THE ESTABLISHMENT OF THE INITIAL AGE MILESTONE FOR THE RECOGNITION OF THE RURAL PERIOD

O ESTABELECIMENTO DO MARCO INICIAL DA IDADE PARA O RECONHECIMENTO DO PERÍODO RURAL

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Resume

The rural community in Brazil has long faced discrimination, resulting in the deprivation of social security rights. With the promulgation of the 1988 Constitution and the enactment of Laws 8.212/91 and 8.213/91, equality was established between urban and rural populations. This study analyzed legislative and jurisprudential evolution, focusing on the analysis of the rural age limit for acquiring retirement, both by age and by contribution time. The research, based on a comprehensive review of literature and documents, addressed legislative changes, such as the Constitution and the mentioned laws, emphasizing equality between populations. Documentary analysis included legal cases regarding the age threshold for the recognition of rural work. The study also explored hybrid retirement, highlighting relevant legislation and changes due to the 2019 Reform. The methodology distinguished between retirement based on contribution time and hybrid retirement, aligning with jurisprudence and INSS application in recognizing rural work at any age. This approach provided a critical and comprehensive understanding of social security treatment for the rural community, significantly contributing to the comprehension of this complex issue.

Keywords: Equal treatment; Rural activity; Minimum age; 1988 Constitution; Law 8.213/1991; Social security rights; Protection of minors.

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1 INTRODUCTION

For a long period, the rural community was subjected to discriminatory treatment, which resulted in the deprivation of several social security rights. With the promulgation of the 1988 Federal Constitution and the subsequent regulation introduced by Laws Nos. 8.212/1991 and 8.213/1991, the principle of equal treatment between urban and rural populations was established, providing the rural population with more effective guarantees of their social security rights. Although Law No. 8.213/1991 established the criteria and methods for proving rural activity, judicial recognition exceeded the limits established by the legislation. One area of controversy that emerged concerns the initial age threshold for recognizing rural work activity.

Hybrid retirement based on age, a type of social security benefit intended for workers who have performed both rural and urban work, represents recognition and appreciation of the efforts of those whose professional trajectories have encompassed both work environments. Established by Law No. 11,718/2008, which amended Article 48, paragraph 2, of the Social Security Benefits Law (Law No. 8.213/1991), this form of retirement considers both rural and urban work.

Retirement based on age, governed by Article 48 of Law No. 8,213/1991, is granted to an insured person who, after satisfying the required qualifying period, reaches the age of 65 for men or 60 for women. The distinctive feature of hybrid retirement based on age lies in the possibility of including periods of work performed in both rural and urban areas, subject to requirements like those applicable to retirement based on age. Consolidated case law establishes that this type of retirement does not require the immediate performance of rural activity during the period preceding the application for the benefit.

The 2019 Social Security Reform introduced changes to the eligibility requirements for urban retirement based on age, establishing a requirement of 15 years of contributions and a minimum age of 62 for women and 65 for men. In addition, the method used to calculate the monthly benefit amount was modified and is now based on 60% of the average contribution salaries, with proportional increases for contribution periods exceeding the minimum requirements.

With respect to crediting periods of rural work for retirement based on length of contributions, there is a distinction in relation to hybrid retirement based on age. In the former, the use of periods of service performed by rural workers is restricted to periods prior to Law No. 8.213/1991. In the latter, no such limitation exists, thereby allowing recognition without the corresponding payment of contributions, including periods of work performed after the enactment of that legislation.

This legislative and jurisprudential development reflects the understanding that the constitutional prohibition against work at certain ages should not deprive insured persons who performed work activities during such periods of recognition of their social security rights. Brazilian case law and the administrative application of the rules by the National Social Security Institute (*Instituto Nacional do Seguro*

Social – INSS) converge in recognizing rural work performed at any age for purposes of satisfying the requirements for hybrid retirement based on age.

This research aimed to conduct a critical analysis of the legislative and jurisprudential evolution concerning the social security treatment afforded to the rural community in Brazil. By addressing regulatory changes and judicial decisions over time, the study sought not only to clarify the technical and legal aspects of this social security benefit, but also to understand the dynamics surrounding the inclusion of periods of work performed in both rural and urban areas.

The methodology employed in this research was based on a comprehensive bibliographic and documentary review examining the evolution of the social security treatment of the rural community in Brazil. The study began with a careful analysis of the literature, including academic articles, specialized works, and legal documents, to understand significant legislative changes, such as the 1988 Federal Constitution and Laws Nos. 8.212/1991 and 8.213/1991, which established principles of equality between urban and rural populations.

The documentary research focused on Public Civil Action No. 5017267-34.2013.4.04.7100, which resulted in judicial decisions that challenged legislative limitations, particularly the controversy concerning the initial age threshold for recognizing rural work activity. A critical analysis of hybrid retirement based on age was also incorporated, with emphasis on the relevant legislation, such as Law No. 11.718/2008, and the changes introduced by the 2019 Social Security Reform. The study examined case law that shaped this type of retirement benefit, particularly with respect to the inclusion of periods of work performed in both rural and urban areas without requiring the immediate performance of rural activity.

The distinction between crediting periods of rural work for retirement based on length of contributions and hybrid retirement based on age was analyzed, emphasizing the convergence between Brazilian case law and the administrative application of the rules by the INSS regarding the recognition of rural work performed at any age. This methodological approach provided a critical and comprehensive understanding of the nuances of the social security treatment afforded to the rural community, resulting in well-founded conclusions and substantial contributions to the understanding of this complex subject.

2 BRIEF HISTORY OF SOCIAL SECURITY LEGISLATION FOR RURAL WORKERS

It was on March 2, 1963, through Law No. 4.214, that rural workers were covered by social security legislation for the first time. This law contained the Workers' Statute, which, in turn, created the Rural Workers' Assistance and Social Security Fund (*Fundo de Assistência e Previdência do Trabalhador Rural* – FUNRURAL).

The Rural Workers Assistance and Social Security Fund was intended to finance the provision of medical and social assistance to rural workers and their dependents and established a contribution levied on the commercialization of rural

production. Among the benefits made available to rural insured persons or their dependents were maternity assistance; sickness benefits; disability or old-age retirement benefits; survivor's pensions in the event of death; medical assistance; and funeral assistance.

The Basic Social Security Plan, established through Decree-Law No. 564 of May 1, 1969, and intended to cover employees not included under the general system provided for by Law No. 3.807 of August 26, 1960, included as mandatory insured persons employees in the rural sector of the sugarcane agro-industrial industry.

Still in 1969, on July 24, Decree-Law No. 704 expanded the Basic Social Security Plan to employees of companies producing and supplying agricultural products *in natura*. In addition, it introduced changes to the contribution system, which continued to be collected as a percentage of rural commercialization. In this case, the obligation to collect the contribution was transferred to the purchaser rather than remaining with the producer, except in cases in which the producer carried out the processing of the product itself. This measure was intended to facilitate oversight of contribution payments.

In turn, Decree No. 65.106 of September 5, 1969, approved the Rural Social Security Regulations and established:

> *Article 1. The Basic Social Security Plan, established by Decree-Law No. 564 of May 1, 1969, and amended by Decree-Law No. 704 of July 24, 1969, shall cover employees:*
>
> *I – in the agricultural sector of agro-industrial enterprises, except those referred to in Article 5 of Decree-Law No. 704 of July 24, 1969;*
>
> *II – of enterprises producing and supplying agricultural products in natura;*
>
> *III – of contractors or organizations that, although not organized as enterprises, use labor for the production and supply of agricultural products in natura;*
>
> *IV – seasonal workers, understood as employees, including rural workers, whose employment contracts are of a duration dependent on seasonal variations in agricultural activity.*[3]

On May 25, 1971, replacing the Basic Social Security Plan, Supplementary Law No. 11 established the Rural Workers' Assistance Program (*Programa de Assistência ao Trabalhador Rural* – PRORURAL), which consisted of the provision of old-age retirement benefits, disability retirement benefits, pensions, funeral assistance, health services, and social services, and identified rural workers and their dependents as beneficiaries.

That Supplementary Law defined a rural worker, for purposes of the Law, as an individual who performs rural services for employers in exchange for remuneration of any kind, as well as a producer, whether or not an owner, who works in rural activity without employees, individually or under a family-based

[3] DECRETO LEI Nº 65.106, DE 05 DE SETEMBRO DE 1969. Aprova o Regulamento da Previdência Social Rural e dá outras providências. Disponível em: . Acesso em: 08 mai. 2020.

subsistence regime, understood as the work of family members indispensable to their own subsistence and performed under conditions of mutual dependence and cooperation.

On December 19, 1972, Decree No. 69,919 approved the Regulations of the Rural Workers' Assistance Program, established by Supplementary Law No. 11 of May 25, 1971. Law No. 6.195 of December 19, 1974, in turn, assigned to FUNRURAL the granting of benefits arising from occupational accidents.

Decree No. 75.208 of January 10, 1975, extended PRORURAL benefits to self-employed prospectors and abolished the Prospectors' Assistance Foundation, while Decree No. 77.514 of April 29, 1976, approved the Regulations of Law No. 6.260 of November 6, 1975, which established social security and social assistance benefits for rural employees and their dependents.

Between the 1960s and the 1980s, a socioeconomic phenomenon also occurred: the exodus of the rural population, resulting from the country's industrialization process and the mechanization of agriculture. It should be emphasized, however, that there was no equal treatment between urban and rural populations from a social security perspective. To remedy this situation, the 1988 Federal Constitution introduced the principle of universality of coverage and service, with the purpose of ensuring equal treatment between urban and rural populations.

The provisions introduced by the 1988 Constitution were subsequently regulated by Laws Nos. 8.212/1991 and 8.213/1991.

3 REQUIREMENTS FOR RECOGNITION OF RURAL WORK PERIODS: RETIREMENT BASED ON AGE FOR RURAL WORKERS UNDER THE GENERAL SOCIAL SECURITY SYSTEM — CHANGES INTRODUCED BY CONSTITUTIONAL AMENDMENT NO. 103/2019

For the benefit to be granted before November 12, 2019, the date on which Constitutional Amendment No. 103/2019 was enacted, and therefore as a vested right, two requirements had to be satisfied: the insured person had to be at least 65 years of age if male or 60 years of age if female, and had to demonstrate completion of the qualifying period, that is, at least 180 months of contributions to the National Social Security Institute (*Instituto Nacional do Seguro Social* — INSS).

Following the Social Security Reform, the qualifying period under the permanent rule is 15 years, and the minimum age for women was increased to 62, while the minimum age for men remained 65. With respect to retirement based on age for rural workers, Constitutional Amendment No. 103/2019 did not establish the applicable requirements. It is therefore understood that the rules set forth in the Social Security Benefits Law, Law No. 8.213/1991, remain applicable.

To qualify for retirement based on age as a rural worker, the insured person must demonstrate completion of a 180-month qualifying period, whether through contributions or through periods of rural work as a rural worker and special insured person, pursuant to Article 25, item II, of Law No. 8.213/1991. The insured person

must also satisfy the minimum age requirement of 55 years for women and 60 years for men.

Article 39, item I, of Law No. 8.213/1991 requires a special insured person, in lieu of the qualifying period, to demonstrate the same number of months of rural activity. This provision remains applicable even after the 2019 Reform.

Rural workers classified as special insured persons are those who work under a family-based subsistence regime, that is, under conditions of mutual dependence and cooperation with their families. This category includes rural producers, artisanal miners, and artisanal fishers.

Law No. 8.213/1991, in regulating the category of special insured persons, provides as follows:

> *Article 11. The following individuals are mandatorily insured under the Social Security system: (Wording established by Law No. 8,647 of 1993)*
>
> *[…] VII — as a special insured person: an individual residing on rural property or in a nearby urban or rural settlement who, individually or under a family-based subsistence regime, even with the occasional assistance of third parties, acts in the capacity of:*
>
> *a) a producer, whether an owner, usufructuary, possessor, settler, grantor or grantee under a rural partnership or sharecropping agreement, borrower, or rural lessee, who engages in the following activity:*
>
> *b) […] c) the spouse or partner, as well as a child over 16 years of age or a person legally equivalent thereto, of the insured person referred to in subitems a and b of this item, provided that such person demonstrably works with the respective family group. (Included by Law No. 11,718 of 2008) […].*

Paragraph 2 of Article 55 of the same statute provides:

> ***§ 2.*** *The period of service completed by an insured rural worker before the effective date of this Law shall be counted regardless of the payment of the corresponding contributions, except for purposes of satisfying the qualifying period, as provided by regulation.*

To prove work performed in a rural area, documentary evidence must be submitted. Documents capable of demonstrating the performance of rural activities may include:

a) rural producer invoice books;

b) rural lease, partnership, sharecropping, or loan-for-use agreements, with the period of activity being recognized only from the date on which the document was registered or its signature was notarized;

c) civil certificates, such as marriage, birth, or death certificates of a family member, identifying the holder or another member of the family participating in the family-based subsistence regime as a farmworker;

d) rural workers' union records;

e) an identity card certificate indicating the person's occupation;

f) a military reservist certificate indicating the occupation of farmworker at the time of discharge from military service, among other documents demonstrating that the insured person and members of the insured person's family performed rural activities under conditions of mutual dependence and cooperation, without the use of machinery or employees.

In addition to documentary evidence, the Administrative Justification Procedure, provided for in Article 574 of Normative Instruction No. 77 — IN No. 77/2015 and subsequent provisions, may also be used to demonstrate rural work. Witnesses may likewise be heard at a hearing during judicial proceedings.

Crediting periods of rural work is important because it provides insured persons with the possibility of receiving a more favorable retirement income and allows them to accumulate additional contribution time, which is often necessary to qualify for retirement. It is also a right and a means of recognizing the value of rural workers' labor, as they frequently face difficult conditions and unique challenges in their work activities, including manual labor performed amid dust, sun, and rain, often without appropriate places in which to eat.

4 HYBRID RETIREMENT BASED ON AGE

Hybrid retirement based on age is a social security benefit available to workers who have performed both rural and urban work. It allows them to retire based on their entire contribution period, regardless of the location in which they worked. To qualify for hybrid retirement based on age, the requirements established by law must be satisfied. This form of retirement recognizes and values the effort and labor of workers whose professional trajectories were divided between rural and urban environments.

Hybrid or mixed retirement based on age was created by Law No. 11.718/2008, which amended Article 48, paragraph 2, of the Social Security Benefits Law, Law No. 8.213/1991. Under this type of benefit, known as hybrid or mixed retirement based on age, both rural and urban work are taken into consideration.

This form of retirement is directly associated with retirement based on age and is subject to similar requirements, while allowing periods of rural work to be used toward satisfying those requirements. The statute provides:

> ***Article 48.*** *Retirement based on age shall be payable to an insured person who, after satisfying the qualifying period required by this Law, reaches 65 years of age, if male, or 60 years of age, if female.*
>
> ***§ 1.*** *The age limits established in the caput shall be reduced to 60 and 55 years, respectively, for male and female rural workers referred to in subitem* ***a*** *of item I, subitem* ***g*** *of item V, and items VI and VII of Article 11.*
>
> ***§ 2.*** *For purposes of paragraph 1 of this Article, the rural worker must demonstrate the effective performance of rural activity, even if discontinuously, during the period immediately preceding the application for the benefit, for a period equal to the number of contribution months corresponding to the qualifying period for the benefit*

> *sought, including the period referred to in items III through VIII of paragraph 9 of Article 11 of this Law.*

In this situation, hybrid retirement is permitted. However, the worker must satisfy the same age requirement applicable to urban workers, namely 65 years for men and 60 years for women.

Rural work shall be proved through the same means applicable to any other type of benefit, including the additions introduced by Law No. 13.846/2019, which are essentially those listed in Article 106 of the Social Security Benefits Law. The new forms of proof are a self-declaration of rural activity and supplementary documentation.

There has been considerable debate regarding whether the insured person may be performing urban work at the time of the administrative application. This issue was resolved through a Joint Circular Memorandum published by the INSS. Questions concerning remote and discontinuous periods of rural activity were likewise adjudicated and settled under Topic No. 1.007 of the Superior Court of Justice (*Superior Tribunal de Justiça* — STJ).

Joint Circular Memorandum No. 01/DIRBEN/PFE/INSS, made public on January 4, 2018, consolidated the long-established judicial interpretation that the insured person is not required to be performing rural activity during the period immediately preceding the benefit application filing date (*data de entrada do requerimento* — DER).

Public Civil Action No. 5038261-15.4.04.7100, adjudicated by the Federal Regional Court for the Fourth Region, resulted in Precedent Statement No. 103, which provides:

> *PRECEDENT STATEMENT NO. 103. The granting of hybrid or mixed retirement based on age, provided for in Article 48, paragraph 3, of Law No. 8.213/1991, is not conditioned upon the insured person's performance of rural activity during the period immediately preceding the administrative application. The nature of the work performed during that period is therefore irrelevant.*

Accordingly, once the controversy was resolved, the performance of rural activity during the period immediately preceding the administrative application was no longer required. The insured person may perform urban work and use rural work completed in the past to satisfy the requirements for hybrid retirement based on age.

Topic No. 1.007 of the Superior Court of Justice guarantees the right to credit rural service completed at any time, even if discontinuously, in applications for hybrid retirement based on age.

Topic No. 1.007 has the force of a binding precedent and therefore applies generally and immediately throughout the judiciary. Its complete wording is as follows:

> *A period of rural service, even if remote and discontinuous and completed before the enactment of Law No. 8.213/1991, may be counted toward the qualifying period*

> *required to obtain hybrid retirement based on age, even where the corresponding contributions were not paid, pursuant to Article 48, paragraph 3, of Law No. 8.,213/1991, regardless of which type of work predominated during the qualifying period or the type of work performed when the age requirement was satisfied or when the administrative application was submitted.*

Accordingly, rural work may have been performed at any time, even discontinuously. Following the enactment of the 2019 Social Security Reform, urban retirement based on age underwent changes. The requirements are 15 years of contributions for both sexes, a minimum age of 62 years for women under the permanent rule, and 65 years for men.

For persons who satisfied the applicable requirements before the 2019 Social Security Reform, the monthly benefit amount was calculated as follows: first, the benefit calculation base was determined based on the simple arithmetic average of the highest 80% of contribution salaries since July 1994. A coefficient of 70% was then applied to the resulting benefit calculation base, with an additional 1% for each year of contributions exceeding the required minimum, up to a maximum of 100%.

Following Constitutional Amendment No. 103/2019, however, the monthly benefit amount shall correspond to 60% of the average of all contribution salaries beginning in July 1994, with an additional 2% for each year exceeding 20 years of contributions for men and 15 years of contributions for women, as also applies to retirement based on age. Periods during which the insured person performed rural activity shall be included in the calculation as though contributions had been made at the minimum contribution amount.

5 CREDITING RURAL WORK PERIODS FOR RETIREMENT BASED ON LENGTH OF CONTRIBUTIONS

As observed throughout this article, periods of rural activity may be used for more than one type of benefit, namely retirement based on length of contributions, retirement based on age for rural workers, and hybrid retirement based on age.

The principal distinction between the use of rural work periods for retirement based on length of contributions and their use for the forms of retirement based on age mentioned above is that, for retirement based on length of contributions, the possibility of counting rural service regardless of payment of the corresponding contributions is limited to periods preceding the effective date of Law No. 8.213/1991. For rural and hybrid retirement based on age, no such limitation exists, and the period may be recognized without the corresponding payment of contributions even when it was completed after the effective date of that Law.

Paragraph 2 of Article 55 of Law No. 8.213/1991 provides:

> ***§ 2.*** *The period of service completed by an insured rural worker before the effective date of this Law shall be counted regardless of payment of the corresponding*

> *contributions, except for purposes of satisfying the qualifying period, as provided by regulation.*[4]

Precedent Statement No. 24 of the National Uniformization Panel confirms this interpretation:

> *A period of service completed by an insured rural worker before the enactment of Law No. 8.213/1991, without payment of social security contributions, may be considered for the granting of a social security benefit under the General Social Security System (Regime Geral de Previdência Social — RGPS), except for purposes of satisfying the qualifying period, pursuant to Article 55, paragraph 2, of Law No. 8.213/1991.*[5]

It should be emphasized, as previously stated, that for the rural work of a special insured person to be recognized, that person must work for his or her own subsistence or that of the family under a family-based subsistence regime. Pursuant to Article 11, paragraph 1, of Law No. 8.213/1991, a family-based subsistence regime is understood as an activity in which the work of family members is indispensable to their own subsistence and socioeconomic development - of the family unit and is performed under conditions of mutual dependence and cooperation, without the use of permanent employees.

Documents belonging to family members may be used to prove periods of rural work. In view of the characteristics inherent in the so-called "family-based subsistence regime," together with the difficulties faced by rural workers and the informality prevailing at the time, case law firmly recognizes documents issued in the names of other family members as initial documentary evidence for purposes of proving rural work. The Federal Regional Court for the Fourth Region, through Precedent Statement No. 73, holds that "documents belonging to third parties who are members of the family group are admissible as initial documentary evidence of the effective performance of rural activity under a family-based subsistence regime."

Pursuant to Article 55, paragraphs 2 and 3, of Law No. 8,213/1991, a special insured person or rural worker seeking to have a period of rural service counted prior to the effective date of the Social Security Benefits Law is not required to prove payment of social security contributions.

With respect to periods after the effective date of Law No. 8,213/1991, where a special insured person or equivalent seeks to have rural service counted for purposes of retirement based on length of contributions, that person must prove payment of social security contributions as a voluntary insured person, in view of the statutory requirement.

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4 BRASIL. LEI 8.213, DE 24.07.1991. Dispõe sobre os planos da Previdência Social e dá outras providências. Diário Oficial [da] União, Brasília, 25.07.1991. Disponível em www.planalto.gov.br. Acesso em 30 mai. 2020.

5 BRASIL. TURMA NACIONAL DE UNIFORMIZAÇÃO. Súmula 24. Súmulas TNU. Disponível em . Acesso em 30 mai. 2020.

Rural worker status may be extended to the spouse, provided that rural activity constitutes the principal activity of the family group and the performance of agricultural services is demonstrated through documentary and testimonial evidence.

With respect to proof of rural work periods, beginning on January 1, 2023, such proof shall be established exclusively through registration. However, paragraph 2 of the same provision states that, for periods prior to that date, the special insured person shall prove the period during which rural activity was performed through a self-declaration ratified by accredited public entities.

Paragraph 3 of Article 55 of the same Law permits proof of activity through an administrative or judicial justification procedure but provides that such evidence shall produce effects only when supported by initial documentary evidence contemporaneous with the relevant facts. Evidence based exclusively on witness testimony is not admissible, except in cases of force majeure or fortuitous events.

The list established by legislation binds the Public Administration; however, other means of evidence are admissible in judicial proceedings, as the list is not considered exhaustive. Therefore, as a rule, proof of rural work requires documentary evidence demonstrating the effective performance of the activity, which may be corroborated through witness testimony.

6 INITIAL AGE THRESHOLD FOR RECOGNITION OF RURAL WORK PERIODS

The performance of rural activity, particularly during childhood, in most cases beginning at eight years of age, may be counted for retirement benefits. Periods of rural activity may be used for more than one type of benefit, namely retirement based on length of contributions, retirement based on age for rural workers, and hybrid retirement based on age.

The principal distinction between the use of rural activity periods for retirement based on length of contributions and their use for the forms of retirement based on age mentioned above is that, for retirement based on length of contributions, the possibility of counting rural service regardless of payment of the corresponding contributions is limited to periods preceding the effective date of Law No. 8,213/1991. For rural and hybrid retirement based on age, no such limitation exists, and such periods may be recognized without payment of the corresponding contributions even when they relate to periods after the effective date of that Law.

With respect to the initial age threshold for counting periods of rural activity, it is well known that the rural population was deprived of social security rights for many years. With the advent of the 1988 Federal Constitution and the predominance of the Principles of Universality of Coverage and Service and Uniformity and Equivalence of Benefits for Urban and Rural Populations, equal treatment was established and subsequently regulated by Social Security Benefits Law.

In 2018, the Federal Regional Court for the Fourth Region, through a decision rendered in Public Civil Action No. 5017267-34.2013.4.04.7100, held that, for social security purposes, work performed at any age may be taken into

consideration, thereby eliminating any minimum age threshold for counting such periods.

Despite that decision, the interpretation was not predominantly applied by the courts, which continued to use 12 years of age as the initial threshold for recognizing rural activity.

However, the Superior Court of Justice, through a decision issued by its First Panel in Appeal in Special Appeal No. 956,558, confirmed this interpretation and unanimously admitted, for social security purposes, the recognition of proven rural activity performed before the insured reached 12 years of age.

Finally, within the Public Administration itself, the publication of Joint Ordinance No. 7 of April 9, 2020, which established guidelines for compliance with Public Civil Action No. 5017267-34.2013.4.04.7100, began to permit recognition of both rural and urban work performed at any age, provided that it is proven. Accordingly, counting the period during which the insured person worked in a rural environment constitutes a legal requirement, provided that the existence of such work is demonstrated.

The Federal Regional Court for the Fourth Region holds that there is no minimum age for counting periods of work for purposes of providing social security protection to children. This interpretation was consolidated in the judgment of Public Civil Action No. 5017267-34.2013.4.04.7100:

> *SOCIAL SECURITY LAW. PUBLIC CIVIL ACTION FILED BY THE FEDERAL PROSECUTOR'S OFFICE SEEKING TO REMOVE THE MINIMUM AGE PROVIDED FOR IN ARTICLE 11 OF LAW NO. 8,213/1991 FOR PURPOSES OF RECOGNIZING PERIODS OF SERVICE AND CONTRIBUTIONS. FEDERAL PROSECUTOR'S OFFICE'S STANDING TO SUE. RECOGNITION. LEGAL EFFECTS OF THE JUDGMENT. NATIONWIDE SCOPE OF A DECISION RENDERED IN A PUBLIC CIVIL ACTION. ARTICLE 16 OF LAW NO. 7,347/1985. INTERPRETATION OF ARTICLE 7, ITEM XXXIII, OF THE FEDERAL CONSTITUTION. CHILD LABOR V. SOCIAL SECURITY PROTECTION. BRAZILIAN FACTUAL REALITY. INDISPENSABILITY OF SOCIAL SECURITY PROTECTION FOR CHILDREN. POSSIBILITY OF COUNTING WORK PERIODS WITHOUT A MINIMUM AGE LIMIT. PUBLIC CIVIL ACTION GRANTED IN FULL. JUDGMENT BY AN EXPANDED PANEL. ARTICLE 942 OF THE CODE OF CIVIL PROCEDURE. FEDERAL PROSECUTOR'S OFFICE'S APPEAL GRANTED. INSS APPEAL DENIED.*
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> *1. The Federal Prosecutor's Office's procedural interest concerns changing the agency's interpretation regarding the social security consequences arising from work performed before the minimum age threshold, an interpretation reflected, among other sources, in Opinion No. 76/2013. Although that Opinion represents an important development in the INSS's position on the matter, it does not render the judicial relief sought unnecessary. The Opinion permits the agency, once an employment relationship involving a minor under 16 years of age has been recognized by the labor courts, to regard the minor as an insured person and extend social security protection to him or her. Nevertheless — in addition to requiring prior recognition by the labor courts—it continues to deny protection in other situations involving work performed by persons under 16 years of age, described in the defense*

as voluntarily undertaken. Furthermore, the issue concerning the documentation and formalities required to prove such work would remain unresolved, demonstrating the continuing need for adjudication and, consequently, the existence of standing to sue.

2. The effects of a decision rendered in a public civil action may not be restricted by territorial boundaries, because such boundaries cannot be confused with the subjective effect of res judicata, which extends to all those participating in the legal relationship. The imposition of territorial limits, as provided in Article 16 of the Public Civil Action Law, does not impair the legally binding nature of the judicial decision with respect to the participants in the procedural relationship.

3. Accordingly, there is no violation of Article 16 of Law No. 7,347/1985, as alleged by the INSS, because the effectiveness of the decision rendered in the proceedings cannot be restricted to the geographical boundaries of the territorial jurisdiction of the adjudicating body, under penalty of endorsing the application of different rules to persons holding the same legal status.

4. Merits. The age limitation imposed by the INSS, which the Federal Prosecutor's Office seeks to overcome, originates from the interpretation given to Article 7, item XXXIII, of the Federal Constitution, which prohibits any work by persons under 16 years of age, except as apprentices.

5. The aforementioned restrictive rule effectively constitutes a constitutional guarantee established for the benefit of children and adolescents; that is, a protective rule established not only in the Federal Constitution, but also in labor legislation, the Statute of the Child and Adolescent (ECA) (Law No. 8,079/1990), international treaties of the International Labour Organization (ILO), and social security regulations.

6. Nevertheless, such rules, enacted to protect persons under 16 years of age, cannot operate to their detriment in cases in which, despite the constitutional and statutory prohibition, they actually worked during childhood or adolescence.

7. Despite the rules protecting children, child labor remains present in society. Numerous children are taken to work by their own parents from a very young age in order to assist in supporting the family. They are placed not only in domestic activities, but also in rural work involving agriculture, livestock farming, forestry, fishing, and even urban activities, such as the sale of consumer goods, handicrafts, among others.

8. There are also children who work in artistic and advertising activities, including soap operas, films, marketing advertisements, theater productions, and performances. The performance of these activities, pursuant to Article 11 of Law No. 8,213/1991, gives rise to classification as a mandatorily insured person under the Social Security system.

9. It is known that the minimum age for social security purposes is 14 years, provided that the person acts as an apprentice. It is also established that, from the age of 16, an adolescent may acquire insured status upon entering the formal labor market and may also obtain such status as a voluntary contributor.

10. Nevertheless, official data demonstrating the existence of a significant number of persons who, pursuant to Article 11 of the Social Security Benefits Law, qualify as mandatorily insured persons despite being younger than the constitutionally prescribed age and who do not receive the corresponding social security protection cannot be disregarded.

11. According to the National Household Sample Survey (PNAD), child labor in Brazil increased significantly in 2014 compared with previous years, when it had been declining.

12. According to the IBGE, in 2014 there were 554,000 children between five and thirteen years of age working. In agricultural activities within this same age group, 325,000 children worked in 2013, whereas in 2014 the figure rose to 344,000, an increase of 5.8%. In 2015, according to PNAD (IBGE), there was again a decrease of 19.8%. Nevertheless, there was an increase of 12.3% in "child labor among children between five and nine years of age."

13. The Ministry of Labor and Social Security (MTPS) reported that, in more than seven thousand inspection actions conducted in 2015, 7,200 children were found in irregular work situations. Of those 7,200 cases, 32 children were between zero and four years of age, all of whom were found in the state of Amazonas. Another 105 were between five and nine years of age and were also found in Amazonas (62), as well as in the states of Pernambuco (13), Pará (7), Roraima (5), Acre (4), Mato Grosso do Sul and Rio Grande do Sul (3 in each state), Bahia and Sergipe (2 in each state). One child within this age group of five to nine years was found in each of the states of Paraíba, Rio de Janeiro, Rondônia, and Tocantins.

14. It should be noted that factual reality demonstrates the existence of artistic and advertising work with a clear economic and commercial purpose performed, with parental authorization and judicial approval, by newborn children and by children one, two, three, four, and five years of age. Indeed, is social security protection possible in such cases? In the event of an accident related to this type of work, would the child be entitled to any social security benefit, such as an accident benefit?

15. In the field of social security, the constitutional provision contained in Article 194, sole paragraph, establishes the principle of universality of coverage and service, which provides that social protection must extend to all workers within the national territory who require it. As a logical consequence, such social protection includes children and adolescents who have performed some form of work.

16. Although statutory provisions establish age limits—Article 13 of Law No. 8,213/1991, Article 14 of Law No. 8,212/1991, and Article 18, paragraph 2, of Decree No. 3,048/1999—it cannot be denied that child labor, even when performed beyond the oversight of the competent authorities or with authorization from parents and judicial authorities, as in the case of artistic and advertising work, constitutes an employment relationship pursuant to Articles 2 and 3 of the Consolidation of Labor Laws (CLT) and constitutes a taxable event for social security purposes under Article 195, item I, of the Federal Constitution.

17. Thus, despite the constitutional limitations on child labor—Article 157, item IX, of the 1946 Federal Constitution; Article 165, item X, of the 1967 Federal Constitution; and Article 7, item XXIII, of the 1988 Federal Constitution—for purposes of social security protection, no age threshold may likewise be established, because adoption of a minimum age would subject the worker to a double penalty: first, the loss of the fullness of childhood as a result of having worked and, second, the INSS's failure to recognize work that actually occurred.

18. It should be emphasized, however, that recognition of child labor for purposes of counting periods of service requires initial documentary evidence, including documents issued in the names of the parents, together with reliable witness testimony.

> *19. Accordingly, for purposes of recognizing periods of service and contributions arising from the performance of the activities described in Article 11 of Law No. 8,213/1991, periods of work performed before the age of 12 may be counted, without the establishment of an age requirement.*
>
> *20. INSS appeal denied. Federal Prosecutor's Office appeal granted. (TRF4, AC 5017267-34.2013.4.04.7100, SIXTH PANEL, Reporting Judge for the Opinion SALISE MONTEIRO SANCHOTENE, entered into the record on April 12, 2018).*

The Superior Court of Justice has also established the interpretation that periods of rural service performed by a worker under 14 years of age under a family-based subsistence regime, even where the worker was not affiliated with the Social Security System, may be credited and used for purposes of obtaining a social security benefit.

As demonstrated by the decisions cited in Edition No. 94 of *Jurisprudence in Theses*, the Court's interpretation may be observed in the decision rendered in the cited interlocutory appeal, REsp No. 1,150,829, in which it confirmed the possibility of recognizing rural activity performed before the age of 12:

> *INTERLOCUTORY APPEAL. SOCIAL SECURITY LAW. CONSTITUTIONAL MATTER. PRESERVATION OF ISSUE FOR APPEAL. IMPOSSIBILITY. INTRODUCTION OF A NEW ISSUE IN AN INTERLOCUTORY APPEAL. IMPOSSIBILITY. RURAL WORKER. WORK PERFORMED BY A MINOR UNDER 12 YEARS OF AGE. RECOGNITION. POSSIBILITY. PRECEDENTS.*
>
> *1. It is settled before this Court that a special appeal is not the appropriate procedural avenue for examining an alleged violation of a provision of the Constitution of the Republic, even for purposes of preserving the issue for appeal, and a judgment that does not address the matter is not considered deficient on that basis.*
>
> ***2.** An issue not raised in the grounds of the special appeal cannot be examined in an interlocutory appeal, as this would constitute the improper introduction of a new appellate issue.*
>
> ***3.** The Superior Court of Justice has firmly established the possibility of counting rural work proven to have been performed by a person under 12 years of age.*
>
> ***4.** Appeal denied.*

Furthermore, through a decision issued by its First Panel in Appeal in Special Appeal No. 956,558, the Superior Court of Justice confirmed this interpretation and unanimously recognized, for social security purposes, proven rural activity performed before the insured person reached 12 years of age.

Within the administrative sphere, following the judgment in Public Civil Action No. 5017267-34.2013.4.04.7100, the interpretation permitting recognition of rural or urban work performed at any age was consolidated through the publication of Joint Ordinance No. 7 of April 9, 2020, which provides:

> *JOINT ORDINANCE NO. 7 OF APRIL 9, 2020*
>
> *Establishes guidelines for provisional compliance with the judgment rendered in Public Civil Action No. 5031617-51.2018.4.04.7100/RS.*

> *[...] Article 1. Guidelines are hereby established for provisional compliance with the judgment rendered in Public Civil Action No. 5031617-51.2018.4.04.7100/RS, which ordered the INSS to accept, for all purposes related to recognition of rights to social security benefits and services—including contribution periods, qualifying periods, insured status, among others—in accordance with each category of mandatorily insured person, work proven to have been performed in the category of mandatorily insured person at any age, except by a voluntary insured person. The same means of proof required for work performed at the legally permitted age shall also be accepted.*
>
> *Article 2. The provisions of this Ordinance shall apply to benefits with a Benefit Application Filing Date (Data de Entrada do Requerimento — DER) on or after October 19, 2018, and shall apply throughout the national territory.*
>
> *Article 3. For purposes of compliance with the judicial decision, the following guidelines shall be observed:*
>
> *I — a period of work performed as a mandatorily insured person below the minimum age permitted at the relevant time shall be accepted for all purposes relating to recognition of rights to social security benefits and services. The benefit shall be processed in the PRISMA system using "ACP" as the reason for the application, according to the applicable minimum-age rules described below:*
>
> *[...] II — for purposes of the proof referred to in Article 1, the same means of evidence required for work performed at the legally permitted age, as in effect on the date on which proof is submitted, shall be accepted.*
>
> *Sole paragraph. Documents proving the performance of activities at an age below that legally permitted shall satisfy the same requirements applicable to proof of activities performed at the legally permitted age.*

Based on the judicial decisions discussed above, as well as the aforementioned Ordinance, which is applied administratively by the INSS itself, it may be observed that the constitutional rule prohibiting work below a certain age cannot be interpreted to the detriment of the minor. The purpose of the rule is to protect minors and prevent the exploitation of child labor; otherwise, a minor who actually performed work would be deprived of his or her social security rights.

Accordingly, it is not reasonable to presume, without examining the specific circumstances of the case, that rural work was not performed before the age of 12 and thereby prevent insured persons who actually performed rural activities at an earlier age from counting such periods for purposes of obtaining a social security benefit.

Therefore, the recognition of rural work performed at any age, even by minors below the statutory age limits, constitutes a trend in Brazilian case law and has also been applied administratively by the INSS.

7 CONCLUSIONS

The legal framework governing recognition of rural work periods has evolved significantly. As discussed, in 2018 the Federal Regional Court for the Fourth Region held that work performed at any age may be considered for social security purposes, thereby overcoming the previous 12-year age limitation. The

Superior Court of Justice reaffirmed this position and permitted recognition of rural work performed even before the age of 12.

Joint Ordinance No. 7 of 2020 provides guidance for recognizing rural and urban work performed at any age, provided that it is duly proven. This legislative and jurisprudential development reflects the understanding that the constitutional prohibition against work below a specified age should not deprive insured persons who performed work during that period of recognition of their social security rights.

It is important to emphasize that case law and administrative regulations are aligned in ensuring the fair application of this right, thereby providing legal certainty and equal treatment to those who contributed to the country's development in different contexts.

The recognition of rural work performed at any age, even by minors below the statutory age limits, constitutes a trend in Brazilian case law and has also been applied administratively by the INSS.

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