

## Rights of the Elderly Person in the COVID-19 Pandemic

Tricia Bogossian

Specialist, Santa Ursula University in Rio de Janeiro-RJ, Brazil

### \*Corresponding author

Tricia Bogossian, Specialist, Santa Úrsula University in Rio de Janeiro-RJ, Brazil. E-mail: tricia.bogossian@hotmail.com

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### Introduction

#### The Rights of the Elderly in Brazil

Currently, according to the provisions of the Elderly Statute, established by Law No. 10,741 of 2003, article 1, people aged over sixty years are considered elderly. The perspective of citizenship and rights makes it possible to approach this group in an integral and real way; without prejudices, or culturally rooted and reproduced stereotypes about old age. It is necessary to understand that elderly people are citizens with rights and not just consider them in a situation of fragility and/or vulnerability, who need to receive assistance and care. In Brazil, the rights of this population to a better quality of life, as well as the importance of social protection for old age, have been guaranteed in the form of laws since the creation of the Constitution of the Federative Republic of Brazil in 1988, as will be seen in the following sections. Chapter IX of the CRFB/1988 provides for the rules relating to the realization of the right to housing and housing for the elderly. This is a fundamental right, included among the social rights provided for in article 6 of the CRFB/1988. The right to housing is one of the social rights provided for in article 6 of the CRFB/1988 [1,2].

In line with this provision, article 37 determines that the elderly person has the right to decent housing, which offers shelter and conditions for aging with More about this source text Source text required for additional translation information Nurse at the State Department of Health RJ and Maternity UFRJ. Judicial Representative CONPEJ, Judicial Expert in Nursing. Master in Work Management for Built Environment Quality. Specialist in Adult Intensive Care Nursing and Neonatal Nursing from UERJ and Occupational Nursing (UFRJ). quality of life. There is a convergence, in the article, of the rights of social and family integration and freedom provided for by the Elderly Statute (EI), that the elderly person has the right to live and maintain contact with family members - whether the natural family or a surrogate family - or even live alone, if you wish and the situation does not expose you to personal risk . In Chapter IV of the CRFB/1988, the rights of the elderly regarding the provision and maintenance of health are presented, which is one of the fundamental rights recognized in the EI. Article 15 of the EI provides that, in order to implement measures aimed at guaranteeing the right to health of the elderly, comprehensive care is guaranteed to this population segment. To this end, the Unified Health quality of life. There is a convergence, in the article, of the rights of social and family integration and freedom provided for by the Elderly Statute (EI),

that the elderly person has the right to live and maintain contact with family members - whether the natural family or a surrogate family - or even live alone, if you wish and the situation does not expose you to personal risk [3].

In Chapter IV of the CRFB/1988, the rights of the elderly regarding the provision and maintenance of health are presented, which is one of the fundamental rights recognized in the EI. Article 15 of the EI provides that, in order to implement measures aimed at guaranteeing the right to health of the elderly, comprehensive care is guaranteed to this population segment. To this end, the Unified Health System (SUS) must adopt measures so that it is possible to ensure broad and full access to all the elderly, aiming at the realization of the principles of universal health protection for the elderly. It is the duty of the Public Power to articulate and carry out continuous actions aimed at preventing, promoting and recovering the health of the elderly, and specific programs must be carried out in relation to those pathologies that preferentially affect elderly people. Paragraph 1 of article 15 determines the measures aimed at realizing the right to health, provided for by the Statute in favour of the elderly. Provides for preventive and maintenance measures that must be implemented in favour of every elderly person. Item II of article 15 of the aforementioned EI provides for the specialized care provided by professionals in the field of geriatrics and gerontology on an outpatient basis, stating that this is a preventive measure, which must always be carried out with a view to preserving and maintaining health. of the elderly. In the activity of preventing and maintaining the health of the elderly, the EI determines in item IV that home care measures must be implemented, including hospitalization, in cases where the patient is unable to move around. Finally, regarding the priority of care specifically in the guarantee and access to health, paragraph 7, included by Law no. Exception rule to this device concerns emergency cases, in which priority care can be mitigated [4].

The right of access to justice is provided for in Title V of the EI, which establishes the rules applicable to the judicial action of defending the rights and guarantees of the elderly. Article 69 of the EI determines that, in addition to the procedural provisions provided for in this Chapter, the summary procedure provided for in the Code of Civil Procedure (CPC) is applied, insofar as it is applicable, the deadlines provided for in the Statute prevailing for all purposes. This provision is applicable until the beginning of the validity of Law 13.105/2015, which brings the new rules for

the Brazilian civil procedure, with no provision for the summary rite, applying from then on the general rules of the common procedure of articles 318 and following of the Brazilian civil procedural law of 2015. In article 70 of the EI there is a rule of a programmatic nature that provides for the possibility of creating specialized courts in the Common Justice to deal exclusively with actions involving The elderly must also receive, under the terms of the Statute, preferential care in the services provided by the Public Defender's Office of the Union, States and the Federal District. In order to ensure that the priority services mentioned in this provision are carried out, §4 of article 71 of the EI determines that specially identified and easily accessible seats and boxes must be made available to the elderly. Paragraph 5 of the same article, regulating the guarantee of priority in access to Justice, presents a rule of interpretation, establishing, in cases in which the elderly person is an interested party, special priority for those cases in which the subject is a person over 80 years of age. deity. It is also the right of the elderly to guarantee access and participation in social life, including, among other things, participation in sports and entertainment activities, with typical adaptations to their personal conditions [4].

In Brazil, the elderly are guaranteed their participation in programs aimed at education, culture, sports, leisure, entertainment, products and services; however, due to possible physical, emotional and/or psychological impairments, such events must provide opportunities for their participation without generating impediment and/or difficulty, always paying attention to their possible fragility. Access to education has a constitutional provision in article 205 of the CRFB/1988; education is everyone's right, and it is the duty of the State and the family to provide it. The State will ensure the inclusion of the elderly and broad access to education, including the adequacy of the curriculum, teaching materials and methodologies. The courses aimed at the elderly will be in the form of social inclusion and should cover content on communication techniques, computing and technological advances, since in the constitutional prism, article 106 of the CRFB/1988 ensures that the elderly have equal conditions in access and permanence in school. Also, under the terms of §2 of article 21 of the CRFB/1988, the elderly are guaranteed the right to participate in celebrations of a civic and/or cultural nature. It is imperative to ensure the exchange of ideas and knowledge between the elderly and new generations, in order to protect memories and cultural identities.

The change in the wording of article 25 of the EI, carried out by Law 13.535/2017, expanded the guarantee of access to education also for the elderly, establishing that higher education institutions must offer, from the perspective of education, courses and extension programs, in the face-to-face or distance modalities, encompassing formal and non-formal activities. Regarding the right to work, in Brazil, it must be considered that the aging population must be protected by working hours that are more adaptable to the health conditions of workers when they reach older ages, that is, flexible hours and food and nutrition. Suitable Public policies must be part of citizens' lives, recovering family savings, promoting satisfactory education, professionalization and health care programs. Public policy actions minimize the effects of demands for basic services in large.

### Concentrations

The 2017 labour reform brought the possibility of teleworking. The inclusion of the specific discipline of telework in the Consolidation of Labour Laws (CLT) is one of the main novelties and legislative additions arising from the Reform, being also a good alternative for the elderly population. The main advantages of teleworking

for the worker stem from the flexibility of schedules, the gain in time and improved productivity. Workers are able to better adapt their work routine to their other needs, making work compatible with social, family, home-related activities, religion, sports, among others, as well as their own biorhythm. In this way, greater family coexistence is made possible, due to the greater availability and possibility of organizing time. This is a type of work that became more used with the Covid-19 pandemic and could benefit the elderly, as it requires less effort and can be provided at home. However, it requires specialization and knowledge in Information Technology (IT) that most seniors do not have. Therefore, this could be a point to be prioritized by public policies: the specialization of the elderly, in order to increase their chances of entering the job market. Subsequently, there is the right to social assistance, which is among the social rights guaranteed to all, under the terms of article 6 of the CRFB/1988, and it is the duty of the Public Power to promote assistance measures aimed at all those who are living in of need. It comprises a set of actions and initiatives materialized by the Government and society with the objective of safeguarding the satisfaction of the rights to health, social security and social assistance, demanding regulation by Law 8.742/1993 - Organic Law of Social Assistance (LOAS) [4].

As a protective policy, the National Social Assistance Policy (PNAS) outlines social protection in levels. Basic Social Protection aims to prevent risks. To this end, it seeks to strengthen ties (family and community) and the development of capabilities and acquisition. The strengthening of bonds for the elderly is framed in the Service of Coexistence and Strengthening of Bonds, provided for in the National Classification of Social Assistance Services (CNAS Resolution No. 109/2009), which aim to contribute to an active, healthy and autonomous aging process, to provide meeting spaces and family and community coexistence, motivating the development of skills, as well as valuing experiences that stimulate the ability to choose and decide. Basic protection also includes the Continuous Cash Benefit (BPC), which according to the PNAS is one of the basic income guarantees for people with disabilities and the elderly. To be entitled to the benefit, which refers to a minimum wage, the LOAS establishes eligibility criteria, such as age and income. Thus, the elderly must be 65 years of age or older and the gross monthly family income, divided between people living in the same house, must be less than 1/4 of the minimum wage. In this sense, with regard to actions aimed at the elderly population in basic social protection, there are services to strengthen bonds, the coexistence center for the elderly and the BPC. In order to increase protection, pursuant to article 50 of the EI, all entities that work in the care of the elderly must be duly registered with the Public Power, to ensure the supervision of activities. For the purpose of providing services in favor of the elderly, article 35 of the EI determines that service entities in a long-stay institutionalization regime and the so-called Casa - Lar - must sign an individual service provision contract, establishing the charges and specifying the nature of the services to be provided. In the case of assistance entities characterized as philanthropic or non-profit, the EI allows, in paragraph 1 of article 35, the possibility of charging the participation of the elderly exclusively for the purpose of funding the entity's activities. Free public land transport is another right of the elderly provided for in article 230, §2 of the CRFB/1988 and the criterion established was the age group, being ensured the right to persons over 65 years of age. According to the intelligence of the Federal Supreme Court (STF), the legal provision that establishes this right has full effectiveness and also immediate applicability, or, rather, since the CRFB/1988 was enacted, this right integrates the normative system, being, therefore, enforceable by the elderly, without the need to create

any other standard to address this matter. In this way, it appears that urban public transport is not only a right guaranteed to the elderly, but also a way of enabling the achievement of other rights, for example, so that they can travel to a hospital, library, exercise their right to come and go, among others [5].

### **Abandonment of Elderly**

Over the years, it has become increasingly common for the elderly to be hospitalized or referred to homes for their care, families are generally responsible for such procedures. However, in some cases the State also seeks to carry out this procedure to prevent the elderly from putting their lives at risk or when certain situations are presented where there is mistreatment by those responsible for caring for the elderly. The legislation created to support the elderly shows that, in some cases, it is the responsibility of the family and the State to support the elderly. This process is highlighted in the Federal Constitution in order to obtain from the responsible persons one of the main ways to develop improvements or to verify which procedures can be implemented to further improve the life and coexistence of the elderly with society. When dealing with specific legislation for the elderly, the most expressive advances are observed from the CRFB/1988, in which a new idea of Social Security is instituted, going further in its article 230, which says “the family, society and the State have a duty to support the elderly, ensuring their participation in the community, defending their dignity and well-being and guaranteeing them the right to life”. As it is the first and main environment where the elderly are inserted, it is advised that families become responsible for the care of the elderly, providing them with all clinical and psychological support, among others that may be needed by them. Thus, as they once benefited from the actions of the elderly when they were healthy and performed activities in a more efficient way, justice considers that families should take care of them who, throughout their lives, sought to provide efficient living conditions for them. all members of your family. However, cases have become more and more constant in which children or those responsible for caring for the elderly practiced certain abuses against them, in some cases leading the elderly to death or developing serious diseases. Due to these facts, the State started to intervene, verifying if the elderly are being well taken care of and if the people responsible for them are giving them the necessary conditions so that their health is not compromised or even the environment where they are inserted is conducive to a good old age. Family abandonment can be considered of great impact for the elderly who come to understand their life as a burden for the people around them, in many cases of elderly people who were abandoned by their children, very strong emotional illnesses are detected. They, in many cases, no longer want to live in society, presenting a reclusive behavior to their room or even limited to the place where they are being accompanied [2,4].

The family relationship is pointed out by many as being one of those that have a great impact on the lives of the elderly, children often because of time or even lack of commitment end up putting the elderly in nursing homes and an environment specialized in welcoming the elderly. For many, developing a family environment conducive to the elderly is not impossible, it is only necessary to implement some care on the part of other people, especially with regard to safety and food. The family is considered by many to be an extremely necessary environment. for the elderly, since they will be in contact with people they know and with whom they already have a relationship. In this way, some routines become something common for them, as well as trust is already something that will not be compromised. The importance of the quality of the relationship between the elderly person and their

family is highlighted by Mazo, when he states that an elderly person who is forgotten or has inadequate treatment, in many cases, suggests an unconscious revenge on the part of the people around them, regarding the previous experiences, although they can also occur due to the non-adaptation of the elderly person to the family after dedicating all their lives to the world of work, to the generation gap, to divergences in behaviour, to chemical and/or alcoholic dependence on the part of the elderly person, to financial limitations and the scarcity of social relationships, among other possibilities. According to Goldim, family relationships do not become different with the prospect of people living longer; they just get more complicated with the increasing number of people interacting. When aging, the elderly make it clear that they need more care, attention, love and a lot of affection. At this stage, the process of transforming feelings emerges, and the infinite nuance of affection and love with the family intensifies. In this way, affectivity is significantly manifested in the daily life of the elderly, expressing once again that the family must always be present at this stage, to provide the necessary support. The support and support that the family can give to the elderly are also pointed out as a basis for their development, in some cases through the care of relatives, the elderly end up not developing certain diseases that are mainly linked to the dependence that can occur due to age. advanced, as they come to accept more positively what their body will present over the years.

### **The Rights of the Elderly in the Covid-19 Pandemic**

The Covid-19 pandemic has highlighted the rights and health of older people: in September 2020, nearly nine out of 10 Covid-19-related deaths worldwide occurred among adults aged 65 and over. Through its broader impacts, the pandemic has also shown how vulnerable many older people are to other situations that can dramatically affect their physical well-being and mental health: lack of access to health care; neglect and abuse in institutions and care facilities; poverty and unemployment; social isolation and exclusion, stigma and discrimination. The Covid-19 pandemic has not only highlighted the vulnerability of older people in emergency situations, but has also witnessed cases of ageism and worrying reports of human rights violations affecting older people, particularly with regard to health and care services. long lasting. Brazilian President Jair Bolsonaro abdicated the government’s responsibility to protect the elderly, suggesting that each family should protect their elderly and not “throw” that responsibility to the state, further arguing that quarantine measures should apply only to the elderly to limit the impacts on the Brazilian economy.

The Covid-19 pandemic, and indeed all crises – acute or protracted – remind us that human rights must be central to all recovery and development efforts. The Sustainable Development Goals will only be achieved if equal opportunities are created for all, address gaps exposed and exploited by Covid-19, and apply human rights standards to combat entrenched, systematic and intergenerational inequalities, exclusion and discrimination.

From India to the Philippines, vaccination campaigns have prioritized “working-age” adults, leading some to conclude that this preventable death constitutes “state-sanctioned gerontocide. Around the world, the implicit calculation shared among political leaders is that the perceived physical frailty and limited economic productivity of older people has made them less worthy of protection. As a result of this ingrained bias, chronological age has been employed in the pandemic response to allocate scarce resources, including ventilators and Intensive Care Units, limiting the accessibility of health care and underlying determinants of health. Categorizing all seniors into a single

risk group undifferentiated, clinical ethics guidelines generally recommend using chronological age as a criterion for rationing life-saving care, denying age-appropriate care and leading to disproportionate death [6].

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