



THE HYPERVULNERABILITY OF THE ELDERLY IN THE FACE OF ABUSIVE DISCOUNTS FROM THE CONSIGNED MARGIN RESERVATION CARD



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ABSTRACT

This study investigates the financial hypervulnerability of the elderly in the context of payroll loan contracts, with emphasis on the use of the payroll margin reserve card. The problem of the research lies in the frequent financial exploitation of the elderly through abusive practices, compromising their economic autonomy. The main objective is to analyze how the jurisprudence has interpreted and applied the protective norms for the elderly in these situations. We use a qualitative and documentary approach, based on the analysis of judicial precedents and the relevant legislation. The results indicate that, despite the existence of legal mechanisms, many older adults remain vulnerable to the abusive practices of financial institutions, due to difficulties in accessing justice and lack of financial education. We conclude that the hypervulnerability of the elderly requires a more effective action by the Judiciary and regulatory bodies to ensure greater protection and awareness of the rights of this group. In addition, we propose the adoption of preventive and educational measures to reduce the impacts of abusive practices on the indebtedness of the elderly.

Keywords: Hypervulnerability. Elderly person. Abusive practices.

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INTRODUCTION

This article deals with the financial hypervulnerability of the elderly in the context of payroll loan contracts, especially in the use of the payroll margin reserve card. Population aging is a global phenomenon that has directly impacted the socioeconomic organization of countries, including Brazil. The increase in life expectancy and the reduction in birth rates have resulted in a higher proportion of elderly people in society, which makes it essential to discuss the protection of their rights, especially with regard to their financial autonomy (Silva, 2020).

In Brazil, payroll loan contracts represent an important tool for access to credit for retirees and pensioners. However, the misuse of the consigned margin reserve card has been the target of criticism due to the occurrence of abusive discounts, compromising the financial stability of the elderly (Pereira, 2019). The hypervulnerability of these individuals, associated with the complexity of banking transactions and misinformation, facilitates the adoption of abusive practices by financial institutions (Santos, 2021).

Brazilian legislation has rules that aim to protect consumers in situations of disadvantage, with the Consumer Protection Code (CDC) being one of the main normative instruments in this regard. However, even with such provisions, many elderly people continue to be harmed by abusive contractual clauses and the difficulty of access to justice.

Given this scenario, the question arises: is the Brazilian legal system sufficient to guarantee the protection of the elderly against abusive discounts on payroll margin reservation cards? To answer this question, this study aims to analyze the jurisprudence of the Court of Justice on the hypervulnerability of the elderly in this context. The research will be qualitative and documentary, based on the analysis of judicial precedents, seeking to understand how the court has interpreted and applied the existing regulatory norms. In addition, the effectiveness of policies for the protection of elderly consumers and possible measures to improve the protection of these rights will be evaluated.

In this way, it is hoped that this study will contribute to the promotion of greater awareness of the rights of older people and to the construction of a fairer and more equitable financial environment.

METHODOLOGY

According to Gil (2002), there are several types of research, such as explanatory research, with the main objective of identifying the factors that influence the occurrence of the phenomenon, as well as the real reason that things occur, while descriptive research describes the particularities, characteristics of the phenomenon, making a data survey, and

finally there is exploratory research that proposes to build hypotheses, explain problems and are usually literature research or case studies.

Therefore, this research has characteristics that fit into two that were described above, consisting of the descriptive and exploratory method. The exposed work has as a bibliographic review method the search for scientific articles, master's and doctoral theses on digital platforms, platforms linked to the government, such as CAPES, GOOGLE ACADEMICO, CONPEDI.

It is appropriate to say how important this topic is for the collective mass, since it aims to clarify and warn, in a clear and objective way, retirees, about common bank fraud. It was with this relevance in mind that this research began, through keywords on the Capes website. However, only one work by Master Milton Rodrigo Gonçalves was found. However, when analyzing this article, 16 bibliographic references were observed, which were able to search individually and obtain more information on the subject

Throughout the research, several other articles were found that were essential for the development of the work. Therefore, it organized what it could use to assist in the production of the scientific article, in addition, the articles found have characteristics in common. For example, they deal with the hyper vulnerability to information about the payroll loan policy, considering loans with abusive rates and infinite installments, infringing constitutional norms, with the lack of easy-to-understand information about the contract.

Therefore, it is concluded that this work will be of fundamental relevance to society.

HYPERVULNERABILITY

The adjective 'vulnerable', according to Claudia Lima Marques (2015, p. 393-923), is a quality that denotes the ability to be easily hurt. In the legal context, this term refers to the identification of weakness or weakness of one of the subjects of the legal relationship, due to certain conditions or intrinsic characteristics, or even due to a position of power identified in the other subject of the legal relationship. (MIRAGEM, 2013, p. 122).

Vulnerability is an intrinsic characteristic of the consumer, and the position between the participants in the consumer relationship is so discrepant that, in it, the vulnerability of the weakest link: the consumer, is always presumed - and it is important to emphasize, it is an absolute presumption. As observed by João Batista de Almeida (2009, p. 26-27), as with the employee in the labor field, only after the recognition of the fragility of the consumer did it become feasible to effectively protect him. However, recognizing and safeguarding the presumption of vulnerability does not mean that, in the interactions established with the

supplier, consumers will always be equally vulnerable. In other words, in consumer relations, vulnerability is not born in equivalent degrees for all parties involved.

The addition of the prefix 'hyper' denotes that some consumers have a vulnerability that goes beyond the normal measure (NISHIAMA; DENSA, 2010, p. 13-45). If these consumers are more fragile, it is necessary that the shield that protects them be not only larger, but also more robust. The Federal Constitution of 1988 emerges as the first bastion of the hypervulnerable at the national level; it is from the Magna Carta that the main foundation that sustains the protection of individuals with aggravated vulnerability originates. For example, from article 227 of the Federal Constitution, one can extract the inherent vulnerability of children and adolescents. On the other hand, from article 230 of the Federal Constitution, it is possible to identify the intrinsic vulnerability of the elderly.

The greatest protection for the elderly, considering them as a presumably vulnerable subject, is based on the protection of human dignity. Elevated to one of the fundamental principles of the Federative Republic of Brazil, the dignity of the human person undoubtedly supports the protection of the elderly not only as an individual with social and existential guarantees, but mainly as someone endowed with an undeniable fragility in the face of contemporary society. This society is extremely fast, volatile and, more than ever, intertwined with technology, credit and consumption, as pointed out by Claudia Lima Marques (2015, p. 393-423).

The expansion of payroll loans has brought the elderly consumer, especially retirees and pensioners, to the consumption scenario. However, the advantages of payroll loan agreements have also transformed the elderly, in certain cases, into a support for indebted families. The lower interest rate - compared to non-payroll personal loans or even payroll loans not linked to social security benefits - led family members to seek the help of the elderly, who, motivated by the affection inherent in family ties and in the face of the needs expressed by their loved ones, quickly went to a financial institution, He took out the payroll loan in his name and then transferred the amount borrowed to the family member. In exchange, this family member committed to pay the monthly installments. The urgent demand of the elderly, retired or pensioner consumer - often already burdened with debts from their own consumption and involved in loans taken out in favor of family members - to cover their regular expenses also contributed to the increase in the number of payroll loans (GONÇALVES, 2015).

The vulnerability of the elderly consumer, in these circumstances, is not only related to the situations described; it stems mainly from the fact that, in payroll loan contracts, the elderly - who, as Claudia Lima Marques (2015, p. 393-423) points out, generally do not

have adequate financial education - tends to opt, by instinct, for installments of lower value. However, the amount of the installment and the term of the loan are inversely proportional: by reducing the amount of the installment, the interest increases and, consequently, the number of installments required to fully pay off the loan also increases, which can extend up to 72 months. Thus, in most cases, the elderly consumer - often compelled to take out the loan initially - is linked to the financial institution for six long years.

REGARDING THE INCREASE IN THE PAYROLL MARGIN - LAW 14,131/2021

On March 30, 2021, still during the COVID-19 pandemic, Provisional Measure No. 1,006 of 2020, converted into Law 14,131/2021, changed the payroll margin of Law 10,820, increasing it to 40%, with 5% allocated to credit card expenses and withdrawals, in force until December 31, 2021. While this measure provided quick access to the acquisition of necessary goods, it also highlighted the lack of financial education in many consumers. On the one hand, payroll loans have facilitated the purchase of essential items, but on the other hand, it has increased the risk of indebtedness turning into over-indebtedness. Specifically, in the case of payroll loans, the ease of contracting has been a driving factor for the increase in the number of these contracts, whether for new acquisitions or to pay off other more expensive loans. In this scenario, the vulnerability, or even hypervulnerability, of the elderly becomes a growing concern (CHAVAGLIA NETO, 2014).

The debate on access to credit for the most disadvantaged classes was already a recurring agenda among consumer protection organizations, which conceived it as an instrument of financial freedom and autonomy. It was argued that low-income families should be inserted in the financial market and have institutions specialized in serving consumers in vulnerable situations. It is undeniable that credit plays a crucial role in facilitating the access of many families to goods that not only indicate quality of life, but are also essential to ensure a minimum of well-being. In addition, in the economic sphere, there is a consensus that credit boosts growth, because by stimulating consumption, it encourages companies to expand production, generate more jobs and strengthen the purchasing power of the population, resulting in improved living conditions (MARQUES C. L. LIMA C. C, 2010).

Payroll loans can act both as a mechanism of inclusion and as a source of difficulties for the debtor, especially for the elderly. According to data from the Central Bank, this type of credit showed significant growth, from R\$ 53.7 billion to R\$ 323.8 billion in just over eleven years. The average annual growth rate was 17.2% in nominal values and 10.7% in real terms. For comparison, the total balance of loan portfolios in Brazil in the same period

increased from R\$762.4 billion to R\$3,130.1 billion, with an annual growth rate of 10.4% in historical values and 5.7% in real terms. A relevant point to be highlighted is the resilience of payroll loans in the face of economic fluctuations. Even in periods of economic instability, this modality maintained a growth trajectory, unlike the behavior observed in total credit, which retracted (CENTRAL BANK, 2020).

According to the National Confederation of Commerce, between 2010 and 2020, the contracting of various types of credit fluctuated. However, payroll loans stood out as the line with the highest growth, changing from 3.90% in 2010 to 8.30% in 2020, a significant increase of 112.82%. This performance consolidated payroll loans as the most used modality over the years, contrasting with the 0.2% drop per year in personal credit and the 2.1% reduction in overdraft contracts, which in 2010 represented 8.30% of the market. In addition, recent data indicate that the group with the highest debt ratio is the elderly (over 65 years old). This public, often with specific health-related needs, has lower incomes than those of the upper classes and faces difficulties in reentering the labor market to supplement their income. Thus, in the face of unforeseen events, such as illnesses or other unexpected expenses, indebtedness can easily evolve into over-indebtedness (PRUX, 2021).

Over-indebtedness is characterized by the impossibility, lasting or structural, of the debtor to bear all its debts or by the existence of a real threat of default at the time these obligations become due. It is also described as a kind of "bankruptcy" or insolvency of the consumer (MARQUES, C. L. LIMA, C. C., 2010).

There is no single definition for over-indebtedness, as its concept varies according to the sociocultural context in which it occurs. Even within a single country, different approaches can generate different interpretations. For some scholars, over-indebtedness boils down to the condition in which the consumer is unable to meet his financial obligations, becoming unable to pay off his debts (ANDRADE, 2015).

Over-indebtedness significantly compromises the individual's financial life, often resulting in the inclusion of their name in credit protection agencies, making them an "inactive" consumer and making it difficult for them to access new credit. This condition not only affects your credibility in the market, but can also generate profound social and emotional impacts. In addition to financial difficulties, over-indebtedness can trigger multidisciplinary consequences that affect not only the debtor, but also their families. The feeling of inability to honor commitments can lead to psychic problems, such as anguish and dejection, affecting family dynamics. In extreme situations, this pressure can contribute to domestic conflicts, violence and even divorces (MARIMPIETRI, 2009).

Excessive concern with over-indebtedness and the incessant search for solutions can cause behavioral changes, such as aggressiveness, impatience and, in extreme cases, even violence. This scenario is particularly worrying among elderly people who have taken out payroll loans, often accumulating other forms of debt. The impact of this phenomenon goes beyond the individual, reaching their social context. Exclusion from the consumer market, resulting from the impossibility of obtaining credit, can lead to isolation and marginalization. In addition, over-indebtedness is not only the result of the consumer's lack of financial control, but also a consequence of the irresponsible offer of credit by financial institutions and the lack of adequate support to cover essential expenses. In view of this, it is essential for the State to intervene to regulate and mitigate the effects of this problem (CERBASE, 2009).

In view of this scenario, and after almost a decade of processing, Law 14,181/2021 was sanctioned, with vetoes, with the aim of strengthening transparency in the granting of credit and preventing over-indebtedness. The proposal originated in the Senate in 2012, as Bill No. 283, and was later sent to the Chamber of Deputies under number 3515/2015. On July 2, 2021, the bill was finally sanctioned, bringing important advances in credit regulation and consumer protection. Among the main changes, the inclusion of measures aimed at financial education and the prevention of over-indebtedness, seeking to avoid social exclusion, stands out. The law also amended the Consumer Protection Code, adding the guarantee of responsible credit practices, the preservation of the existential minimum in the granting of credit and the possibility of renegotiating debts. In addition, it reinforced the obligation of clear information on the price of products per unit of measure, promoting greater transparency in consumer relations.

OFFERING OF PREDATORY CREDIT

From a legal point of view, vulnerability is a principle by which the Brazilian legal system recognizes the condition of the most fragile individuals in consumer relations. This is due to the risk that they may suffer damage, whether in their physical, psychological or even economic integrity, before stronger parties in these relationships (MORAES, 2009).

In this context, many payroll loan consumers are elderly, characterized as hypervulnerable due to their advanced age. This vulnerability is often compounded by other conditions such as illiteracy, hearing or visual impairments, making them easy targets for unscrupulous suppliers. Many of these companies take advantage of these weaknesses to practice abusive actions that hurt human dignity, intentionally leading these people to over-indebtedness (ARQUETTE L. N., 2022).

The practice of predatory granting of credit has become common among financial institutions. Aggressive approach strategies, such as insistent calls and sophisticated persuasion techniques, are increasingly frequent. These tactics manipulate consumers into making decisions aligned with the interests of companies, exceeding the limits of reasonableness and placing them in financial traps that result in excessive indebtedness and the loss of financial autonomy, hurting their dignity.

In the era of postmodernity, marked by consumerism, the incessant flow of information and constant monitoring, individuals end up being treated as objects, constantly compared and surveilled. This scenario reinforces the incessant search for personal satisfaction through consumption, often without full awareness of the impacts of these choices. Consumerism, driven by the advancement of digital technologies, goes beyond the simple acquisition of products and services. The human body itself is treated as a commodity, being transformed into an object of consumption. In this context, individuality and human dignity are increasingly disregarded by financial institutions that offer credit (BAUMAN, Zygmunt., 2014).

Companies in the sector use sophisticated communication strategies to condition society to unbridled consumption. In this way, the consumer society is intertwined with the age of information and surveillance, where every step of the consumer is monitored. This constant tracking results in the breach of personal data, allowing companies to exploit the behavior of individuals to make profits, while also meeting their needs in a calculated and targeted way. Thus, the moment when a desire for consumption is satisfied coincides with the moment when the individual's privacy is compromised in favor of the profit of others (BAUDRILLARD, Jean., 1995, ARQUETTE L. N., Alinne. 2022, ZUBOFF, Shoshana. 2020).

Within this scenario, predatory credit stands out for presenting striking characteristics that harm the consumer. Among them are:

- **Abusive interest rates:** The interest rates charged are excessively high, well above the market average, making the payment of the loan extremely onerous.
- **Disadvantageous payment terms:** Institutions impose terms that make it difficult to pay off debt, such as short terms, severe fines, and high fees in cases of delay.
- **Lack of transparency:** The information provided about the credit is inaccurate, incomplete, or confusing, making it difficult for the consumer to understand the real terms of the contract.
- **Harassment and pressure:** Companies that practice predatory credit often use insistent approaches, with aggressive persuasion strategies, leading customers to make hasty decisions without properly analyzing the conditions of the offer.

In this way, predatory credit is configured as a mechanism of financial exploitation that compromises the autonomy of consumers, leading many to over-indebtedness and economic vulnerability.

ABUSIVE PRACTICES RELATED TO BANKING CONTRACTS.

Banking contracts are often sources of abusive practices by financial institutions, combated by the rules of the Consumer Protection Code (CDC). Article 39 of the CDC lists examples of abusive practices, seeking to balance the relationship between supplier and consumer, which is usually unequal, favoring the supplier. Some prohibited practices include tie-in sales, refusal of service without justification, delivery of unsolicited products, taking advantage of consumer vulnerability, demanding unjustified advantages, among others. The sole paragraph of article 39 of the CDC establishes that services provided or products sent without request are equivalent to free samples. However, this does not include the conscious use of the credit card sent without authorization, and does not protect the bad faith of either party. Sending the card without authorization can generate compensation for moral damages, but it does not entitle the consumer to make use of the credit granted without request and not pay it later (JANTÁLIA, 2012).

FRAUD AND LACK OF CONTRACTUAL GOOD FAITH ON THE PART OF FINANCIAL INSTITUTIONS

The European constitutions of the post-World War II period began to incorporate fundamental rights and constitutional jurisdiction mechanisms into their texts. In this way, they ceased to be merely guidelines for the political powers and began to have normative force, reaffirming their supremacy over the entire legal system. With this change, they expanded their role, which was previously limited to the structuring of the State, establishing fundamental, social and economic rights, in addition to demanding concrete state actions. They also incorporated values applicable to private relations, especially with regard to the use and disposal of property, orienting economic activity towards objectives of social justice (SARMENTO, Daniel. 2007).

Fundamental rights have acquired an objective dimension, being recognized as values that influence all legal relationships, whether between individuals or between citizens and the State. This resulted in a broader constitutional interpretation, affecting the reading and application of concepts and institutes from all branches of law.

In Brazil, the Federal Constitution of 1988 followed this same trend. In its text, fundamental, social and economic rights are provided, in addition to the recognition of third-generation rights, with an evident concern with their effectiveness, as expressly provided for in article 5, paragraph 1. To ensure this effectiveness, the Constitution established mechanisms for the protection of rights, such as constitutional remedies, and reinforced the performance of constitutional jurisdiction.

In addition, the Federal Constitution of 1988 assumed a leading character, establishing essential principles for the structuring of society, such as social justice, freedom and equality. These principles function as programmatic norms, obliging the political powers to observe them in the exercise of their constitutional powers. Equally relevant is its binding nature, aimed at guaranteeing political, religious, cultural and human diversity, ensuring the recognition and protection of the dignity of the person in its entirety.

On the other hand, the Civil Code of 1916 was conceived under the influence of an individualist and voluntarist doctrine, similar to the Code of Napoleon and other European codifications of the time. In this context, it was considered the "constitution of private law", based on rigid rules that prioritized the stability of economic relations and favored the success of the most insightful or strategically advantageous party in a negotiation. However, with the advance of industrialization and the strengthening of social movements throughout the nineteenth century, European law had to resort to special legislation and complementary norms to regulate new social dynamics that were not contemplated in traditional codes.

The Brazilian legal system followed a similar path. The Civil Code of 1916, which initially presented itself as the main instrument regulating private relations, proved to be insufficient in the face of constant social evolution. New demands emerged and did not find support in the original text of the code, leading legal operators to seek solutions based on logical-deductive interpretation.

In this way, the normative exclusivity of the Civil Code of 1916 was gradually weakened, allowing its coexistence with special legislation that began to discipline the new private relations that emerged in the context of the post-industrial economy. This scenario required jurists and legislators to take a more attentive approach to the content and purpose of the activities performed by the subjects of law, ensuring that the standardization would follow the ongoing social and economic transformations.

In this context, the definition of the content of contracts in current Brazilian law is intrinsically linked to the observance of constitutional norms and principles, which attribute to the contract a function that goes beyond the simple manifestation of the will of the

parties, imposing on it the promotion and respect for the dignity of the human person. The contractual model that predominated in the codifications of the nineteenth century was strongly influenced by philosophical individualism and economic liberalism. Within this logic, the will was the central element of the contract, being considered the main factor in the formation of legal relationships. Public powers, including legislators and courts, had a posture of non-intervention, allowing contractors to freely exercise their private autonomy (ROPPO, Enzo. 1988).

This understanding conceived the contract as an instrument of self-limitation of individual freedom, supported by the consent of the parties to submit to the agreed clauses. However, it is undeniable that social and economic factors often interfere with the construction of a truly balanced contractual bond.

Economic power, from a sociological point of view, can significantly modify – or even annul – the ability of one of the parties to negotiate the conditions of the contract, generating an imbalance in the legal relationship. This phenomenon affects not only contracts entered into between companies and individuals, but also relations between business societies, due to the concentration of economic power (SILVA. 2006).

Furthermore, the classical conception of contractual freedom, broadly functional to the capitalist model, often masks substantial inequalities between the contracting parties. The formal equality that exists in traditional contract theory hides the reality of a legal structure in which some have wealth and influence, while others have only their labor power to offer. Thus, full contractual freedom can, in certain contexts, become an instrument for the perpetuation of socioeconomic inequalities, requiring legal mechanisms that seek to balance contractual relations and ensure social justice (ROPPO, Enzo. 1988).

The principle of good faith introduces an essential ethical dimension in contractual relations, imposing on the parties a non-negotiable duty of loyalty, correctness and transparency. This perspective contradicts the classic individualistic and voluntarist view, which often prioritized obtaining advantages over the opposing party, placing the will to possess above respect for the dignity of the contracting party.

Even so, conceptions persist that treat the contract as a rigid and immutable pact, detached from social reality. For these defenders of absolute contractual autonomy, once concluded, the contract should remain unchanged, regardless of the social and economic transformations that may arise. Such a view reduces the contract to a mere formal instrument, transforming it into a reflection of conflicts of interest, instead of a mechanism aimed at resolving these conflicts (SILVA, 2006).

With the new constitutional order, the contractual relationship is understood as a space for cooperation and development of the human personality. Good faith, as a structuring principle, redefines the contract, overcoming the logic of the opposition of interests to establish a model based on collaboration between the parties (NEGREIROS, Teresa, 1998).

In this sense, the contract assumes a partnership role, aimed at a common goal, in which mutual respect and solidarity guarantee the balance of the contractual relationship. The fair sharing of risks and benefits becomes an essential guideline, ensuring that both parties share the results of the bond established (MARTIN-COSTA, Judith. 2000).

In this way, the contract, which historically represented the private autonomy and bargaining power of the parties, must be understood from a new perspective. More than just a reflection of freedom of negotiation, it is consolidated as a fundamental instrument for the circulation of wealth in society, especially in market economies, but not limited to them. This new understanding reinforces the need for a balance between contractual autonomy and the social function of the contract, ensuring that its execution meets not only the individual interests of the parties, but also the fundamental values of the community (SILVA, 2006).

Within this new conception of cooperation, the relationship between creditor and debtor is no longer seen as a clash of opposing interests, but rather as an interaction that requires mutual collaboration. The principle of good faith, by structuring this dynamic, does not eliminate the rights and claims of the creditor, but imposes duties that assist in the execution of the obligation, such as avoiding conduct that hinders or makes unfeasible the debtor's performance.

This perspective is supported by the Federal Constitution itself, which, by electing the dignity of the human person as its foundation, seeks to build a solidary society. To achieve this ideal, it is essential to reduce inequalities and promote collective well-being, which necessarily involves the requirement of cooperation and respect in legal relations. In the contractual field, this understanding reinforces the role of contracts as instruments for the circulation of wealth, but without losing sight of their social function (MARTIN-COSTA, Judith. 2000).

Thus, unlike the traditional view, in which the contract was treated exclusively from the perspective of the autonomy of will, the current understanding considers its obligatory nature and its economic function. The contract, whether of public or private law, must meet the social function imposed on it by the legal system, reflecting the constitutional principles that guide social justice and the social function of property.

However, despite this conceptual evolution, there are still challenges in practice, especially when it comes to the protection of vulnerable parties in contractual relationships. A notable example is the situation of elderly consumers, who are often victims of fraud, particularly in banking contracts. The lack of technical knowledge and the deficiency of clear information make them susceptible to mistakes, especially in loan agreements.

Banks, with their teams trained to persuade customers, do not always guarantee the necessary transparency in contracting these services. Many elderly people end up being induced to enter into contracts without full awareness of the interest applied, the number of installments, the total amount of the loan or the inclusion of insurance. This information, which is essential for conscious decision-making, is often not properly clarified before the contract is formalized, evidencing the need for greater protection and inspection to ensure that good faith and the social function of contracts are effectively respected.

The condition of hypervulnerability of the elderly makes this portion of the population a frequent target of suppliers who prioritize profit to the detriment of transparency and contractual balance. Many financial institutions avoid providing clear and detailed information about contracts, as this could reduce consumer adherence to the service offered. Thus, the elderly, often without technical knowledge about the charges of the contracted credit, trust in the good faith of the suppliers, who, in turn, have greater preparation and control over the contractual relationship.

It is a fact that every consumer is vulnerable to suppliers, but the elderly face additional challenges. One of the determining factors for this greater vulnerability is the biological aspect. The way an elderly person receives, processes and understands information is different from that of a young person, making him or her more susceptible to hasty or induced decisions by third parties. In addition, the elderly are more prone to stress, which can have serious health consequences, including chronic diseases and even the risk of death. The aging process reduces the body's ability to deal with pressure situations, making them even more fragile in the face of aggressive commercial approaches (PAZ, A. A.; SANTOS, B. R. L; EIDT, O. R. 2006).

Thus, it is not possible to demand that the elderly adapt to modern commercial conditions, but rather that these conditions be adjusted to respect the particularities of this age group. The elderly have built their lives in a social, economic and technological context that is very different from the current one, which reinforces the need for specific protection for their fundamental rights. Legislation and public policies must ensure that business practices are fair and transparent, ensuring that older people have access to clear and

understandable information, in order to avoid abuses and losses that could compromise their dignity and well-being.

In addition to the physical and cognitive limitations associated with old age, such as decreased mobility and senses, older adults face a worsening of their vulnerability due to increasing exploitation by service providers, who often take advantage of these weaknesses. Payroll loans, considered one of the most popular credit instruments, are particularly attractive to those looking for a simple way to pay off debts, but it also becomes a fertile field for abuse. Financial institutions, which have easy access to these individuals, often offer loans with unclear terms, further compromising the financial situation of the elderly.

Financial crimes committed against the elderly can be divided into two broad categories: fraud committed by strangers and financial exploitation carried out by family members or caregivers. While these two categories overlap in some cases, the nature of the relationship between the offender and the victim may require different approaches to dealing with the problem. Scams usually involve deceiving the victim by promising goods, services, or other benefits that do not exist or were never intended to be provided. The variety of ways to commit fraud is wide, but criminals often use only a small set of strategies to deceive the elderly.

In the case of family members or caregivers, the situation is even more delicate, as these individuals are often in positions of trust and maintain continuous relationships with the elderly. Financial exploitation occurs when these agents misappropriate the victim's assets or money, either by stealing, retaining or using the resources for personal gain to the detriment of the elderly. This practice, unlike external fraud, is often difficult to detect due to the intimacy and trust between the parties (JOHNSON, Kelly Dedel. 2003).

A worrying example of this exploitation is the improper contracting of payroll loans, which has become a recurring practice among financial institutions. Many elderly people are induced to sign loan contracts without authorization or with obscure clauses, compromising a significant part of their income. The fact that many retirees are unable to live with dignity with their retirement, with a significant percentage of them being forced to look for jobs to ensure their survival, makes the negative impact of payroll loans even more evident. Committing 40% of their monthly income to loan debts is an alarming reality, aggravating the vulnerability of this portion of the population, which should be protected by more effective public policies and legal security mechanisms.

CONCLUSION

The analysis carried out throughout this study demonstrated that the financial hypervulnerability of the elderly in the context of payroll loan contracts is a significant problem that requires greater attention from the legal system. Despite the existence of protective norms, we found that the elderly continue to be exposed to abusive practices, mainly due to the lack of financial education and the difficulty in accessing justice. Jurisprudence has advanced in the interpretation of protective norms, but the effective protection of the rights of the elderly still faces practical challenges.

The results obtained confirm the hypothesis that the economic fragility of the elderly makes them easy targets for financial exploitation and that current measures are not fully effective to ensure their safety. Thus, we reinforce the need for more rigorous action by the Judiciary and regulatory bodies, in addition to the implementation of specific financial education policies for this audience.

We conclude that it is essential to improve preventive and repressive measures to minimize the abusive indebtedness of the elderly, ensuring a fairer and more equitable financial environment. The continuity of studies on the subject and the creation of initiatives aimed at protecting this group are essential to advance in the realization of their rights.

REFERENCES

1. Almeida, J. B. de. (2009). *A proteção jurídica do consumidor* (7th ed.). Saraiva.
2. Andrade, F. S., & Rosa, T. H. da. (2015). Notas sobre a tutela do consumidor superendividado no Brasil: Um novo caso de proteção da pessoa contra si mesmo (atualidades e perspectivas). *Arquivo Jurídico: Revista Jurídica Eletrônica da UFPI*, 2, 6–29.
3. Arquette, A. L. N. (2022). Crédito consignado: Uma necessária análise sobre oportunidades, abusos e superendividamento dos hipervulneráveis. In G. Andreassa Júnior & A. J. G. de Oliveira (Eds.), *Novos estudos de direito bancário II* (pp. 49–67). Íthala.
4. Banco Central do Brasil. (2020). Indicadores de endividamento de risco e perfil do tomador de crédito: Estudo Especial nº 80/2020. https://www.bcb.gov.br/conteudo/relatorioinflacao/EstudosEspeciais/EE080_Indicadores_de_endividamento_de_risco_e_perfil_do_tomador_de_credito.pdf
5. Baudrillard, J. (1995). *A sociedade de consumo* (A. Mourão, Trad.). Elfos. (Obra original publicada em 1970)
6. Bauman, Z. (2014). *Modernidade líquida* (P. Dentzien, Trad.). Zahar. (Obra original publicada em 2000)
7. Brasil. (1946). Decreto-Lei nº 9.790, de 6 de setembro de 1946. Determina que as dívidas contraídas nas Carteiras de Empréstimos dos Institutos e Caixas de Aposentadoria e Pensões, no Instituto de Previdência e Assistência dos Servidores do Estado e entidades de crédito mantidas pelos Estados e Municípios para os seus próprios servidores, podem ser salgadas através de consignações sobre os salários do devedor. *Diário Oficial da União*. http://www.planalto.gov.br/ccivil_03/decretolei/1937-1946/Del9790.htm
8. Brasil. (1950). Lei nº 1.046, de 2 de janeiro de 1950. Dispõe sobre a consignação em folha de pagamento. *Diário Oficial da União*. http://www.planalto.gov.br/ccivil_03/leis/1950-1969/l1046.htm
9. Brasil. (2003). Exposição de Motivos Interministerial nº 176/2003. MF/MPS. Senado Federal. https://www.fazenda.sp.gov.br/folha/nova_folha/legislacao/exp_motivos_f_imin_000_176_2003.asp
10. Brasil. (2016). Lei nº 13.313, de 14 de julho de 2016. Conversão da Medida Provisória nº 719, de 2016. *Diário Oficial da União*. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/l13313.htm
11. Cadiñanos, L. (2018). Fatores econômicos que motivam e vulnerabilizam a tomada de crédito consignado por idosos. In *Anais do XXX Salão de Iniciação Científica: Salão UFRGS* (pp. 1–10). UFRGS.
12. Cartão RMC: O terror dos aposentados. (2019, September 18). Jus.com.br. <https://jus.com.br/artigos/76620/cartao-rmc-o-terror-dos-aposentados>

13. Cerbase, G. (2009). Como organizar sua vida financeira. Elsevier.
14. Chavaglia Neto, J., Felipe, J. A., & Ferreira, M. A. M. (2017). Neuroeconomia: Uma nova perspectiva sobre o processo de tomada de decisões econômicas. Atlas.
15. Cruz, C. M. F. da. (2021). O caráter abusivo da publicidade de crédito consignado direcionada ao consumidor idoso [Master's dissertation, Universidade Federal da Paraíba]. João Pessoa.
16. Gil, A. C. (2002). Metodologia científica. Atlas.
17. Gonçalves, M. R. (2019). A interpretação dos negócios jurídicos à luz da boa-fé: As operações de saque via cartão de crédito consignado efetivadas por consumidores hipervulneráveis, no período ligeiramente posterior à edição da Lei 13.172/2015. *Revista do Instituto de Direito Constitucional e Cidadania*, 4(1), 56–66. <http://www.idcc.com.br/ojs/index.php/idcc/article/view/104>
18. Ishiyama, A. M., & Densa, R. (2010). A proteção dos consumidores hipervulneráveis: Os portadores de deficiência, os idosos, as crianças e os adolescentes. *Revista de Direito do Consumidor*, 19(76), 13–34.
19. Jantália, F. (2012). Juros bancários. Atlas.
20. Johnson, K. D. (2003). Crimes financeiros contra idosos (Guia nº 22). Série de Guias sobre Policiamento Orientado aos Problemas.
21. Marimpietri, F. (2009). Consumo e superendividamento. *Revista Magister de Direito Empresarial*, 5(27), 1–15.
22. Marques, C. L. (2015). Mulheres idosas e o superendividamento dos consumidores: Cinco anos de dados empíricos do Projeto-Piloto em Porto Alegre. *Revista de Direito do Consumidor*, 24(100), 393–423.
23. Marques, C. L., Lima, C. C., & Bertoncello, K. (2010). Prevenção e tratamento do superendividamento. *Caderno de Investigações Científicas*, 39–98. <http://www.mpce.mp.br/wp-content/uploads/2019/09/CADERNO-PREVENCC%A7A%CC%83O-E-TRATAMENTO-DO-SUPERENDIVIDAMENTO.pdf>
24. Martin-Costa, J. (2000). A boa-fé no direito privado: Sistema e tópica do processo obrigacional. *Revista dos Tribunais*.
25. Miragem, B. (2014). Curso de direito do consumidor (5th ed.). *Revista dos Tribunais*.
26. Mora, M. (2015). A evolução do crédito no Brasil entre 2003 e 2010 (Texto para Discussão nº 2022). IPEA. https://www.ipea.gov.br/portal/images/stories/PDFs/TDs/td_2022.pdf
27. Moraes, P. V. D. P. (2009). Código de Defesa do Consumidor: O princípio da vulnerabilidade no contrato, na publicidade e nas demais práticas comerciais: Interpretação sistemática do direito. Livraria do Advogado.

28. Negreiros, T. P. de A. T. (1998). Fundamentos para uma interpretação constitucional do princípio da boa-fé. *Renovar*.
29. Paz, A. A., Santos, B. R. L., & Eidt, O. R. (2006). Vulnerabilidade e envelhecimento no contexto da saúde. *Acta Paulista de Enfermagem*, 19(3), 338–342. <https://doi.org/10.1590/S0103-21002006000300016>
30. Proteja sua aposentadoria dos abusos do crédito consignado. (2020, February 9). UOL. <https://agora.folha.uol.com.br/grana/2020/02/proteja-sua-aposentadoria-dos-abusos-do-credito-consignado.shtml>
31. Prux, O. I., & Durante, M. G. (2021). Idosos hipervulneráveis e a manutenção do mínimo existencial: A questão do elevado limite do crédito consignado. *Revista Argumentum*, 22(3), 1133–1154. <http://ojs.unimar.br/index.php/revistaargumentum/article/viewFile/1460/964>
32. Roppo, E. (1988). *O contrato*. Almedina.
33. Rosenvald, N. (2005). *Dignidade humana e boa-fé no Código Civil*. Saraiva.
34. Santos, L. F. F. (2023). *A hipervulnerabilidade do idoso no direito brasileiro diante da política dos créditos consignados* [Undergraduate thesis, Unidade de Ensino Superior Dom Bosco]. São Luís.
35. Sarmento, D. (2007). Ubiquidade constitucional: Os dois lados da moeda. In C. P. de Souza Neto & D. Sarmento (Eds.), *A constitucionalização do direito: Fundamentos teóricos e aplicações específicas* (pp. 118–134). Lumen Juris.
36. Schimitt, C. H. (2009). A “hipervulnerabilidade” do consumidor idoso. *Revista de Direito do Consumidor*, 18(70), 139–171.
37. Silva, C. do C. e. (2006). *A obrigação como processo*. FGV.
38. Zuboff, S. (2020). *A era do capitalismo de vigilância: A luta por um futuro humano na nova fronteira do poder* (G. Schlesinger, Trad.). Intrínseca.