



THE INSS GOVERNANCE SYSTEM AND THE LIABILITY OF THE MANAGING SERVANT FOR DELAYS IN THE GRANTING OF BENEFITS

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ABSTRACT

The object of this article is the integrity and governance programme instituted by the National Institute of Social Security (INSS) through Ordinances 3.212/19 and 3.213/19. The problem addressed is the scenario of non-compliance of the autarchy with the deadlines for analysis and judicial implementation of benefits provided by Law 8.213/91, leading to the application of fines and official letters reporting crime of prevarication and disobedience of public servants. Will this governance system provide the manager with tools to prove the absence of personal responsibility in decision-making? It is intended to demonstrate that this legal regime of governance can impact the limits of personal liability of public servants. Its specific objectives are to evaluate such Ordinances; to establish a comparison with the decisions of the Federal Regional Courts and the Federal Court of Auditors and, finally, to verify if the autarchy is structured to demonstrate the exemption of responsibility of the manager. The applied methodology includes the deductive method, considering a systemic analysis, with bibliographic review and data collection. The research findings indicate that the INSS integrity and governance programme is still incipient, with a threat of liability falling on the servant, which can be mitigated by data transparency and permanent collaborative governance.

Keywords: Liability; Public Servant; External Control Organisations; Public Compliance.



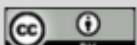
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1. INTRODUCTION

The National Institute of Social Security (INSS) administers the analysis of requests for social security benefits, in accordance with Law No. 8.213/91, and must do so within the deadlines established therein.

Seeking to improve the management decision-making process and make improvements in its institutional performance and in compliance with Decrees No. 9.203/2017 and No. 9.746/2019, also considering the guidelines of the Office of the Comptroller General (CGU) established in Ordinance No. 1.089/2018, the INSS instituted the integrity programme and its governance system through Ordinances No. 3.212/2019 and No. 3.213/2019, respectively. Among other planned objectives, the programme seeks to "promote the strategic management of the INSS, focused on the continuous improvement of the services offered to beneficiaries", leading the autarchy "to maintain evidence-driven decision-making process" and "by legal compliance".

However, since 2019, when almost half of the public servants retired, the autarchy began to delay, considerably, the analysis of administrative requests and the implementation of benefits judicially granted, which led to the application of fines by the Judiciary and the issuance of official letters reporting the crime of prevarication and disobedience.

In this context, the INSS managers are at risk of personal responsibility for possible damages caused to the public treasury, especially before external organs, such as the Federal Audit Court, the Public Prosecutor's Office and the Judiciary. How can the manager prove the absence of responsibility in decision-making and administrative measures? Will the governance system and the integrity programme created by Ordinances No. 3.212/2019 and No. 3.213/2019 provide the manager with tools to do so?

This paper aims to demonstrate that the governance system of the INSS must be improved to protect servants from the application of penalties. To this end, it will be necessary to evaluate Ordinances No. 3.212/2019 and No. 3. 213/2019 against the bibliographic review on public compliance and governance; compare with decisions of the Federal Regional Courts and the Federal Audit Court that face the theme of the liability of the servant, both for damages to the treasury and for crimes of disobedience and prevarication; ascertain if the autarchy is structured so as to demonstrate the manager's exemption from liability when facing the structural limitations of the body, especially if there is coordination and participation of the autarchy in the social security public policy, which impacts on the management of the service.



As a theoretical framework, one highlights the guidelines on public governance developed by the Organisation for Economic Development (OECD) and the ISO standards.

The methodology applied involves the deductive method, considering a systemic analysis, with literature review and data collection. From the survey and analysis of judgments of the Federal Regional Courts and the Federal Audit Court, we sought to investigate any imposition of liability to the INSS employee regarding the delay in the implementation of benefits and compliance with court decisions. Subsequently, the ordinances were compared with the literature review, especially with the OECD's public governance guidelines, in order to evaluate the programme.

In jurisprudential research, appeals and filing of writs of mandamus in defence of public servants who suffered personal penalties due to non-compliance with court decisions were identified. Several public policies from the federal government that negatively impacted the management of the INSS were also identified, over which the social security agency had no control or did not demonstrate it had made formal warnings about the risk of non-compliance when it approved them.

Furthermore, the agency has not been able to meet the deadlines established by law, beyond those set in an agreement in the Supreme Federal Court, which mitigated the legal requirement in favour of the effectiveness and organisation of the INSS. In other words, it has not been meeting the governance system's goal of "promoting strategic management focused on continuous service improvement" and legal compliance.

The hypothesis is that the INSS governance and integrity programme is still incipient and poorly understood by the other external control actors, imposing on the public servant a threat of responsibility arising from the lack of structure of the body. This threat further compromises the quality of the agency's public service, as it establishes a work environment under pressure and without prospects for improvement, due to the absence of effective governance over the development of public policy. It is also noteworthy that the situation can be mitigated by easy access to management dashboards, on sight, increasing transparency and by an effective interinstitutional dialogue and permanent collaborative governance.

2. THE INSS GOVERNANCE SYSTEM AND COMPLIANCE IN THE DELIVERY OF PUBLIC POLICY WITHIN THE LEGAL TIMEFRAME

The public policy of state provision of social security, with regard to social welfare and in part, social assistance, provided for by Law no. 8.213/91, is administered by the National



Institute of Social Security (INSS), created by Decree no. 99.350/1990, now regulated by Decree no. 9.746/2019.

It is incumbent upon the INSS, within the time limits provided for by the legislation, to analyse the administrative applications for obtaining benefits, in accordance with the law. As to the deadline, §5° of article 41-A of Law no. 8.213/91 provides that the INSS has 45 days to analyse the application after the presentation of the documentation.

Seeking to improve the management decision-making process and make improvements in its institutional performance, and in compliance with Decrees no. 9.203/2017 and no. 9.746/2019, also considering the guidelines of the Office of the Comptroller General (CGU) established in Ordinance no. 1.089/2018, the INSS instituted the integrity programme and its governance system, through Ordinances no. 3.212/2019 and no. 3.213/2019, respectively.

Public governance is conceptualized by Decree no. 9.203/2017 as a "set of leadership, strategy and control mechanisms put in place to evaluate, direct and monitor management, with a view to conducting public policies and providing services of interest to society" (Brazil, 2017). The principles of public governance are responsiveness, integrity, reliability, regulatory improvement, accountability, responsibility and transparency.

The main guidelines of public governance, provided in Article 4 of Decree No. 9.203/2017, are directly related to the effective delivery of public policy, using resources rationally, with innovative and simplified solutions. This duly accompanied by control and monitoring of the quality, efficiency and performance of management in its deliveries, providing for the creation of internal governance committees in the organs and entities of the federal public administration.

The Organisation for Economic Development (OECD) has long been dedicated to the study of public governance. In the document "Policy Framework for Investment User's Toolkit", it defined good public governance as the framing of the exercise of power and decision-making in the public interest with a set of arrangements, formal and informal, which establish standards of respect for the law and human rights, either within the State or in relations between the State and non-state institutions. The following basic principles of good governance also stand out: accountability, transparency, efficiency, effectiveness, responsiveness and respect for the law (OECD, 2011).

CGU Ordinance No. 1.089/2018, which provides recommendations for the implementation of integrity programmes, specifically aimed at preventing fraud and corruption in the public sphere, in turn, establishes that agencies should internalize processes to "promote



active transparency and access to information", in accordance with the Access to Information Law (Law No. 12.527/2011).

As for the INSS' governance and integrity programmes, Decree No. 9.746/2019 provided for their structuring, establishing that the Integrity, Governance and Risk Management Board would be responsible for, among several functions, "planning, guiding and coordinating the activities of control and compliance, investigation and reduction of fraud and corruption risks". Therefore, Ordinances No. 3.212/2019 and No. 3.213/2019 were responsible for establishing the integrity programme and the INSS' governance system.

The governance system of the autarchy seeks to "promote the improvement of the decision-making process and the improvement of institutional performance", also highlighting its function of implementation of the compliance system, due to the binding nature of the public administration to the principle of legality. This is in line with many provisions of the ordinance, especially item VII of Article 3 of Ordinance No. 3.213/19, which establishes as governance objectives "to maintain the decision-making process guided by evidence, by legal compliance and by non-bureaucracy".

The governance system also establishes the collegiate form for making important decisions, through the Strategic Governance Committee (CEGOV), which is formed by the President of the autarchy and five directors, and the meetings are composed of the Audit, Internal Affairs and Federal Attorney's Office. The thematic committees were created to assist the CEGOV in making decisions, and are divided into: planning, digital governance, information management, integrity, contract management and personnel management. The minutes of the CEGOV meetings are available on the INSS website.

Moreover, the INSS integrity programme, instituted by Ordinance 3.212/2019, is focused on preventing and combating fraud and corruption. It establishes guidelines and objectives to be pursued in the structuring of practices and internal controls in the management of ethics and integrity risks. It was implemented through CEGOV Resolution no. 8 of June 29, 2020, which established the first plan for the period 2020-2021.

The OECD Council Recommendation on Public Integrity (2021) defines public integrity as "consistent alignment with and adherence to common values, principles and ethical standards to sustain and prioritize the public interest over private interests in the public sector.

It is also worth highlighting transparency as a healthy premise for the idea of governance, established in item IX of Article 3 of Ordinance no. 3.213/19, by providing that the governance system is responsible for "promoting open, voluntary and transparent



communication of the activities and results of the INSS, in order to strengthen public access to information".

Once established, the CEGOV began the development of the necessary regulations, such as Resolution no. 5, of 05/28/2020, which established the Risk Management Policy, and Resolution no. 6, of 06/02/2020, which provides for the implementation of the Organisational Performance Monitoring System. These systems have the objective of making diagnosis and acting in the reduction of risks, as well as outlining the follow-up and monitoring of action plans, programmes and priority projects and services provided by INSS.

Regarding the INSS Risk Policy, it is worth highlighting article 5, which establishes as its mission "to assist decision making with a view to providing reasonable security in fulfilling the mission and achieving institutional objectives". Thus, the greatest risk for the social security agency is not fulfilling its legal role of executor of the social security policy.

As for transparency, the sole paragraph of art. 6 of Resolution 6/2020 established that the approved monitoring indicators should be disclosed through an online viewing platform (management panel), of public access, called "INSS in numbers", which will present the indicators through graphs, tables or other forms of easy and interactive viewing.

The platform "INSS in numbers", up to the date of 09/11/2021, was still not available with the promised data, with indicators presented through graphs and tables. In any case, the press frequently requests data from the INSS to publish news about the agency in the media. There are still management reports offered by the INSS website, such as the 2020 Management Report, and statistical data published in INSS yearbooks.

In any case, the INSS, as well as all organs and public entities of the federal public administration, are subject to the policies of the Open Data Plan (PDA), according to specific regulations (Decree no. 8.777/16 and Decree no. 9.903/19). The last open data plan, of the INSS, comprises the period from 07/2016 to 07/2018.

After presenting this overview, we will now outline the critical situation faced by the social security agency, which ends up affecting its employees, when the non-compliance with the legal dictates, especially regarding the deadlines set for the completion of administrative applications and compliance with court decisions.



3. THE UNCONTROLLED DEMAND AND THE DELAY IN DELIVERING INSS PUBLIC POLICY - THE RESPONSIBILITY OF THE MANAGING AGENT ON DAILY FINES AND THE CRIME OF DISOBEDIENCE

In order to properly outline the problem, it is essential to understand what is within the scope of governance and control of the INSS. As already mentioned, the agency is responsible for the execution and administration of social security and, in part, social assistance public policy, according to legal provisions.

The scope of the INSS' activity is in the understanding of the text of the norm and its application to concrete cases (subsumption), like that of a judge in the administrative social security process. Within its hierarchical structure, should be all the servants that will receive and analyse these applications, but this is not in line with reality.

The fact is that the agency, for its full operation, depends on external structures, not hierarchical by themselves, such as the administration of the information systems (under the control of DATAPREV, a public technology company) and the social security medical expertise (under the administration of the Undersecretariat of Federal Medical Expertise). In other words, in order to fulfil a good part of its institutional mission, the welfare autarchy depends on external organs, over which it has no administrative interference.

As for the preparation of welfare public policy, it is via the federal government, through the respective ministry, depending on its internal organisation, which establishes all the rules for the concession of benefits through constitutional reforms, provisional measures or law initiatives forwarded to the National Congress. Hence, the demand of the INSS can be altered, overnight, without its participation.

It is worth mentioning an example that contributed greatly to the creation of chaos in the INSS, without the time and organisation of the structure prior to the new demand: the social security reform. The latest reform was enacted by Constitutional Amendment no. 103/2019, which substantially changed the requirements and the formula for calculating social security benefits. Most of its provisions came into force on the date of its publication, on 12 November 2019, without the prior adaptation of the INSS systems, which took months to be implemented, according to several news reports in the press media (Cavallini, 2020). However, the INSS systems were only able to implement and calculate benefits many months later, with the waiting of countless administrative requests.

Other examples follow in the impact of public policy formulation by the federal government on INSS administration: anticipation of sickness aid (COVID); operation *pente fino*; transference of the administration of *Seguro Defeso*; assumption of the benefit of



continued benefit (BPC); rural benefits without contribution in the records; appeals to the Council of Social Welfare Resources (CRPS - organ external to INSS); project of centralization of the administration of the proper regime of federal servants, among others.

All this context is aggravated by another variable out of the autarchy's control: judicialization¹⁶. In fact, the INSS workers are submitted to the public administration rules, especially the demand of strict legality to produce proof and analysis of the requirements of the benefits, fixed with objective criteria. The Judiciary, on the other hand, uses the rules of civil procedure to produce evidence (all admitted in Law) and uses subjective criteria, non-taxed, to make the subsumption of the rule to the concrete case, applying abstract principles in hermeneutics.

Even in this context of receiving extraordinary demands, the INSS does not have the prerogative to determine the opening of a public contest without the approval of the federal government, or to increase its budget in face of new demands. Several initiatives for emergency hiring have been put forward by the government, including the calling of retired public servants (Martello, 2020), which is beyond the autarchy's governance.

The problem is outlined more clearly: the lack of governance and control over the generation of new demands, human resources and the data system has generated administrative chaos¹⁷, with delays in the analysis of applications and in the implementation of benefits granted by the courts, putting great pressure and threats on the civil servants, especially the managers.

When almost half of the public servants retired in 2019, the autarchy began to delay, considerably, the analysis of administrative requests and the implementation of benefits judicially granted. In the judicial sphere, a real race began in the application of daily fines against the agency, in an attempt to force the implementation of benefits granted. According to Technical Note SEI/CJF 0115120 of the Federal Justice's intelligence centres (Otilio, 2020), the INSS would have passed on data of delay of 213,661 court orders in March 2020. Public civil actions were also filed and several writs of mandamus (against the managing agent, the

¹⁶ For the understanding of the phenomenon of judicialisation in the granting of benefits, two studies are indicated: the one conducted by the Federal Audit Court (judgment 2894/2018) and the one developed by INSPER (2019). The latter indicates that 11% of social security benefits are granted judicially, which generates another demand, the provision of information, service and implementation of judicial benefits.

¹⁷ To try to make better use of staff and material resources, the INSS, in July/2019, created the Benefit Analysis Centres (CEAB) and, as a pilot experience, implemented the semi-attendance modality, waiving attendance control for public servants who met a certain work goal. The CEABS were created at the regional level, focused on the analysis of processes of recognition of rights and service of judicial demands. As soon as the CEABS were created, there was a severe worsening in delays, perhaps due to the mismatch between various sectors, access difficulties and system limitations, among other factors.



coercive authority) seeking to force the INSS to comply with the legal deadlines for the analysis of social security benefits. However, the problem of delays remains to this day (Conjur, 2021).

In the 2020 management report, the INSS emphasizes, on pages 31/32, that one of the challenges of the agency's management is to implement the dispatch deadlines for initial applications for benefits defined in the protocol agreed upon in the scope of the judgment of Extraordinary Appeal no. 1.171.172/SC, in the Federal Supreme Court, with the establishment of differentiated deadlines for each type of benefit (INSS, 2020). The report informs that, until April 2020, before the pandemic, the INSS remained within the expected goal, according to the deadlines established in the agreement, despite the agreement foreseeing a deadline of 90 days for the concession of retirement due to contribution time and the spreadsheet showing a timeframe of 142 days for the analysis.

In November 2021, there are still news about the delays in the analysis, highlighting that the national queue has increased in recent months, passing 1.8 million requests in July 2021 (Globo, 2021). The Union of Social Welfare Workers estimates a deficit of 22 thousand workers in the INSS staff structure (Imenes, 2021).

The question that one seeks to understand is how much of these problems lead to risk of personal liability to public servants and, especially, of the managers of the INSS, and whether the agency is transparent and structured, in its governance and compliance programmes, so as to rule out this liability.

In a jurisprudence research in the TRFs¹⁸, it is revealed that the INSS has already had to appeal to the courts to reverse judicial decisions that imposed daily fines to public servants, in addition to numerous letters to the Federal Public Ministry to investigate administrative improbity and crimes of noncompliance with judicial orders.

The INSS filed several writs of mandamus (example: no. 50382313820194047100)¹⁹ before the appeal courts of Rio Grande do Sul against court decisions that fixed a personal daily fine to the public servant for failure to comply with a court decision within the established time period, with blocking of amounts via BACENJUD. According to the survey, the writs of mandamus were granted to rule out the imposition of a personal fine on the public servant. In other proceedings, daily fines were fixed against the INSS, with the determination that the

¹⁸ Both the jurisprudential research at the TRFs and the research at the TCU showed difficulties in the search for keywords. It was necessary to resort to google to obtain a more accurate search regarding the examples of accountability of public servants and the application of personal fines.

¹⁹ Other examples: 5067910-83.2019.4.04.7100, 5037188-66.2019.4.04.7100, 50375073420194047100, 50357552720194047100; 5038756-20.2019.4.04.7100.



autarchy should inform the SIAPE registration number of the public servant, for accountability purposes²⁰.

In injunctions filed against the INSS for immediate review of administrative proceedings, the servant was threatened with the configuration of a crime of disobedience, according to Article 26 of Law No. 12.046/2009. See the judgment of the interlocutory appeal of no. 5020344-30.2021.4.04.0000 (TRF4, 2021), in which the report highlights part of the sentence that warns the risk of "crime of disobedience under Article 26 of Law 12.016/09.

Thus, in addition to the risk of fixing a fine against him/her, the INSS public servant may also respond criminally, for not complying with the court decision within the deadline set, with the sending of official letters to the Federal Police or the Public Prosecutor's Office for investigation of the crimes of prevarication or disobedience. In research of jurisprudence in the site of the CJF, it was found some judgments in habeas corpus to lock the investigation instituted because of noncompliance with the judicial decision of implantation of benefit (HC No. 2005.05.99.001901-9 (TRF5, 2006); HC No. 2006.01.00.048668-0 (TRF1, 2007); HCNo. 97.04.38142-5 (TRF4, 1998)

The issue of attempting to apply a fine and impute liability to a servant is not new, highlighting judgments of TRF4, which rule out this liability when there is no misconduct on the part of the servant, such as interlocutory appeal judgments no. 5020620-08.2014.404.0000 (TRF4, 2014) and no. 5048444-34.2017.4.04.0000 (TRF4, 2018). The risks of liability recognition are not low, to the extent that the TCU itself has been engaging in audits for the purpose of finding flaws or systemic errors in the granting of social security benefits. It is worth highlighting the operation of irregularities in the INSS database, described in Judgment no. 1.350/2020, when irregularities were found in 242 thousand social security benefits, in the order of 2 billion reais (TCU, 2021).

As an example of the danger of accountability, there is the account taking no. 029.573/2010-6, which arose from representation by the judiciary, where the INSS employee had a fine applied in the amount of 20% of the amount due to the plaintiff, totalling R\$716.50 (year 2009). The TCU emphasized that it did not know about the representation because the

²⁰ It highlights the magistrate in case no. 5005341-14.2018.4.04.7122/RS, that the summonses would be forwarded to the judicial representation body, "being up to the Federal Attorney who is made aware of the content of the court order to be settled, to forward it to the competent sector/servant of the social security agency for the compliance with the court decision, identifying in these records the servant who receives it, providing name, position held, SIAPE enrollment and place of assignment. Likewise, it must guide these public servants about the limits and terms of the decision to be carried out, as well as the importance and primacy that must be given to the fulfillment of judicial obligations in relation to other administrative obligations, as well as the possible procedural consequences to the INSS and its servants for the noncompliance or delay in carrying out such judicial decisions."



daily fine imposed on the public entity was less than R\$23,000.00, the minimum level for submission of a debt in an autonomous proceeding to the Court of Auditors, but that "this does not mean that the authority, within the scope of its powers and duties, is exempt from investigating the fact and establishing the debt. (TCU, 2011)

The civil liability of public servants is a recurring theme in doctrine and case law, and is the subject of extensive regulation by law. Initially, we highlight the provision of Law 8112/91, in Chapter IV, which provides numerous rules on civil, administrative and criminal liability of public servants.

Regarding INSS employees, in addition to the volume of work and the short deadline for compliance, their acts are reviewed by the TCU, which, according to art. 71, VII, §3 of the Federal Constitution, has the power to hold them administratively accountable and condemn them to pay compensation for damages caused to the public coffers, and may also impose fines and disqualification from holding commissions or positions of trust (Law 8443/1992).

With these considerations, we now evaluate whether the public governance programme of the INSS can exempt the servant from liability for non-compliance.

4. TRANSPARENCY IN MANAGEMENT AND PROTECTION OF THE SERVANT-MANAGER BY THE INSS, GIVEN THE LACK OF STRUCTURE OF THIS BODY

The formal creation of the INSS' public governance programme, as well as the acts that followed, with the creation of committees, disclosure of procedures, provisions, resolutions and meetings, already demonstrate the search for internal organisation, structuring and transparency of collegiate decisions. It happens that, in terms of demonstrating conformity with its legal obligation, especially the analysis of administrative requests within the timeframe provided by law, in addition to establishing the responsibility of the management staff, the programme is still incipient and needs to mature, which is verified in the CEGOV acts available on the INSS website.

In the strategic map 2020-2023, published by Resolution no. 2/CEGOV/INSS, of 31/12/2019, the INSS (2019) elects strategic actions related to "analyse with quality and timeliness the demands of the citizen", with goals to update normative instructions and manuals, consolidate the analysis centres, expand control and monitoring of the quality of decisions. However, the measures have not shown any impact, as can be seen by the current news of increased queues and delays in analysis, in addition to not eliminating the danger of personal responsibility of the managers.



As demonstrated, the formulation of social security policies by the government has a great impact on the management of the INSS. The reasons why politicians make decisions and the way they do so usually impact and hinder the executor of these policies. Since the INSS is an autarchy, an autonomous administrative entity, created by law, with its own legal personality, but still an administrative decentralization of the power that created it, it must actively participate in policy formulation and express itself openly and transparently about the administrative impact on the organisation.

The INSS governance system should be interlinked with the governance system of the social security secretariat (currently, within the Ministry of Labour and Welfare), and should openly demonstrate that it has highlighted the dangers of new social security policies making the institute administratively unviable and what resources are needed to do so. In other words, the planning of new policies must begin with their initial formulation and the risks must be demonstrated in a warning system.

In this case, the CEGOV should formalize its active participation in the Inter-ministerial Governance Committee (CIG) and record the meetings of these two committees, where the risks of new policies having a negative impact on the institute should be discussed. Likewise, there must be alignment with the inter-institutional committees, such as the Secretariat of Federal Medical Expertise and DATAPREV.

Effective operational risk management contributes to efficiency in the provision of public services, enables the proper accountability of managers and enhances the reputation of the public entity (OECD, 2011). The INSS has not published any risk matrix, with impact assessment and probability of occurrence, being that the periodic mapping of compliance risks is essential to demonstrate the diagnosis and effective preventive measures for its non-occurrence (Bandarovsky, 2021).

Only with a specific methodology for mapping, analysis and evaluation of risks (Steinberg, 2007) is it possible to inquire how to treat, mitigate or adapt to them, especially those related to the fulfilment of the organisation's objectives. Moreover, communication to stakeholders is fundamental to complete the risk management system, with permanent improvements to workflows. Thus, only with method and use of appropriate tools is it possible to recognize the quality and maturity of a governance and compliance programme.

The OECD, through the Committee on Public Governance, in a study conducted on Latin America (OECD, 2017), highlighted that governments should consider, among several suggestions, the best way to coordinate the various institutions and levels of government. The



idea of "coordinating the whole of government" would be fundamental to an interconnected system of public governance (Thorstensen, 2020, p. 18).

When public policies are developed by one branch of government without due consideration of the impact on others, they can have serious consequences due to lack of coordination across sectors. In the OECD's view, "policies adopted jointly by more than one ministry may be more efficient than relying on the total separation of functions" (Thorstensen, 2020, p. 18).

Much has been said about regulatory impact analysis, with steps to be taken before an act of state regulation becomes effective. Similarly, the impact of the creation, alteration, increase or revision of a benefit has not only economic, but also administrative impacts, which must be foreseen by those who carried out the state act. Without planning and predictability, the entire list of obligations that the administrative entity must already fulfil is put at risk.

At the time of the social security reform, for example, the Executive Branch could have proposed and defended, in the Legislative Branch, a longer vacancy period for the adaptation of the INSS systems by DATAPREV, which would have prevented administrative chaos. If there was previous dialogue between the Secretariat of Social Security, the Presidency of the INSS and DATAPREV, as one does not have access to this data (meeting minutes), in view of the negative results (worsening of the national backlog), it seems that the risk analysis was not adequately done.

Analysing the INSS governance programme, CEGOV had established, as a strategic action 2020-2023, the implementation of the evolution programme for the Benefits Analysis Central Offices (CEABs), seeking to fix the maximum response time to requests, within the agreement made in the scope of the STF, until 06/2021. From the news that are broadcasted in the press, the national queue has increased in size and waiting time, indicating that the INSS was unable to meet its target.

The Basic Reference of Public Governance, prepared by the Court of Audit of the Union (TCU, 2014), establishes guidelines for good governance, indicating that management should be cohesive, responsive, to achieve the goals outlined, in a harmonious and participatory work environment. The objective of good governance should be to establish mechanisms, similar to those of compliance, to ensure that measures are taken to align with the institutional purpose and with the public interest (Rodrigues, 2021).

After all, establishing a governance and integrity system that formally seems adequate, but does not provide the results that society expects from the public entity, demonstrates a low



level of institutional maturity and is not supported by national and international guidelines (CGU, 2015).

In this area, it is essential to develop horizontal and vertical cooperation mechanisms between the various spheres of government and the INSS, through informal and formal means to "support consistency and avoid overlaps and gaps and share and develop lessons learned from good practices" (OECD, 2021).

In order to mitigate and collaborate with the agency and solve the problem of delay in complying with judicial requisitions, an inter-institutional working group was implemented, within the scope of the 4th Region, derived from the Inter-Institutional Social Security Forum. Within this scope, standardization of routines and interoperability of systems was established, which culminated in the edition of Provision 90 (TRF4, 2020), with success in eliminating the stock of judicial benefits to be implemented (INSS, 2020). It is worth noting that Provision 90 was preceded by the Recommendation of the Regional Federal Court of Justice (SEI 5082815, CRC D42740B0), which authorized the closing of over 100 thousand judicial requisitions, which were redone in the manner then established, in a posture of inter-institutional collaboration with the social security authority.

The positive results of this inter-institutional work demonstrated that the open discussion of problems and the search for cooperation among all the actors is fundamental for the resolution of complex problems, making it possible for the servants to work and have maximum productivity, in a healthy environment, without the shadow of threat.

Moreover, in terms of transparency, there is still much to evolve in terms of indicators and data accessible to all. For this research, it was not possible to know, for example, what is the average waiting time for service, average waiting time for analysis, among other important indicators in the evaluation of INSS service. Similarly, all the goals of the strategic map cannot be monitored by the external public.

Transparency in terms of action plan, goals set and not met, by the top management, could subsidize the defence of the INSS public servants, when pointed out by external bodies, for not complying with court decisions or incurring in serious error in the granting of benefits, due to the large volume of work. In any case, as established by the OECD (2021), "transparency is not enough. Making information publicly available is not enough and must be accompanied by effective mechanisms for scrutiny and accountability".

The INSS already has several management dashboards that indicate the rate of compliance with institutional goals, such as "average attendance time". Although CEGOV has published a resolution about the "INSS in numbers", this management panel has not been



released. As per OECD guidelines, it is recommended to "develop benchmarks and indications and gather convincing and relevant data on the level of implementation, performance and overall effectiveness of the integrity system." (OECD, 2021).

The fact is that the national lack of coordination as for changes in social security policy by the federal government causes considerable administrative impacts and increases the pressure on public servants and managers of the agency, who are pressed by the obligation to fulfil the legal object of INSS's incumbency, without having the necessary resources to do so. In this aspect, the governance system of the autarchy is not sufficient to remove this concern and a scenario of possible threats to the civil servants.

5. CONCLUSION

When implementing governance and integrity systems in the public sector, it is expected that the organisation will acquire maturity and resourcefulness in the creation of mechanisms that actually bring greater efficiency, delivery and compliance in the realization of public policy.

The INSS has formalized and created governance and integrity systems, but the limitation to influence the previous development of the public social security policy, within the scope of the federal government, impacts negatively on its management, demonstrating that it does not have the capacity to mitigate future risks.

It has been demonstrated that, even if civil servants are not effectively penalized, a system of threats of accountability hovers over issues of difficult management, especially in face of the limited human resources and materials.

In the hierarchical structure of the INSS, not all the necessary framework for the delivery of public policy is established, especially the medical expertise and information systems, which increases the difficulty of governance.

Many points of the governance and integrity system created with Ordinances no. 3.212 and no. 3.213 of 2019 remained only on paper, such as the dashboard in sight, instituted by resolution, in the "INSS in numbers", as well as a risk mapping system, methodologically established.

On the other hand, it was shown that when the agency approaches the other actors of the social security system, in an open and constructive dialogue, surprising results are achieved, such as the one that occurred in the Interinstitutional Social Security Forum. In this scenario, the reorganisation of flows and deadlines, in reciprocal collaboration, with system



interoperability, has allowed the agency to put over one hundred thousand judicial requisitions on time.

The entire system of governance and integrity is discredited without the coordination of the "whole of government" by the higher levels of federal public administration. It will be necessary to develop interconnection and risk prevention mechanisms before the creation of public policy, demonstrating, openly, that there was participation and consideration of the obstacles presented by the INSS, on which falls all the responsibility for the non-delivery, to satisfaction, of the social security public policy.

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