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PHYSICAL SIGNATURE AND DIGITAL FREEDOM: THE PROTECTION OF ELDERLY CONSUMERS IN ADI 7.027/PB OF THE BRAZILIAN SUPREME FEDERAL COURT REGARDING PARAÍBA STATE LAW No. 12.027/2021

ASSINATURA FÍSICA E LIBERDADE DIGITAL: A TUTELA DO CONSUMIDOR IDOSO NA ADI 7.027/PB DO STF SOBRE A LEI Nº 12.027/2021 DA PARAÍBA

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Abstract: This article examines the protection of elderly consumers in credit contracts made electronically, taking as a normative framework the State Law No. 12.027/2021 of Paraíba, which requires the physical signature of the elderly person on credit operation contracts signed electronically with financial institutions. It begins with the fundamentals of Consumer Law in the Brazilian legal system, vulnerability as a structuring principle, the constitutional consecration of consumer protection, and the need for state intervention to rebalance the consumer relationship, in order to then analyze the judgment of Direct Action of Unconstitutionality (ADI) No. 7.027/PB by the STF (Supreme Federal Court), in which the Court, by majority vote, recognized the constitutionality of the Paraíba law, in light of articles 170 and 230 of the Federal Constitution and the concurrent legislative competence of the States to legislate on consumer protection. This paper discusses the rationale behind the winning vote of Justice Gilmar Mendes and the dissenting opinion of Justice André Mendonça, who argued that requiring a physical signature could harm, rather than protect, elderly people with internet access. Finally, it examines the application of the precedent by the Court of Justice of Paraíba (TJPB), which has recognized the nullity of electronically signed loan agreements without a physical signature, with double repayment of undue payments and, in some cases, compensation for moral damages. It concludes that Law No. 12.027/2021 and the judgment of ADI 7.027/PB represent a relevant normative milestone in reconciling digital inclusion with the differentiated protection of elderly consumers, even though the topic remains under development, requiring continuous attention from legal scholars and jurisprudence.

Keywords: Consumer Law. Vulnerability and State Intervention. Elderly Person. ADI 7.027/PB. Physical Signature.

Resumo: O presente artigo examina a proteção do consumidor idoso nas contratações de crédito por meios eletrônicos, tomando como marco normativo a Lei Estadual nº 12.027/2021 da Paraíba, que exige assinatura física do idoso nos contratos de operação de crédito firmados eletronicamente com instituições financeiras. Parte-se dos fundamentos do Direito do Consumidor no ordenamento brasileiro, a vulnerabilidade como princípio estruturante, a consagração constitucional da defesa do consumidor e a necessidade de intervenção estatal para reequilibrar a relação de consumo, para, em seguida, analisar o julgamento da Ação Direta de Inconstitucionalidade (ADI) nº 7.027/PB pelo STF, no qual a Corte, por maioria, reconheceu a constitucionalidade da norma paraibana, à luz dos artigos 170 e 230 da Constituição Federal e da competência legislativa concorrente dos Estados para legislar sobre proteção do consumidor. Discutem-se os fundamentos do voto vencedor do Ministro Relator Gilmar Mendes e a divergência do Ministro André Mendonça, que sustentou o risco de a exigência de assinatura física prejudicar, em vez de proteger, os idosos com acesso à internet. Por fim, examina-se a aplicação do precedente pelo TJPB, que vem reconhecendo a nulidade de contratos de empréstimo consignado firmados eletronicamente sem assinatura física, com repetição do indébito em dobro e, em alguns casos, indenização por dano moral. Conclui-se que a Lei nº 12.027/2021 e o julgamento da ADI 7.027/PB representam um marco normativo relevante na conciliação entre a inclusão digital e a proteção diferenciada do consumidor idoso, ainda que o tema permaneça em construção, exigindo contínua atenção da doutrina e da jurisprudência.

Palavras-chave: Direito do Consumidor. Vulnerabilidade e Intervenção Estatal. Pessoa Idosa. ADI 7.027/PB. Assinatura Física.

1. Introduction

The digitalization of consumer relations has profoundly transformed how Brazilians contract financial products and services. Credit transactions that previously depended on the consumer’s physical presence at a bank branch are now completed entirely electronically or by telephone, often in just a few clicks. This convenience, however, is not without risks, especially when the contracting party belongs to a group already recognized by the legal system as doubly vulnerable: the elderly consumer.

In this context, the State of Paraíba enacted Law No. 12,027/2021, which began requiring the physical signature of elderly individuals on credit operation contracts signed electronically or by telephone with financial institutions, under penalty of nullity of the agreement. This law was challenged before the Supreme Federal Court (STF) through Direct Action of Unconstitutionality (ADI) No. 7,027/PB, filed by the National Confederation of the Financial System (CONSIF), which argued the formal and material unconstitutionality of the requirement. In dismissing the request, the Court consolidated a relevant understanding regarding the limits of the concurrent legislative competence of the member states in matters of consumer protection and the scope of the differentiated protection due to elderly individuals in digital consumer relations.

This article aims to analyze the legal foundations that support this state intervention, starting from vulnerability as a structuring principle of Consumer Law and its constitutional consecration, in order to then examine the terms of Law No. 12.027/2021 and the grounds adopted by the Supreme Federal Court in the judgment of ADI 7.027/PB, also analyzing the dissenting opinion presented by Minister André Mendonça. Finally, the study focuses on the concrete application of this precedent by the Court of Justice of Paraíba, in order to verify how the state law has been interpreted and applied by local jurisdictional bodies.

This is a bibliographical and documentary research, developed from a review of legislation, consumer law doctrine, and the jurisprudence of the Supreme Federal Court and the Court of Justice of Paraíba, using a qualitative approach. To this end, the work is structured in three main sections, in addition to this introduction and the final considerations: the first deals with the foundations of Consumer Law in Brazil, highlighting vulnerability, the constitutional consecration of the matter, and the need for state intervention; the second analyzes Law No. 12.027/2021 of Paraíba and the grounds for the judgment of ADI 7.027/PB by the STF, as well as its application by the courts of Paraíba; and the third presents the final considerations of the study.

2. Fundamentals of Consumer Law in Brazil

2.1 Vulnerability as the cornerstone of consumerist discipline

Consumer relations and commerce are as old as civilization itself. Consumer Law did not arise from a dogmatic abstraction, but from a historical and sociological observation. This is because industrialization, mass production, and, more recently, the digitalization of economic relations have deepened the imbalance between those who produce and offer goods and services and those who acquire them for final use. As Norat (2026) aptly systematizes, the origin of Consumer Law dates back to economic and social processes that intensified from the Industrial Revolution to the consumer society of the post-World War II era, a period in which large-scale production, mass advertising, and the widespread granting of credit transformed the way individuals relate to the market.

In this process, the consumer ceased to be treated as a mere equal contracting party, in the mold of classical civil law, founded on the autonomy of will and formal equality between the parties, to be recognized as a vulnerable party in a structurally unequal relationship. Vulnerability, in this sense, is not an accidental quality of a given consumer, but a legal presumption that informs the entire principle of the consumer protection microsystem, distributed across at least four dimensions (Norat, 2026): *technical* , which develops the lack of knowledge about the characteristics of the product or service; *legal* , regarding the absence of specialized legal, accounting, or economic knowledge; *factual* or socioeconomic, dealing with the superior economic power of the supplier; and *informational* , related to asymmetry in access to and understanding of information relevant to the contract.

This logic is expressly incorporated by Article 4, item I, of Law No. 8.078/1990 (Consumer Protection Code, CDC), which recognizes the vulnerability of the consumer in the consumer market as a fundamental principle of the National Policy on Consumer Relations. It is from this principle that institutions such as the reversal of the burden of proof, the most favorable interpretation of ambiguous contractual clauses, the objective liability of the supplier, and the nullity of abusive clauses are justified.

2.2 Constitutional consecration and the CDC as a legal microsystem

The 1988 Federal Constitution broke with previous tradition by elevating consumer protection to the status of a fundamental right (Article 5, XXXII) and a principle of the economic order (Article 170, V), thus recognizing that consumer protection is not merely sub-constitutional legislative policy, but a binding constitutional mandate for all federative entities and branches of government.

This dual nature is what allows us to understand why consumer protection can legitimately limit free enterprise without violating that same principle. In this sense, Celso Antônio Bandeira de Mello states:

The Brazilian Constitution presents itself as a stark antithesis of neoliberalism, as it does not entrust the satisfactory organization of economic and social life to a supposed (and never demonstrated) efficiency of the market. On the contrary, it declares that the Brazilian State has formally explicit commitments to the values enunciated therein, obliging the economic and social order to be articulated in a way that achieves the stated objectives (Mello, 2010).

The Consumer Protection Code (CDC), enacted in compliance with the constitutional mandate, is traditionally described by legal scholars (Norat, 2026) as a legal microsystem, endowed with its own principles, in dialogue with other norms of the legal system, also known as the dialogue of sources, and with a vocation for transversal application to any relationship that falls within the concept of a consumer relationship, regardless of the branch of law in which that relationship is embedded (banking, insurance, education, health, etc.).

This principled view of the CDC is also shared by other authors, such as Miguel Reale (1994), who defends the idea that principles are *floating truths* of a knowledge system.

Thus, the *principle of consumer protectionism* (Tartuce, 2017) generates some practical consequences for the legal relationship between the parties, such as the impossibility of its disregard under penalty of absolute nullity, for example, the legal prohibition of abusive practices that are inconsistent with the consumer protection system.

It is precisely this principled vision and the vocation for transversal application that allows the Consumer Protection Code (CDC) to apply to banking and credit contracts entered into by elderly people, the central theme of the judgment analyzed in this article.

2.3. The need for State intervention as a promoter of consumer rights.

Given the recognized structural vulnerability of the consumer, the question arises: who is responsible for correcting this imbalance? The answer from the Brazilian constituent assembly and legislature was unequivocal: the State, in its various legislative, administrative, and judicial functions, is responsible for acting as a market regulator and promoter of consumer protection, intervening in private autonomy whenever necessary to restore balance to the consumer relationship.

This intervention does not represent a denial of free enterprise, but rather its alignment with the other constitutional values of the economic order. Article 170 of the Constitution of the Republic, while enshrining free enterprise as a foundation of the economic order, lists consumer protection among the principles that should guide this same order, so that state regulatory action is not an exception, but a condition for the legitimacy of the market itself.

At the federal level, this promotional function is not exclusive to the Union. Article 24, items V and VIII, and paragraph 2 of the same constitutional provision grant the member states supplementary concurrent legislative competence in matters of consumer protection, allowing the state legislature, within the limits of the Union’s competence to issue general rules, to expand and strengthen consumer protection according to the peculiarities and vulnerabilities identified in its territory.

The state’s role in promoting consumer rights gains additional relevance when we consider the situation of the elderly, as enshrined in the Statute of the Elderly, Law No. 10.741/2003, in its article 3:

Article 3. It is the obligation of the family, the community, society, and the public authorities to ensure, with absolute priority, the effective realization of the rights of elderly persons to life, health, food, education, culture, sport, leisure, work, citizenship, freedom, dignity, respect, and family and community life (Brazil, 2003).

In addition, Articles 106 and 107 of the same Statute address the penalties applicable in cases where third parties take advantage of an elderly person's lack of discernment to manage their assets or enter into contracts:

Article 106. Inducing an elderly person lacking discernment of their actions to grant power of attorney for the purpose of managing or freely disposing of their assets:

Penalty – imprisonment from 2 (two) to 4 (four) years.

Article 107. To coerce, in any way, an elderly person to donate, enter into a contract, make a will, or grant power of attorney:

Penalty – imprisonment from 2 (two) to 5 (five) years (Brazil, 2003).

Therefore, the combination of the consumer protection microsystem and the microsystem for the protection of the elderly is what allows us to understand Law No. 12,027/2021 of Paraíba not as an isolated norm, but as part of a broader normative arrangement for the protection of vulnerable groups within the presumed vulnerability of the consumer.

3. Law No. 12.027/2021 of the State of Paraíba, ADI 7.027/PB, and the protection of elderly consumers in the digital age.

3.1 The reality of digital transactions in Brazil today

Research conducted this year reveals that credit operations via virtual or *online* means represent the majority of commercial transactions and payment methods, with Pix being the most widely used payment tool by Brazilians. According to data released by the Central Bank of Brazil (BCB), in July 2026, Pix accounted for a movement of almost 3.6 trillion reais in the month, resulting from more than 7 billion transfers made that month (BCB, 2026).

In addition, the Central Bank of Brazil (BCB) also announced that mobile phones are the most used means of payment by Brazilians, accounting for almost 6 billion financial and non-financial transfers carried out in the first quarter of 2026.

Thus, it can be seen that electronic payments and financial transactions have already become a reality in Brazilian society, and have been in constant growth since their inception. In the realm of credit operations, the reality is no different.

According to Ricardo Ferreira, operations director at Matera Insights, in an interview with Times Brasil – Exclusive Licensee CNBC (2025), 70% of consumers contracted their last credit product through digital channels. Furthermore, among those interviewed, 65% say they feel confident in their decisions and 34% know the contracted credit rate. The analysis of this data reveals something extremely worrying: almost 70% of people who take out loans online do not know the actual contracted rate.

Beyond the lack of knowledge about the contracted rates, the percentage is even more alarming when we identify that 67% of Brazilians have financial debts, such as loans, and 21% admit to having overdue debts (VEJA, 2026). Furthermore, of the respondents who resorted to loans from friends and family, around 41%, 29% justified the measure due to default on revolving credit card debt, 26% due to debts incurred with banks, and 25% due to store installment plans (VEJA, 2026).

Thus, while digital transactions have become increasingly common in Brazil, it is observed that widespread access to banking services has served as an instrument to accelerate the financial mismanagement experienced by the population. The biggest problem with this situation is that more than half of Brazilians resort to bank loans to make ends meet at the end of the month, and almost 70% of them do not know the terms of the contracts they are entering into or the applicable interest rates.

3.2 Direct Action of Unconstitutionality No. 7.027/PB

Given the increased vulnerability of the elderly and the growth of online transactions for loan agreements and credit operations, the State of Paraíba enacted State Law No. 12.027/2021, which made the physical signature of elderly individuals mandatory on credit operation contracts, including loans, financing, leases, payroll deductions, and other credit-related operations, entered into electronically or by telephone with financial institutions. In this context, the following provisions are extracted from the aforementioned legal text:

Article 1. In the State of Paraíba, the physical signature of elderly persons is mandatory on credit operation contracts entered into electronically or by telephone with financial and credit institutions, their representatives or agents.

Sole paragraph. For the purposes of this Law, a credit operation contract is considered to be any and all types of contracts, services or products in the form of payroll deduction for discounts on retirement benefits, pensions, lump-sum payments, savings accounts, checking accounts, such as loans, financing, leases, mortgages, insurance, financial applications, investments, or any other type of operation that has a credit nature.

Article 2. Credit operation contracts entered into electronically or by telephone with elderly persons must be made available in physical form, so that the contracting party, considered elderly by law, may be aware of their clauses and subsequently sign them.

Sole paragraph. The contracted financial and credit institution must provide a copy of the signed contract to the elderly contracting party, under penalty of nullity of the agreement.

Article 3. Failure to comply with the provisions of this Law shall subject financial and credit institutions to the following penalties, without prejudice to other penalties provided for in current legislation:

I – First offense: warning;

II – second infraction: fine of 300 (three hundred) UFR-PB (Fiscal Reference Units of the State of Paraíba);

III – third infraction: fine of 600 (six hundred) UFR-PB (Fiscal Reference Units of the State of Paraíba);

IV – starting with the fourth infraction: a fine of 2,000 (two thousand) UFR-PB (Fiscal Reference Units of the State of Paraíba) for each infraction.

Article 4. The enforcement of the provisions of this Law shall be carried out by public bodies within their respective areas of responsibility, which shall be liable for the sanctions resulting from violations of the rules contained herein, through administrative proceedings, ensuring full defense and the right to a hearing.

Article 5. This Law shall enter into force 90 (ninety) days after the date of its publication (Brazil, 2003).

From what can be seen in the transcribed regulation, there is a provision for the physical signature of the elderly person, as well as that such contracts must be made available in physical form for the elderly person to understand the clauses, under penalty of nullity of the agreement if the financial institution does not provide a copy of the instrument, in addition to providing for progressive administrative sanctions in case of non-compliance.

This legal instrument essentially aims to protect elderly consumers, who are in a weaker position in consumer relations, from obscure credit operations proposed by large banks, in accordance with the terms stipulated in the Consumer Protection Code and the Statute of the Elderly Person highlighted in the previous section.

Contrary to the legal provision, considering it to be in violation of the constitutional norm, CONSIF, a union representing financial institutions, filed ADI 7.027/PB [3] arguing two major axes of unconstitutionality: (i) formal, for alleged usurpation of the Union's exclusive competence to legislate on civil law and credit policy (art. 22, I and VII, CF); and (ii) material, for alleged violation of the principles of equality and proportionality, arguing that the requirement of a physical signature would create an unnecessary bureaucratic burden incompatible with digital life.

3.3 The foundations of constitutionality as understood by the Supreme Federal Court

The vote of the Reporting Justice Gilmar Mendes, supported by the majority of the Plenary, recognized the active legitimacy of CONSIF and acknowledged the action, but dismissed the request, recognizing the constitutionality of the Paraíba law as a landmark in state intervention for the protection and guarantee of consumer and elderly rights, supported by articles 170 and 230 of the 1988 Federal Constitution.

From a formal standpoint, the rapporteur classified the rule as belonging to the realm of consumer law, and not civil law or credit policy in the strict sense, because it does not interfere with rates, credit granting requirements, or contracting criteria, but only ensures that elderly consumers are aware of the content of the contract and have physical proof. This classification attracted the application of Article 24, V and VIII, of the Constitution, legitimizing the supplementary legislative competence of the States, in harmony with precedents of the Supreme Federal Court itself in analogous cases involving state regulations for the protection of banking consumers.

With ADI 4.512/MS, reported by Minister Cármen Lúcia, the STF (Supreme Federal Court) decided on the constitutionality of State Law No. 3.885/2010 of Mato Grosso do Sul, which obliges health plan operators to provide written and justified proof in cases of denial of medical and hospital coverage, consolidating the understanding that the aforementioned state law validly falls within the concurrent legislative competence for consumer protection.

At the time, the Supreme Federal Court (STF) highlighted that the requirement acts as a tool to mitigate the extreme vulnerability and lack of resources of debilitated patients, materializing the fundamental right to information.

Furthermore, in the judgment of ADI 4.633/SP, reported by Minister Luiz Fux, the STF (Supreme Federal Court) ratified the constitutionality of Law No. 14.364/2011 of the State of São Paulo, which established the mandatory installation of individual partitions between tellers and the waiting area in bank branches, having dismissed the request that alleged a supposed invasion of the Union’s exclusive competence to legislate on the financial system, consolidating the understanding that the requirement for equipment to guarantee the privacy of financial operations has an eminently consumerist nature.

In its *ratio decidendi* , the Court established that consumer relations in the banking sector attract concurrent legislative competence between the Union and the member states, based on article 24, items V and VIII, of the Federal Constitution.

Within the scope of ADI 7.027/PB, in line with the aforementioned ADIs, the rapporteur understood that the rule does not violate federal legislation, but rather strengthens it, in accordance with articles 52, 54-B and 54-D of the CDC (Consumer Protection Code), which already impose on the supplier the duty to inform the consumer in advance and adequately about the credit conditions, expressly considering their age (art. 54-D, I, CDC), the latter included by Law No. 14.181 of 2021, note:

Article 54-D. When offering credit, prior to contracting, the supplier or intermediary must, among other actions:

I – to adequately inform and clarify to the consumer, considering their age, the nature and type of credit offered, all applicable costs, in accordance with the provisions of articles 52 and 54-B of this Code, and the general and specific consequences of default;

[…] (Brazil, 2021).

In other words, from a substantive point of view, the Supreme Federal Court understood that the state law does not impose any limitation on economic freedom, but only aims to add, within the procedural framework, legal protection for the consumer, namely the possibility of having access to the terms of the contract being signed before its signing.

According to Gilmar Mendes, the CDC recognizes that the client's age must be taken into account in the way information is transmitted and, therefore, the Paraíba state law, by ensuring that the consumer is duly informed about the product or service they will contract, only establishes more specific rules, with the aim of protecting elderly consumers, preventing fraud that could harm their assets, without infringing the general rules issued by the Union (STF Portal, 2023).

There is no limitation on entering into loan agreements through virtual means, but the state regulation aims to guarantee to the elderly population, a highly vulnerable group in consumer relations, that the terms of the contracts are made explicit at the time of their signing.

Regarding the potential regulatory authority of the Central Bank and the National Monetary Council, the opinion highlighted that CMN Resolution No. 4,480/2016 only allows, but does not mandate, digital signatures for opening deposit accounts, and therefore there is no regulatory incompatibility with the state requirement for physical signatures for senior citizens in credit transactions.

Finally, from a material standpoint, the rapporteur dismissed the claim of violation of equality and proportionality, relying on the precedent of ADI 6.727/PR [4] , reported by Justice Cármen

Lúcia, in which the STF had already recognized the validity of the Paraná law that required a physical signature and presentation of an identity document for payroll loans to retirees and pensioners.

The ruling reaffirmed that differentiated protection for the elderly does not diminish their ability to contract, but merely provides greater security and transparency to legal transactions. This measure is *appropriate* to ensure knowledge of the proposal's content, *necessary* because it does not impose excessive burden on financial institutions, and *proportionate* in the strict sense because it protects the most vulnerable class of consumers.

3.4 Dissenting Opinion of Minister André Mendonça

The concurring vote of Minister André Mendonça [5] , the only one to rule in favor of the request, offers a relevant counterpoint for the critical analysis of the judgment.

From a formal standpoint, the minister argued that, by establishing a validity requirement for credit operation contracts, the state law regulated a matter that was essentially contractual and not merely informational, thus encroaching upon the exclusive competence of the Union to legislate on civil law (art. 22, I, CF), invoking precedents from the STF that prohibit states from regulating contractual obligations under the pretext of concurrent consumer law competence.

From a material standpoint, the dissenting opinion presented relevant empirical data, extracted from the Central Bank's 2021 Financial Citizenship Report: of the approximately 34 million elderly Brazilians, more than 95% already have a relationship with the financial system and at least 50% access the *internet* , a percentage that grew from 21% to 50% between 2013 and 2020.

Based on this data, the Minister argued that requiring a physical signature, by preventing the elderly from exercising a technological ability already available to the general public—the electronic signature, legally equated to a handwritten signature by Provisional Measure No. 2,200-2/2001—could paradoxically harm, rather than protect, especially the elderly with mobility difficulties, in addition to increasing the cost of credit operations due to the expense of issuing and physically sending the contract.

It is relevant to note, however, that the data presented by Minister André Mendonça were not expressly refuted by the majority vote. The rapporteur addressed the controversy essentially from a formal perspective, the informational, and not contractual, nature of the requirement, and from an abstract material perspective, the submission of the norm to the test of adequacy, necessity, and proportionality in the strict sense, without, however, confronting the statistical picture of digital banking and the broad – and growing – access of the elderly to technology brought by the dissenting opinion.

The absence of an explicit response to this empirical argument does not, in itself, invalidate the majority's conclusion, but it leaves open a question that a critical analysis of the judgment cannot ignore: was the proportionality of the measure assessed in light of the concrete reality of the public it seeks to protect, or only on the abstract plane of formal compatibility between legislative powers?

3.5 A regulatory framework under construction

The tension between the two votes illustrates one of the central challenges of contemporary Consumer Law: how to reconcile the differentiated protection of vulnerable groups with the digital and financial inclusion of that same group. It is not a matter of irreconcilable positions regarding the protected value, but of divergence regarding the most appropriate means to achieve it: requiring an additional in-person formality or preserving the elderly person's freedom of choice through digital channels, already guaranteed as optional by the regulation of the National Financial System.

The majority decision, by prevailing, consolidates Law No. 12,027/2021 of Paraíba as a relevant precedent on at least three fronts. Firstly, it reaffirms the supplementary legislative competence of the member states to, within the normative space of article 24, §2, of the Constitution, expand consumer protection provided for in general federal norms, without this constituting an invasion of the exclusive competence of the Union, provided that the state norm does not regulate the essentially contractual and obligatory core of the relationship, but aspects of information, transparency and legal certainty.

Secondly, it confirms the Supreme Federal Court's jurisprudential line of recognizing differentiated normative treatment for elderly and retired consumers in their dealings with financial institutions. Thirdly, the decision positions the Judiciary before the challenge of regulating the boundary between digital inclusion and formal protection of elderly consumers, recognizing that the digitization of credit relations, while bringing convenience and increased access, can also be a vector for fraud, the obtaining of vitiated consent, and the exploitation of the informational and technological vulnerability of this age group.

In this sense, the Paraíba state law and the judgment that confirmed it can be understood as a relevant normative milestone, even if not without criticism, because they make it clear that consumer protection is not static and must adapt to new forms of contracting without abandoning the core protection afforded to historically vulnerable groups.

Note that the divergence between the votes in ADI 7027/PB exposes a methodological asymmetry: while the rapporteur deduces the proportionality of the physical signature from abstract norms and concepts, the dissenting vote relies on empirical data from the Central Bank regarding the significant digital inclusion of the elderly (50% with internet access and more than 95% banked) to dismiss the presumption of risk associated with electronic means.

This omission undermines the proportionality test, as the majority vote did not examine electronic signatures as a less burdensome and equally suitable alternative, nor did it present any empirical evidence that the physical method is actually more protective of elderly consumers.

In short, the argumentative gap diminishes the persuasive force of the precedent, keeping open the debate about the balance between the formal protection of the elderly and the exercise of their digital autonomy.

Within the judicial system, the constitutionality of State Law No. 12.027/2021 has already guaranteed the nullity of contracts made through digital means, as well as their conversion into compensation for losses and damages, ensuring the preservation of the rights of the elderly and the best interests of the elderly. To illustrate this reality, let's look at some recent rulings from the Court of Justice of Paraíba.

In her ruling on Civil Appeal No. 0800243-02.2023.8.15.1071, Judge Túlia Gomes de Souza Neves found the claims to be entirely justified, recognizing both the double restitution of discounts resulting from a void contract, as well as compensation for moral damages *in re ipsa* , see:

CONSUMER LAW. CIVIL APPEAL. UNAUTHORIZED CONSIGNED LOANS. ELDERLY PERSON. NULLITY OF CONTRACTS ENTERED INTO WITHOUT PHYSICAL SIGNATURE. STATE LAW NO. 12,027/2021 OF PARAÍBA. DOUBLE REIMBURSEMENT OF UNDUE PAYMENTS. MORAL DAMAGES ESTABLISHED. APPEAL PARTIALLY GRANTED. I. CASE UNDER EXAMINATION 1. Appeal filed against a judgment that dismissed the action brought against Banco Itaú BMG Consignado SA. The appellant alleged the execution of four undue consigned loans, contracted electronically, without his authorization and without a physical signature, as required by State Law No. 12,027/2021. He requested the cancellation of the deductions, the double restitution of the amounts unduly deducted, and compensation for moral damages. The first-instance judgment denied the requests, arguing that the plaintiff did not present sufficient evidence to refute the validity of the contracts. II. ISSUE UNDER DISCUSSION 2.

There are two issues under discussion: (i) whether the electronically executed loan agreements without the physical signature of the elderly plaintiff should be considered null and void; (ii) whether the undue deductions give rise to double repayment and whether compensation for moral damages is due. III. REASONS FOR DECISION 3. State Law No. 12.027/2021 of Paraíba requires a physical signature in credit transactions agreed upon electronically or by telephone with elderly persons. The absence of this formality in the contracts presented by the bank violates this provision, resulting in the nullity of the contracts entered into. 4. The contracts presented by the bank, even when accompanied by facial biometrics, do not have the physical signature of the appellant, as required by the aforementioned law, which implies their nullity, pursuant to art. 104, III, of the Civil Code. 5. Regarding the repetition of undue payment, article 42, sole paragraph, of the Consumer Protection Code determines double restitution when the consumer is charged unduly, except in cases of justifiable error. 6. Moral damages are established by the illicit nature of the deductions from a social security benefit of an alimentary nature, essential for the subsistence of the plaintiff, the damage being *in re ipsa.*, that is, presumed. IV. DECISION AND THESIS 7. Appeal partially granted. Judgment thesis: 1. Loan agreements signed electronically with elderly individuals without the physical signature required by State Law No. 12.027/2021 are null and void. 2. Double repayment of undue payments is due in cases of improper deductions, according to article 42, sole paragraph, of the Consumer Protection Code, when there is no plausible justification on the part of the creditor. 3. Moral damages resulting from improper deductions from a social security benefit of an alimentary nature justify compensation. Relevant provisions cited: Consumer Protection Code, article 42, sole paragraph; Civil Code, article 104, III; State Law of Paraíba No. 12.027/2021. Relevant case law cited: STF, ADI 7027, Rel. Min. Gilmar Mendes, Full Court, decided on 12/17/2022, DJe 01/25/2023. The Third Civil Chamber of the Court of Justice of Paraíba, unanimously, following the vote of the Rapporteur, AGREES to PARTIALLY GRANT the appeal. (CIVIL APPEAL no. 0800243-02.2023.8.15.1071, Rapporteur TULIA GOMES DE SOUZA NEVES, 3rd Civil Chamber, decided on 12/06/2024).

Similarly, Judge Carlos Eduardo Leite Lisboa, when judging Civil Appeal 0807435-84.2024.8.15.0251, established the understanding of double repayment and the absence of moral damages due to the situation experienced not exceeding mere displeasure, as can be seen:

CONSUMER AND CIVIL PROCEDURE LAW. CIVIL APPEAL. CONSIGNED LOAN AGREEMENT. ELECTRONIC SIGNATURE. ELDERLY PERSON. ABSENCE OF PHYSICAL SIGNATURE. VIOLATION OF STATE LAW NO. 12,027/2021. NULLITY OF THE CONTRACT. DOUBLE REIMBURSEMENT OF UNDUE PAYMENT. MORAL DAMAGES NOT CONFIGURED. PARTIAL PROVISION. I. CASE UNDER EXAMINATION Civil appeal filed by Banco AGIBANK SA against a judgment that partially granted the requests made by Marina Francisca do Nascimento, declaring the non-existence of the consigned loan agreement, ordering the double reimbursement of the debited amounts and condemning the bank to pay compensation for moral damages. The lack of proof of a valid contract was alleged, especially due to the absence of a physical signature required by State Law No. 12.027/2021 for elderly individuals. II. ISSUE UNDER DISCUSSION There are two issues under discussion: (i) verifying whether there was proof of the loan agreement, especially regarding the absence of a physical signature on contracts signed with an elderly person; (ii) assessing whether the undue deduction from income constitutes compensable moral damages. III. REASONS FOR DECISION The financial institution does not present the physical contract signed by the plaintiff, as required by State Law No. 12.027/2021, applicable to contracts entered into by elderly individuals, in accordance with the Statute of the Elderly and the jurisprudence consolidated by the STF in ADI 7027, which recognized the constitutionality of this state legislation. The absence of proof of the contract relieves the plaintiff of the burden of proof, pursuant to Article 373, item I, of the CPC (Brazilian Code of Civil Procedure), leading to the nullity of the contract and the objective liability of the bank based on Article 14 of the Consumer Protection Code. The double return of the amounts unduly deducted is applicable, according to Article 42, sole paragraph, of the CDC (Brazilian Consumer Protection Code), due to the violation of objective good faith by the financial institution, regardless of proof of bad faith, in accordance with the understanding established by the STJ (Superior Court of Justice) in the judgment of REsp 676.608/RS. Moral damages are not established, as the situation experienced by the plaintiff does not exceed the sphere of mere displeasure, with no evidence of significant psychological distress or embarrassment, according to the jurisprudence of the STJ and the TJ/PB (Court of Justice of Paraíba), which requires minimal proof of moral harm for the configuration of non-pecuniary damages. In light of the partial granting of the appeal, the burden of costs is redistributed 50% (fifty percent) to each party, with no compensation allowed, and the enforceability of the costs is suspended due to the legal aid granted to the plaintiff. IV. DECISION AND LEGAL ARGUMENT Appeal partially granted. Legal argument: The absence of a physical signature on loan agreements involving elderly individuals, as required by State Law No. 12.027/2021, renders the contract null and void due to lack of valid proof.imposing on the financial institution the obligation to return double the amounts unduly deducted, pursuant to article 42, sole paragraph, of the Consumer Protection Code (CDC). The establishment of moral damages requires proof of actual psychological distress or significant embarrassment, not characterizing mere everyday annoyance as grounds for compensation. Relevant provisions cited: CF/1988, art. 230; CDC, arts. 14 and 42, sole paragraph; CPC, art. 373, items I and II; State Law No. 12.027/2021; Statute of the Elderly, art. 2. Relevant jurisprudence cited: STF, ADI 7027, Rel. Min. Gilmar Mendes, j. 14.10.2022; STJ, REsp 676.608/RS, Rel. Min. Paulo de Tarso Sanseverino, j. 24.03.2010; STJ, AgInt in REsp 1988191/TO, Rel. Min. Raul Araújo, j. 03.10.2022; TJ/PB, AC nº 0804384-02.2023.8.15.0251, Rel. João Batista Vasconcelos, j. 22.03.2024. (CIVIL APPEAL n. 0807435-84.2024.8.15.0251, rapporteur CARLOS EDUARDO LEITE LISBOA, 2nd Civil Chamber, judged on 17/12/2024).

Furthermore, it should be noted that outside the scope of State Law, the allegation of nullity of a contract signed by an elderly person does not automatically lead to the granting of the requests. In other cases, the TJPB (Court of Justice of Paraíba) has understood that the consumer’s tacit consent, given the repeated use of credit provided by the financial institution, is an instrument capable of recognizing the legality of the contract in light of the principle of *non venire contra factum proprium* (not to act against one's own prior conduct), which, to a certain extent, reflects the dissenting opinion of Minister André Mendonça that the free discernment to contract and the broad access to digital means should not lead to contractual nullity due to the absence of a physical signature.

In this regard, the understanding of Judge Maria de Fátima Moraes Bezerra Cavalcanti Maranhão is cited:

CIVIL AND CONSUMER LAW. CIVIL APPEAL. DECLARATORY ACTION OF NON-EXISTENCE OF DEBT COMBINED WITH REPETITION OF UNDUE PAYMENT AND COMPENSATION FOR MORAL DAMAGES. CONSIGNED LOAN. USE OF DEPOSITED FUNDS. CHARGES ON CREDIT LIMIT. PRINCIPLE OF NON VENIRE CONTRA FACTUM PROPRIUM. ABSENCE OF UNLAWFUL ACT. APPEAL DISMISSED. I. Case under examination 1. Civil appeal filed against a judgment that dismissed the claims made in a Declaratory Action of Non-Existence of Debt combined with Repetition of Indebtedness and Compensation for Moral Damages filed against Banco Bradesco SA, given the proof of receipt and use of the amounts of the payroll loan and the legality of charging fees for the use of the credit limit. II. Issue under discussion 2. There are two issues under discussion: (i) to define whether there is no debt related to the contested loan; (ii) to establish whether the charges made as fees on the credit limit are undue. III. Reasons for the decision 3. The receipt and use of the amounts of the payroll loan demonstrate the appellant's consent, attracting the application of the principle of non venire contra factum proprium and dismissing the allegation of non-existence of debt. 4. The absence of a physical contract does not invalidate the obligation, given the documentary proof of the transfer of funds and the appellant's conclusive conduct. 5. The charging of fees on the used credit limit is lawful, constituting a regular exercise of the financial institution's right. 6. In the absence of an unlawful act or failure in the provision of service, there is no right to restitution of undue payment or compensation for moral damages. IV. Ruling and thesis 7. Appeal dismissed. Judgment thesis: "1. The receipt and use of the amounts of a payroll loan constitute tacit consent of the contracting party, dismissing the claim of non-existence of debt. 2. The use of the bank credit limit generates valid charges, and its collection does not constitute illegality. 3. In the absence of an unlawful act, an award of material and moral damages is inadmissible.”__________Relevant provisions cited: CF/1988, art. 5, XXXVI; CC, arts. 186 and 927; CDC, art. 14, § 3º, I; CPC/2015, art. 373, II. Relevant jurisprudence cited: TJPB, Civil Appeal No. 0801535-17.2022.8.15.0211, Rel. Des. Romero Marcelo da Fonseca Oliveira, j. 10/26/2023; TJPB, Civil Appeal No. 0800114-80.2019.8.15.0151, Rel. Desa. Maria de Fátima Moraes Bezerra Cavalcanti Maranhão, j. 05/23/2021; TJPB, Civil Appeal No. 0800748-66.2021.8.15.0261, Rel. Des. Romero Marcelo da Fonseca Oliveira, judgment of 12/08/2022; TJPB, Civil Appeal No. 0803866-69.2022.8.15.0211, Rel. Des. Leandro dos Santos, judgment of 24/07/2023; TJPB, Civil Appeal No. 0800077-88.2023.8.15.0191, Rel. Des. José Ricardo Porto, judgment of 29/09/2023. Having reviewed, reported, and discussed these proceedings, identified above: The First Specialized Civil Chamber of the Court of Justice of Paraíba, in an ordinary virtual session held, AGREES…By unanimous vote, the appeal was DENIED. (CIVIL APPEAL No. 0801145-70.2024.8.15.0601, Judge MARIA DE FÁTIMA MORAES BEZERRA CAVALCANTI MARANHÃO, 1st Civil Chamber, decided on 05/28/2025).

Based on the judgments transcribed above, it can be inferred that, even if there is disagreement regarding the particularities of the specific case and the free discernment of the eminent Judges, the application of the State Law can be considered an important milestone in guaranteeing the rights of the elderly in the State of Paraíba, ensuring greater security and balance in contractual and consumer relations.

4. Final considerations

The analysis developed throughout this article allows us to conclude that Law No. 12,027/2021 of Paraíba, by requiring the physical signature of elderly individuals on credit operation contracts signed electronically or by telephone, constitutes a legitimate exercise of the concurrent legislative competence of the member states in matters of consumer protection, as provided for in Article 24, items V and VIII, of the Federal Constitution. This is a norm that strengthens, and does not contradict, the federal consumer protection microsystem, by giving concrete expression to the duty of adequate information provided for in Articles 52 and 54-D of the Consumer Protection Code (CDC), with specific attention to the age of the contracting party.

The Supreme Federal Court's ruling on ADI 7.027/PB reaffirms this understanding by recognizing, by majority vote, that the Paraíba state law does not regulate the core contractual aspects of the credit relationship, which is the exclusive domain of the Federal Government, but only ensures that elderly consumers have prior and documented knowledge of the contractual clauses.

The application of the precedent by the TJPB (Court of Justice of Paraíba) demonstrates that the state law has produced concrete effects in the protection of elderly consumers, with the recognition of the nullity of payroll loan contracts signed without a physical signature and the consequent double repayment of the undue amount, even though the configuration of moral damages and the allegation of tacit consent continue to depend on the particularities of each specific case.

It can be concluded, therefore, that Law No. 12,027/2021 and the judgment that confirmed it represent a relevant normative milestone, albeit not without tensions, in the difficult task of reconciling digital inclusion with the differentiated protection of vulnerable groups in consumer relations. The topic, however, is far from exhausted: the consolidation of the jurisprudence of the TJPB (Court of Justice of Paraíba), the possible enactment of similar regulations by other states, and the very advancement of digital credit regulation in the country indicate that the matter should continue to demand attention from legal scholars, the Judiciary, and the legislature in the coming years.

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[3] Direct action of unconstitutionality. 2. Law no. 12,027, of August 26, 2021, of the State of Paraíba. 3. Rules that oblige elderly people to physically sign credit operation contracts entered into electronically or by telephone. Possibility. 4. Supplementary competence of the States to legislate on consumer protection. Precedents. 5. Adequacy and proportionality of the challenged rule for the protection of the elderly. 6. Direct action of unconstitutionality known and judged unfounded. (ADI 7027, Rapporteur: GILMAR MENDES, Full Court, judged on 12-17-2022, ELECTRONIC PROCESS DJe-s/n DIVULG 01-24-2023 PUBLIC 01-25-2023).

[4] SUMMARY: PRELIMINARY INJUNCTION IN A DIRECT ACTION OF UNCONSTITUTIONALITY. CONVERSION INTO A FINAL JUDGMENT. LAW NO. 20,276 OF PARANÁ. PROHIBITION ON FINANCIAL INSTITUTIONS, BANKING CORRESPONDENTS AND LEASING COMPANIES FROM CONDUCTING ADVERTISING OR ACTIVITIES TO CONVINCE RETIRED AND PENSIONED PERSONS TO TAKE OUT LOANS. CONCURRENT COMPETENCE OF THE STATE TO LEGISLATE ON CONSUMER PROTECTION. ECONOMIC AND SOCIAL VULNERABILITY OF RETIRED AND PENSIONED PERSONS. FULL PROTECTION FOR THE ELDERLY. DIRECT ACTION OF UNCONSTITUTIONALITY DECLARED UNFOUNDED. 1. The prohibition by Paraná State Law No. 20.276/2020 against financial institutions, banking correspondents, and leasing companies from conducting telemarketing, commercial offers, proposals, advertising, or any type of activity aimed at persuading retirees and pensioners to enter into loan agreements results from the legitimate exercise of the concurrent competence of the federated entity in matters of consumer protection, supplementing the principles and norms of the Consumer Protection

Code and reinforcing the protection of a group in a situation of special economic and social vulnerability. 2. Direct action declared unfounded. (ADI 6727, Rapporteur: CÁRMEN LÚCIA, Full Court, decided on 12-05-2021, ELECTRONIC PROCESS DJe-096 PUBLISHED 19-05-2021 PUBLIC 20-05-2021).

[5] DIRECT ACTION OF UNCONSTITUTIONALITY. STATE LAW DEFINING A VALIDITY REQUIREMENT FOR THE CELEBRATION OF A CREDIT OPERATION CONTRACT. EXCLUSIVE COMPETENCE OF THE UNION TO LEGISLATE ON CIVIL LAW: USURPATION. PROPORTIONALITY: ABSENCE. MERITS. 1. A state law that establishes a validity condition for credit operation contracts signed electronically or by telephone, consisting of the mandatory physical signature of the elderly contracting person, deals with contract law, usurping the exclusive competence of the Union to legislate on civil law (CRFB, art. 22, I). 2. Prohibiting elderly people from a legitimate right granted to people in general, to enjoy the technological facility provided by digital signatures, may create a situation that creates more obstacles than it protects the vulnerable group in question. 1. Disproportionality of the measure that does not adequately achieve its intended purpose. 2. According to information gathered by the Central Bank in the 2021 Financial Citizenship Report, of the 34 million elderly people, who represent 16% of the national population, 95% have a relationship with the financial system and at least 50% have internet access. 3. Direct action of unconstitutionality that is deemed admissible, to establish the formal and material unconstitutionality of State Law No. 12,027 of 2021, of Paraíba (ADI 7027, Vote-concurring Minister ANDRÉ MENDONÇA, Full Court, judged on 12/17/2022, ELECTRONIC PROCESS DJe-s/n PUBLISHED 01/24/2023 PUBLIC 01/25/2023).