


JUDICIALIZAÇÃO DA VULNERABILIDADE: O BPC E A URGÊNCIA DA PROTEÇÃO SOCIAL PELO MANDADO DE SEGURANÇA**JUDICIALIZATION OF VULNERABILITY: THE BPC AND THE URGENCY OF SOCIAL PROTECTION THROUGH THE MANDAMUS OF MANDAMUS****JUDICIALIZACIÓN DE LA VULNERABILIDAD: EL BPC Y LA URGENCIA DE LA PROTECCIÓN SOCIAL A TRAVÉS DEL MANDAMUS DEL MANDAMUS**

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Alexandre Moura Lima Neto¹, Alessandra Anchieta Moreira Lima de Aguiar², Sara Barros Pereira de Miranda³, Guilherme Saldanha Santana⁴, Silvio Mesquita Leite⁵, Amanda Silva Madureira⁶, Diogo de Almeida Viana dos Santos⁷, Flávio Vinícius Araujo Costa⁸, Ana Paula Galvão Mello⁹, Maria José Carvalho de Sousa Milhomem¹⁰

RESUMO

Este artigo analisa a efetividade do mandado de segurança como instrumento jurídico para assegurar a análise tempestiva dos requerimentos do Benefício de Prestação Continuada (BPC) no âmbito do Instituto Nacional do Seguro Social (INSS). A partir de uma abordagem voltada aos direitos fundamentais e à proteção de pessoas em situação de vulnerabilidade social, o estudo discute os entraves burocráticos e judiciais enfrentados pelos requerentes do BPC, bem como a atuação do Judiciário na garantia de direitos sociais. A pesquisa utiliza metodologia bibliográfica, com base em publicações recentes, normativas legais e jurisprudência. Conclui-se que o mandado de segurança, embora não seja solução definitiva, mostra-se ferramenta eficaz na proteção de direitos violados pela inércia administrativa.

¹ Doctor student in Law at UNISINOS. University Professor

E-mail: alexandrenetoadv@hotmail.com

² Dr student in Environment at CEUMA University. University Professor

E-mail: alessandramoreiraadv@hotmail.com

³ Dr student in Law at IDP. University Professor

E-mail: sbarros.adv@gmail.com

⁴ Dr student in Law UAL Lisboa. University Professor

E-mail: guilhermesantanaprofessor@gmail.com

⁵ Dr in Public Policy from the Federal University of Maranhão (UFMA). Professor of the Master's Degree in Law and Affirmation of the Vulnerable, CEUMA University

E-mail: sclmmestrado@gmail.com

⁶ Dr in Public Policy from the Federal University of Maranhão – UFMA. University Professor

Email: madureira.amanda@gmail.com

⁷ Dr in Law and Governance. Professor of the Professional Master's Degree in Law and Affirmation of the Vulnerable at CEUMA University

E-mail: diogosantos@nagoya-u.jp

⁸ Master in Law from FADISP/SP. University Professor

Email: flavio_pcosta@hotmail.com

⁹ Master in Law from UAL/UFMA. University Professor

Email: apgalvaomello@gmail.com

¹⁰ Post-Doctorate in Human Rights from the University of Salamanca, Spain. University Professor

Email: mjcsm@hotmail.com



Palavras-chave: Mandado de Segurança. Benefício de Prestação Continuada. Vulnerabilidade Social.

ABSTRACT

This article examines the effectiveness of the writ of mandamus as a legal instrument to ensure the timely analysis of requests for the Continuous Cash Benefit (Benefício de Prestação Continuada – BPC) within the scope of the National Institute of Social Security (Instituto Nacional do Seguro Social – INSS). Adopting an approach centered on fundamental rights and the protection of individuals in situations of social vulnerability, the study discusses the bureaucratic and judicial obstacles faced by BPC applicants, as well as the role of the Judiciary in safeguarding social rights. The research is based on bibliographic methodology, drawing on recent publications, legal norms, and jurisprudence. It concludes that although the writ of mandamus is not a definitive solution, it proves to be an effective tool for protecting rights violated by administrative inaction.

Keywords: Writ of Mandamus. Continuous Cash Benefit (BPC). Social Vulnerability.

RESUMEN

Este artículo analiza la eficacia del auto de mandamus como instrumento legal para garantizar el análisis oportuno de las solicitudes de Pago Continuo de Prestaciones (BPC) en el ámbito del Instituto Nacional de la Seguridad Social (INSS). Con un enfoque centrado en los derechos fundamentales y la protección de las personas en situación de vulnerabilidad social, el estudio analiza los obstáculos burocráticos y judiciales que enfrentan los solicitantes del BPC, así como el papel del Poder Judicial en la garantía de los derechos sociales. La investigación utiliza una metodología bibliográfica, basada en publicaciones recientes, normativa legal y jurisprudencia. Se concluye que el auto de mandamus, si bien no constituye una solución definitiva, es una herramienta eficaz para proteger los derechos vulnerados por la inercia administrativa.

Palabras clave: Auto de mandamus. Pago Continuo de Prestaciones. Vulnerabilidad social.



INTRODUCTION

The Continuous Cash Benefit (BPC), provided for in article 203, item V, of the Federal Constitution, and regulated by the Organic Law of Social Assistance (Law No. 8,742/1993), consists of a monthly payment in the amount of one minimum wage, guaranteed to the elderly person aged 65 years or older and to the disabled person, of any age, who prove that they do not have the means to provide for their own maintenance or to have it provided by their family (Brasil, 1988; Brazil, 1993). It is a fundamental right aimed at the social protection of subjects in a state of economic vulnerability, being one of the main instruments of social assistance policy in Brazil (Lima, 2023).

Although the Brazilian legal framework recognizes the importance of the BPC as a mechanism of social justice, the practical reality reveals a worrying scenario of slowness and administrative inefficiency on the part of the National Institute of Social Security (INSS). The excessive delay in the analysis of applications has led thousands of citizens to experience situations of material insecurity, worsening their subsistence conditions and compromising their dignity. The bureaucracy involved in the process, added to the structural overload of the agency, contributes to an institutional environment in which the social right to assistance is not implemented in a timely manner (Rodrigues, 2024).

The writ of mandamus, as governed by Law No. 12,016/2009, appears in this context as a viable legal instrument to ensure the speedy examination of BPC requests. It is a constitutional remedy intended to protect a liquid and certain right, threatened or violated by an act of a public authority or an agent of a legal entity in the exercise of public power attributions. In the sphere of welfare law, it has often been called upon to compel the INSS to comply with deadlines and obligations provided for by law, promoting a judicial response to administrative omission (Alves, 2022).

When analyzed as a mechanism of jurisdictional protection, the use of the writ of mandamus in the field of social assistance raises relevant debates about the effectiveness of judicial tools in the protection of social rights. The recourse to the Judiciary, although legitimate, reveals a worrying aspect of the system: the judicialization of public policy due to the inability of the State to spontaneously fulfill the commitments assumed by the Constitution. This scenario causes an inversion in the logic of access to rights, transferring to the citizen the responsibility of activating judicial mechanisms to obtain what should be granted automatically (Ferreira, 2020).

The discussion about the effectiveness of the writ of mandamus in the analysis of BPC requests also involves a broader perspective of fundamental rights. The right to social assistance cannot be seen in isolation, but as an interdependent element of other equally



essential rights, such as health, food, housing and education. Administrative negligence compromises not only the benefit itself, but the set of minimum conditions for a dignified existence, especially in relation to individuals in situations of extreme poverty or with physical and mental limitations (Brito, 2021).

Another fact to be considered is the asymmetry of access to justice. Although the writ of mandamus is a constitutionally guaranteed instrument, its effectiveness depends on the performance of public defenders or trained lawyers, which is often not within the reach of all applicants. This barrier reveals inequalities within the protection system itself, since the most vulnerable, precisely those who depend most on the BPC, may have more difficulty in activating the necessary judicial means to demand their rights (Oliveira, 2020).

The main objective of this research is to discuss the effectiveness of the writ of mandamus as a means of guaranteeing the timely analysis of BPC requests by the INSS, based on the analysis of normative, doctrinal and jurisprudential data. It seeks to understand to what extent this lawsuit has been able to fill gaps left by the public power and what has been the position of the Judiciary in the face of this growing demand. The methodology used will be bibliographic, with an emphasis on recent academic productions, judicial decisions, and legal regulations (Mendes, 2022).

This debate is also supported by the work of institutions such as the Public Prosecutor's Office and the Public Defender's Office, which have played an important role in promoting social justice. Based on public civil actions, administrative recommendations and direct assistance to applicants, these entities act as protagonists in the defense of the rights of socially excluded populations. A critical analysis of the performance of these institutions is necessary to understand the limits and scope of legal protection in the field of care (Silva, 2021).

In the midst of this scenario, it is urgent to reflect on institutional measures that can avoid the need for excessive judicialization of social rights. It is necessary to think about structural reforms, technical training of civil servants, improvement of service channels and efficient computerization of the BPC analysis process. The performance of the Judiciary, although relevant, cannot be a permanent substitute for effective administrative action. This balance between the administrative and judicial spheres is fundamental for the promotion of a State truly committed to fundamental rights (Brito, 2021).



JUDICIALIZATION OF VULNERABILITY: THE RIGHT TO THE BPC AND THE MINISTRY OF HEALTH AS A WAY OF GUARANTEEING RIGHTS

THE CONTINUOUS PROVISION BENEFIT: LEGAL AND SOCIAL FOUNDATIONS

The Continuous Cash Benefit (BPC) is one of the pillars of public social assistance policy in Brazil. Established by the Organic Law of Social Assistance (Law No. 8,742/1993), the benefit ensures the payment of a monthly minimum wage to people with disabilities and seniors aged 65 or over who prove that they do not have the means to provide for their own maintenance or to have it provided by their family. The constitutional provision of the BPC is present in article 203, item V, of the Federal Constitution of 1988 (Brasil, 1988), which introduced assistance as a social right independent of social security contributions, reinforcing the role of the State in the protection of people in situations of helplessness (Alves, 2022).

The creation of the BPC was the result of a long process of mobilization by social movements and entities that defend the rights of people with disabilities and the elderly. This historical construction consolidated the understanding that social assistance should be part of a universal security system, along with health and social security, according to the tripod established by the Constitution. The universality of social protection and respect for human dignity are guiding principles of the benefit, reinforcing its function in promoting social justice (Brito, 2021).

The legislation defines specific criteria for granting the benefit. The per capita family income must be less than 1/4 of the minimum wage, according to the original wording of the LOAS. Proof of disability, in the case of people with long-term impairments, must involve a medical and social evaluation carried out by a multidisciplinary team from the INSS. In the case of the elderly, the age criterion and family income are enough. Recent court decisions have broadened the understanding of the concept of miserability, making the objective criteria more flexible in favor of an analysis that is more sensitive to the real living conditions of the applicants (Ferreira, 2020).

The social dimension of the BPC is expressive, as it is aimed at groups with high vulnerability and low insertion in the labor market. Among the beneficiaries, people who depend on state aid to meet basic needs predominate. Alongside programs such as Bolsa Família, the BPC is an instrument to combat extreme poverty and exclusion, being responsible for guaranteeing a minimum income that allows access to food, medicines, transportation, and housing. Many Brazilian municipalities, especially those in the interior and in the North and Northeast regions, rely on the BPC as a fundamental part of the local economy (Rodrigues, 2024).



The social impact of the benefit transcends the economic dimension. The recognition of the right to non-contributory assistance represents an advance in the consolidation of full citizenship. Access to the BPC contributes to the reduction of social inequalities and allows people in vulnerable situations to achieve a minimum of autonomy. The granting of the benefit, in itself, is a state recognition that social protection should extend to those who are unable to meet their basic needs by their own means, due to advanced age or physical or mental limitations (Mendes, 2022).

At the normative level, the BPC finds support not only in national legislation, but also in international treaties to which Brazil is a signatory. The Convention on the Rights of Persons with Disabilities, approved as a constitutional amendment by Legislative Decree No. 186/2008 and promulgated by Decree No. 6,949/2009, reinforces the obligation of States to guarantee adequate income and social protection to persons with disabilities. These milestones strengthen the legal basis of the BPC and consolidate the State's responsibility to ensure the dignity of vulnerable populations (Silva, 2021).

Despite its importance, the BPC faces challenges in its operationalization. The slowness of administrative processes, the difficulty of access to the application channels and the constant registration reviews are factors that make it difficult to enforce the right. Many applicants face difficulties in collecting documents, traveling to INSS agencies or obtaining medical reports. Such obstacles are aggravated in regions with less infrastructure, contributing to inequality in access to the benefit between the different territories of the country (Lima, 2023).

The welfare nature of the BPC implies the non-requirement of a previous contribution to social security, which sometimes generates prejudice and misinformation about its real purpose. Part of society still associates the benefit with a kind of state privilege or handout, ignoring that it is a social right provided for in the Constitution and intended for situations of proven need. Strengthening the assistance policy, therefore, also requires an effort at social education, to combat stigmatized views and value the rights of the poorest people (Oliveira, 2020).

The public policy involving the BPC requires constant institutional improvement. The digitalization of INSS services has brought facilities, but it has also increased the difficulties for part of the population, especially the elderly with low education and without access to the internet. The State's challenge is to combine technological innovation with social inclusion, ensuring that no citizen is left without care due to lack of technical knowledge or access to electronic devices. The principle of universality should guide institutional



practices, in order to ensure that the rights provided for by law do not become unfeasible in practice (Brito, 2021).

THE SLOWNESS IN THE ADMINISTRATIVE ANALYSIS OF APPLICATIONS BY THE INSS

The slowness in the processing of administrative processes related to the BPC is one of the main difficulties faced by citizens seeking access to social assistance. The National Institute of Social Security (INSS), responsible for analyzing and granting the benefit, has been operating under strong structural overload, which directly affects the ability to process applications within the legal deadline. This slowness, in addition to disrespecting the rules that govern the Public Administration, aggravates the condition of vulnerability of applicants, who often depend exclusively on the benefit for their survival (Alves, 2022).

Brazilian legislation establishes reasonable deadlines for the response of public agencies to the demands of the administrated. In the case of the INSS, Law No. 9,784/1999 determines that administrative proceedings must be decided within 30 days, extendable for an equal period upon express justification. In practice, this deadline is rarely respected. Several BPC requests remain unanswered for months or even years, which has generated a significant increase in the number of lawsuits filed by citizens dissatisfied with state inertia (Rodrigues, 2024).

The factors that contribute to this scenario include a deficit of servers, failures in electronic processing systems, and constant updating of internal regulations, which make bureaucratic procedures even more complex. The lack of experts to carry out medical and social assessments required in the BPC granting process also represents a recurring obstacle. In many locations, there are long lines for expert examinations, which postpones the progress of the processes and imposes emotional and financial strain on the applicants (Mendes, 2022).

The digitalization of service and the implementation of technological tools, such as the Meu INSS application, were presented as solutions to increase institutional efficiency. Although these measures have the potential to speed up procedures, they end up excluding part of the population that has low education or does not have regular access to the internet. Elderly people and people with severe disabilities encounter barriers in the use of these digital media, which increases dependence on third parties and makes the process more time-consuming and exhausting (Ferreira, 2020).

The most evident consequence of the delay is the worsening of the social and health conditions of the applicants. The absence of a quick response to the BPC's requests



deprives individuals of the existential minimum guaranteed by the constitution, contrary to the principles of human dignity and administrative efficiency. The delay in granting the benefit represents, in many cases, the difference between access to food, medicine, or housing, which transforms the wait for an administrative response into a precarious survival process (Brito, 2021).

Administrative inefficiency also has relevant legal implications. The Federal Supreme Court and the Superior Court of Justice have already taken a position on the inertia of the INSS, stating that the State has a duty to ensure the speedy processing of assistance requests. In several decisions, the courts have recognized the right of applicants to obtain an administrative response within a reasonable period of time and have determined the forced compliance with the analysis, often by means of a writ of mandamus, with the setting of a daily fine in case of non-compliance (Silva, 2021).

The judicialization of delays, although effective in certain contexts, represents a symptom of the partial failure of the public administration to guarantee full access to social rights. The growing number of lawsuits for delays in the analysis of welfare benefits compromises the functioning of the Judiciary and transfers to the judicial sphere the responsibility for solving structural failures in public management. Such dynamics distort the function of the judicial route, which should act in a subsidiary manner, only in exceptional cases of omission or abuse (Oliveira, 2020).

The institutional response to the delay has been punctual and insufficient. Plans to tackle the waiting list have already been announced on several occasions, but the practical results are limited. The absence of robust investments in personnel and technological infrastructure, combined with the instability in public policies aimed at social assistance, highlights the lack of government priority in the realization of the rights guaranteed by the Constitution. The lack of transparency in the internal analysis flows of the INSS also makes it difficult for the applicants themselves and the control bodies to follow up (Lima, 2023).

Overcoming the slowness requires an articulated set of administrative, legislative and political measures. The expansion of the staff of civil servants, the accessible technological modernization and the simplification of the analysis criteria are possible ways to make the granting of the BPC more efficient. Valuing the performance of public defenders and social workers in administrative proceedings can assist in the mediation between the citizen and the State, promoting extrajudicial solutions and avoiding the prolongation of situations of helplessness (Brito, 2021).



FUNDAMENTAL RIGHTS AND THE DIGNITY OF THE HUMAN PERSON IN THE GRANTING OF THE BPC

The Federal Constitution of 1988 established a new paradigm of social protection in Brazil, by recognizing fundamental rights as stony and inalienable clauses. Among these rights, access to social assistance was ensured as a duty of the State, with the objective of supporting citizens who are in situations of social risk. The BPC, in this scenario, is not presented as a government favor, but as a state obligation arising from the constitutional pact that places human dignity at the center of public policies (Rodrigues, 2024).

The dignity of the human person, as the foundation of the Republic, is provided for in article 1, item III, of the Constitution, serving as an interpretative reference for the entire normative structure of the country (Brasil, 1988). This means that every administrative action must observe this principle, which includes the processing and granting of welfare benefits (Brasil, 1988). The undue denial or delay in the response by the public administration represents a direct violation of this principle, as it deprives the individual of minimum conditions to exercise their citizenship and freedom with autonomy (Brito, 2021).

The BPC is a right that guarantees not only the financial transfer, but the recognition that the condition of poverty or disability should not prevent the individual from participating in social life with dignity. Receiving the benefit allows the acquisition of basic goods, the cost of medicines, travel for medical treatment and support for extremely vulnerable families to maintain some level of stability. The non-granting of this right, therefore, reinforces historical inequalities and deepens processes of exclusion (Silva, 2021).

The jurisprudence has been clear in associating the granting of the BPC with the protection of fundamental rights. Brazilian courts have already stated, in several decisions, that the analysis of requests for this benefit must be done as a priority, at the risk of compromising the rights to health, food and life. The State's omission in this process transforms access to a right into a bureaucratic obstacle, inverting the constitutional logic of protection and care for the most vulnerable (Alves, 2022).

The protection of human dignity requires an approach that is sensitive to the concrete reality of the applicants. Many of them live in extreme conditions of vulnerability, facing severe physical, social and economic limitations. In such contexts, the role of public policy should be to support and not to impose barriers. The requirement for detailed medical reports, documentary evidence, and the use of complex digital platforms are practices that, although legal, often disregard the real limitations of applicants (Oliveira, 2020).

The legal analysis of the BPC must consider the principle of maximum effectiveness of fundamental rights. This means interpreting the norms in such a way as to promote the



realization of social rights, and not the other way around. The public administration, instead of adopting restrictive or formalistic criteria, should guide its procedures by the commitment to social justice. This understanding is already defended by control bodies and also by decisions of the Federal Supreme Court that reinforce the state's duty to act based on humanitarian values (Ferreira, 2020).

There is no way to dissociate the guarantee of the BPC from a State project committed to reducing inequalities. The right to social assistance is closely linked to the notion of solidarity and the redistributive function of public policies. When the benefit is denied or delayed, it is not only an administrative problem, but a structural flaw that evidences the absence of commitment to the foundations of the Democratic Rule of Law. Social vulnerability needs to be understood as a priority and not as a statistical data (Lima, 2023).

The State's action must go beyond simple formal compliance with the law. The interpretation of the requirements for the BPC must observe the peculiarities of each case and take into account the social inequalities accumulated historically. The cold letter of the rule, when applied rigidly, can result in injustice and deepen the suffering of those who already live on the margins of protection systems. Therefore, vulnerability analysis must be humanized, focusing on overcoming barriers and promoting inclusion (Mendes, 2022).

The dignity of the human person, in this sense, cannot be reduced to a legal abstraction. It must be reflected in the concrete practices of the public administration, in the acts of civil servants, in judicial decisions and in the planning of assistance policies. The BPC represents one of the most direct expressions of the state's responsibility to protect those who are unable to fully exercise their rights due to limitations imposed by their own social condition. Denying or hindering access to this benefit is denying the very meaning of the 1988 Constitution (Brito, 2021).

THE WRIT OF MANDAMUS AS AN INSTRUMENT OF JUDICIAL PROTECTION

The writ of mandamus is one of the most traditional constitutional actions existing in the Brazilian legal system. It is an instrument provided for in article 5, item LXIX, of the Federal Constitution (Brazil, 1988) and regulated by Law No. 12,016/2009, and is used to protect a liquid and certain right when it is threatened or violated by an act of public authority. In the field of welfare law, it has been consolidated as an effective measure to ensure that the State complies with obligations related to the analysis and granting of benefits, such as the BPC, especially in the face of administrative inertia (Mendes, 2022).

The configuration of the writ of mandamus requires the presence of an already determined right and the demonstration that the Public Administration omitted or acted in an



illegal or abusive manner. In the case of BPC requests, the delay or the absence of a decision within the legal deadline has been considered as conduct that violates the liquid and certain right to a speedy analysis. Jurisprudence has recognized that prolonged waiting compromises the full exercise of social rights, especially when it comes to the elderly and people with disabilities who live in conditions of extreme poverty (Brito, 2021).

By activating the writ of mandamus, the citizen seeks not necessarily to obtain the direct granting of the benefit, but the judicial determination for the INSS to analyze the request in a reasonable time. It is a measure to control state omission, with no intention of replacing administrative action. However, its use has become recurrent due to the inefficiency of the social security system, which is unable to meet the demand quickly enough to preserve the dignity of its users (Rodrigues, 2024).

The doctrine points out that the writ of mandamus plays a strategic role in the realization of fundamental rights, functioning as a protection valve against the effects of excessive bureaucracy and institutional negligence. When the State does not act, or acts inadequately, the Judiciary becomes the channel of access to the realization of the right, especially for segments of the population that do not have other means to protect themselves. This corrective function of the writ of mandamus has reinforced its importance in cases of social assistance (Oliveira, 2020).

Although the instrument is considered to be swift and effective, there are important limitations. One of them is the requirement of pre-constituted documentary evidence, which often prevents people in vulnerable situations from being able to gather the necessary elements to instruct the initial petition. This represents a challenge, especially when the applicant does not have adequate legal guidance or depends on the Public Defender's Office, whose structure, in many states, is insufficient to handle all cases with the necessary urgency (Silva, 2021).

Another point of debate refers to the use of the writ of mandamus as a permanent solution to a structural problem. Instead of investing in more efficient administrative mechanisms, the State has allowed judicialization to become the only way for citizens to see their rights respected. This generates a cycle of dependence on the judiciary, overloads the Judiciary, and further delays the provision of public services, creating an imbalance between the spheres of power (Ferreira, 2020).

Even in the face of these limits, the writ of mandamus proves to be a useful and necessary mechanism in the current context. Its adoption by lawyers, public defenders and civil society organizations has allowed thousands of people to gain faster access to the analysis of their requests, preventing the wait from compromising their own survival. In



many cases, the preliminary injunction granted in a writ of mandamus is the only viable remedy for the applicant to obtain a response in a reasonable time (Alves, 2022).

The higher courts, such as the Federal Supreme Court (STF) and the Superior Court of Justice (STJ), have been consolidating an understanding in favor of the use of the writ of mandamus to compel the Public Administration to comply with legal deadlines.

Jurisprudence recognizes that the unjustified omission of the INSS in the analysis of welfare benefits directly compromises the principle of efficiency, provided for in article 37 of the Constitution, in addition to violating the principles of legality, morality, and public purpose, which should guide administrative activity (Lima, 2023).

The function of the writ of mandamus, in this context, transcends the procedural aspect and assumes an institutional character. Its use represents the resistance of citizens in the face of state inertia, and its effectiveness is directly related to the capacity of the Judiciary to act as a guarantor of rights. Although it does not replace the need for deep administrative reforms, this instrument has been fundamental to ensure that the right to social assistance, especially the BPC, is not lost in the slowness of the public machine (Brito, 2021).

LIMITS AND POSSIBILITIES OF THE WRIT OF MANDAMUS IN ASSISTANCE DEMANDS

The writ of mandamus, although widely used to address administrative inertia in matters of welfare benefits, has legal and operational limits that need to be considered. As it is an action that requires a liquid and certain right, its applicability depends on the unequivocal demonstration of the state's omission and the existence of documentary evidence that supports the request. This requirement often hinders access for people in situations of extreme vulnerability, who are not always able to gather the necessary documentation to correctly instruct the petition (Oliveira, 2020).

The Superior Court of Justice has already consolidated the understanding that the writ of mandamus should not be used as a substitute for ordinary action when the matter involves factual complexity or the need to produce evidence. In the context of INSS benefits, this means that, although the writ is effective in forcing the administrative analysis of applications, it should not be used to discuss the merits of the grant, especially in cases that require technical expertise or a more detailed socioeconomic assessment (Mendes, 2022).

This formal limitation ends up restricting the effectiveness of the writ of mandamus as an instrument for expanding access to justice. Individuals who are unable to present all the documents at the time of filing the lawsuit, even if they are in a situation of real need, may have their request rejected due to the absence of pre-constituted evidence. This



requirement, although legal, clashes with the concrete reality of the poor population, which often lacks access to medical services, updated reports, and specialized legal guidance (Silva, 2021).

Despite these barriers, the action has indisputable merits when the objective is to ensure compliance with legal deadlines that have already passed. When the INSS exceeds the time allotted to analyze a BPC request, without justification or formal communication, it is a violation of a certain right. In these situations, the writ of mandamus allows the Judiciary to act quickly, by means of an injunction, to determine the immediate analysis of the administrative process, reestablishing the legal flow of the public administration (Brito, 2021).

It is also worth highlighting the role of the Public Defender's Offices, which have contributed decisively to the filing of writs of mandamus on behalf of underprivileged people. The performance of these bodies has enabled thousands of Brazilians to access justice at no cost, with qualified representation. The structuring of the Public Defender's Offices and the expansion of their staff are indispensable elements to increase the effectiveness of this type of action in the context of care demands (Rodrigues, 2024).

Another aspect that deserves attention concerns the behavior of the public administration in the face of judicial decisions obtained through a writ of mandamus. Even if the Judiciary determines the immediate analysis of the request, it is not uncommon for compliance with the order to be delayed or executed in a superficial manner. This demonstrates that, although the action has the potential to protect rights, its effectiveness also depends on the institutional commitment of the body responsible for the demand. The absence of strict mechanisms for inspection and administrative sanction contributes to the repetition of omissions (Alves, 2022).

The use of the writ of mandamus, when recurrent, indicates persistent structural flaws in the management of the social assistance policy. The volume of lawsuits with the same object shows that the problem is not punctual, but systemic. Instead of correcting the origin of the failure, the State has been allowing the Judiciary to function as a substitute for the regular administrative process. This mass judicialization, although it brings occasional relief to the beneficiaries, does not represent a lasting solution, as it transfers the burden of institutional correction to another power (Ferreira, 2020).

It is also necessary to recognize that the writ of mandamus is not accessible to everyone in the same way. The dependence on legal structure, technical knowledge and specialized monitoring makes it difficult for a portion of the population to be used in conditions of greater exclusion. In places without the presence of the Public Defender's



Office or with little activity of social organizations, many applicants do not even know about the possibility of filing this type of lawsuit. This generates inequality of access to justice and prevents the benefit from reaching everyone who needs it (Lima, 2023).

Despite these limitations, the writ of mandamus remains a fundamental resource to correct administrative omissions related to the BPC. Its use must be accompanied by public policies that improve the internal flows of the INSS, with an increase in personnel, investments in technology and humanization of care. Strengthening administrative instances and creating internal correction mechanisms could reduce the need for lawsuits and improve the quality of public service delivery (Brito, 2021).

RECENT JURISPRUDENCE AND THE POSITION OF THE HIGHER COURTS

The writ of mandamus aimed at ensuring the analysis of BPC applications has been the subject of relevant decisions in the higher courts. The Judiciary has recognized that the unjustified delay in the analysis of the requests directly violates the fundamental rights of the applicants, especially in cases where the urgency of the social situation faced is proven. The Superior Court of Justice (STJ), on several occasions, has consolidated its understanding that the 30-day deadline provided for in Law No. 9,784/1999 must be respected, and may be extended only once, upon adequate motivation (Silva, 2021).

Recent jurisprudence demonstrates that administrative inertia cannot be tolerated when the subsistence of people in a condition of vulnerability is at stake. In repeated judgments, the ministers of the STJ have stated that the failure to comply with legal deadlines constitutes an abuse of power, justifying the granting of a writ of mandamus. This position reinforces the idea that the Judiciary is no longer limiting itself to the literal interpretation of legislation, but rather incorporating constitutional principles such as dignity, material equality, and full protection (Alves, 2022).

The Federal Supreme Court (STF) has also taken a clear position on the need for effective action by the Public Administration in matters of social rights. In monocratic and collegiate decisions, the justices have recognized that the delay in the analysis of benefits violates the essential core of the right to assistance, creating a situation of unconstitutional state omission. The STF has reinforced that the provision of social assistance is not subordinated to administrative discretion, but rather to the legality and efficiency provided for in the Constitution (Rodrigues, 2024).

Recent decisions of the federal courts have adopted the criterion of the reasonableness of the deadline as a determining element for granting security. The judgments establish that, after the legal deadline has elapsed without a response from the INSS, the writ of mandamus is appropriate to ensure that the agency issues an



administrative decision. The analysis of these decisions demonstrates a consolidated tendency towards giving effect to the rights provided for in the Constitution, even if through judicial impositions on the Executive Branch (Brito, 2021).

Another important aspect identified in the case law concerns the granting of injunctions. The urgency of the situations presented by the BPC applicants has led the magistrates to grant injunctions determining the immediate analysis of the request, without the need for the process to be processed indefinitely. These injunctions have a direct impact on the protection of the life and health of beneficiaries, who depend on the state response to ensure access to essential items, such as medicines, food, and transportation (Ferreira, 2020).

The decisions have also indicated the understanding that the Public Administration cannot use the complexity of the procedures as a justification for non-compliance with deadlines. The courts consider that the internal structure of the INSS must be prepared to meet the demand that is constitutionally attributed to it. The absence of human or technological resources cannot be a valid argument for non-compliance with legal and constitutional duties. Jurisprudence has made it clear that the State cannot omit itself in relation to the poorest and most vulnerable (Mendes, 2022).

Another point that frequently appears in judgments is the reaffirmation of the independence of welfare rights in relation to social security contributions. The jurisprudence of the higher courts has reiterated that the BPC does not depend on payment to the INSS, and cannot be confused with a social security benefit. This reinforces the thesis that its analysis and granting should be guided by criteria of social need, and not by technical or contributory requirements, which is in line with the protective logic of the Brazilian social security system (Oliveira, 2020).

Jurisprudence has therefore assumed a decisive role in shaping a fairer and more humanized interpretation of the right to social assistance. The courts have acted to correct administrative failures and ensure the fulfillment of state duties through the courts. This posture, although necessary in the current scenario, also highlights the fragility of the administrative structure in ensuring basic rights without the intervention of the Judiciary. The growing number of decisions on the subject shows that the judicialization of the BPC is not an exception, but a common practice (Lima, 2023).

The scenario analyzed points to a trend of strengthening the judicial protection of social rights, especially when these involve populations neglected by the traditional system. Jurisprudence, by evolving towards the expansion of the effectiveness of the writ of mandamus, has contributed to ensuring that the rights provided for in the Constitution are



respected in practice, even when there is resistance or inertia on the part of the State. It is a corrective action that seeks to rescue the public commitment to the dignity of all citizens, regardless of their social position or economic capacity (Brito, 2021).

THE ROLE OF THE PUBLIC PROSECUTOR'S OFFICE AND THE PUBLIC DEFENDER'S OFFICE IN THE DEFENSE OF THE BPC

The BPC represents one of the main social protection mechanisms aimed at the elderly and people with disabilities in vulnerable situations. Given the complexity of access to this right and the obstacles faced by its applicants, the performance of public institutions such as the Public Prosecutor's Office and the Public Defender's Office has proven to be essential to ensure compliance with the constitutional and legal guarantees related to the benefit (Rodrigues, 2024).

The Public Defender's Office has the legal authority to provide full and free legal assistance to people who cannot afford a lawyer. His presence has been decisive in the filing of lawsuits, such as the writ of mandamus, to ensure the speedy analysis of BPC requests. The institution has promoted collective actions, public hearings, and information campaigns aimed at guiding citizens about their rights and facilitating access to the social assistance system (Silva, 2021).

Through its extrajudicial action, the Ombudsman's Office also intervenes with the INSS to request administrative measures that reduce queues, correct irregularities or speed up the progress of processes. Many of these interventions result in administrative resolutions without the need for judicialization, which contributes to relieve the Judiciary and serve those assisted more quickly. The pedagogical role of the Public Defender's Office, in this context, strengthens the legal empowerment of people historically excluded from formal state protection systems (Ferreira, 2020).

In the judicial field, public defenders have used strategies such as filing public civil actions in favor of communities or social groups, especially in locations where there is a lack of efficient service by the INSS. In these situations, collective action allows reaching a greater number of beneficiaries with a single lawsuit, expanding the scope of the right and stimulating institutional changes through judicial pressure. These actions reveal the Defender's Office's commitment to the realization of social rights in their collective dimension (Lima, 2023).

The Public Prosecutor's Office, in turn, plays an essential role in controlling the legality of public policies, including those aimed at social assistance. With regard to the BPC, prosecutors and prosecutors have instituted administrative procedures to supervise the performance of the INSS, demand compliance with legal deadlines and investigate



complaints of omission or inadequate treatment of beneficiaries. The role of the Public Prosecutor's Office stems from its constitutional attribution to defend the legal order, social interests, and inalienable individual rights (Brito, 2021).

In cases of systematic irregularity, the Public Prosecutor's Office has filed public civil actions seeking to hold the State responsible for failures in granting the benefit. Among the measures required are the hiring of servers, review of internal procedures and implementation of technological solutions that improve the service to applicants. These actions have contributed to the production of more appropriate public policies and to overcoming barriers that prevent full access to the BPC (Mendes, 2022).

The articulated action between the Public Prosecutor's Office and the Public Defender's Office has also yielded concrete advances. In various regions of the country, the two institutions work in partnership to promote legal assistance efforts, identify collective demands and ensure that people in vulnerable situations are adequately guided about their rights. These initiatives are particularly relevant in municipalities with little institutional structure, where the population has difficulties in moving around and accessing information (Alves, 2022).

Both institutions face structural challenges that limit their ability to fully meet demand. The Public Defender's Office, in particular, suffers from a lack of defenders in several states, which compromises the continuous service and monitoring of processes. The Public Prosecutor's Office, on the other hand, despite having a consolidated national presence, faces institutional resistance in the inspection of public policies and often depends on the proactive action of its members to establish procedures aimed at the defense of welfare rights (Oliveira, 2020).

Despite these challenges, the impact of the performance of these institutions is indisputable. Their presence has ensured that the BPC is no longer just a formal right and becomes an effective policy of inclusion and social justice. The daily work of defenders and prosecutors, by intervening in the failures of public administration, represents a link between the vulnerable citizen and the fulfillment of the constitutional objectives of eradicating poverty and reducing social inequalities. The defense of the BPC, therefore, is not only a legal issue, but a concrete action in favor of citizenship (Brito, 2021).

PERSPECTIVES FOR INSTITUTIONAL IMPROVEMENT AND GUARANTEE OF RIGHTS

The consolidation of the BPC as an instrument for promoting social justice requires the constant improvement of the structures responsible for its management. The National Institute of Social Security (INSS), as an executing agency, needs robust investments in human resources, infrastructure and technological systems. The precariousness of these



elements has been one of the main obstacles to the efficient analysis of applications, resulting in waiting lines and the consequent judicialization of demands that should be resolved administratively (Rodrigues, 2024).

One of the possible ways to improve the management of the BPC is the intelligent digitalization of services, accompanied by digital inclusion policies. The use of platforms such as Meu INSS already represents an advance, but it is necessary to ensure that people with low education, without internet access or with physical limitations have face-to-face and accessible alternatives to apply for the benefit. Hybrid care, which combines technology and human support, can make the system more effective and welcoming to the target audience of the benefit (Silva, 2021).

Another urgent measure is the appreciation of public servants involved in the analysis of welfare benefits. Many professionals work under strong pressure, with high goals and insufficient structure. Continuous training and the improvement of working conditions are essential to reduce procedural errors and humanize service. A well-prepared civil servant, with adequate time for analysis and listening, is more likely to understand the nuances of the situations presented and make fairer decisions (Ferreira, 2020).

The strengthening of social control is also essential in this process. Social assistance councils, civil society entities and organized movements can contribute with complaints, suggestions and monitoring of public policy. The construction of a transparent system, with open data on average response times and rejection rates, favors citizen participation and allows for a more accurate diagnosis of institutional bottlenecks. Transparency strengthens the population's trust and inhibits negligent practices (Lima, 2023).

Another fundamental point is the periodic review of the BPC eligibility criteria. The current parameter of 1/4 of the minimum wage per capita, although already made more flexible by court decisions, still does not reflect the reality of many poor families. Legislation needs to follow social and economic studies that show how the cost of living impacts the condition of vulnerability. The adoption of more flexible criteria, combined with the contextualized analysis of cases, can make the benefit fairer and more effective (Brito, 2021).

The articulated action between the Executive, Legislative and Judiciary branches is also an indispensable element for institutional advancement. Parliament can contribute with legislative proposals that strengthen the assistance policy, while the Executive must ensure sufficient budget and political will to prioritize care for the neediest populations. The Judiciary, on the other hand, by assuming a role as a guarantor of fundamental rights, must



continue to be attentive to administrative omissions and willing to correct injustices through swift decisions that are consistent with the Constitution (Mendes, 2022).

The performance of the Public Defender's Offices and the Public Prosecutor's Office should also be strengthened. These institutions, in addition to promoting access to justice, can function as permanent channels of listening and mediation between the State and citizens. Strengthening the structures of these entities in the municipalities with the greatest demand for the BPC can contribute to preventing conflicts, guiding applicants, and more closely monitoring compliance with deadlines and procedures by the INSS (Alves, 2022).

Universities, research centers and public auditing bodies have an important role in the production of knowledge about the functioning of the BPC. Studies that evaluate the effectiveness of the benefit, its coverage, social impact, and operational challenges help in the formulation of more efficient public policies. The articulation between academic production and public management is a strategic way to transform data into policies capable of responding with agility to the real demands of the population (Oliveira, 2020).

The construction of a State that respects and promotes social rights requires a continuous commitment to the improvement of its institutions. The BPC is a right provided for in the Constitution, but it is only fully realized when it finds an administrative structure capable of implementing it. Improving the functioning of the INSS, expanding access to information, combating misinformation and valuing civil servants are measures that move towards making social assistance more accessible, humane and efficient. Institutional improvement is, therefore, a necessary condition for the effective guarantee of the rights provided for by law (Brito, 2021).

FINAL CONSIDERATIONS

The analysis of the effectiveness of the writ of mandamus in ensuring the timely analysis of the BPC requests showed the presence of a serious dysfunction between the rights formally guaranteed by the Constitution and the reality faced by thousands of citizens in vulnerable situations. Although the BPC is a right provided for in Brazilian legislation, its operationalization suffers from administrative obstacles that compromise fair and fast access to the benefit.

The use of the writ of mandamus has proven to be an effective legal alternative in the face of the administrative slowness of the INSS. Through this action, the Judiciary has taken an active role in the protection of fundamental rights, determining the analysis of dammed cases and ensuring that legality and administrative efficiency are respected. This



corrective action, although punctual, has made it possible for people in extreme need to have access to the assistance they so desperately need.

The massive judicialization of a basic social right highlights deep structural flaws in the management of public policy. The writ of mandamus cannot be treated as a definitive solution, as it does not replace the State's responsibility to ensure the spontaneous realization of social rights. The growing dependence on the judiciary exposes the fragility of the administrative system and widens inequalities, since not all citizens are able to resort to justice.

The work of institutions such as the Public Defender's Office and the Public Prosecutor's Office has been essential to mitigate these barriers. These entities have promoted the democratization of access to justice, guiding citizens and pressuring the State to fulfill its obligations. However, its action, as relevant as it may be, is also not enough to correct all the operational deficiencies of the INSS and ensure the universalization of the right to the BPC.

For the BPC to be fully realized as a public protection policy, an articulated effort between the three Powers is necessary. Administrative management needs to be modernized and humanized; the legal framework must be improved to better reflect the reality of Brazilian families; and the Judiciary must maintain its vigilance, acting as a guarantor of rights and not as a substitute for the Administration.

The realization of the dignity of the human person involves guaranteeing the existential minimum to all who need it. The BPC is an instrument of this guarantee, and its implementation represents the State's commitment to the most fundamental principles of justice, equality and solidarity. The writ of mandamus, although limited, plays an important role in this process, but the improvement of public institutions is still the main way for rights to stop being promises and become reality.



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