

# The Impact Of Judicialization On The Implementation Of The Right To Health Of The Elderly Population In Brazil

Jaqueline Machado De Aguiar; Maria Emilia Camargo

*Veni Creator Christian Universit-USA*

*Veni Creator Christian University-USA; GOVCOPP- Universidade De Aveiro, Portugal*

---

## **Abstract:**

*This article aims to analyze the demographic transition and the elderly's right to health, understood as a fundamental and social right guaranteed by the Constitution, within the context of judicialization. The research adopted a descriptive approach, using bibliographic analysis methods, with data from the Brazilian Institute of Geography and Statistics (IBGE). The results indicate that, in recent years, the Judiciary has become essential to guarantee the elderly's right to health, due to the State's budgetary limitations, the insufficiency of public health services and the lack of effective public policies to ensure the comprehensive health of this population.*

**Keywords:** *Elderly; Judicialization; Right to Health.*

---

Date of Submission: 08-09-2025

Date of Acceptance: 18-09-2025

---

## **I. Introduction**

The enactment of the Federal Constitution of 1988 represented a milestone in the consolidation of social rights as fundamental rights, granting them immediate effect, as provided for in Article 5, §1. Article 6 expressly listed the right to health as a duty of the State, which consolidated its legal enforceability.

This progress was the result of intense popular mobilization during the constitutional process, especially by social movements demanding a more just and inclusive state. The centrality of human dignity as a foundation of the Republic, as provided for in Article 1, item III, reinforces the Brazilian State's commitment to implementing public policies aimed at promoting health and well-being, especially for vulnerable populations, such as the elderly.

Despite formal recognition of social rights, their implementation faces significant obstacles in practice, as it depends on political choices, budgetary availability, and legal regulations. The inadequacy of these material guarantees has prompted the Judiciary to act as an agent for the enforcement of the right to health, a scenario evidenced by the growing judicialization of demands related to access to medicines, medical treatment, hospital beds, and surgical procedures.

In addition, there has been a significant increase in litigation involving supplementary health care, with questions about contract adjustments, denial of coverage, and exclusion of procedures by health plans, revealing the complexity of judicialization as a means of accessing health care.

Thus, the failure of the government to guarantee essential services, such as access to healthcare, leads citizens to resort to the judiciary as a means of claiming a legally guaranteed right, revealing the fragility of state action in the face of social demands.

The objective of this research is to discuss the relevance of judicialization vis-à-vis public authorities in relation to demographic transition in the pursuit of constitutionally guaranteed rights for the elderly, in order to ensure that demands relating to public health in the country are met.

The research adopts a qualitative and descriptive approach, with an exploratory and analytical character, aimed at understanding the impacts of seasonal rentals on the fundamental right to housing. To achieve the proposed objectives, the deductive method is used, starting from constitutional and international principles of protection of housing and property, and then analyzing specific situations and case law.

## **II. Changes In The Age Structure Of The Population: Dynamics And Implications Of Demographic Transition**

The concept of demographic transition, introduced by Warren Thompson in 1939, refers to changes in the age structure of populations, marked by declining birth rates and increased longevity, resulting in relative growth in the elderly population. In Brazil, traditionally characterized by its young population, this phenomenon has intensified in recent decades, driven by advances in public health, expanded access to education, and changes in reproductive patterns.

The observation of population aging, already well established in developed nations, is supported by recent data from the Brazilian Institute of Geography and Statistics (IBGE) and presents the Brazilian government with the challenge of implementing public policies based on the Statute of the Elderly (Law No. 10,741/2003), aimed at guaranteeing rights and promoting dignity in old age (Goldman, 2000).

The aging process of the Brazilian population occurred at an accelerated pace compared to European countries, where this phenomenon took place gradually, sustained by high standards of living, health, and social welfare. In Brazil, in addition to these elements, improved sanitary conditions played a fundamental role in this demographic transformation. Another decisive factor was the significant reduction in the birth rate, which directly contributed to the increase in the proportion of elderly people in the population (Minayo, Almeida, 2005).

According to estimates by the Brazilian Institute of Geography and Statistics (IBGE), Brazil's elderly population is expected to triple by 2050, rising from approximately 19.6 million in 2010 to around 66.5 million, which will represent almost 30% of the total population, requiring the strengthening of the Elderly Persons Act and effective public policies for this age group.

Given the data presented, it can be observed that the growth of the elderly population in Brazil has been rapid and continuous in recent decades, constituting an irreversible phenomenon that significantly impacts today's society and alters the national epidemiological profile. In this scenario, infectious diseases, which were prevalent up to four decades ago, have been progressively replaced by chronic degenerative diseases, which aggravate the loss of functional capacity among the elderly (Lima-Costa; Barreto; Giatti, 2003).

Considering these reflections, it is essential to highlight that old age, despite being a privilege associated with increased longevity, also poses a challenge for modern societies, requiring the State to formulate specific policies and actions aimed at the demands of aging (Debert; Oliveira, 2012).

### **III. Perspectives On Health And The Legal Guarantee Of Access To Care**

To explore this topic further, it is necessary to reflect on the concept of health, as highlighted by Scliar (2007): the notion of health is conditioned by social, economic, political, and cultural realities, varying according to historical and geographical context and social conditions. In addition, individual, scientific, religious, and philosophical perceptions influence this definition, which also applies to the concept of disease.

The World Health Organization (WHO), linked to the United Nations since its creation in 1948, defines health as "a state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity," consolidating a comprehensive approach to promoting care (World Health Organization, 1946).

Over time, it became clear that the classic definition of health lacked scope, as it prioritized individual aspects at the expense of collective dimensions. From the 20th century onwards, the understanding that health should be analyzed in relation to the environment, social and economic conditions, as well as community dynamics, became consolidated, reinforcing its status as a fundamental human right. From this perspective, Weichert's (2004) reflection gains relevance when questioning the limits and possibilities of health as a social construct and public good.

[...] in fact, even if rewarding individual vision, citizens cannot remain healthy without the environment in which they live – and the people around them – also being or possessing healthy conditions, especially in the face of contagion and contamination by agents that directly cause disease. On the other hand, the protection of this right cannot be restricted to the individual, as it is a collective good belonging to all members of society. Therefore, health must be examined—and protected—in the surrounding environment (Weichert, 2004, p. 120).

When observing the evolution of health concepts and the respective right, it is noted that, although the Federal Constitution of 1988 does not establish an explicit definition of health, it gives centrality to the topic. Article 196 recognizes health as a universal right and duty of the State, which must be ensured through public policies aimed at risk reduction and equitable access to prevention, promotion, and recovery services. In addition, Article 197 attributes public relevance to health actions and services, imposing on the Public Power the duty to regulate, supervise, and control their execution, either directly, through state entities, or through authorized private institutions, always under the aegis of collective interest and equity in access.

By adopting the principle of universality, the 1988 Constitution unequivocally affirmed that the right to health must be guaranteed to all, without any form of discrimination, ensuring equal treatment for all individuals, regardless of their nationality, gender, or socioeconomic status. Like the rights to social security and social assistance, the right to health is part of the social security system, structured on the basis of coordinated action between the state and society and governed, in accordance with Article 194 of the Federal Constitution, by guidelines such as the universality of coverage and care (Brazil, 1988).

The Federal Constitution also establishes that private initiative in the health sector is permitted, provided that the guidelines of the Unified Health System (SUS) are respected, into which it may be integrated in a complementary manner through contracts or agreements with the government, with priority given to philanthropic and non-profit institutions. Furthermore, the allocation of public funds to private for-profit entities is prohibited,

as is the direct or indirect participation of foreign companies or capital in the provision of health services in the national territory, except in cases expressly provided for by law.

Finally, Article 200 of the Federal Constitution defines the responsibilities of the Unified Health System (SUS), supplemented by infra-constitutional legislation. Among its duties are: supervising procedures, substances, and products of interest to health; producing medicines, blood products, and essential supplies; carrying out health, epidemiological, and occupational health surveillance activities; promoting the training of professionals in the field; acting on basic sanitation policy; and fostering scientific and technological development and innovation in health. In addition, the SUS is responsible for inspecting food, beverages, and water; controlling psychoactive, toxic, and radioactive substances; and collaborating in the preservation of the environment, including the workplace (Brazil, 1988).

With the enactment of Law No. 8,080 of September 19, 1990—known as the Organic Health Law—later regulated by Decree No. 7,508 of June 28, 2011, constitutional rights to health were specified and operationalized. This legislation established the principles and guidelines for the promotion, protection, and recovery of the population's health, as well as regulating the organization, management, and operation of the Unified Health System (SUS), giving it greater effectiveness and institutional structure.

Law No. 8,080/1990 also defines the Unified Health System (SUS) as an integrated arrangement of health actions and services, carried out by public institutions and agencies at the federal, state, and municipal levels, covering both direct and indirect administration, as well as public foundations. This includes research centers, quality control laboratories, and units that produce supplies, medicines, blood, blood products, and health equipment. Private sector participation in the SUS is permitted on a complementary basis, provided that the guidelines established by law are followed, in accordance with Article 4 (Brazil, 1990).

Among the central objectives of the Unified Health System, as established in Article 5 of Law No. 8,080/1990, item III stands out, which ensures the provision of care through coordinated actions for the promotion, protection, and recovery of health, integrating preventive and curative practices. Article 6 of the aforementioned law provides for the scope of the SUS, covering, among other areas, health surveillance, epidemiological surveillance, occupational health, and comprehensive therapeutic care, including the provision of essential medicines to the population (Brazil, 1990).

Among the structural foundations of the SUS, its doctrinal principles stand out, which guide the formulation and execution of public health policies. The principle of universality ensures unrestricted access for the population to all levels of health care, from basic services to highly complex ones. Comprehensiveness implies the continuous and coordinated provision of preventive and curative actions, both individual and collective, according to the specific needs of each individual. Equality, on the other hand, determines that care be provided equitably, without any type of discrimination, ensuring that everyone receives dignified and fair treatment (Brazil, 2016).

As Cohn (2017) observes, recognizing health as a universal right and a state duty requires addressing challenges that go beyond formal access to services. The population tends to seek public services based on their territorial and immediate availability, while the private sector is primarily guided by the logic of rights acquired through payment. This dichotomy highlights the persistence of a Brazilian tradition in which social rights are historically linked to mandatory contributions, which differentiates them from welfare actions aimed at the most vulnerable segments. Thus, the achievement of equity in universal health care is closely related to broader transformations in public policies and in the way the relationship between the state and society is structured, ultimately reflecting changes in the country's power dynamics.

#### **IV. Protecting Human Dignity And Exercising The Right To Health In Old Age**

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly through Resolution 217 A (III) on December 10, 1948, establishes a broad set of social rights, with emphasis on the right to health. In Article 25, the declaration ensures that everyone has the right to a standard of living adequate for the health and well-being of themselves and their family, including food, clothing, housing, medical care, and essential social services, as well as protection in situations such as unemployment, illness, disability, widowhood, old age, or other circumstances that compromise one's livelihood regardless of the individual's will (Unicef, 1948).

The Federal Constitution of 1988 established, in Article 1, the dignity of the human person as one of the fundamental principles of the Federative Republic of Brazil, assigning to the State the responsibility to protect, respect, and guarantee conditions for a dignified life. This translates into the formulation of laws and the implementation of public policies aimed at fully satisfying the essential needs of the population. By adopting human dignity as the central basis of the legal system, the Constitution expanded the list of fundamental rights, seeking to ensure their effective realization in the lives of citizens.

Sarlet (2001, p. 60) defines human dignity as an inherent and unique quality of each individual, which makes them deserving of equal respect and consideration from the State and society. This concept encompasses a set of fundamental rights and duties intended to protect individuals against any degrading or inhumane acts,

ensuring them the minimum conditions for a healthy life. In addition, it emphasizes the promotion of active and co-responsible participation by individuals in the conduct of their own lives and in social coexistence with other human beings.

Among the fundamental rights, social rights stand out, which require the State to adopt positive measures. Among these rights, health, provided for in Articles 196 et seq. of the Federal Constitution, is a fundamental right that imposes on the State the responsibility to promote public and economic actions and policies aimed at guaranteeing it. Recognized as a universal and equal right, health is intrinsically linked to the right to life and the protection of human dignity (Oliveira; Costa, 2011).

The Federal Constitution of 1988, in its Article 3, item IV, establishes as one of the fundamental objectives of the Federative Republic of Brazil the promotion of the welfare of all, prohibiting any form of prejudice or discrimination, whether based on origin, race, sex, color, age, or other reasons. This provision makes it clear that dignity is an inherent attribute of all individuals, regardless of their particularities (Tavares, 2011). Thus, it is understood that the fundamental rights and guarantees assured to citizens must also necessarily extend to the elderly population.

The right to protection of the elderly, as a fundamental social right, is expressly supported by the Federal Constitution of 1988 and further elaborated in Article 230. This provision establishes that the family, society, and the State have a joint duty to ensure conditions for the elderly that promote their dignity, integrity, and active participation in community life. Thus, the constitutional norm guarantees not only the right to life, but also the preservation of the physical, emotional, and social well-being of the elderly, reaffirming the centrality of dignified aging in the Brazilian legal system.

According to Bulos (2010), social rights consist of public freedoms aimed at protecting vulnerable groups, ensuring them the means for a more dignified existence, in line with the principle of substantive equality. In this context, Law No. 8,080/1990—known as the Organic Health Law—reinforces, in its Article 2, §1, that health is a fundamental human right. Thus, it is incumbent upon the State to guarantee the necessary conditions for its promotion, protection, and recovery, in addition to structuring and maintaining public health services in an accessible, efficient, and integrated manner within the social security system (Brazil, 1990).

Art. 2 Health is a fundamental human right, and the State must provide the conditions necessary for its full exercise.

§1 The State's duty to guarantee health consists of formulating and implementing economic and social policies aimed at reducing the risks of disease and other health problems and establishing conditions that ensure universal and equal access to actions and services for its promotion, protection, and recovery.

§2 The State's duty does not exclude that of individuals, families, companies, and society.

Art. 3 Health levels reflect the social and economic organization of the country, with health being determined and conditioned by, among other things, food, housing, basic sanitation, the environment, work, income, education, physical activity, transportation, leisure, and access to essential goods and services.

Sole paragraph. Actions that, pursuant to the provisions of the previous article, are intended to guarantee physical, mental, and social well-being for individuals and the community also relate to health (Brazil, 1990).

With the establishment of the national policy for the elderly, through Law No. 8,842/1994, the Brazilian state began to develop specific legal initiatives and public policies aimed at the elderly population. The central objective of this policy is to guarantee the social rights of this segment of society, promoting equity, autonomy, and respect for the dignity of the elderly. In its Article 3, the law establishes guidelines that ensure, among other aspects, aging with quality of life, social appreciation of the elderly, and the promotion of their full integration into community life (Brazil, 1994).

Art. 3 The national policy for the elderly shall be governed by the following principles:

I – the family, society, and the state have a duty to ensure that the elderly enjoy all the rights of citizenship, guaranteeing their participation in the community, defending their dignity, well-being, and right to life;

II – the aging process concerns society in general and should be the subject of knowledge and information for all;

III – the elderly shall not suffer discrimination of any kind;

IV – the elderly should be the main agents and beneficiaries of the changes to be implemented through this policy;

V – economic, social, and regional differences, and particularly the contradictions between rural and urban areas in Brazil, should be taken into account by public authorities and society in general in the application of this law (Brazil, 1994).

Older persons is Law No. 10,741, of October 1, 2003, known as the Statute of Older Persons. This legislation consolidates guidelines for comprehensive protection, priority care, and access to justice, entrusting the State with the duty to ensure conditions that promote health and a dignified life. In this sense, it establishes the need for effective public policies that enable active, healthy, and respectful aging. It is an essential legal milestone for the consolidation of citizenship for the elderly population in Brazil.

The enactment of the Statute of the Elderly represented a significant advance in the consolidation of the rights of this age group, by explicitly recognizing old age as a relevant stage of life and as a social issue that requires specific public policies. Among its provisions, the guarantee of comprehensive and priority health care through the Unified Health System (SUS) stands out, ensuring immediate, individualized, and preferential care in both the public and private networks, with access to medications, specialists in geriatrics and gerontology, and priority in the formulation and execution of social policies.

Dignified aging, as an essential human right, presupposes the recognition of older persons as subjects with full and autonomous rights. To this end, it is imperative that the State develop strategies that promote social inclusion, quality of life, and the appreciation of this population, understanding old age not as a phase of exclusion, but as an integral part of the life cycle, deserving of protection, respect, and protagonism.

Thus, the realization of the fundamental rights enshrined in the Federal Constitution, especially social rights related to health, assistance, and security, requires affirmative and continuous action by the State. Dignity in old age depends directly on the implementation of coordinated and inclusive public policies that guarantee the full exercise of citizenship for older persons.

## **V. The Role Of E Judiciary In Ensuring Access To Healthcare For The Elderly Population In A Democratic State Governed By The Rule Of Law**

In the Brazilian context, the rapid growth of the elderly population poses a challenge to contemporary society to ensure adequate, specialized, and efficient care for this group. Although the State provides health services for this purpose, the absence of robust public policies compromises the full realization of the elderly's right to health.

Deficiencies in pharmaceutical care, insufficient medicines, therapeutic supplies, qualified human resources, and adequate infrastructure are recurring problems that lead many elderly people to seek legal protection to guarantee their rights. However, legal demands are not restricted to access to treatment and medicines; they also represent the defense of the physical integrity, dignity, and life of the elderly, values protected by the Brazilian legal system.

The elderly population requires special care due to the vulnerabilities inherent to this stage of life, which demands substantial investments in programs specifically tailored to their needs. It is the responsibility of the Unified Health System (SUS) to implement integrated therapeutic care actions, including pharmaceutical care, adopting strategies that promote the prevention, protection, and recovery of this group's health.

According to Faleiros (2004), the State, which should ensure the right to health for the elderly, is often its main violator:

Denying access to healthcare and medication represents serious state violence against the elderly population, as it treats them as 'others', ignoring their specific needs and failing to comply with the covenant of citizenship rights. Complaints against health insurance plans are recurrent, as many elderly people see their financial capacity compromised due to rising costs and stagnant incomes [...]. This violence generated by inequality limits the possibilities for the elderly to carry out their projects, affecting their autonomy and quality of life (Faleiros, 2004, p. 96).

Due to state omission or inertia, the Judiciary is resorted to in all instances to ensure, through individual and collective legal actions, the enforcement of the constitutional right to health. This action is not intended to punish the State, but rather to protect human dignity, especially that of the elderly, who are in a situation of evident vulnerability.

In this sense, access to justice is the most effective means of ensuring a fair and effective judicial response to the resolution of conflicts. It is the duty of the Judiciary to act coercively in the face of state inaction, assuming a fundamental role in ensuring that the elderly have full and effective access to the health services to which they are entitled.

In Schwartz's view (2001, p. 162), judicial intervention occurs after it has been established that the positive actions of the State have not ensured the right to health. Therefore, it is a secondary action—although not merely supplementary—in relation to the duty of the Public Authorities, especially the Executive, because if they adequately fulfilled their responsibilities, there would be no need for a judicial decision.

Seeking legal protection to guarantee access to healthcare for the elderly is an extreme situation, which "concentrates the most intense manifestations of the social issue in the experience of individuals" (Iamamoto, 2004, p. 286). As the author points out, it is only after all administrative means have been exhausted that a person resorts to the Judiciary in search of effective protection of the right to health.

Similarly, Barison (2014) emphasizes that the Judiciary plays a dual role: on the one hand, it serves individuals who seek to secure their violated rights; on the other, it promotes the realization of the social rights provided for in the Constitution through judicialization.

Regarding this new role of the Judiciary, Maulaz (2010) states that it is required to constructively apply the substantive law in force, with the aim of achieving its ultimate goals within the positive legal system. In the

context of the welfare state, it is incumbent upon judges, in the exercise of their jurisdictional function, to consolidate and implement the law in order to guarantee justice in specific cases, under the principle of material equality.

The Judiciary faces numerous challenges in ensuring comprehensive judicial services in the field of health, especially when it comes to vulnerable individuals, such as the elderly, whose natural condition of aging places them at critical limits of autonomy and well-being. In this context, questions arise about the right to health in the face of the State's financial limitations, highlighting the conflict between the minimum necessary for existence and the principle of the reserve of the possible.

## **VI. Between Human Dignity And Budgetary Constraints: Conflicts And Convergences Between The Minimum Necessary For Existence And The Reserve Of Possibilities**

The 1988 Constitution of the Federative Republic of Brazil enshrined, within the set of Fundamental Rights, a series of social rights aimed at achieving human dignity. Among them, Article 6 stands out, which explicitly states essential rights such as health, education, work, housing, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute (Brazil, 1988). These guarantees translate into positive obligations on the part of the State to ensure that all citizens have the minimum conditions for a dignified existence, establishing social justice as the foundation of the Brazilian constitutional order.

According to Nunes Júnior (2009), social rights constitute a specific branch of fundamental rights, whose purpose is to recognize and meet the demands of socially and economically vulnerable groups. Through the granting of positive benefits by the State, the regulation of economic dynamics, and the creation of mechanisms that ensure the full exercise of these rights, the aim is to guarantee equal access to the goods, opportunities, and benefits provided by life in society.

From this perspective, the concept of Minimum Subsistence is consolidated, which goes beyond mere physical subsistence, encompassing the set of social rights indispensable to guaranteeing a dignified existence. It is a matter of ensuring that individuals have not only the material means to survive, but also effective conditions for exercising a free, autonomous life with full participation in social life, in accordance with the principles of human dignity.

In view of these considerations, it should be noted that the minimum subsistence level, as a fundamental prerogative, must be available to all citizens, with special attention to the elderly population, whose social vulnerability is widely recognized. The right to health of the elderly is directly linked to the constitutional principles of human dignity and the preservation of life (Perlingeiro, 2014), and it is the duty of the State to manage public resources efficiently and in a targeted manner in order to meet the specific demands of this age group.

However, the full realization of the right to health requires considerable investment by the State, which poses challenges given the scarcity of public resources. In this scenario, the Theory of the Reserve of the Possible emerges, often invoked as a legal basis to justify state limitation or omission in the realization of social rights that depend on budgetary allocation and financial availability.

The provision of health services by the State often faces obstacles due to budgetary constraints, which compromises the full realization of the fundamental rights guaranteed to citizens. In this context, the Theory of the Reserve of the Possible is invoked as a criterion for weighing up the situation and should be applied on the basis of reasonableness and a concrete analysis of the State's financial capacity, in order to reconcile economic constraints with the obligation to enforce social rights.

As Sarlet (2015) points out, the Theory of the Reserve of the Possible comprises three interdependent dimensions: (i) the factual availability of resources, which refers to the concrete existence of material and financial means; (ii) the legal availability of resources, conditioned by budgetary priorities established in accordance with the law; and (iii) the criterion of proportionality/reasonableness, which assesses the enforceability of state provision. For the author, the Reserve of the Possible constitutes both a factual and legal limit to the realization of social rights, especially the so-called second-dimension rights. However, it cannot be used as an absolute argument, under penalty of reducing the right to health to a mere programmatic guideline, emptying its binding character (Sarlet, 2015).

It is important to highlight the position of Sarmento (2010, p. 411), who conceptualizes the Reserve of the Factually Possible as the assessment of the reasonableness in the universalization of the required service, considering the resources effectively available to the public administration. The legal dimension of the Reserve of the Possible, on the other hand, requires the search for a balance, or "middle ground," where the Judiciary must respect the budgetary laws in force, but without adopting them rigidly, always considering the particularities and specificities of the specific case.

Based on the positions presented, it is important to highlight that the Reserve of the Possible has often been invoked by the State as justification for not enforcing constitutionally guaranteed rights.

## VII. Final Considerations

Based on all the content covered and the evidence presented throughout this article, it can be concluded that the rapid aging of the Brazilian population, combined with the demand for specialized and high-cost care—especially due to the increased risk of chronic diseases and disabilities associated with advanced age—poses numerous challenges for the State in guaranteeing the right to health care for the elderly, both within the public health system and the supplementary health system.

Although the Unified Health System (SUS) has made significant progress and there are several laws that guarantee the right to health care for the elderly, numerous challenges remain in terms of full implementation and the provision of quality public services. Among the difficulties are bureaucracy and vertical structure, insufficient training of professionals to meet the specific needs of the elderly, lack of appropriate facilities, as well as lack of specific programs and human resources. In addition, the state's omission, inertia, and financial limitations in guaranteeing this right encourage this segment of the population to turn to the judiciary in search of full satisfaction of their right to health.

Thus, budgetary issues and health are the main factors driving the Judiciary to act in the judicialization of the right to health. However, as it is a fundamental right, health must be fully guaranteed, at the risk of violating the constitutional order, especially when it involves people in vulnerable situations, such as the elderly. When the State fails to fulfill its social duty, the elderly have no alternative but to resort to the intervention of the Judiciary to ensure the enforcement of their constitutional right.

It is important to highlight that the principle of universality ensures access to health services at all levels of care. Comprehensive care refers to the coordinated and continuous provision of preventive and curative actions and services, both individual and collective, necessary for each case, across all levels of complexity in the health system. Furthermore, the principle of equality requires the State to provide fair and equitable care to all who need it, without discrimination or privilege. When these principles are violated, it constitutes a clear social setback, compromising the realization of the fundamental right to health and human dignity, which are constitutionally guaranteed.

## References

- [1]. Barison, M. S. A Judicialização E A Despolitização Da Questão Social: Duas Faces De Uma Mesma Moeda. *Rev. O Social Em Questão*, V. 31, 2014. Disponível Em: <https://www.redalyc.org/Journal/5522/552264797001/552264797001.Pdf>. Acesso Em: 26 Abr. 2025.
- [2]. Brasil. Constituição Da República Federativa Do Brasil De 1988. Disponível Em: [https://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao.Htm](https://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.Htm). Acesso Em: 25 Abr. 2025.
- [3]. Brasil. Lei Nº 8.080, De 19 De Setembro De 1990. Dispõe Sobre As Condições Para A Promoção, Proteção E Recuperação Da Saúde, A Organização E O Funcionamento Dos Serviços Correspondentes E Dá Outras Providências. Disponível Em: [https://www.planalto.gov.br/ccivil\\_03/Leis/L8080.Htm](https://www.planalto.gov.br/ccivil_03/Leis/L8080.Htm). Acesso Em: 25 Abr. 2025.
- [4]. Brasil. Implantação E Aspectos Organizacionais Do Sus. 2016. Disponível Em: [https://moodle.unasus.gov.br/vitrine29/pluginfile.php/2528/Mod\\_Resource/Content/4/Ebook/18.Html](https://moodle.unasus.gov.br/vitrine29/pluginfile.php/2528/Mod_Resource/Content/4/Ebook/18.Html). Acesso Em: 27 Abr. 2025.
- [5]. Brasil. Lei Nº 8.842, De 4 De Janeiro De 1994. Dispõe Sobre A Política Nacional Do Idoso, Cria O Conselho Nacional Do Idoso E Dá Outras Providências. Disponível Em: [https://www.planalto.gov.br/ccivil\\_03/Leis/L8842.Htm](https://www.planalto.gov.br/ccivil_03/Leis/L8842.Htm). Acesso Em: 26 Abr. 2025.
- [6]. Cohn, A. A Saúde Como Direito E Como Serviço. 7. Ed. São Paulo: Cortez Editora, 2017.
- [7]. Debert, G. G.; Oliveira, A. M. Feminização Da Violência Contra O Idoso E As Delegacias De Polícia. *Mediações – Rev. Ciências Sociais*, V. 17 N. 2 (2012). Disponível Em: <https://ojs.uel.br/revistas/Uel/Index.php/Mediacoes/Article/View/14030>. Acesso Em: 25 Abr. 2025.
- [8]. Faleiros, V. P. Violência Na Velhice. *Rev. O Social Em Questão*, Ano Viii, Nº 11, 2004.
- [9]. Goldman, S. N. Envelhecer Com Cidadania: Quem Sabe Um Dia? Rio De Janeiro: Impetus, 2000.
- [10]. Iamamoto, M. V. Questão Social, Família E Juventude: Desafios Do Trabalho Do Assistente Social Na Área Sócio Jurídica. In: Sales, M. A.; Matos, M. C.; Leal, M. C. (Org.). *Política Social, Família E Juventude: Uma Questão De Direitos*. 6. Ed. São Paulo: Cortez, 2004.
- [11]. Ibge. Estatística – Projeção Da População, 2013. Disponível Em: <https://www.ibge.gov.br/estatisticas-novoportal/sociais/populacao.html>. Acesso Em: 15 Maio 2025.
- [12]. Lima-Costa, M. F.; Barreto, S. M.; Giatti, L. Condições De Saúde, Capacidade Funcional, Uso De Serviços De Saúde E Gastos Com Medicamentos Da População Idosa Brasileira: Um Estudo Descritivo Baseado Na Pesquisa Nacional Por Amostra De Domicílios. *Cad. Saúde Pública*, Rio De Janeiro, 19(3):735-743, Mai-Jun, 2003. Disponível Em: <https://www.scielo.org/Pdf/Csp/2003.V19n3/735-743>. Aceso Em 20 10 Maio 2025.
- [13]. Maulaz, Ralph Batista De. Os Paradigmas Do Estado De Direito. O Estado Liberal, O Estado Social (Socialista) E O Estado Democrático De Direito. *Jus Navigandi*. Teresina, Ano 15, N. 2628, 11 Set. 2010. Disponível Em: <http://jus.com.br/revista/texto/17368>. Acesso Em: 14 Maio 2025.
- [14]. Minayo, M. C. S.; Almeida, L. C. C. Importância Da Política Nacional Do Idoso No Enfrentamento Da Violência. Ipea, 2005.
- [15]. Nunes Junior, Vidal S. A Cidadania Social Na Constituição De 1988 – Estratégias De Positivização E Exigibilidade Judicial Dos Direitos Sociais. São Paulo: Verbatim, 2009.
- [16]. Oliveira, Kátia Cristine Santos De; Costa, Jamille Coutinho. Direito À Saúde: Da (In)Efetividade Das Políticas Públicas À Sua Judicialização Como Forma De Garantir O Mínimo Existencial. *Revista De Direito Brasileira*, Florianópolis, Brasil, V. 1, N. 1, P. 77–99, 2011. Doi: 10.26668/Indexlawjournals/2358-1352/2011.V1i1.2678. Disponível Em: <https://indexlaw.org/Index.php/Rdb/Article/View/2678>. Acesso Em: 26 Mar. 2025.
- [17]. Oms. Constitution Of The World Health Organization. 1946. Disponível Em: <https://www.who.int/about/governance/constitution>. Acesso Em: 20 Abr. 2025.

- [18]. Perlingeiro, Ricardo, Os Cuidados De Saúde Dos Idosos Entre As Limitações Orçamentárias E O Direito A Um Mínimo Existencial (2014). Revista De Direito Sanitário, V.15, P.83 - 118, 2014, Disponível Em: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2441607](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2441607). Acesso Em 27 Abr. 2025.
- [19]. Sarlet, I. W. Dignidade Da Pessoa Humana E Direitos Fundamentais. Porto Alegre: Livraria Do Advogado, 2001.
- [20]. Sarlet, I. W. Dignidade Da Pessoa Humana E Direitos Fundamentais. 10 Ed. Atual. Porto Alegre: Livraria Do Advogado, 2015.
- [21]. Scliar, M. História Do Conceito De Saúde. Revista De Saúde Coletiva. Rio De Janeiro, 17(1): 29-41, 2007. Disponível Em: <http://www.scielo.br/Pdf/Physis/V17n1/V17n1a03.Pdf>. Acesso Em: 14 Abr.2025.
- [22]. Schwartz, G. Direito À Saúde: Efetivação Em Uma Perspectiva Sistêmica. Livraria Do Advogado, 2001.
- [23]. Tavares, A. R. Curso De Direito Constitucional. 9. Ed. São Paulo: Saraiva, 2011.
- [24]. Thompson, Warren S. Population. American Journal Of Sociology, Chicago, V. 35, N. 6, P. 868-879, 1939.
- [25]. Unicef. Declaração Universal Dos Direitos Humanos. 1948. Disponível Em: <https://www.unicef.org/Brazil/Declaracao-Universal-Dos-Direitos-Humanos>. Acesso Em 5 Maio 2025.
- [26]. Weichert, M. A. Saúde E Federação Na Constituição Brasileira. 1 Ed. Rio De Janeiro: Ed. Lumen Juris, 2004.