

Care as legal value and the principle of the best interest of the elderly: the interface between public and private law¹

Cuidado como valor jurídico e o princípio do melhor interesse do idoso: a interface entre o direito público e o privado

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Abstract

In view of contemporary changes in socio-family dynamics, such as the reduction in the number of children, offspring often living in a place far from the parents' homes and the greater insertion of women in the labor market, this article seeks to reflect on the division of responsibility between family, society and state in the care of the elderly, and, consequently, to discuss the need for new models of care for the elderly, several of the traditional institutions of long-term or the attribution of responsibility very concentrated in the family, commonly in a female figure. In this scenario, it is also intended to deal with the importance of there being multiple forms of support and assistance to meet the various heterogeneities involving the older person, a condition without which, a more just, plural and solidary society is not built for all generations. For this, the hypothetical deductive method will be used, aiming to respond to the hypotheses mentioned based on bibliographic research, especially empirical data, normative instruments and specialized works.

Keywords: human rights; Care; family and community coexistence; principle of the best interest of the elderly; Fundamental rights.

Resumo

Ante as mudanças contemporâneas na dinâmica sociofamiliar, tais como a redução do número de filhos, prole que frequentemente vive em local distante do domicílio dos pais e a maior inserção da mulher no mercado de trabalho, o presente artigo busca refletir sobre a divisão de responsabilidade entre família, sociedade e Estado nos cuidados com as pessoas idosas, e, por consequência, debater acerca da necessidade de novos modelos de cuidado, diversos das tradicionais instituições de longa permanência ou da atribuição de responsabilidade muito concentrada na família, comumente na figura feminina. Nesse cenário, pretende-se ainda tratar da importância de existirem múltiplas formas de apoio e assistência para atender às diversas heterogeneidades envolvendo a pessoa idosa, condição sem a qual não se constrói uma sociedade mais justa, plural e solidária a todas as gerações. Para tanto, será empregado o método hipotético dedutivo, almejando responder às hipóteses mencionadas com fundamento em pesquisa bibliográfica, especialmente dados empíricos, instrumentos normativos e obras especializadas.

Palavras-chave: direitos humanos; cuidado; convivência familiar e comunitária; princípio do melhor interesse do idoso; Direitos fundamentais.

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1 Introduction

Throughout the twentieth century, several changes took place in the dynamics of families, such as: the increase in intergenerational coexistence, made possible by the increase in life expectancy, the reduction in the size of family units, the insertion of women in the labor market, the ease of geographical displacement, especially migration to larger urban centers, in addition to the accentuation of the social division of labor (Silva; Barletta, 2020, p. 182), have promoted new debates on the responsibility of the family, society and the State with respect to the care or lack of care of the elderly.

The relevance of the topic is therefore justified in view of the trend towards a decrease in the possibilities of care and assistance to the elderly, provided exclusively by the family. On the other hand, the *model of care provided only by long-term care institutions (LTCF) does not seem to be sufficient or always adequate*, even a priori².

As for LTCFs, there was a 33% increase in the number of elderly people in shelters in the period from 2012 to 2017, and in 2018, one hundred thousand elderly people would be living in public or private shelters (Folha de São Paulo, 2018).

In the same sense, the number of demands, with applications for places for the elderly in long-term care institutions, indicates that the supply does not keep pace with the growth in demand. For example, in 2018, there were 108 elderly people on the waiting list for vacancies in Brasília (Folha de São Paulo, 2018).

To further aggravate the situation of insufficient vacancies, there is a great imbalance in the distribution of these institutions. According to an IPEA survey, the 3,548 institutions for the elderly cover only 28.9% of Brazilian municipalities (Camarano; Barbosa, 2016).

As can be seen in these introductory data, there is already a *deficit* of services in the area of care for the elderly in the country, a situation that needs to be combated and debated urgently, under penalty of serious aggravation, due to the accelerated aging of Brazilians³.

Despite the existence of normative sources that establish the responsibility of the family (Article 209 of FC/88 - Federal Constitution of 1988), of society and of the State, such as

²"The LTCF is an institutional unit with the characteristics of a home that welcomes elderly people with different needs and degrees of dependency, and must guarantee continuous coexistence with family and friends, as well as access to cultural, educational, recreational and leisure activities in the community" (Brasil, 2015).

³ According to IBGE's projection, "a quarter of the Brazilian population is expected to be over 60 years old by 2043, while the proportion of young people up to 14 years old will be only 16.3%" (IBGE, 2019).

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Articles 230 of FC/88⁴, Article 3 of the National Policy for the Elderly (Law 8.842/1994 – PNI)⁵ and Article 3 of the Statute of the Elderly (Law 10.741/2003 – EI),⁶ Empirical data on the profile of LTCFs⁷ suggest the hypothesis that care for the elderly in Brazil is still unequally attributed to families and civil society, with little involvement from the state.

The State, also with regard to public spaces, does not seem to take adequate care of the elderly, since it often does not meet the security needs of this population, especially those with reduced mobility, persisting in cities, stairs without handrails, slippery floors, depredated and irregular sidewalks, as well as high steps for access to buses.

In the city of São Paulo, for example, in order not to disturb the flow of traffic, people often need to cross the streets at a speed of 1.2 meters per second; however, the ideal for the elderly would be less than one meter per second (Mendes; Valsecchi, 2007).

Faced with the above problems, this study, through the hypothetical-deductive method, aims to demonstrate whether there are enough public policies to support the elderly population in Brazil and what is the responsibility of the State in this scenario. The objective is to contribute to the creation and expansion of new forms of care, such as public day centers, home care, greater support and training of informal caregivers, in compliance with the precepts of the PNI (1994)⁷ and the new contemporary reality proposed.

2 The legal basis of the duty of diligence from the perspective of the constitutional State

Initially, it should be clarified that "care is permanent planting ground" (Hapner *et al*, 2007, p. 123), and it is more intense when it involves the protection of those who demand more

⁴ "Article 230 of the Federal Constitution: The family, society and the State have the duty to support the elderly, ensuring their participation in the community, defending their dignity and well-being and guaranteeing them the right to life."

⁵ "Article 3 of the PNI: The national policy on the elderly shall be governed by the following principles: "The family, society and the State have the duty to ensure that the elderly have all the rights of citizenship, guaranteeing their participation in the community, defending their dignity, well-being and the right to life."

⁶ "Article 3 of EI: The family, the community, society and the Government have the obligation to guarantee to older persons, with absolute priority, the realization of the right to life, health, food, education, culture, sports, leisure, work, citizenship, freedom, to dignity, respect and family and community life."

⁷ "Regarding the profile of long-term care institutions for the elderly (LTCF), IPEA found that the vast majority of Brazilian institutions are philanthropic, 65.2%, including religious and secular institutions; private institutions constitute 28.2% of the total and only 6.6% of Brazilian institutions are public or mixed, with municipal institutions predominating" (Camarano, 2016).

⁷ "Article 10 of the PNI: In the implementation of the national policy for the elderly, the responsibilities of public bodies and entities are: I - in matters of promotion and social assistance: [...] b) To stimulate the creation of incentives and alternatives for the care of the elderly, such as community centers, nurseries, nursing homes, sheltered work workshops, home care and others."

protection, such as the elderly, children, the illiterate, the chronically ill, the indigenous, the disabled, according to the intensity of self-determination in the conduct of one's own life.

Caregiving reveals, therefore, a plexus of protective behaviors and a greater sensitivity through consideration and attention to the existential interests of the other. Thus, this process unfolds in the legalization of assistance and in the implementation of the principle of solidarity (Article 3, I, of CF/88).

This study analyzes the care provided to the elderly. In this regard, it is necessary, in the first place, to highlight the strengthening of human rights in domestic law, either through the hermeneutical foundation or through the incorporation of the Treaties at the domestic level (Article 5, § 2, of FC/88). Of particular note, for example, is the National Human Rights Programme.

According to Luís Roberto Barroso (2020), the Constitutional State is centered on the Constitution, which presents as one of the foundations the principle of the dignity of the human person.

Barroso (2020) goes on to say that, as a constitutional principle, human dignity represents a direct source of rights and duties, whether positive or negative. In fact, according to Daniel Sarmento, the nature of the principle of human dignity demands an openness, that is, it is a "gateway" for the strengthening of moral imperatives in the field of law (Sarmento, 2019, p. 70). Such imperatives must be understood not from a perspective of virtue, but in the sense of social practices, of choices on the part of people that do not compromise the rights of others and are channeled towards the relevant collective legal goods; without forgetting the concern for a critical morality (Sarmento, 2019, p. 72), in which the human person is pointed out not as a means, but as an end of the legal system.

In fact, Sarlet (2015) contributes to this issue by clarifying that the duties that derive from the principle of human dignity go beyond the state sphere, since they also affect the community order, private entities and between individuals, since they express the ideal of solidarity.

Among the objectives of the Republic is the construction of a free, just and supportive society⁸. Solidarity, conceived as a general guideline of conduct, emerged as a principle of law in Brazilian law only with the 1988 Constitution.

⁸ "Article 1 of the Federal Constitution: The Federative Republic of Brazil, formed by the indissoluble union of the States and Municipalities and the Federal District, is constituted as a Democratic State of Law and has as its foundations: [...] III - the dignity of the human person".

"Article 3 of the Federal Constitution: The fundamental objectives of the Federative Republic of Brazil are: I - To build a free, just and supportive society".

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In short, human dignity, equality and solidarity enhance and increase, with a greater axiological charge, the variety of private or public relationships, and give them more elaborate contours in the search for the right in the specific case, going beyond depatrimonialization⁹ and attributing legality to certain values such as, for example, care.

This movement to strengthen constitutional values in private existential relations is the result of the constitutionalization of private law¹⁰.

For Barboza (2007, p. 70), "as important or more important than solidarity, care emerges as a value that ensures, in all its dimensions, the free exercise of the right to ageing".

In the words of Leonardo Boff (2017), care is an attitude that encompasses more than a moment of attention, zeal and care, it represents occupation, concern, responsibility and affective involvement with the other; it must satisfy and support the material, affective and psychological needs of the person.

From the legal field, a new conception of care is defended, based on commitment and responsibility. Care is understood as a dimension of the principle of human dignity (Pereira, 2020). In the specific scope of this work, constitutional solidarity is the basis of the sub-principles of comprehensive protection¹¹ and absolute priority¹², which make up the principle of the best interests of the elderly (Silva; Barletta, 2020, p. 188), which, due to its relevance, deserves a separate analysis.

⁹ Pietro Perlingieri points out: "Towards the depatrimonialization of civil law. [...] With the term, certainly not very elegant, a normative-cultural tendency is individualized, [...] that is acting slowly between individualism (overcoming individualism) and patrimonialism (overcoming patrimoniality as an end in itself, of productivism first and consumerism as a value). With this, it is not envisaged to promote the quantitative reduction of the patrimonial content in the legal system or in the civil system in particular [...]. Economic pluralism assumes the role of guaranteeing political pluralism and respect for human dignity. Civil law appropriates, in a renewed way, its original vocation of *ius civile*, aimed at developing the protection of civil rights in a new synthesis, to which corresponds normative knowledge [...] between civil, economic and political relations" (Perlingieri, 2001, p. 55).

¹⁰ "The evolutionary process of Law is deeply associated with human evolution itself and, consequently, with life in society. Today, there is a greater role for the State in areas that, in the past, were traditionally private. Thus, the so-called Constitutional Civil Law reflects the analysis of the application of constitutional norms, that is, of a public nature, in eminently private situations, governed by Private Law. Thus, the requirement was raised that individual behaviors do not harm the collective interest, so that they are in line with balance and social well-being" (Carvalho, 2015, p. 343).

¹¹ "Article 2 of EI: Older persons enjoy all the fundamental rights inherent to the human person, without prejudice to the full protection referred to in this Law, assuring them, by law or by other means, all opportunities and facilities for the preservation of their physical and mental health and their moral, intellectual, spiritual and social, in conditions of freedom and dignity."

¹² "Article 3 of EI: The family, the community, society and the Government have the obligation to guarantee to older persons, with absolute priority, the realization of the right to life, health, food, education, culture, sports, leisure, work, citizenship, freedom, to dignity, respect and family and community life."

2.1 Principle of the best interests of the elderly

Fabiana Rodrigues Barletta (2014, p. 128) teaches that "the principle of the best interests of the elderly arises from an analogical interpretation of its dogmatic-normative content with the contents of the same line of protection for children and adolescents". The analogy is appropriate, as they both share the same *raison d'être*, i.e., vulnerability due to age.

The principle of the best interests of the elderly must pay attention to comprehensive protection, without ignoring the peculiarities of each human being (Barboza, 2007, p. 57), because ageing is a very personal right¹³, it is an individual notion that is very varied according to the cultural context, previous experiences in the world¹⁴, the current value system and life goals, not to mention the various health conditions, participation and levels of independence of older people of a similar age group (Barboza, 2007, p. 69).

Therefore, the necessarily open nature of this norm-principle is of the utmost importance, since the protection of the person is not carried out through a one-dimensional perception, but in the complexity of situations, which may arise in the form of a legal power of attorney, other powers, legitimate interest, subjective right and/or faculties (Perlingieri, 2002, p. 155).

As a practical consequence, the principle of the best interests of older persons, whether in the public or private sphere, must pay attention to concrete existential issues and honour the self-determination of older persons, except in cases of effective incapacity to do so (Perlingieri, 2002, p. 166).

It should be noted that the feeling of incapacity, after the EPD (Law 13.146/2015-EPD), restricted the absolute modality only to minors under 16 years of age and only from the patrimonial perspective – which means that, if it is an existential issue, autonomy must be respected, even in relation to non-pubescent minors, and much less with regard to older people.

Thus, the focus of the guardianship of the long-lived is to preserve and protect him, not because of the question of age, but according to the greater or lesser aptitude to perform certain activities, depending on the maintenance of functional skills.

¹³ "Article 8 of EI: Ageing is a very personal right and its protection a social right, in the terms of this Law and current legislation".

¹⁴ This idea was developed by Heidegger, in the work *Being and Time*: "Knowing is a mode of presence founded on being-in-the-world" (Heidegger, 2005, p. 102).

After all, as the name suggests, the best interests of older people must be realized and guaranteed, even if it is to the detriment of the personal interest of family members or the cultural patterns and stereotypes about aging, common in ageist societies¹⁵.

Applying these precepts to the duty of care of the elderly, it can be inferred that there is a need for multiple and concomitant models of care and support, in order to allow the elderly to choose the one that best suits their interests and their vision of well-being and quality of life.

2.2 Affectivity and the principle of family and community life

Before analyzing the current importance of affection in family relationships, a brief historical digression is pertinent.

In the last two centuries, the role played by families has undergone profound changes. This is largely due to the expansion of public living spaces, such as schools, workplaces outside the residence and associations, which have allowed the transfer of the exercise of activities, previously concentrated in the family unit, such as the learning of trades transmitted from generation to generation (Silva; Barletta, 2020, p. 181).

This context allowed the emergence of family units, no longer focused on the economic function of producing goods and services, but above all around affection, companionship and welcome, which awakens a feeling of family (Silva; Barletta, 2020, p. 181).

Consequently, "the merit of the protection of the family does not refer only to blood relations, but above all to affective relationships that are translated into spiritual and life communion" (Perlingieri, 2002, p. 244).

Another consequence of these historical-cultural phenomena referred to refers to the formation of nuclear families, basically composed of parents and children, especially due to the geographical non-coincidence of the dwellings of the new constituted family and the original family, intensified in the second half of the twentieth century (Silva; Barletta, 2020, p. 182).

This contemporary situation calls into question the realization of the right to family life guaranteed to the elderly¹⁶, since the internal relations of parents with children naturally precede the bonds of adults with parents and aunts and uncles of a higher age group.

¹⁵ "The World Health Organization defines ageism as stereotypes, prejudices and discrimination directed at people on the basis of age" (Who, 2018).

¹⁶ The right to family and community life is provided for in the above-mentioned article 3 of the Statute of Older Persons.

In terms of family life practices, it is worth noting the change caused by the need for isolation and social distancing required by the new coronavirus pandemic¹⁷.

With the expansion of the use of technological resources, even among the elderly, who sometimes resisted the past, new dimensions of care emerge in the possible new interaction with family, friends, and other people, by using distance communication mechanisms, such as the internet, cell phones, *Whatsapp*, *Zoom*, and *Teams* (Pereira, 2020).

The technology to assist the elderly goes beyond these remote communication resources, as there are already robots that 'talk' about topics of interest, based on answers about the likes and dislikes of the elderly, in order to alleviate feelings of isolation and loneliness. This is the case of the *Pepper*¹⁸ robot, of Japanese origin. The debate on the effects of dehumanization resulting from technology deserves to be highlighted.

Still regarding the effects of the pandemic in the field of social coexistence, it is noted that the community and the neighborhood can help and favor the care of the elderly, in respect of the principle expressed in the Inter-American Convention on the Rights of Older Persons¹⁹, a treaty of the Inter-American Regional System of Human Rights. which represents an international milestone in the protection of this group.

Initiatives of neighbors who made themselves available to make basic purchases in markets and pharmacies to avoid the exposure of the elderly, who are a risk group for the disease, can be mentioned²⁰. In addition, the role of community living is increasingly important when associated with the significant increase in the number of older people living alone²¹.

In the same sense, it is pertinent to cite an excerpt from Aresp No. 1450606-SP, issued on 04/23/2019 and published in the Official Gazette on 04/30/2019, by the Rapporteur of the Superior Court of Justice (STJ), Maria Isabel Gallotti. According to the judgment, care is a

¹⁷ WHO. *Director-General's opening remarks at the press conference on COVID-19* (11/3/2020). Available at: <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>. Accessed on: 8 April 2020.

¹⁸ "Do you like to watch tennis, eat spaghetti carbonara or watch Bollywood movies? These are some of the questions the Pepper robot has been asking nursing home residents in England, as part of a pioneering study on how the machines can be used to help older people deal with feelings of isolation and loneliness. [...] For seniors struggling with these feelings, technology has often provided companionship, such as televisions and automated phone services. For many seniors, their TV is their constant companion and can be a lifeline for those living alone, particularly in recent circumstances [...] Regular phone calls also make a big difference in seniors' connection with family and friends." (Technology, 2020).

¹⁹ "Conventional text of Article 3, 'or': The responsibility of the State and the participation of the family and the community in the active, full and productive integration of older persons in society, as well as in their care and attention, in accordance with domestic legislation" (OAS, 2015).

²⁰ "The media widely disseminated such practices, such as the report published in Estadão, under the title: To avoid the exposure of the elderly to the Coronavirus, neighbors offer to buy" (Estadão, 2020).

²¹ "Between 2005 and 2015, there was a trend towards an increase in the proportion of single-person arrangements, from 10.4% to 14.6%, related to the aging of the population, since the proportion of single-person arrangements made up of people aged 50 and over went from 57.3% to 63.7%" (IBGE, 2016).

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true institute, endowed with legal value, progressively recognized by doctrine and by precedents of jurisprudence, applicable not only in family relationships, but also in relations between citizens and the State (STJ, 2019).

The crisis arising from COVID-19 has highlighted the need for effective protection in the social environment of values such as solidarity, wisdom, moderation and justice, which are essential to face this global adversity in the face of common responsibility for the well-being of others, especially the most vulnerable groups. including the elderly population (Menezes; Amorim, 2020, p. 04).

In order to raise awareness of the common responsibility for the well-being of the elderly, public and private actions and programmes can be adopted aimed at building and strengthening intergenerational socio-affective bonds, which are capable of preventing situations of neglect and abandonment of the elderly.

The relevance of promoting intergenerational activities, especially by the State, was foreseen in the pioneering Inter-American Convention on the Rights of Older Persons, in its Article 8, on the right to community participation and integration²². In domestic law, the Statute of Older Persons contains a similar provision within the guarantee of priority²³.

In terms of intergenerational affection and coexistence, the legislative proposal that provides for civil liability for the neglect of family members in the adequate care of the elderly is quite current. This is Bill No. 4,229/2019²⁴, which proposes to modify the Statute of the Elderly to insert the express civil liability of children for emotional abandonment, in case of violation of the duty of care, support and protection of the elderly.

The project is based on the pedagogical effect that the threat of a civil pecuniary sanction would have on families with a history of abandonment of the elderly, and would reestablish the bonds of affection within the family ethics, a situation that is also beneficial for society (Senado Federal, 2019).

²² "Article 8 of the Convention: States Parties shall take measures to ensure that older persons have the opportunity to participate actively and productively in the community and to develop their capacities and potential. To this end: [...] b) Promote the participation of older persons in intergenerational activities to strengthen solidarity and mutual support as essential elements of social development" (OAS, 2015).

²³ "Article 3, paragraph 1, IV of the EI: ... Paragraph 1 - The guarantee of priority includes: [...] IV- feasibility of alternative forms of participation, occupation and coexistence of the elderly with other generations" (Brasil, 2003).

²⁴ "Bill proposing the following amendment to EI: Chapter XI: On the Right to Family and Community Life, Art. 42-A. The elderly person has the right to maintain affective ties with the family and social ties with the community, in environments that guarantee healthy aging, and, Art. 42-B. Children have a duty to care, support and protect the elderly. Sole paragraph. The violation of the duty provided for in the subsection of this article constitutes an unlawful act and subjects the offender to civil liability for emotional abandonment, under the terms of Article 927 of Law No. 10,406, of January 10, 2002" (Federal Senate, 2019).

The objective of this bill is in line with the ideal of full protection of older persons. However, it can be imprudent from the point of view of social effectiveness, since these are sensitive existential issues, in particular affective ones, which require a change of consciousness and self-responsibility of the offspring, on which a judicial sentence is sometimes not able to satisfactorily fulfill.

Mediation and conciliation practices seem more appropriate in the search for a solution to conflicts of this nature, since they materialize in dialogue and in the construction of a solution by those involved in the specific case, which strengthens the autonomy²⁵ of the elderly. Projects in this area are already being carried out in the country, such as CEJUSC 60+, developed by the TJ/RS (TJ/RS [...], 2020).

In short, care functions as a root value, from which a set of other values and metalegal situations branch out that can acquire the color of legality, but that, in order to bear fruit, depend on the affection exercised according to the peculiarities of each existential relationship, with emphasis on the care of the elderly.

3 Models of care based on public-private cooperation and shared responsibility

Before analysing the care models, some prejudices, seen as common, around the care of the elderly, which constitute obstacles to the improvement of public policies in the area in question, will be pointed out.

The first of these is the culturally negative view associated with abandonment that is created through LTCFs. This view probably derives from the circumstances of origin of LTCFs, since, initially, they were places that provided long-term services with a more charitable, philanthropic character, without normative criteria²⁶ and without minimum quality standards (Mendonça, 2016, p. 172/173).

In our opinion, this perspective must be overcome, since it does not contribute to the valorization of these institutions or to the transfer of public resources, despite the fact that the

²⁵ "Article 2 of Law No. 13.140/15 (Mediation Law): Mediation shall be governed by the following principles: [...] V - autonomy of the will of the parties" (Brazil, 2015).

²⁶ "The Statute of the Elderly presents, from Article 48, a broad provision on the entities that care for the elderly, such as rules of constitution and operation, obligations, as well as provisions on inspection procedures and investigation of infractions."

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emergency situation of the new coronavirus has given rise to Law No. 14,018/2020,²⁷ which institutes the transfer by the Union of 160 million to the LTCFs.

Therefore, care must be seen from a broader and more natural perspective, often present in the last cycle of life²⁸, and not restricted to the aspect of the exceptional financial burden, whether of the public coffers or the family budget.

Therefore, it is necessary to politicize care at the national level, to incorporate it into the economy as an essential resource, instead of interpreting it negatively as an undesirable expense, in terms of social benefits or salaries of care professionals (Félix; Debert, 2020), and begin to see it as a source of countless opportunities and an area in clear expansion, in the face of the accelerated aging of the population.

In addition, it is relevant to detach the provision of care to the elderly only from the family nucleus, mostly represented by the female figure²⁹ (Félix; Debert, 2020), extending it to the public-private shared responsibility model, which makes it possible to mitigate the economic effects of long-term care in the coming years and converge to the goal set out in SDG No. 17.17³⁰.

In this sense, Fabiana Rodrigues Barletta (2020, p. 186) argues that the duty provided for in Article 229 of the Federal Constitution³¹ ("of parents to assist, raise and educate minor children and that of adult children to help and support their parents in old age, need or illness") must be interpreted in conjunction with Article 230 of the Federal Constitution, in the light of the principle of social solidarity. – Consequently, the model of social policies for the protection of the elderly should not be based on the residual action of the State to guarantee and ensure the minimum necessary for survival.

²⁷ "Article 1 of Law No. 14,018/2020: The Federal Government will provide the Long-Term Care Institutions for the Elderly (LTCF) with emergency financial aid in the amount of up to R\$ 160,000,000.00 (one hundred and sixty million reais), with the aim of strengthening the fight against the public health emergency of international concern derived from the coronavirus (Covid-19). [...] The criterion for apportionment of the amount provided for in the subsection of this article shall be defined by the Ministry of Women, Family and Human Rights, taking into account the number of elderly persons cared for in each institution."

²⁸ "According to a survey released by the Ministry of Social Security, about 13.5% of Brazilian elderly – corresponding to approximately 2.3 million people – had difficulty coping with some basic activities of daily living, such as eating, bathing or going to the bathroom" (Batista *et al.*, 2008).

²⁹ The issue of gender inequality in care and its impacts on the economy came to the fore with the pandemic: "In terms of caring for people, the rate of return was 36.8% for women and 25.9% for men. [...] It is believed that the Ministry of the Interior, which places a greater burden on women, in a country without a National Care Policy (NCP), will have a slowing effect on economic growth in the coming years."

³⁰ "SDG 17, target 17.17: Encourage and promote effective public, public-private and civil society partnerships, building on the experience of resource mobilization strategies, data, monitoring and accountability of these partnerships" (Agenda 2030, 2015).

³¹ "Article 229 of the Federal Constitution: Parents have the duty to assist, raise and educate their minor children, and adult children have the duty to help and support their parents in old age, need or illness."

It is essential to transpose the ideal of mere care provided to older persons to effective care that provides well-being and quality of life, in accordance with the care recommendations of the global document of the United Nations Principles for Older Persons³², transcribed and addressed by Valério de Oliveira Mazzuoli (2017, p. 155).

Once these premises have been overcome, the study of the implementation of policies for the care of the elderly in the country is carried out.

In this field of analysis, it is worth highlighting the role of Councils for the Elderly, which, due to their multiple composition, represent a true bridge between the public sector and civil society (Alcântara, 2019, p. 176/177). Article 6 of the PNI³³ defines the national, state, Federal District and municipal councils for the elderly as "permanent, parity and deliberative bodies, made up of an equal number of representatives of public agencies and entities and of organizations representing civil society linked to the area" (PNI, 1994).

The councils are responsible for supervising, monitoring, inspecting and evaluating the national policy on older persons, within the scope of the respective political-administrative bodies³⁴, as well as for ensuring compliance with the rights of older persons³⁵, with emphasis on the role of receiving communication, in case of suspicion or confirmation of violence against older persons³⁶.

Despite the fact that the PNI dates back to 1994, approximately half of Brazilian cities still do not have a Municipal Council of Elders, with Alagoas being the state with the most serious situation, only 16% (WESTIN, 2018). The persistent shortage of Municipal Councils of Elders or the low representation³⁷ of those already installed is worrying, as they contribute

³² "United Nations Principle 11 for Older Persons: Older persons should have access to health care that helps them maintain or regain an optimal level of physical, mental and emotional well-being and that prevents or delays the onset of disease."

³³ "Article 6 of the PNI: The national, state, Federal District and municipal councils for the elderly shall be permanent, parity and deliberative bodies, composed of an equal number of representatives of public agencies and entities and representative organizations of civil society linked to the area."

³⁴ "Article 7 of the PNI: It is the responsibility of the Councils referred to in Article 6 of this Law to supervise, monitor, supervise and evaluate the national policy on the elderly, within the scope of the respective political-administrative bodies."

³⁵ "Article 7 of the EI: The National, State, Federal District and Municipal Councils for the Elderly, provided for in Law No. 8,842 of January 4, 1994, shall ensure compliance with the rights of older persons, as defined in this Law."

³⁶ "Article 19 of the EI.- Cases of suspected or confirmed violence against the elderly shall be subject to mandatory notification by public and private health services to the health authority, as well as being compulsorily reported by them to any of the following bodies [...] III – Municipal Council for the Elderly; IV – State Council for the Elderly; V – National Council for the Elderly".

³⁷ "The lack of democratic tradition, the lack of maturity of Brazilian citizens, in addition to the culture of contempt for compliance with the laws, even by the State itself, are pointed out as barriers to the strengthening of the Councils" (Alcântara, 2019, p. 176).

to a more assertive demand for public agents to meet the local demands of the population, which differ from one region to another.

This also has a direct impact on the field of support and care services, since the failure of local councils to inspect the conditions of care entities increases the vulnerability of institutionalized older people. Therefore, one of the solutions for the priority advancement³⁸ of a network of care policies in the country is the strengthening of the Councils for the Elderly, especially the Municipal Councils.

Another impact factor for the improvement of these policies corresponds to the greater participation of the public sector. In this regard, Jurilza Maria Barros de Mendonça (2016, p. 147) argues that the public sector serves as a reference for the network of private institutions that also offer care services to the elderly, and that, without a structured and reliable public-private system, quality services will hardly be achieved.

Unlike other countries such as Spain, where there is a network of structured services with home care, day centers, day hospitals with palliative care, and telecare units, in Brazil there is no national care policy, with specific long-term actions for elderly people in a situation of dependency (Mendonça, 2016, p. 175).

Despite this Brazilian omission, an important step was taken through Bill No. 6,892/2010,³⁹ which proposes to amend Article 20 of Law No. 8,742/1993 (Law on the Organization of Social Assistance), and to add to the hypotheses of this assistance benefit, that of a person with a proven long-term disability who needs the help of a third party indispensable for functional needs.

The purpose of this study is not the individual and detailed treatment of the various modalities of support services for the elderly, listed in Article 10, I, b of the PNI.⁴⁰ However, because they represent intermediate, less expensive models of care, with the potential to provide more balance and division of responsibilities, in addition to allowing the elderly person to live

³⁸ "Article 3, paragraph 1, IV of the EI: ... Paragraph 1 - The guarantee of priority includes: [...] II – preference in the formulation and execution of specific social public policies".

³⁹ "Full text of Article 20 of Law 8.742/93, according to PL 6.892/2010: The benefit of the continuous benefit is the guarantee of 1 (one) minimum monthly wage to persons with disabilities and to the elderly aged 70 (seventy) years or older and who are in a situation of economic vulnerability or in case of evidence of long-term impediments that require the help of a third party indispensable for the functional needs derived from limitations on locomotion, food, hygiene and personal care, regardless of their economic condition and being active in the labor market" (Câmara dos Deputados, 2010).

⁴⁰ "Article 10 of the PNI: In the implementation of the National Policy for the Elderly, the following are the responsibilities of public bodies and entities: I - In matters of promotion and social assistance: [...] b) To stimulate the creation of incentives and alternatives for the care of the elderly, such as community centers, nurseries, nursing homes, sheltered work workshops, home care and others."

with a full family, daycare centers or daycare centers will be addressed, and initiatives to support the caregiver, often informal, represented by a family member, will be addressed.

In regulatory terms, in addition to the aforementioned PNI, there is Ordinance 73/01 of MPAS/SEAS,⁴¹ which deals in detail with all the modalities of care for long-lived people, dependent or not.

According to MPAS/SEAS Ordinance 73/01, day centers are aimed at elderly people with some degree of dependency and "semi-dependent" who cannot stay at home and need medical and social care. Among the main objectives are: to provide assistance, health and leisure, and to promote socio-family support by allowing the caregiver of the elderly to work outside the home and have more time to take care of themselves.

The idea of day centres is in harmony with the current times, because it allows the descendants of the elderly person to continue working, without prejudice to the well-being of the elderly in need of care, so it is urgent to expand the public offer of these services, or at least make them available by paying more affordable prices. under penalty of accentuating the social inequalities of this group.

As an example, the city of Campinas/SP still does not have a public day center, only a project under construction⁴² that is undoubtedly not enough to serve the 150 thousand elderly who reside in the Municipality.

What we see in the country are only exceptional public initiatives to help families and, in particular, informal caregivers (Berzins, 2016, p. 466). The "Companions of the Elderly" Program,⁴³ launched in 2004 in the city of São Paulo/SP, offers follow-up at home, support for daily activities, and develops care and support actions for 2,809 elderly people in a situation of dependency (Berzins, 2016, p. 467).

Another relevant issue for the support of informal caregivers refers to gerontechnology, which, by the very word, corresponds to technology aimed at the common needs of ageing, such as digital products and services capable of helping in socialisation, in the search for work, and also, in the field of health, with telemedicine (Félix, 2019).

⁴¹ "Program of Ordinance 73/01 of the MPAS/SEAS: establishes the rules for the operation of care services for the elderly in Brazil, in the modalities provided for in the National Policy for the Elderly, and the challenges that demographic growth imposes on the country" (Câmara dos Deputados, 2001).

⁴² "Campinas will gain a Day Center for the Elderly. The unit will be the first public service in the Municipality to receive people over 60 years of age, so that they can spend the day and then return to their homes. The estimated attendance is 50 people per day" (Campinas [...], 2020).

⁴³ "The Program involves the realization of a care plan with systematized follow-up, which includes the number of weekly visits of the companions, the time planned for each visit and the actions to be developed with the elderly. Currently, there are 24 teams, composed of a doctor, a nurse, two nursing technicians, an administrative assistant and a driver, and all are coordinated by a social worker" (Berzins, 2016, p. 467).

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Gerontechnology emerges as a mitigating alternative from the point of view of those who demand long-term care, by alleviating the burden assumed by families, civil society or the State (Félix, 2019), in addition to preventing accidents and institutionalization, and allowing them to stay longer in the residence of origin when aging in place (*aging in place*).

According to researcher Jorge Félix (2019), Brazil is once again lagging behind in this field. While other developed countries, especially after the 2008 crisis, began to allocate a wide range of resources to the research and development of numerous products and services for aging, almost all of them high-tech, the issue is practically absent from the public debate on population aging in Brazil. By both *policymakers* and policymakers and by the press and academia.

Continuing with the initiatives to support non-professional caregivers, it is worth highlighting the setback that occurred due to the presidential veto No. 25/2019, maintained by the National Congress, of Bill No. 11/2016 that regulated the profession of caregiver, which could corroborate the improvement and qualification of care⁴⁴.

In view of all the data and examples listed, the hypothesis initially proposed that Brazil needs to evolve in its care policies, through the sharing of public-private responsibilities, under penalty of disrespect for the constitutional duty of protection and comprehensive support for the elderly, is ratified.

4 Conclusion

The new socio-family dynamics and the vertiginous growth of the elderly demand new models of care for this population. Those that allow for effective shared responsibility between the family, society and the State deserve to be highlighted, such as day centers and policies to support informal caregivers, a scenario that is in line with the national and international regulatory system.

Especially through alliances and integration of efforts from all sectors – public, private, civil society and academia – it will be possible to advance in the national policy of care for the elderly, especially those with some dependency, a progress so necessary in the national context, towards a greater realization of the principle of the best interests of the elderly.

⁴⁴ "Total veto of House Bill No. 11 of 2016 (No. 1,385/2007, in the House of Origin), which "Creates and regulates the professions of Caregiver of the Elderly, Caregiver of Children, Caregiver of Persons with Disabilities and Caregiver of Persons with Rare Diseases and provides for other provisions" (National Congress, 2019).

Finally, it is important to note that the distribution of responsibilities does not mitigate the essential role of the state actor, given its leading role in the formulation and execution of public policies, with the specific purpose of prioritizing the rights of the elderly, especially care.

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