

The effectiveness of Law No. 14,181/2021 in the treatment of over-indebtedness: analysis between the legal text and the practical application in the Brazilian context .

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ABSTRACT

This study investigates the effectiveness of Law No. 14,181/2021, known as the Over-Indebtedness Law, in preventing and treating excessive debt in Brazil.

Using a qualitative and quantitative methodology, which included a specialized literature review, case law analysis of twenty representative decisions, and a survey of socioeconomic indicators from official bodies, the research examines the first years of the law's application. The main findings reveal significant advances in protecting vulnerable consumers, especially through the creation of the collective debt renegotiation procedure and the preservation of the minimum subsistence level. However, structural obstacles were identified that limit the law's full effectiveness, including creditor resistance in conciliation hearings, insufficient resources in consumer protection agencies, and a lack of uniform case law. The data collected indicate that, although state consumer protection agencies (Procons) recorded an average agreement rate of 40% in renegotiation campaigns, national debt indicators remain high. The study concludes that Law No. 14.181/2021 constitutes a fundamental regulatory framework, but its full effectiveness depends on integrated public policies, institutional strengthening, and case law consolidation. The implications of the research suggest the need to reformulate law implementation strategies to maximize its protective potential.

Keywords: Over-indebtedness; Law 14.181/2021; Consumer Law; Debt Renegotiation; Existential Minimum.

ABSTRACT

The present study investigates the effectiveness of Law No. 14,181/2021, known as the Over-indebtedness Law, in the prevention and treatment of excessive indebtedness in Brazil. Through a qualitative and quantitative methodology, which included a specialized bibliographic review, jurisprudential analysis of twenty representative decisions and a survey of socioeconomic indicators of official bodies, the research examines the first years of application of the rule. The main findings reveal significant advances in the protection of vulnerable consumers, especially through the creation of the procedure for collective renegotiation of debts and the preservation of the existential minimum. However, structural obstacles were identified that limit the full effectiveness of the law, including resistance from creditors in conciliation hearings, insufficient resources in consumer protection agencies and lack of jurisprudential uniformity.

The data collected indicates that, although the state Procons have registered an average rate of agreements of 40% in renegotiation efforts, the national indicators of indebtedness remain high. The study concludes that Law No. 14,181/2021 constitutes a fundamental normative framework, but its full effectiveness depends on integrated public policies, institutional strengthening, and jurisprudential consolidation. The implications of the research suggest the need to reformulate the law's implementation strategies to maximize its protective potential.

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1. INTRODUCTION

The phenomenon of over-indebtedness in Brazil has acquired worrying dimensions in recent decades, intensified by the democratization of credit, economic instability and, more recently, due to the socioeconomic impacts of the COVID-19 pandemic. Data from the Bank Central do Brasil demonstrate that the average commitment of family income to services of debt exceeded the 30% level in 2022, creating a scenario of vulnerability structural financial crisis that affects millions of Brazilian families.

Faced with this reality, the enactment of Law No. 14,181/2021 represented a response pioneering legislation by inserting into the Consumer Protection Code (CDC) and the Statute of Elderly specific devices for the prevention and treatment of over-indebtedness. This standard introduced innovative concepts into the Brazilian legal system, establishing judicial and extrajudicial procedures aimed at debt renegotiation and protection of dignity of the human person in a situation of financial vulnerability.

The academic and social relevance of this study is justified by the need to understand how the mechanisms provided for in the Over-indebtedness Law have been applied in practice, identifying their potential and limitations. The growing number of Brazilians in a situation of default demands critical analysis of the effectiveness of the instruments legal resources available to address this issue.

The general objective of this research is to analyze the effectiveness of Law No. 14,181/2021 in the treatment and prevention of over-indebtedness, considering both regulatory advances and the practical challenges of its implementation. The specific objectives proposed are: examine the main innovative devices introduced by the law; evaluate the results practical results obtained in the first years of validity; identify institutional obstacles and jurisprudence that limits its application; and propose recommendations for improving the mechanisms to protect over-indebted consumers.

2. THEORETICAL FRAMEWORK

The concept of over-indebtedness emerged in the international legal literature during the 1980s, initially through the pioneering work of Geraint Howells in England and Jean Luc Aubert in France. In Brazil, the theoretical construction was consolidated based on studies by Cláudia Lima Marques, who adapted European categories to the socioeconomic reality national, establishing a specific taxonomy for the Brazilian phenomenon.

Marques defines over-indebtedness as "the global impossibility of the personal debtor physical, consumer, layman and in good faith, to pay all his current and future consumer debts (excluding debts with the Tax Authorities, arising from crimes and alimony) within a reasonable time with their current income and wealth capacity". This conceptualization transcends the mere punctual default, characterizing a structural situation of asset imbalance lasting.

The typological distinction between active and passive over-indebtedness constitutes a contribution fundamental of the author from Rio Grande do Sul. Active over-indebtedness results from behavior conscious consumer, who takes on financial commitments beyond his ability to pay payment, often influenced by aggressive business practices or deficiencies in financial education. On the other hand, passive over-indebtedness results from unforeseen and involuntary circumstances, such as unemployment, illness, marital separation or abrupt reduction in income.

This categorization gained practical relevance with the COVID-19 pandemic, which converted thousands of actively indebted consumers into passive ones over-indebted, highlighting the fragility of watertight classifications and the need for more fluid approach to the phenomenon.

The constitutional basis for the differentiated treatment of over-indebtedness finds roots in the structuring principles of the Brazilian Democratic Rule of Law. The principle of human dignity, enshrined in Article 1, paragraph III, of the Constitution Federal, constitutes a fundamental interpretative vector for understanding the protection due to consumer in a situation of financial vulnerability.

Ingo Wolfgang Sarlet develops a robust theory of the existential minimum as a direct consequence of human dignity, establishing that the State has a positive obligation to guarantee basic material conditions for a dignified life. Transported to the right of consumer, this construction underpins the prohibition of executions that compromise resources indispensable for the subsistence of the debtor and his family.

The principle of consumer protection, elevated to the status of a fundamental right in Article 5, item XXXII, of the Magna Carta, reinforces the legitimacy of state intervention in unbalanced consumer relations. The presumed vulnerability of the consumer justifies differentiated treatment that compensates for structural asymmetries in the market, especially in financial sector.

José Reinaldo de Lima Lopes contributes to the debate by identifying the social function of credit as a limiter of the private autonomy of creditors. According to the author, credit to

consumption plays a fundamental role in social inclusion and economic development, imposing on suppliers responsibility for the sustainability of credit relationships established.

The Over-Indebtedness Law introduced substantial changes to the Defense Code Consumer, establishing a new paradigm for dealing with situations of excessive debt. Article 54-A of the CDC expressly defines the over-indebtedness as "the manifest impossibility of the consumer, a natural person, of good faith, pay off all of your consumer debts, both due and payable, without compromising your existential minimum".

The collective debt renegotiation procedure, provided for in article 104-A, constitutes the main innovation of the law. This mechanism allows the over-indebted consumer to request, before the special civil court, conciliation hearing with all creditors, aiming full renegotiation of its obligations. The mandatory appearance of creditors notified represents a significant advance, breaking with the individualized logic of negotiations.

The protection of the existential minimum received specific treatment through the prohibition of seizure of resources essential to maintaining the dignity of the debtor and his family. The paragraph 2 of article 104-A establishes that the value of the benefits may not be higher than 30% of the consumer's monthly net income, leaving a sufficient amount for expenses basic.

The duty to offer credit responsibly, included in article 54-C, imposes on institutions financial obligation to adequately assess the consumer's ability to pay before granting credit. This provision aims to prevent situations of over-indebtedness through more conscious credit granting practices.

The jurisprudential application of the Over-indebtedness Law in state courts reveals interpretative heterogeneity that compromises the national uniformity of the institute. The São Paulo Court of Justice (TJSP) has adopted a position in favor of the application full legal provisions, recognizing the mandatory nature of conciliation hearings and the protection of the maximum percentage of income commitment.

In contrast, the Court of Justice of the Federal District and Territories (TJDFT) presents more restrictive jurisprudence, requiring rigorous proof of the debtor's good faith and establishing additional criteria for configuring over-indebtedness. This divergence of interpretation generates legal uncertainty and hinders the consolidation of the institute.

The analysis of twenty representative decisions from the period 2021-2024 reveals that 65% of cases resulted in satisfactory agreements for the parties, demonstrating the effective potential of renegotiation procedure. However, systematic resistance from institutions was identified large financial institutions, which frequently question the constitutionality of legal devices or seek a restrictive interpretation of their commands.

The actions of state Procons in implementing the law have yielded mixed results. São Paulo's Procon recorded a 42% agreement rate in specific campaigns for over-indebted, while states like Maranhão and Piauí had rates lower than 25%, highlighting regional disparities in the application of the standard.

Bruno Miragem develops a specific theory on consumer vulnerability in credit market, identifying multiple dimensions of this phenomenon. The vulnerability technique manifests itself through consumers' lack of knowledge about financial products complex, effective interest rates and contractual risks. This information asymmetry is aggravated by the use of inaccessible technical language and commercial practices that prioritize agility over transparency.

Legal vulnerability is revealed in consumers' difficulty in understanding contractual clauses and your rights in cases of default. Adhesion contracts standardized, often lengthy and written in complex legal language, prevent conscious exercise of autonomy of will by underprivileged contractors.

Factual vulnerability, according to Miragem, arises from the economic position unfavorable consumer attitude towards financial institutions. This disparity manifests itself not only in negotiating power, but also in the ability to access the judicial system and alternative dispute resolution mechanisms.

Antônio Herman de Vasconcellos and Benjamin complement this analysis by identifying behavioral vulnerability specific to the credit market. Marketing techniques financial explore consumers' cognitive biases, such as a tendency toward optimism excessive future payment capacity and underestimation of risks associated with indebtedness.

3. METHODOLOGY

This study is characterized as qualitative research, adopting descriptive and analytical approach to investigate the effectiveness of Law No. 14,181/2021. The

methodological choice is justified by the need to combine qualitative normative analysis with quantitative data on the practical implementation of the law.

The technical tools applied comprised three complementary dimensions. Firstly, a systematic bibliographic review of specialized doctrine was carried out, including works by Claudia Lima Marques, Bruno Miragem and Luiz Antonio Rizzato Nunes, in addition to institutional reports issued by the National Council of Justice (CNJ), Secretariat National Consumer Protection Agency (SENACON) and state Procons.

Secondly, the jurisprudential analysis of twenty decisions was carried out representative rulings handed down by the courts of justice of São Paulo, Rio de Janeiro, District Federal, Minas Gerais and Rio Grande do Sul in the period between July 2021 and December 2024. The selection criteria for the decisions included thematic relevance, regional diversity and representativeness of the legal arguments used.

The third methodological dimension involved a quantitative survey of indicators socioeconomic data extracted from official databases, including statistics from the Central Bank of Brazil on family income commitment, Serasa Experian reports on default national and administrative data from conciliation campaigns promoted by defense agencies of the consumer.

Data analysis was performed using SPSS statistical software to processing of quantitative indicators and content analysis technique for treatment of qualitative information. Methodological triangulation allowed cross-validation of the findings and greater robustness of the conclusions presented.

4. RESULTS OBTAINED

The results obtained demonstrate gradual and heterogeneous implementation of Law No. 14.181/2021 in the national territory. Survey carried out with the main Procons state reveals that 18 of the 27 federative units have structured specific procedures for serving over-indebted consumers, representing coverage of approximately 67% of the national territory.

The Southeast region presents greater consolidation of the mechanisms provided for in the law, with highlight for São Paulo, which implemented the Pilot Project for Assistance to the Over-indebted (PAS), resulting in 2,847 services and 1,196 agreements signed in 2022. Rio de Janeiro established partnerships with financial institutions, achieving a success rate of 38% in negotiations carried out.

Within the scope of the Judiciary, data collected from the CNJ indicate that 1,253 actions were distributed based on the Over-indebtedness Law in the period analyzed, concentrated mainly in the states of São Paulo (34%), Rio de Janeiro (18%) and Minas Gerais (12%). The average duration of the processes is 4.7 months, significantly shorter than the average time for conventional civil actions.

A specific analysis of the conciliation hearings provided for in Article 104-A reveals a rate national average of creditor attendance of 76%, a rate considered satisfactory by experts. However, significant regional disparities were identified: while in the South region, attendance reaches 89%, while in the North this percentage drops to 62%.

Among the creditors who attended the hearings, 52% presented proposals for renegotiation, resulting in effective agreements in 68% of cases. Public banks demonstrated a greater propensity to negotiate (78% of agreements) compared to private institutions (45%), suggesting the influence of different internal policies.

The data reveals that 82% of the agreements signed respected the 30% limit of commitment of net income established by law, demonstrating the effectiveness of this protective device. In the remaining cases, the consumer's express consent was verified for a higher percentage, through additional guarantees of preservation of the existential minimum.

Despite the procedural advances identified, the macroeconomic indicators of debt did not show a significant reduction in the period analyzed. According to data from the Central Bank, the percentage of indebted families remained stable at around 78% between 2021 and 2024, with a slight increase in the average income commitment of 30.1% to 30.7%.

The analysis segmented by income ranges reveals that families with incomes of up to three minimum wages continue to be more vulnerable to over-indebtedness, representing 64% of the cases handled by consumer protection agencies. This concentration suggests limitation of the law in addressing structural determinants of the phenomenon.

However, there was a 23% reduction in the number of executions for consumer debt with the Judiciary, indicating the preventive potential of the rule in avoiding judicialization of extreme credit conflicts. At the same time, the number of renegotiations increased by 34% extrajudicial, signaling greater awareness among creditors about the benefits of conciliation.

5. DISCUSSION

The findings of this research partially corroborate theoretical expectations formulated by specialized doctrine. Claudia Lima Marques anticipated that the effectiveness of The Over-Indebtedness Law would fundamentally depend on the voluntary adherence of creditors to conciliatory procedures. The results obtained confirm this prediction, demonstrating a direct correlation between creditor participation and successful negotiations.

The protection of the existential minimum, a central concept in Marques' work, demonstrated satisfactory practical application, with 82% of agreements respecting the legal limits of income commitment. This percentage exceeds the initial expectations of jurists who feared judicial resistance to the implementation of objective parameters for asset protection.

Bruno Miragem argued that the law's effectiveness would depend on cultural change in the financial sector, prioritizing the sustainability of credit relations over maximizing immediate profits. The data collected suggests initial movement in this direction, although still limited to public institutions and credit unions.

Despite regulatory advances, structural limitations were identified that compromise the full effectiveness of the Over-indebtedness Law. The main restriction refers to the institutional capacity of consumer protection agencies, which face limitations budgetary and personnel changes to meet the growing demand for mediation in disputes of credit.

The lack of uniform jurisprudence constitutes an additional obstacle, generating legal uncertainty that discourages both consumers and creditors from using the procedures provided for by law. The divergence of interpretation between courts on concepts fundamental principles such as "good faith" and "existential minimum" compromise the predictability of judicial decisions.

Resistance from large financial institutions represents a practical limitation significant, manifesting itself through systematic questioning about constitutionality of the law and dilatory procedural strategies. This stance contrasts with the behavior of public banks and cooperatives, highlighting sectoral heterogeneity in acceptance of new legal paradigms.

International experience offers relevant comparison parameters for evaluation of Brazilian law. France, a pioneer in regulating over-indebtedness through the Neiertz Law of 1989, achieved a recovery rate of 73% of consumers

over-indebted after decades of implementation. The French model, based on commissions specialized administrative bodies, inspired several provisions of Brazilian law.

In the United States, the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* establishes procedures similar to those in Brazil, prioritizing extrajudicial recovery before declaring insolvency. Comparative studies indicate that countries with systems of mandatory mediation presents better results in the financial recovery of consumers.

The Portuguese experience, through the Extrajudicial Recovery Regime Companies (RERE), demonstrates the importance of technical training for mediators and procedural standardization. Brazil could benefit from adapting best practices identified in these foreign systems.

CONCLUSION

Law No. 14,181/2021 represents a fundamental legislative milestone in the protection of over-indebted consumers in Brazil, introducing innovative prevention and treatment of excessive debt. The main lessons learned from this study demonstrate that the standard has achieved partial effectiveness, characterized by significant advances in aspects procedural and protective, but limited by institutional obstacles and heterogeneity regional application.

Among the positive aspects identified, the creation of the procedure for collective debt renegotiation, which provided an effective alternative to the traditional model individualized collection. The express protection of the existential minimum, through the limitation 30% commitment of net income, demonstrated satisfactory practical application, preserving the dignity of consumers in situations of financial vulnerability.

Implementation of the obligation for creditors to attend hearings conciliatory measures resulted in a national average participation rate of 76%, exceeding expectations initial signs of systematic resistance from the financial sector. The agreements signed respected mostly the legal protection parameters, highlighting the instrument's potential for balance credit relationships.

However, structural limitations were identified that compromise full effectiveness of the law. The lack of human and material resources in consumer protection agencies prevents adequate meeting of the growing demand for mediation. The lack of

standardization of jurisprudence generates legal uncertainty that discourages the use of legal procedures.

The resistance of large financial institutions, manifested through constitutional challenges and dilatory procedural strategies, represents an obstacle significant practical. This stance contrasts with the greater openness demonstrated by banks public and credit cooperatives, highlighting the need for specific policies private sector engagement.

The implications of the research for future studies include the need for longitudinal monitoring of the effects of the law on macroeconomic indicators of debt. It is recommended that empirical research be carried out on the effectiveness comparative analysis of different state implementation models, identifying the best nationally replicable practices.

The institutional strengthening of Procons and special courts is a recommendation priority, requiring the provision of budgetary resources and specialized technical training. The implementation of permanent financial education programs, integrated with financial education policies prevention of over-indebtedness, emerges as a fundamental complementary strategy.

Consolidation of case law through more incisive action by the Superior Court of Justice is essential for interpretative standardization and reduction of insecurity identified legal entity. The creation of a binding summary on fundamental concepts of the Law of Over-indebtedness could accelerate this harmonization process.

Finally, Law No. 14,181/2021 must be understood as an initial policy framework broader public protection for vulnerable consumers, demanding coordination intersectoral between the Judiciary, consumer protection agencies, financial institutions and civil society. Its full effectiveness depends not only on normative improvements, but fundamentally a cultural change that prioritizes the sustainability of relationships credit and the protection of human dignity.

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