the protection of essential rights for the very assurance of those, rights without which ones cannot even talk about life and especially about a dignified life, like the right to health or food. These are rights that, once absent, make it impossible or, at least, hinder the full development of the person and his personality. In this sense, the teachings of Rabindranath Capelo de Souza (1995, p. 516) are important, that:

> [...] the personality <physical> or <moral> referred to in art. 70 of the Civil Code covers both goods linked to the physical reality of each man (*homo phoenomenon*), and the goods inherent to his autonomy and freedom (*homo noumenon*), which with this legal provision protects not only the essentials of the personality of all men (*humanitas*) but also the particular individua-

> lity and unrepeatability of each one (*individualitas*) and that **the protection of human personality requires not only the protection of their inner goods but also the protection and preservation of each man's outer living space**. (Emphasis added) (Our translation into english)

This time, the right to health, especially when reserving an intimate connection with the right to life, turns out to be "a fundamental right that is related to the full development of the human personality and integrates the right to the minimum for a dignified life [...]" (OTERO; MASSARUTTI, 2016, p. 849), which can also be included not only as a human and fundamental right, but also as a personality right, emphasizing the importance of its tutelage and effectiveness.

Furthermore, this statement can even be based on the teachings of Fernanda Cantali (2009, p. 217), who argues that: the search for the effectiveness of the principle of human dignity - which is the general clause for the protection of human personality - imposes a bifrontal action, acting in a protective and promotional perspective, that is, guaranteeing a sphere of personal self-determination, expression of private autonomy and of personal freedom, but also guaranteeing the imperative of assistance through state action or collective. Perez Luno (p. 318) also teaches in this sense, stating that "the dignity of the human person isn't only a negative guarantee that the person will not be the object of offenses or humiliation, but also implies, in a positive sense, in the full development of personality of each individual" (our translation into english).

In this perspective, defends Fermentão (2007, p. 75-76):

> The Modern State has the task of protecting fundamental rights and promoting the full development of the person. Assumes the obligation to respect the individual rights of the person, such as the right to life, freedom, information, work, study, and others, both essential and characteristic of every human person, who has rights as a citizen, and, therefore, the State also has a duty to promote such rights, eliminating any difficulties, whether economic or social, that may prevent the effective exercise of personal rights and citizenship. The State has an obligation to intervene and to enable that the existential and individual interests of the human person to be exercised. (Our translation into english)

In this tone, the principle of human dignity doesn't matter only in a limit for the Public Powers, in the sense of refraining from attempting against it, but, rather, it translates a north for the state conduct, imposing a commissive attitude of the public authorities for the protection of the free development of the human personality, with the guarantee of the minimum conditions for life with dignity (SARMENTO, 2004, p. 113), conditions that include an effective access to the right to health, at a repressive, protective and promotional level.

In Brazil, the Federal Constitution of 1988 brought in its art. 198, that "public health actions and services are part of a hierarchical network and constitute a single system", a norm that gave rise to the 'Unified Health System' (*Sistema Único de Saúde - SUS*), bringing in art. 200[11] of the same diploma what are the attributions of this system, which address

11 Art. 200. The unified health system is responsible, in addition to other duties, under the terms of the law: I – to control and inspect procedures, products and substances of interest to health and to participate in the production of medicines, equipment, immunobiologicals, blood products and other inputs; II – to carry out the health and epidemiological surveillance actions, as well as the workers' health; III – to order the training of human resources in the health area; IV – to participate in the formulation of the policy and the execution of basic sanitation actions; V – to increase, in its area of activity, scientific and technological development and innovation; VI – to survey and inspect food, including the control of its nutritional content, as

issues related not only to actions aimed at access to health, but also basic sanitation, food, protection of the environment, among others. Subsequently, this system was regulated by Law nº 8.080/1990, which provides, among other things, that the public health services and the private services integrated into the '*Sistema Único de Saúde – SUS*', must follow some principles, among them the the universality of access to health services at all levels of assistance (art. 7º, I, Law nº 8.080/1990), which guarantees, for all people, access to available health actions and services (BARROSO, 2009, p. 41).

However, despite the fact that the Constitution provides for a fundamental right of access to health, the State ends up failing and doesn't offer a universal system (MACIEL--LIMA; OLIVEIRA; DOMINGOS, 2018, p. 238)[12], because the contemporary homeland reality has shown that "the public health system has been selective in the face of the lack of infrastructure, which is precarious, and of health resources, which are scarce" (SIQUEIRA; LAZARETTI, 2019, p. 312), since the right to health is a right that, necessarily, "depends on the political will, that is, on the will of the Powers to carry out policies, actions and services aimed at ending the problem of its ineffectiveness" (PICCIRILLO; ZAIA, 2016, p. 323), and that, in the absence of such a will, its effectiveness is hindered, and can sometimes show the existence of social euthanasia or 'mysthanasia', which refers to a "slow, cruel and miserable death resulting from the abandonment in which a large part of the Brazilian population is found" (ZAGANELLI; SOUZA; CABRAL; SANCHES, 2016, p. 7) (our translations), which will be addressed specifically in the next topic.

2 SOCIAL EUTHANASIA: THE STATE AS A VIOLATING AGENT FOR THE DIGNITY OF THE HUMAN PERSON?

The term "euthanasia", thus considered, is a word that comes from the Greek, derived from "*eu*" (well) and "*thanatos*" (death), which in its origin is understood as good death, appropriate death, godly death, death beneficial (SA; NAVES, 2011, p. 95). Thus, it ends up being understood as a dignified, painless death.

To configure euthanasia, it's necessary to understand whether 3 (three) essential requirements are present, namely: a) a situation of incurable terminal illness or irreversible disability; b) the humanitarian and pious motive of the agent; c) the existence of consent validly provided by the patient, if conscious, but if unconscious, the principle of beneficence prevails, which determines the performance of third parties in the patient's best interest (SIQUEIRA; LAZARETTI, 2019, p. 313-315). In other words, it shows that death is anticipated to avoid suffering the patient who, due to something incurable or irreversible, wouldn't have a dignified life if such a situation is postponed, so that death is anticipated, and painlessly, so that if the pacient has a "good death".

well as drinks and water for human consumption; VII – to participate in the control and inspection of the production, transport, storage and use of psychoactive, toxic and radioactive substances and products; VIII – to collaborate in the protection of the environment, including that of the labor. (Our translation into english)

12 In the original: "The Constitution provides for a fundamental right of access to health, however, the State fails and not offer a universal system [...]".

However, what is known as social euthanasia or 'mysthanasia', in no way resembles euthanasia itself. The expression 'mysthanasia' (*mistanásia*) also has a Greek etymology, derived from "*mis*" (unhappy) and "*thanatos*" (death), that is, it translates the idea of a death suffered, before and out of time, caused slowly, being a death that have as scope the social inequalities and caused, in most cases, by the neglect of the public power in relation to the poor class of society (ZAGANELLI; SOUZA; CABRAL; SANCHES, 2016, p. 7). Thus, the teachings are important:

> Euthanasia, at least in its intention, wants to be a good, smooth, painless death, while the situation called social euthanasia isn't good, smooth or painless. Within the great category of mysthanasia I want to focus on three situations: first, the large mass of sick and disabled people who, for political, social and economic reasons, aren't even patients, as they are unable to enter the medical care system effectively; second, the patients who manage to be patients and then become victims of medical error and, third, the patients who end up being victims of malpractice for economic, scientific or socio-political reasons. Mysthanasia is a category that allows us to take the phenomenon of human evil seriously. (MARTIN *In* FERREIRA; OSELKA; GARRAFA, 1998, p. 172) (Our translation into english)

Thus, there is that social euthanasia or mysthanasia refers to the deaths that occur due to lack of assistance from the State, due to medical error and bad practice (SIQUEIRA; LAZARETTI, 2019, p. 317). So, there will be the occurrence of mysthanasia in three hypotheses: when citizens aren't even 'be a patient', because they are unable to enter the health system due to geographic, political and social factors, characterizing an omission of aid by the State; when citizens get access to a public health unit, but in view of the large number of patients added to the lack of adequate structure, they end up not being attended, and the diseases persist or worse, with their death in the Unified System lines or, when attended to, there are insufficient beds or devices, forcing health professionals to choose which patients to attend; or, still, being attended to, they end up being victims of medical error (recklessness and negligence) and dying (CABETTE, 2009).

Thus, one of the great counterpoints between mysthanasia and euthanasia is the result, because while that (mysthanasia) causes death before the hour, in a miserable and painful way, this (euthanasia) causes a death also before the hour, but in a gentle way and without pain, and it's precisely this result that makes euthanasia attractive to many and the mysthanasia invisible to others, that is, we live in a society that at the same time offers the highest technology for "well dying", denies the indispensable for "good living" (PAOLO; RIBAS; PEREIRA, 2006, p. 274-275).

In the words of Dworkin (2003, p. 280),

> [...] The death dominates because it's not just the beginning of nothing, but the end of everything, and the way we think and talk about death - the emphasis we put on "dying with dignity" - shows how important that the life to end properly, that death is a reflection of the way we wish we had lived. (Our translation into english)

Thus, death, which puts an end to the breath of life, cannot simply be anticipated by the mere justification that the State lacks resources to invest in infrastructure, materials, health workers, beds and medicines, instruments necessary to give full effectiveness to the right to health. Accepting this justification as valid, is the same as accepting the occurrence

of mass homicides, perpetrated on those who only have the 'Unified Health System' (*Sistema Único de Saúde – SUS*) as a hope to have access to health and a decent life.

It is worth noting that the right to health must also be understood as a "right to social justice essentially as a way of guaranteeing a dignified life" (SILVA; VITA, 2014, p. 261), so that it can be consider that there is a cruel and dangerous hypocrisy in the concern with the offer of a "dignified death", when little is done to provide those who live the respect for their human dignity (CABETTE, 2009, p. 31).

In addition, regarding mysthanasia, it's added that:

> In Latin America, in general, the most common form of mysthanasia is the failure to provide structural assistance that affects millions of patients during their entire life and not just in the advanced and terminal stages of their illnesses. The absence or precariousness of medical care services, in many places, ensures that people with physical or mental disabilities or with diseases that could be treated die before the time, suffering while experiencing pain and suffering in principle preventable. (MARTIN *In* FERREIRA; OSELKA; GARRAFA, 1998, p. 175) (Our translation into english)

Thus, the reality that is revealed is that, while talking about the possibility of a legislative change in Brazil to accept the occurrence of euthanasia - which is still prohibited in the Brazilian State[13] – and the spotlight is turned to the debate about providing a dignified death to those who no longer have the viability of a dignified future life, the discussion about mysthanasia, that is, the countless miserable deaths perpetrated in the country due solely to the absence of a effective and universal state provision of the right to health, remain invisible, non-existent or stifled.

And this scenario is justified because social euthanasia is directly related to public health policies and the quality of life that must be part of state planning in search of the social justice (ZAGANELLI; SOUZA; CABRAL; SANCHES, 2016, p. 8) and of the realization of the dignity of the human person to all. Thus, it's substantiated precisely because of the ineffectiveness and inertia of the State in relation to the promotion of public policies in this sense[14], which ends up acting just in opposition to its state role: instead of protecting and promoting quality access to health for all, it acts as a violator of life, human dignity and even death at the right time, and isn't even punished or held responsible for such violations, even though, in theory, there is possibility of State liability (only in the civil field - not in the criminal field) when the unsatisfactory provision of health service occurs[15].

13 In this sense: "[...] Brazilian criminal law has never been interested in making euthanasia a crime in itself. In the majority doctrine there is a tendency with regard to equating the conduct with homicide, typified in article 121 of the 1940 Brazilian Penal Code, in force today". (FERREIRA; PORTO, 2017, p. 156) (Our translation into english).

14 Regarding the role of the state in promoting the right to health, the teachings of Silva and Vita stand out (2014, p. 249): "The guarantee of the social right to health requires from the State an administration capable of implementing public policies capable of meeting the most urgent needs. Among them, we highlight the needs related to the provision of free medicines, hiring and decent remuneration to health professionals, construction and structuring of hospitals and public health posts, among other needs". (Our translation into english)

15 In this sense: "In spite of the fact that there is a satisfactory year provision of the public health service, from which harm is derived, state responsibility is exaggerated. From such responsibility comes the duty to compensate the injured citizen due to the absence or failure in the health service, by repairing the damage or its reimbursement, through a quantum of indemnity, according to the understanding of the doctrine and of the most current jurisprudence in our country". (GOMES, 2010, p. 183) (Our translation into english)

3 SOCIAL EUTHANASIA AND EXTREME POVERTY: A RELATION OF SOCIAL EXCLUSION

Poverty and extreme poverty are a latent reality, especially in underdeveloped countries such as Brazil, and the view on them has changed since the 20th century, because what was previously limited only to the economic power of the person, becomes still be linked to the economic situation, but expanded, adding the fact that the first condition of poverty is due to the impediment of having access to other factors that would inhibit its perpetuation (FERNANDES, 2017, p. 308) and it doesn't refer only to the lack of material goods (TEIXEIRA, 2014, p. 216).

In this sense, it's important to explain about the conception of Amartya Sen, which identifies poverty as a deprivation of capabilities:

> [...] poverty can be sensibly identified in terms of capacity deprivation, with the approach focusing on intrinsically important deprivations, in contrast to low income, whose value is only instrumentally; b) there are other influences on the deprivation of capacities, therefore on real poverty, in addition to the low level of income, since this isn't the only instrument of capacity generation; c) the instrumental relation between low income and low capacity varies between communities and even between families and individuals, adding that the impact of income on capacities is contingent and conditional. (SEN, 2010, p. 121) (Our translation into english)

Thus, poverty can be understood as a form of social exclusion, as a result of the unequal distribution of essential goods for a dignified life, goods that correspond to the capacity of individuals, families and communities to supply their basic needs (FERNANDES, 2017, p. 309) and is configured as a social factor that goes far beyond the reductionist criterion of income; mentioning Paugam about "social disqualification", that is, the relation that exists between a population designated as poor due to their dependence on social services and the rest of society (PAUGAN *In* VERAS, 1999, p. 63-64), thus placing it as a multidimensional phenomenon (CABRAL JUNIOR; COSTA, 2017, p. 796).

In line with this thought, José Loureiro argues that "poverty can be translated into deprivation or insufficient access to fundamental goods (v.g., food, health) that jeopardize the own survival" (LOUREIRO *In* CORREA; MACHADO; LOUREIRO, 2012, p. 409) (Our translation into english).

Thus, it's possible to extract from the most modern conceptions about poverty a common denominator, that is, common denominator: that poverty isn't only linked to the low income factor, but also is linked to issues such as the dependence on public services to obtain access to fundamental goods, such as the right to health, food, education, among others, access that, if obtained in a qualitative way, wouldn't only allow the dignified experience of this large portion of the population, but also the own possibility of social ascension and overcoming poverty.

In this way, what can be seen, in terms of the discussions hitherto woven, is that the 'mysthanasia', as a miserable and painful anticipation of death, - caused mainly by the omission and public abandonment of the State regarding the universal realization of the right to health - has affected the poorest sections of the population more precisely, since there

is a direct and exclusive dependence on the 'Unified Health System', without any possibility of resorting to other means to obtain medical treatment, in addition to the fact that health is an element that has a total relation not only with the individual, but with the entire social environment that surrounds him (RAMOS; DINIZ, 2017, p. 174), which doesn't favor the populations living in conditions of extreme poverty and that, for the most part, don't even have a healthy habitat for life.

In this sense, Martin's teachings are important (*In* FERREIRA; OSELKA; GARRAFA, 1998, p. 175):

> It's precisely the complexity of the causes of this situation that generates a certain feeling of helplessness in society, conducive to the spread of mentality: "save yourself who can". Private health plans for those who are able to pay and the appeal to traditional alternative medicines and new ones by the rich and the poor, alike, are symptomatic data of a malaise in society in face the absence of health services in many places and the scrapping of public services and the elitization of private services in others. In a society where considerable financial resources are unable to guarantee quality of care, the greatest and most urgent ethical issue that arises in the face of the poor patient in the advanced stage of their illness isn't the euthanasia or dysthanasia, destinations reserved for patients who manage to break their barriers of exclusion and becoming patient, but, yes, mysthanasia, destination reserved for those thrown into the dark and cramped rooms of the shanty town or in the more airy spaces, although not necessarily less polluted, under the bridges of our big cities. (Our translation into english)

Furthermore, there is still a 'state neglect' in relation to the "diseases of poverty", which are so named because, even extinct in the past, they end up returning to the current reality because the poor and extremely poor population ends up having no means to avoid contamination[16] or don't know how to do it and, especially, when they get sick, they are poorly assisted (SOUZA, 2011, p. 313-314). In this sense, Silva and Gonçalves clarify (2013, p. 565):

> Just look, for example, at the institutional neglect of so-called diseases of poverty. It's admirable, in the derogatory sense of the word, the government's resignation in relation to the existence of diseases considered outdated, but which affect and lead to the death of a considerable portion of the poor, miserable population and residents of remote regions of Brazil. This fact is proven by the high number of new cases of tuberculosis and leishmaniasis in the Brazilian territory, diseases whose drugs developed for their respective treatments occurred, mainly, between the 40s and 50s, with no development of relevant drug innovations after this period. Leishmaniasis is quantified in 30 thousand new cases per year. Tuberculosis reaches the number of 70 thousand new cases per year in Brazil (BRASIL. Ministério da Saúde. Portal do SUS). The Rocinha slum, located in the city of Rio de Janeiro, for example, came to account for 50 cases of tuberculosis per month in 2008 (SOUZA, 2011, p. 313). Still in 2011, between January and October, malaria reached the record of 217.298 new cases in the Amazon region, where 99% of the cases of this disease are concentrated in Brazil (BRASIL. Ministério da Saúde. O SUS enfrenta malária). (Our translation into english)

16 In this sense: "Urban disadvantage and vulnerability lead to various forms of health inequalities. The absence of basic amenities in low-income settlements in urban areas, together with unsanitary environments and overcrowding, creates a vicious cycle of infections, malnutrition, and poor health". (SHAFIQUE; BHATTACHARYYA; ANWAR; ADAMS, 2018, p. 63-64).

In this way, the dependence of the poorest classes of the population is added to the 'Unified Health Service'[17] exclusively, with the aforementioned "diseases of poverty" and the fact that such population normally lives with hunger, with living in homes precarious, with the absence of clean water, unemployment or working in overwhelming conditions, etc., which ends up contributing to the spread of ill health and a deadly and excluding culture (MARTIN *In* FERREIRA; OSELKA; GARRAFA, 1998, p. 175).

Thus, "poverty is an obstacle to access to health, which shows that there is still a correlation between social class and health" (RAMOS; RAMOS, 2016, p. 300), and, consequently, the occurrence of social euthanasia ends up having as victims mainly the layer of the population where poverty and extreme poverty are present, where dependence on public service is the only hope, thus being effective as an instrument that, in addition to killing, excludes these populations socially, in a cruel and painful way. So, the term mysthanasia ends up giving meaning "to the death of thousands of people without any assistance, left to their own devices, in dumps, under overpasses, bridges, streets and, mainly, in hospitals with crowded corridors, with dying and abandoned patients for the State and for all" (MENDONÇA; DA SILVA, 2014, p. 175), and whose violating agent, unfortunately, remains unaccountable for such deaths and for the institutionalized exclusion it promotes. Thus, there is, finally, the importance of viewing the right to health as an ethical demand for equity and the need to internalize public moral norms to progressively realize this right (RUGER, 2006, p. 326)[18], as well as the adoption of a perspective that understands that the realization of the right to health must be seen as a priority, since the absence of equal access sometimes leads to an institutionalized exclusion of those who depend on exclusive access to public health, which is often precarious and insufficient.

FINAL CONSIDERATIONS

In view of all the considerations made in this article, the importance that the right to health has for the actual concreteness of the right to life and the dignity of the human person remains evident, figuring as a right that besides being human and fundamental, it can also be considered as a personality right, insofar as it maintains an intimate relation with the core of those rights, that is, the dignity of the human person, in addition to the fact that there is no way to talk about the full development of the personality of the person if it's not given to each individual, effectively, the preservation and care with their health and life.

In addition, because it's a unique right that is included among the rights characterized as "minimum existential", and that must be guaranteed to each person, the claim of the 'reserve of the possible' by the State, in order to justify its omission and inefficiency, with regard to the promotion of public health policies for all, and the incorrect application of public resources, shouldn't be understood as a valid justification by the legal system, as it involves

17 In comparative law, we have that: "Over 42.5 million Americans (15.5%) have no health insurance coverage—a major increase since 1990s despite the strong performance of the American economy since the recession of the early 1990s. Of these, 32.4% of the poor or 10.4 million people are without coverage". (KINNEY, 2000, p. 1475)

18 "[...] It emphasizes the importance of viewing the right to health as an ethical demand for equity in health and the need for the internalization of public moral norms to progressively realize this right. [...]". (RUGER, 2006, p. 326)

such a relevant right, or at least it should only be considered as a valid argument if it remains effectively demonstrated that the limitation to its effectiveness was made by weighing conflicting rights of the same relevance and in which the proportionality requirements were met and with the preservation of the minimum content necessary to guarantee the exercise of life with dignity, under penalty of, indiscriminately accepting such state claim, make the own materiality of the right to health unfeasible and continue to legitimize that consequences such as mysthanasia are perpetuated.

In this tone, it was also found that social euthanasia or mysthanasia (*eutanásia social ou mistanásia*) in no way resembles euthanasia itself, whereas in those cases death is also anticipated, and such anticipation occurs in a miserable, painful and cruel way, a result, in large part of the times, the state's omission regarding the implementation of a health system that is, in fact, accessible to all and of quality, and not a system that is inaccessible to many, or that when accessed, is selective and precarious, leaving to perish countless people without, at least, adequate care.

Thus, social euthanasia is revealed, not only a disregard for the right to health, but also as a violating act perpetrated constantly by the State and whose accountability and even the legal debate, for involving precisely the great "leviathan", still it's makes it invisible and, consequently, stimulates the continuation of this institutionalized social exclusion, especially of the social layer covered by poverty and extreme poverty, which depend only on a public service so that their health is treated and preserved, as well as their dignity respected.

In this way, the answers to the problems initially proposed in this article are in the sense that: the realization of the right to health is of paramount importance, especially as this right reveals itself as a human, fundamental and personality right, necessary for the realization of the dignity of the human person and for a full and free development of the personality.

In addition, phenomena as cruel as mysthanasia remain practically invisible in the contemporary scenario, because it has as its causative agent precisely the one that should protect and enforce the rights of the population, that is, the State, which not only promotes (or at least allows) several deaths to be perpetrated due to failures and insufficiencies in the provision of a qualitative and universal health service, but also promotes the institutionalized social exclusion of the poor and extremely poor classes, this because this portion of the population has only the public health service to resort to and, in addition, they usually have precarious living conditions, without adequate housing or food, with the absence of clean water, etc., which facilitate the spread of ill health and the perpetuation of a deadly and exclusionary culture.

REFERENCES

BAHIA, Claudio José Amaral; ABUJAMRA, Ana Carolina Peduti. The justiciability of the fundamental right to health: concretization of the constitutional principle of human dignity (A justiciabilidade do direito fundamental à saúde: concretização do princípio constitucional da dignidade da pessoa humana). *Revista Argumentum - UNIMAR*, n. 10, p. 295-318, 2009. Available in: http://ojs.unimar.br/index.php/revistaargumentum/article/view/1045/626. Accessed on: November 24, 2019.

BARROSO, Luis Roberto. The new constitutional interpretation: consideration, fundamental rights and private relations (*A nova interpretação constitucional***:** ponderação, direitos fundamentais e relações privadas). Rio de Janeiro: Renovar, 2003.

BARROSO, Luís Roberto. From ineffectiveness to excessive judicialization: right to health, free supply of medicines and parameters for judicial action (Da falta de efetividade à judicialização excessiva: direito à saúde, fornecimento gratuito de medicamentos e parâmetros para a atuação Judicial). *Jurisp. Mineira*, Belo Horizonte, year 60, n. 188, p. 29-60, Jan./Mar. 2009. Available in: https://bd.tjmg.jus.br/jspui/bitstream/tjmg/516/1/D3v1882009.pdf. Accessed on: November 22, 2019.

BARROSO, Luís Roberto. The dignity of the human person in contemporary constitutional law: the construction of a legal concept in the light of world jurisprudence (*A dignidade da pessoa humana no direito constitucional contemporâneo***:** a construção de um conceito jurídico à luz da jurisprudência mundial). Transl.: Humberto Laport de Mello. Belo Horizonte: Fórum, 2014.

BERNARDI, Renato; LAZARI, Rafael José Nadim de. Does the criticism of the incorporation of the 'reserve of the possible' into the Brazilian legal system have any basis? (Tem fundamento a crítica à incorporação da reserva do possível no sistema jurídico brasileiro?). *In:* SIQUEIRA, Dirceu Pereira; LEÃO JÚNIOR, Teófilo Marcelo de Arêa (Orgs). *Direitos Sociais***:** uma abordagem quanto à (in)efetividade desses direitos - a Constituição de 1988 e suas previsões sociais. 1.ed. Birigüi, SP: Boreal Editora, 2011, p. 251-267.

BERTOLAIA, Denilson; PALAZZOLO, Massimo. The social order and its constitutional effectiveness (A ordem social e a sua efetividade constitucional). *Revista Direitos Humanos e Democracia*, year 4, n. 8, p. 271-309, Jul./Dec. 2016. Available in: https://www.revistas.unijui.edu.br/index.php/direitoshumanosedemocracia/article/view/5899. Accessed on: November 25, 2019.

BRASIL. *Constituição (1988)*. Constitution of the Federative Republic of Brazil, 1988. Enacted on October 5, 1988 (Constituição da República federativa do Brasil de 1988. Promulgada em 05 de outubro de 1988). Available in: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: November 22, 2019.

CABETTE, Eduardo Luiz Santos. Euthanasia and Orthothanasia: comments on Resolution 1.805/06 CFM. Ethical and legal aspects (*Eutanásia e Ortotanásia***:** comentários à Resolução 1.805/06 CFM. Aspectos Éticos e jurídicos). Curitiba: Juruá, 2009.

CABRAL JÚNIOR, Luciano Roberto Gulart; COSTA, Eder Dion de Paula. Political Poverty and Brazil Without Poverty Plan (Pobreza política e plano Brasil Sem Miséria). *Revista Direitos Sociais e Políticas Públicas - UNIFAFIBE***,** v. 5, n. 2, p. 793-816, 2017. Available in: http://www.unifafibe.com.br/revista/index.php/direitos-sociais-politicas--pub/article/view/254/pdf_1. Accessed on: November 24, 2019.

CALDERÓN-VALENCIA, Felipe; ESCOBAR-SIERRA, Manuela. L'articulation de la juridiction spéciale pour la paix avec la justice ordinaire en matière d'extradition: les enjeux politiques du cas Jesus Santrich dans le contexte du post-conflit Colombien. *Revista Direitos Sociais e Políticas Públicas – Unifafibe***.** V. 7, N. 1, 2019.

CANTALI, Fernanda Borghetti. Personality rights: relative availability, private autonomy and human dignity (**Direitos da personalidade:** disponibilidade relativa, autonomia privada e dignidade humana). Porto Alegre: Livraria do Advogado Editora, 2009.

CAPELO DE SOUZA, Rabindranath Valentino Aleixo. The general right of personality (*O direito geral da personalidade*). Portugal: Coimbra Editora, 1995.

CIARLINI, Léa Martins Sales; CIARLINI, Alvaro Luis de Araujo. The structure of public policies and the paradoxes of judicial intervention through public civil action: an analysis from the five stages of the political-administrative cycle of Michael Howlett, Ramesh and Perl (A estrutura das políticas públicas e os paradoxos da intervenção judicial por meio da ação civil pública: uma análise a partir dos cinco estágios do ciclo político-administrativo de Michael Howlett, Ramesh e Perl). *Revista Direitos Sociais e Políticas Públicas – Unifafibe***.** V. 7, N. 1, 2019.

CUPIS, Adriano de. The rights of the personality (*Os direitos da personalidade*). Campinas- SP: Romana Jurídica, 2004.

DWORKIN, Ronald. Life domain: abortion, euthanasia and individual freedoms (*Domínio da vida***:** aborto, eutanásia e liberdades individuais). Transl.: Jefferson Luiz Camargo; translation review of: Silvana Vieira. São Paulo: Martins Fontes, 2003.

FERMENTÃO, Cleide Aparecida Gomes Rodrigues. Law and axiology - the value of the human person as a foundation for personality rights (Direito e axiologia - o valor da pessoa humana como fundamento para os direitos da personalidade). *Revista Jurídica Cesumar- Mestrado*, v. 7, n. 1, p. 57-80, 2007.

FERNANDES, David Augusto. Anode of sacrifice: poverty and indignity of the human person (Ânodo de sacrifício: a pobreza e a indignidade da pessoa humana). *Revista Jurídica - UNICURITIBA*, v. 3, n. 48, p. 299-319, 2017. Available in: http://revista.unicuritiba.edu.br/index.php/RevJur/article/view/2182/1362. Accessed on: November 24, 2019.

FERREIRA, Clécia Lima; PORTO, Carolina Silva. Euthanasia in Criminal Law: the legal aspects of pious homicide (Eutanásia no Direito Penal: os aspectos jurídicos do homicídio piedoso). *Revista Direitos Humanos e Democracia*, v. 5, n. 10, p. 150-174, 2017. Available in: https://www.revistas.unijui.edu.br/index.php/direitoshumanosedemocracia/article/view/6449. Accessed on: November 25, 2019.

FERREIRA, Olavo Augusto Vianna Alves; LEHFELD, Lucas de Souza; SIQUEIRA, Dirceu Pereira. Parliamentary immunity according to the supreme court: analysis of the precedent over the arrest of Senator Delcídio Amaral in the face of personality rights (A imunidade parlamentar segundo o supremo tribunal: análise do precedente sobre a prisão do senador Delcídio Amaral frente aos direitos da personalidade). *Revista Direitos Sociais e Políticas Públicas – Unifafibe*. V. 7, N. 2, 2019.

FOLLONE, Renata Ap; RODRIGUES, Rúbia Spirandelli. The perspective of the elderly person's right to personality on the basis of human dignity (A perspectiva do direito de personalidade do idoso sob o fundamento da dignidade humana). *In:* SIQUEIRA, Dirceu Pereira; AMARAL, Sérgio Tibiriçá (Orgs.). *Democracia, cidadania e os direitos da personalidade***:** uma releitura contemporânea. 1.ed. Birigui- SP: Boreal Editora, 2017, p. 314-330.

FLORIANI, Lara Bonemer Rocha; SANTOS, Luccas Farias. The hierarchy of international treaties and their legal and extra-legal effects (A hierarquia dos tratados internacionais e seus reflexos jurídicos e extrajurídicos). *Revista Direitos Sociais e Políticas Públicas – Unifafibe***.** V. 7, N. 1, 2019.

GOMES, Fabiano Maranhão Rodrigues. State responsibility for inefficiency in the provision of public health services (Responsabilidade do Estado por ineficiência na prestação de serviços de saúde pública). *Argumenta Jornal Law*, n. 12, p. 163-190, 2010. Available in: http://seer.uenp.edu.br/index.php/argumenta/article/view/165/165. Accessed on: November 25, 2019.

KANT, Immanuel. Metaphysical foundation of morals (Fundamentação da Metafísica dos Costumes). *In: Os pensadores - kant* (II). Transl.: Paulo Quintela. São Paulo: Abril Cultural, 1980.

KELBERT, Fabiana Okchstein. Reservation of the possible and the effectiveness of social rights in Brazilian law (*Reserva do possível e a efetividade dos direitos sociais no direito brasileiro*)**.** Porto Alegre: Livraria do Advogado, 2011.

KINNEY, Eleanor D. The international human right to health: What does this mean for our nation and world. *Indiana Law Review*, v. 34, p. 14571475, 2000. Available in: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=296394. Accessed on: November 22, 2019.

LASCANO, Alfonso Jaime Martinez. Inconvencionalidad del amparo mexicano por la eficacia en la protección judicial de derechos humanos. *Revista Direitos Sociais e Políticas Públicas – Unifafibe***.** V. 7, N. 2, 2019.

LOUREIRO, João Carlos. Responsibility (s), poverty and the world: towards a (inter) constitutional topic of poverty (Responsabilidade (s), pobreza e mundo: para uma tópica (inter)constitucional da pobreza). *In*: CORREIA, Fernando Alves; MACHADO, Jónatas E. M; LOUREIRO, João Carlos. *Estudos em homenagem ao Professor José Joaquim Gomes Canotilho*. Coimbra: Editora Coimbra, 2012, p. 395 – 424.

MABTUM, Matheus Massaro; GERRA FILHO, Willis Santiago. The importance of time and meaning for Niklas Luhmann's systems theory (A importância do tempo e sentido para a teoria dos sistemas de Niklas Luhmann). *Revista Direitos Sociais e Políticas Públicas – Unifafibe***.** V. 6, N. 2, 2018.

MACIEL-LIMA, Sandra; OLIVEIRA, Francisco Cardozo; DOMINGOS, Isabela Moreira; Fundamental health rights: Microcefalia and sanitary policies to combat the Zika Virus. *Revista Brasileira de Direito*, v. 14, n. 3, p. 235-248, set./dez. 2018. Available in: https://seer.imed.edu.br/index.php/revistadedireito/article/view/2972/2028. Accessed on: September 4, 2019.

MARTIN, Leonard M. Euthanasia and Dysthanasia (Eutanásia e Distanásia). *In:* FERREIRA, Sérgio Costa; OSELKA, Gabriel; GARRAFA, Volnei (org). *Iniciação à Bioética*. Brasília: Conselho Federal de Medicina, 1998. Available in:

https://portal.cfm.org.br/images/stories/biblioteca/iniciao%20%20biotica.pdf. Accessed on: November 22, 2019.

MASSAFRA, Cristiane Quadrado. Right to health and Brazilian development: a question of citizenship (Direito à saúde e desenvolvimento brasileiro: uma questão de cidadania). *Revista Direito em Debate*, v. 13, n. 22, p. 47-70, Jul./Dec. 2004. Available in:

https://www.revistas.unijui.edu.br/index.php/revistadireitoemdebate/article/view/713. Accessed on: November 25, 2019.

MENDONÇA, Márcia Helena; DA SILVA, Marco Antonio Monteiro. Life, dignity and death: citizenship and mysthanasia (Vida, dignidade e morte: cidadania e mistanásia). *Ius Gentium*, v. 9, n. 5, p. 151-190, 2014. Available in: https://www.uninter.com/iusgentium/index.php/iusgentium/article/view/150/124. Accessed on: November 22, 2019.

MORAES, Carlos Alexandre. Civil liability of parents in assisted human reproduction (**Responsabilidade civil dos pais na reprodução humana assistida**). 1.ed. Rio de Janeiro: Forense; São Paulo: Método, 2019.

NEAL, Mary. Respect for human dignity as 'substantive basic norm'. *International*

Journal of Law in Context, v. 10, n. 1, p. 26-46, 2014. Available in: https://web.a.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=0&sid=4194401a-9547-41e1-a62f-750df90b385f%40sdc-v-sessmgr01. Accessed on: November 25, 2019.

Organização das Nações Unidas. Universal Declaration of Human Rights (*Declaração Universal dos Direitos Humanos*)**.** 1948. Available in: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/por.pdf. Accessed on: November 22, 2019.

Organização das Nações Unidas. International Covenant on Economic, Social and Cultural Rights (*Pacto Internacional sobre Direitos Econômicos, Sociais e Culturais*). 1966. Available in: https://www.oas.org/dil/port/1966%20Pacto%20Internacional%20sobre%20os%20Direitos%20Econ%C3%B3micos,%20Sociais%20e%20Culturais.pdf. Accessed on: November 22, 2019.

Organização Mundial da Saúde. Constitution of the World Health Organization (*Constituição da Organização Mundial de Saúde*). 1946. Available in: http://www.direitoshumanos.usp.br/index.php/OMS-Organiza%C3%A7%C3%A3o--Mundial-da-Sa%C3%BAde/constituicao-da-organizacao-mundial-da-saude-omswho.html. Accessed on: November 22, 2019.

OTERO, Cleber Sanfelici; HILLE, Marcelo Luiz. The dignity of the human person in the face of scarcity of State resources (A dignidade da pessoa humana em face da escassez de recursos do Estado). *Revista Jurídica Cesumar***,** v. 13, n. 2, p. 485-511, Jul./Dec. 2013. Available in: http://periodicos.unicesumar.edu.br/index.php/revjuridica/article/view/3098/2136. Accessed on: November 6, 2019.

OTERO, Cleber Sanfelici; MASSARUTTI, Eduardo Augusto de Souza. In accordance with the fundamental right to health provided for in the Brazilian Constitution of 1988, is it possible to require the State to provide synthetic phosphoethanolamine for people with cancer? (Em conformidade com o direito fundamental à saúde previsto na Constituição brasileira de 1988, é possível exigir do Estado a prestação de fosfoetanolamina sintética para pessoas com câncer?). *Revista Jurídica Cesumar*, v. 16, n. 3, p. 847-876, Sept./Dec. 2016, p. 856. Available in: http://periodicos.unicesumar.edu.br/index.php/revjuridica/article/view/5380/2890. Accessed on: November 6, 2019.

PAOLO, Edvige Di; RIBAS, Luciane Aparecida; PEREIRA, Maria Regina Rodrigues. Social Euthanasia: A Case Study of the Street Population of Juiz de Fora (Eutanásia Social: Um Estudo de Caso da População de Rua de Juiz de Fora). *CES Revista*. Juiz de Fora, 2006.

PAUGAM, Serge. The concept of social disqualification (O conceito de desqualificação social). In: VÉRAS, Maura Pardini Bicudo (Org.). *Por uma sociologia da exclusão social***:** o debate com Serge Paugam. São Paulo: EDUC, 1999.

PEREZ LUÑO, Antonio Henrique. *Derechos Humanos, Estado de Derecho y Constitución***.**

PICCIRILLO, Miguel Belinati; ZAIA, Raíssa Dias. The ineffectiveness of the right to health in Brazil (A inefetividade do direito à saúde no Brasil). *Revista Direitos Sociais e Políticas Públicas - UNIFAFIBE*, v. 4, n. 2, p. 319-355, 2016. Available in: http://www.unifafibe.com.br/revista/index.php/direitos-sociais-politicas-pub/article/view/173/pdf_1. Accessed on: September 4, 2019.

RAMOS, Paulo Roberto Barbosa; RAMOS, Edith Maria Barbosa. Right to health, basic needs and human dignity (Direito à saúde, necessidades básicas e dignidade da pessoa humana). *Revista Jurídica*, v.3, n. 44, p. 275-304, 2016. Available in: http://revista.unicuritiba.edu.br/index.php/RevJur/article/view/1747/1141. Accessed on: November 22, 2019.

RAMOS, Edith Maria Barbosa; DINIZ, Isadora Moraes. The right to health and the idea of social protection in the 1988 Federal Constitution: opening notes (O direito à saúde e a ideia de proteção social na Constituição Federal de 1988: notas iniciais). *Revista Direito em Debate*, v.26, n. 48, p. 159-184, Jul./Dec. 2017. Available in: https://www.revistas.unijui.edu.br/index.php/revistadireitoemdebate/article/view/5906. Accessed on: November 25, 2019.

RIBEIRO, Maria de Fátima. Effectiveness of public policies: a budget issue (Efetivação de políticas públicas: uma questão orçamentária). *Revista Argumentum - UNIMAR*, v. 12, p. 77-102, 2011. Available in: http://ojs.unimar.br/index.php/revistaargumentum/article/view/1068/662. Accessed on: September 4, 2019.

ROSSIGNOLI, Marisa; SOUZA, Francielle Calegari de. The constitutional principle of free competition in the face of sustainable development policy (O princípio constitucional da livre concorrência frente a política do desenvolvimento sustentável). *Revista Direitos Sociais e Políticas Públicas – Unifafibe***.** V. 7, N. 1, 2019.

RUGER, Jennifer Prah. Toward a theory of a right to health: capability and incompletely theorized agreements. *Yale Journal of Law & the Humanities*, v. 18, n. 2, p. 273-326, 2006. Available in: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=933009. Accessed on: November 22, 2019.

SÁ, Maria de Fátima Freire de; NAVES, Bruno Torquato de Oliveira. Bio-law Manual (*Manual de Biodireito*). Belo Horizonte: Del Rey, 2011.

SARLET, Ingo Wolfgang; FIGUEIREDO, Mariana Filchtiner. Reservation of the possible, existential minimum and right to health (Reserva do possível, mínimo existencial e direito à saúde). *Revista Brasileira de Direitos Fundamentais & Justiça*, v. 1, n. 1, p. 171-213, 2007. Available in: http://dfj.emnuvens.com.br/dfj/article/view/590/73. Accessed on: November 25, 2019.

SARLET, Ingo Wolfgang. Human dignity and fundamental rights in the 1988 Constitution (*Dignidade da pessoa humana e direitos fundamentais na Constituição de 1988*). 7.ed. rev. atu. Porto Alegre: Livraria do Advogado, 2009-a.

SARLET, Ingo Wolfgang. The dimensions of human dignity: building the necessary and possible constitutional legal understanding (As dimensões da dignidade da pessoa humana: construindo a compreensão jurídico constitucional necessária e possível). *In:* SARLET, Ingo Wolfgang (Org.). *Dimensões da dignidade***:** ensaios de filosofia do direito e do direito constitucional. 2.ed. Porto Alegre: Livraria do Advogado, 2009-b.

SARMENTO, Daniel. Fundamental rights and private relations (*Direitos fundamentais e relações privadas*). Rio de Janeiro: Editora Lumen Juris, 2004.

SELAYARAN, Alexandre; MACHADO, Guilherme; MORAIS, Fausto. The (non) connection between excessive judicialization of the right to health and judicial activism (A (não) conexão entre judicialização excessiva do direito à saúde e ativismo judicial). *Revista Direitos Sociais e Políticas Públicas - UNIFAFIBE*, v. 6, n. 2, p. 1-27, 2018. Available in: http://www.unifafibe.com.br/revista/index.php/direitos-sociais-politicas-pub/article/view/315/pdf. Accessed on: November 25, 2019.

SEN, Amartya. Development as freedom (*Desenvolvimento como liberdade*). Transl: Laura Teixeira Motta. São Paulo: Companhia das Letras, 2010.

SHAFIQUE, Sohana; BHATTACHARYYA, Dipika S., ANWAR, Iqbal; ADAMS, Alayne. Right to health and social justice in Bangladesh: ethical dilemmas and obligations of state and non-state actors to ensure health for urban poor. *BMC medical ethics*, v. 19, n. 1, p. 61-69, 2018. Available in: https://web.a.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=0&sid=8c865c5e-d536-429f-919f-c074364a3fe4%40sessionmgr4007. Accessed on: November 24, 2019.

SILVA, Diogo Bacha e; GONÇALVES, Luciano Meni. Judicialization of health and the transfer of control over the body (Judicialização da saúde e a transferência do controle sobre o corpo). *Revista Jurídica Cesumar*, v. 13, n. 2, p. 561-579, Jul./Dec. 2013. Available in: http://periodicos.unicesumar.edu.br/index.php/revjuridica/article/view/3047/2139.

Accessed on: November 6, 2019.

SILVA, Karina Zanin da; VITA, Jonathan Barros. The reserve for the possible principle and the fundamental right to health (O princípio da reserva do possível e o direito fundamental à saúde). *Revista Jurídica Cesumar*, v. 14, n. 1, p. 241-264, Jan./Jun. 2014. Available in: http://periodicos.unicesumar.edu.br/index.php/revjuridica/article/view/3439/2298. Accessed on: November 6, 2019.

SIQUEIRA, Dirceu Pereira; LAZARETTI, Bruna Furini. Social euthanasia and personality rights: a critical constitutional reading (Eutanásia social e os direitos da personalidade: uma leitura constitucional crítica). *Argumenta Jornal Law*, n. 30, p. 297-329, Jan./Jun. 2019. Available in: http://seer.uenp.edu.br/index.php/argumenta/article/view/1571/pdf. Accessed on: November 21, 2019.

SOARES, Marcelo Negri; KAUFFMAN, Marcos Eduardo; MARTIN, Raphael Farias. Economy law and economic analysis of law and the impacto on intellectual property in the common law system. *Revista Direitos Sociais e Políticas Públicas – Unifafibe***.** V. 7, N. 2, 2019.

SOUZA, Jessé. Brazilian rabble: who is and how lives (*A ralé brasileira***:** quem é e como vive). Belo Horizonte: Ed. UFMG. 2011.

STURZA, Janaína Machado; RODRIGUES, Bruna dos Passos. Dialogues between public policies and the right to health: public hearings as an instrument of popular participation from the perspective of Habermas' theory of communicative action (Diálogos entre políticas públicas e direito à saúde: as audiências públicas enquanto instrumento de participação popular sob a perspectiva da teoria da ação comunicativa de Habermas). *Revista Direitos Sociais e Políticas Públicas – Unifafibe***.** V. 7, N. 2, 2019.

SZANIAWSKI, Elimar. Personality rights and guardianship (*Direitos da personalidade e sua tutela*). 2.ed. rev. atual. e ampl. São Paulo: Editora Revista dos Tribunais, 2005.

TASCA, Jocimar Antonio. The judicialization of health (A judicialização da saúde). *Revista Direitos Sociais e Políticas Públicas - UNIFAFIBE*, v. 1, n. 1, p. 93-118, 2013. Available in: http://www.unifafibe.com.br/revista/index.php/direitos-sociais-politicas-pub/article/view/7/pdf_4. Accessed on: September 4, 2019.

TEIXEIRA, Sílvia Gabriel. Fighting poverty: the responsibility to protect of the international community (Combate a pobreza: a responsabilidade de proteger da comunidade internacional). *Revista Direitos Sociais e Políticas Públicas - UNIFAFIBE***,** v. 3, n. 1, p. 195-240, 2014. Available in: http://www.unifafibe.com.br/revista/index.php/direitos-sociais-politicas-pub/article/view/59/pdf_39. Accessed on: November 25, 2019.

VIDAL DE SOUZA, José Fernando; SANOMIYA, Bárbara Ryukiti. Ecological existential minimum and the judicialization of public policies (Mínimo existencial ecológico e a judicialização das políticas públicas). *Revista Brasileira de Direito*, v. 13, n. 3, p. 381-407, dez. 2017 Available in: https://seer.imed.edu.br/index.php/revistadedireito/article/view/1742. Accessed on: November 25, 2019.

WEDY, Gabriel. Sustainable development as a fundamental right and the principle of human dignity (Desenvolvimento sustentável como direito fundamental e o princípio da dignidade da pessoa humana). *Revista Brasileira de Direitos Fundamentais & Justiça*, v. 12, n. 38, Jan./Jun. 2018. Available in: http://dfj.emnuvens.com.br/dfj/article/view/723/939. Accessed on: November 25, 2019.

ZAGANELLI, Margareth Vetis; SOUZA, Carlos Henrique Medeiros de; CABRAL, Hildeliza Lacerda Tinoco Boechat; SANCHES, Letícia Carvalho. Social euthanasia: "miserable death" and the judicialization of health (Eutanásia social: "morte miserável" e a judicialização da saúde). Lima, Peru: *Derecho y Cambio Social*, n. 43 - year XIII – 2016. Available in:

https://www.derechoycambiosocial.com/revista043/EUTANASIA_SOCIAL.pdf. Accessed on: November 22, 2019.

ZEIFERT, Anna Paula Bagetti. Thinking public policies from the focus of capacities: social justice and respect for human rights (Pensar as políticas públicas a partir do enfoque das capacidades: justiça social e respeito aos direitos humanos). *Revista Direitos Sociais e Políticas Públicas* – Unifafibe. V. 7, N. 1, 2019.

Recebido/*Received*: 08.05.2020.

Aprovado/*Approved*: 30.05.2020.