

Credit consumers in Brazil and the realization of human rights

O crédito ao consumidor no Brasil e a concretização dos direitos humanos

JOEDSON DE SOUZA DELGADO

Master's Candidate in Law at the University Center of Brasília – UniCEUB; Expert in Administrative Law at the Public Law Institute of Brasília – IDP; Bachelor in Administration at the University of Brasília – UnB; Bachelor in Law at University Center of the Brazilia Federal District – UDF; and Public servant at the Brazilian Health Regulatory Agency – Anvisa.
joedson.delgado@hotmail.com

ALINE ROBERTA HALIK

Mater's Candidate in Accounting Sciences at the University of Brasília – UnB. Accountant and Economist graduated at the Federal University of Tocantins – UFT. Public servant at the Brazilian Ministry of Science, Technology and Innovation – MCTi.
aline.halik@gmail.com

ABSTRACT This article discusses aspects of the human rights structure in front of a consumer credit protective bias, using the hypothetical-deductive method and also the literature research. Therefore, the analysis will take into account the consumer credit access, which has been increased in the same proportion as problems inherent to them. Positive and negative effects of this protection, related to the balance between the interests of debtors and creditors, are discussed, in order to prevent fraud and ensure clear information to the consumer credit. The conclu-

sion is that, despite these important advances, some gaps remain, such as the predatory lending and excessive burden.

KEY-WORDS: CONSUMER CREDIT; CONSUMER PROTECTION; HUMAN RIGHTS; PREDATORY LENDING; EXCESSIVE BURDEN.

RESUMO Neste artigo, abordam-se aspectos da estrutura de direitos humanos diante do viés protetivo ao consumidor do crédito, utilizando o método hipotético-dedutivo e, por ele, a pesquisa bibliográfica. Para tanto, a análise tomará em consideração o acesso de crédito aos consumidores, que tem aumentado, na mesma proporção, dos problemas inerentes à sua disposição. São discutidos os efeitos positivos e negativos dessa proteção quanto à equiparação entre interesses e relações de fornecedor e consumidor, com vistas a impedir as fraudes e assegurar informações claras ao consumidor de crédito. A conclusão a que se chega é de que, apesar destes importantes avanços, algumas lacunas permanecem, a exemplo do empréstimo predatório e da onerosidade excessiva.

PALAVRAS-CHAVE: CRÉDITO AO CONSUMIDOR; PROTEÇÃO DO CONSUMIDOR; DIREITOS HUMANOS; EMPRÉSTIMO PREDATÓRIO; ONEROSIDADE EXCESSIVA.

INTRODUCTION

Brazilian Consumer Protection Agencies have been tirelessly acting, in order to effectively protect consumers, driving them to use credit in a conscious way, and to discourage abusive trade practices related to consumers' capacity to pay off their debt.

Notwithstanding, these agencies efforts are not sufficient to protect consumers from most credit problems. From this point, there are gaps that must be regulated – such as the interest rates of minimum amount payment of the credit card –, in order to guarantee their purchasing power. However, this discharging modality takes away great amounts of consumer income, and becomes a tool of debt maintenance.

The general objective is investigating the preeminence of human rights related to consumer credit supply regulation. Such bias focuses on ensuring a fair relation between creditors and debtors, when law conditions are balanced.

From this point, current consumer protection does not appropriately comprise credit problems, causing more chaos. Therefore, the market inefficiencies raise concerns about human and consumer rights. A good example is consumerist behavior or unbridled consumerism.

Thereafter, Spagnol (2015, p. 161) comments this phenomenon as “[...] the conscience which, inside a capitalist society, ‘having’ is essential so that individuals feel socially inserted. Thus, goods consumption (unnecessary or not), is now as important as the individual own lives”.

Under this perspective, human rights issues may arise from consumer credit context in different ways. Situations of over-indebtedness may come up with debtors unable to manage their basic needs, affecting their health and welfare, since they are not living an adequate standard life.

For this reason, some pay-off debt terms may cause debt peonage. For example, when debtors dedicate more than half of their incomes available to pay-off long terms debts. Other discriminatory charging methods may also interfere in privacy right or human dignity. Usually, creditors harass debtors personally or by phone.

The deductive-hypothetic-method has been adopted together with the theoretical review. This method has been chosen because it allows a critical approach to the hypothesis formulation, regarding over-indebtedness solutions and other ones related to consumer credit availability.

Claims developed in the research offer a theoretical frame that exposes consumer credit problems. Such perspective understands that consumers and economic agents’ behavior cannot be negotiated, based on economic efficiency and, therefore, changing this behavior is a good action.

The article is structured in four chapters. The first one provides details regarding some basic consumer credit problems. It focuses on over-indebtedness caused by income needs and supply of excessive burden credit, whose contracts have been detrimentally assigned.

The second discusses ways to protect credit consumers and their problems, as well as addresses some gaps in debtors’ protection process. The third paragraph presents consumer credit together with human rights as an advantageous tool to regulate credit supply by contracts,

since they become unfeasibly when they do not provide basic needs. Finally, the fourth paragraph answers potential objections through a human rights approach, inside consumer credit issues.

CONSUMER CREDIT PROBLEMS

Possibly, the major consumer credit problem includes over-indebtedness circumstances, which influence consumer ability of knowing their dimensions. For this reason, Silva Neto (2013, p. 605-606) states that such phenomenon has become aggravated in the last years, due to credit supply dissemination and facilitation. Nevertheless, harmful credit attendance and entitlement cause several legal consequences to consumers.

Over-indebtedness can be attributed to, at least, two significant overlaid problems. Credit, the first one, usually is offered in excessive burn conditions. Such loan may come from several reasons. Sometimes, the problem is caused by fraud, written in lowercase on the contract footnote. In other cases, loan is “predatory”, and many times its cost is out of proportion related to non-payment risk. Sometimes, the problem is market inefficiency, caused by consumer misinformation.

Over-indebtedness may arise from predatory loan, caused by salary reduction, and affecting health and welfare. Besides, even more people search for credit, in order to meet their basic needs. In other words, individuals or families, facing income reduction, count with third parties extra credit to fill financial gaps.

The second problem refers to income crunch and the unreasonable necessity of consuming. In Brazil – due to consuming financing mechanisms, increasingly more facilitated and wider – the highest hyper consumption has occurred when “the country encouraged consumption in maximum, noticed during the governments of Fernando Henrique Cardoso (1995 – 2002), and, currently, of Dilma Rousseff” (OLIVEIRA, 2015, p. 187).

Almeida (2009, p. 327) rightly states that:

Over-indebtedness, in turn, has not been considered by law yet, although there are ongoing projects being discussed on Congress. In relation with this subject, CDC (Brazilian Defense Consumer Code) is silent. Other countries, like France, have already voted their laws, regulating this issue, which have presented positive effects to consumers, and become a model to be followed. We observe that, today, population is more indebted – mainly poorest and retirees – due to financing convenience and consigned credit. Therefore, there is a great expectation that the government takes effective measures in order to solve or minimize all these problems.¹

Excessive burn credit and insufficient incomes issues used to be correlated. Consumers use credit to meet their basic needs, but the conditions in which credit is offered make this possibility even more unlikely. In other cases, consumers have enough income to meet their basic needs, but due to the credit extension and its services costs, they become unable to pay-off the debt. It should be pointed out that these problems may occur, even when creditors are not promoting any fraud or when contract terms are widely published.

CONSUMER INCOME DEFICIENCIES

Even facing the predatory loans unavailability, consumers can become excessively indebted due to chronic or unexpected income deficiencies. Sometimes, over-indebtedness is triggered by a sudden in-

¹ O superendividamento, a seu turno, ainda não foi objeto de legislação, embora existam projetos em andamento no Poder Legislativo. O CDC é silente a respeito. Outros países, como a França, já votaram suas leis, regulamentando o assunto, com efeitos positivos para o consumidor, apresentando-se como modelo a ser seguido. De constatar que hoje a população está mais endividada, principalmente os mais pobres e aposentados, pela facilidade de financiamento e crédito consignado. Daí esperar do governo medidas concretas que resolvam ou minimizem os problemas (ALMEIDA, 2009, p. 327).

come reduction or debts increase. For instance, a loan made to cover emergency debts as funeral debts, medical bills, credit cards, and costs of basic needs derived from a loss of employment etc.

Other circumstance that enables over-indebtedness is mentioned by Ferretti (2015, p. 350) as:

[...] the liberalization and expansion of credit markets, alongside the following increased availability of credit to feed the consumption model of the modern society, may explain why, traditionally, consumer loans and excessive lending by financial institutions or borrowing by consumers have been associated with over-indebtedness.

In situations of chronic or unexpected income deficiencies, individuals can accept loans under abusive conditions and, in these terms, the urgent need of the loan may guide people to run the high risk of default.

Brazilian Credit Protection Services and the National Confederation of Shopkeepers states that since the beginning of 2015, 39.27% of the Brazilian economically active population present debts in arrears due to a worst economic scenario and a greater unemployment rate, 8.2% (SPC BRASIL, 2016; BRAZILIAN INSTITUTE OF GEOGRAPHY AND STATISTICS, 2016).

Therefore, consumers have accepted loans contracted regardless the clauses. One of the reasons is worse cyclical indicators, which, in February 2016, was defined as “[...] a minimum salary able to maintain a family of four members that should sum R\$ 3,795.24 (around US\$ 13,662.86. Quotation in May 30, 2016)” (INTER-UNION DEPARTMENT OF STATISTICS AND SOCIO-ECONOMIC STUDIES, 2014, p. 52).

It is worth pointing out that, usually, credit is used in order to control household budget bills, but in fact, it just enlarges the financial black hole. On the other hand, costs with rental, transportation, health and education have increased, including basic public services costs.

Income deficiencies have affected social welfare and, thus, made credit loans a necessity, aimed to balance household budget.

In Europe, French families' debts have increased in the last years. Between January, 2000, and March, 2015, these debts have increased 34 percentage points – from 53.3% to 86.4% – (BANQUE DE FRANCE, 2016). According to *Institut National de la Statistique et des Études Économiques* (INSEE), 46% of families present debts related to real state investments, such as housing, offices etc., and to consumer goods, e.g., cars, equipment etc. (INSEE, 2016).

Equity relations sound unrealistic, regarding a contract freely assigned between economic agents and consumer, arising then a consent defect. Miragem (2014, p. 52) highlights that “Talking about consumption relation, inequity is what will legitimate unequal law procedures, in the same extent of this real inequity”.

Presupposing income deficit has increased, people contracts credit services hopelessly. In this sense, they face a growing black hole between their debts and income available to pay them.

CLAUSES OF AN EXCESSIVE BURDEN CREDIT CONTRACT

When people search for credit, either to pay debts off and acquire real state or movable assets, among others, loan is, many times, offered in excessive burn conditions. Consumers know that the clauses are expensive, but without any options or hope, they accept the imposed conditions. In other cases, consumers miss the chance of contracting in more favorable conditions because they do not have a clear comprehension of the clauses.

Historically, most part of creditors would not concede loans after analyzing client's profiles. However, finance houses, currently, approve loans even in situations of high non-payment risks. This occurs when loans are object of securitization, that is, when credit rights are sold to third parties and, therefore, risks are mitigated to foment mercantile mechanisms to factoring firms.

Loan contract clauses can be considered abusive, since they are related with fraud, misunderstanding and lack of transparency. Finance

houses use aggressive selling methods and/or take advantages improperly because consumers do not comprehend loan contract full content, since, usually, the cost charged to debtors is highly out of proportion when compared to non-payment risks. In other words, predatory lending includes, many times, excessive charges that tend to maintain debtors in situations of indebtedness and poorness.

Credit cards are an important payment method and a significant credit source to consumers. Nevertheless, credit card interest rates are, most of times, around 400% per year, and vehicles' financing interest rates are around 31% (G1, 2016).

It is important to emphasize that many clients are unable to pay off loans in original terms, becoming compelled to postpone their payment, which come up with the possibility of being sued by finance houses.

Sometimes, burn contract clauses or predatory practices refer to debts charging. Besides high debt costs, debtors face charges that affect daily life, which threatens human dignity. In other circumstances, creditors and debt collectors harass debtors personally or by phone in an offensive way.

On this regard, Benjamin exposes creditor right to have the loan paid off: "Charging a debt is a fair and current activity. The Code does not present any argument. Its objection refers to excesses performed in order to receive what has been loaned. And that is an abuse" (BENJAMIN, MARQUES, BESSA, 2013, p. 292).

Loan credit clauses should also suggest the arbitration as a conflict alternative solution. Therefore, Domingues and Conrado (2014) warns:

In fact, the advanced voluntary (optional) arbitration model, established by Law n. 9,307/1996, demands, as basic *prima facie* requirements: contractors payment ability (subjective arbitrability: Art. 1, Law n. 9.307/1996), whose absence make the arbitration convention set impossible, and a close relation between

controversy and the available property right (objective arbitrability: Art. 2, Law n. 9.307/1996) [...]²

In some cases, creditors hide excessive burden clauses or, deliberately, deceive debtors. In other situations, these clauses are not hidden, but consumers are not able to comprehend them, or simply, they do not realize the presence of unclear terms in the contract. Thus, consumers are subjected to cognitive biases, hampering the assessment of contract risks.

CONSUMER CREDIT THROUGH HUMAN RIGHTS APPROACH

The second part of this article demonstrated that there are serious problems related to consumer credit and that they arise, usually, from the excessive burden debt conditions and from income deficiencies, or from both, even when there is no predatory lending behavior.

In this topic, human rights approach is defended, in front of consumer credit, as a possible tool to correct some weaknesses and gaps related to protection.

HUMAN RIGHTS DEFINITION APPLIED TO CONSUMER CREDIT

In a scenario where rights are being balanced, consumer credit problems implications to human rights are analyzed. So, the action of defining “human rights” expression must be taken, which, for Amartya Sen – Economics Nobel Prize winner of 1998 –, means ethical demands, whose importance is related to freedom, which, in its turn, presents a strong universalist assumption (SEN, 2000, p. 112).

Clark (2016, p. 301) affirms that human rights meaning comprises that:

² Deveras, o avançado modelo de arbitragem voluntária (facultativo), instituído pela Lei n. 9.307/1996, exige, como requisitos fundamentais *prima facie*, a capacidade dos contratantes (arbitrabilidade subjetiva: art. 1.º da Lei n. 9.307/1996)71, sem o que não pode ser firmada a convenção de arbitragem, e que a controvérsia diga respeito a direito patrimonial disponível (arbitrabilidade objetiva: art. 2.º da Lei n. 9.307/1996) [...] (DOMINGUES; CONRADO, 2014).

Freedom is the way in which human beings exist; it is the means of self-actualization. Therefore, “Freedom is not given to us as an end in itself, but as a mean to a greater end...freedom exists for the sake of morality and together with morality for the sake of a higher spiritual law and order of existence—the kind of order that most strictly corresponds to rational beings, which are persons”.

There is no question that freedom creates ethical requirements shaped as a human right that must be protected, for example, prejudice, slavery, hunger etc.

Regarding the confluence of consumer rights and human rights, Martins (2011, p. 192) states that “Re-personalization, therefore, expresses a goal to be achieved, but with no return, of the Consumer Defense Code basic rights in the depersonalizing market, related to supranational human rights arguments”.

In this sense, human rights must influence individual and group actions in order they be able to help guaranteeing freedom. These actions include not only consumerist legislation, but also constraining governments and/or companies to respect consumer rights.

For this reason, consumer rights comprise, at once, collective and diffuse rights that must be protected by Prosecutor’s Office.³ Nishiyama (2010, p. 258) understands that consumer’s protection attracts an immediate effect of the metaindividual interests effective safeguarding.

From this angle, Castilho (2015, p. 398) asserts that consumer right is inherent to the great human rights evolution:

[...] which aims to protect this weaker social category, when compared to suppliers, producers and merchants, which form the category of those economically stron-

³ Second Carvalho (2002, p. 86), diffused rights or interests are the right characterized, in the subjective aspect, by its object indivisibility, being shared by an indeterminate number of people and, in the objective aspect, by the absence of a base judicial relation among the them.

ger. Ultimately, it protects the whole society, since so-
meway and sometime all people are consumers.⁴

This way, consumerist legislation constitutes a fundamental right of third dimension, at the same level of fraternity, which aims safeguarding mutual support among people and their quality of life (COUTINHO, 2016, p. 13). Consequently, it protects and promotes human rights. An example is the regulation that protects debtors from prejudice conditions, debtor's privacy and debtor's rights of meeting their basic needs with dignity.

BENEFITS OF HUMAN RIGHTS APPLIED TO CREDIT

The first benefit of human rights applied to consumer credit is that their system offers a rhetorical structure to approach these issues. Human rights language is more widely accepted inside consumer credit problems field, due to its universal relevance. For instance, the fact that debtors cannot sell their contract to third parties.

Actually, human rights themselves offer a platform to consumer defense organizations, researches, judges, legislative authorities and policy makers.

The second advantage of human rights approach is the economy. Efficiency arguments cannot be used to justify the absence of basic protection to consumers against credit contracts that violate human rights.

Therefore, human rights should not be the only way to regulate consumer credit. Instead, they must provide a minimum protection to debtors, comprising credit access and costs. In this sense, human rights and consumer protection can work side by side, that is, human rights provide a minimum of protection.

⁴ [...] que visa proteger essa categoria social mais fraca em relação ao fornecedor, ao produtor e ao comerciante, que integram a categoria dos mais fortes economicamente. Em última instância protege toda a sociedade, na medida em que, de alguma forma e em algum tempo todos são consumidores (CASTILHO, 2015, p. 398).

In this line of thinking, corporations and politicians do not want to be accused of violating human rights. As a result, a human rights approach is positive for an instrumental reason: companies avoiding credit supply for consumers without minimum paying-off conditions.

In this scenario, more than 8,000 companies in 145 countries assigned the UN Global Compact, which established that “Companies should support and respect human rights protection internationally recognized” and “guarantee not performing or participating in violations of such rights”.⁵

Such guidelines prove to be more effective, from a managing practical point of view, since companies will defeat themselves from these accusations and change actions that might violate human rights.

HUMAN RIGHTS IMPLICATIONS ON CONSUMER CREDIT PROTECTION

Universal human rights are found in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (ICCPR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Among them, there are ten rights regarding over-indebtedness. They are related to: adequate standard of living; health; work; not being arrested due to debts; freedom over debt slavery; freedom over prejudice; privacy; human dignity; due process; property.

In this sense, Souza (2012, p. 258) asserts that:

[...] conflicts among contradictory notions of human rights have been written over UN documents’ history, particularly in the International Covenant on Civil and Political Rights and the International Covenant on Eco-

⁵ The UN Global Compact is a conduct code created by Kofi Annan, ex UN General Secretary, aiming “mobilizing the international commerce community to adopt, in their business practices, the fundamental principles, which are internationally accepted in human rights, working relations, environment and anti-corruption fields, reflected in 10 principles” (PACTO GLOBAL, 2016).

conomic, Social and Cultural Rights, both carried out in 1966. The discussion about these two compacts states that the rights established are different kind of species. The first ones are to be applied immediately. The second ones are progressive. Or, yet, the first comprise freedoms (are self-enforcing) and the second ones imply powers (depend on the role played by States and public policies).⁶

The universal principles of human rights are relevant for all consumer credit relation stages. In the contract execution, government has to determine the circumstances in which credit contracts will be ready to be executed, notably in those which interfere in human rights.

First, a consumer credit contract can prevent debtors of an adequate standard of living. Second, terms or practices of credit providing cannot be prejudicial. Third, collecting information can affect debtors' privacy. Forth, contract clauses can violate their rights since they prevent debtors from claiming against creditors, then, remaining arbitration.

In any case, the universal principles of human rights can inform not only the type of debt, which might be available, but also the species of contracts that the State should be willing to fulfill.

AN EXAMPLE OF REGULATING CONSUMER CREDIT DESIGNATED TO PROMOTE HUMAN RIGHTS

Regulations regarding consumer credit, when it is provided also to debtors' rights, should support an adequate standard of living. Contracts

⁶ [...] os conflitos entre essas noções contraditórias de direitos humanos ficaram inscritos na história dos documentos da Organização das Nações Unidas (ONU), particularmente no Pacto Internacional sobre Direitos Cívicos e Políticos e no Pacto Internacional sobre Direitos Econômicos, Sociais e Culturais, ambos de 1966. A discussão sobre esses dois pactos afirma que os direitos neles consagrados são de espécies distintas. Os primeiros são de aplicação imediata. Os segundos são progressivos. Ou, ainda, que os primeiros contemplam liberdades (são autoaplicáveis) e os segundos implicam em poderes (dependem do papel desempenhado pelos Estados e pelas políticas públicas) (SOUZA, 2012, p. 258).

that strongly affect debtors' financial capacity to meet their basic needs must to be considered unworkable.

Ryder and Thomans (2011, p. 187) comment the measures adopted by Financial Services and Markets Act 2000 (FSMA 2000), in the United States, as a solution to prevent irresponsible loans:

The importance of these ground-breaking financial penalties by the FSA cannot be underestimated and the FSA is to be commended for tackling irresponsible lending practices in this often poorly regulated area. In Irresponsible lending – a scoping paper, the OFT stated that creditors 'should undertake proper and appropriate checks on the potential borrower's creditworthiness and ability to repay the loan and to meet the terms of the agreement. The checks should be proportionate, taking account of the type of agreement, the amounts involved, the nature of the lender's relationship with the consumer, and the degree of risk to the consumer.

Some of the important references of human rights must have universal application, and can be used to prevent situations that a credit relation disables consumers to meet their basic needs. In this proposal terms, creditors are required to check if consumers income is sufficient to pay-off the debt and also to provide minimum of dignity. Such analyzes have to be performed over all loans without individualizing specific products or people.

Certainly, this initiative alone is not enough to comply with all human rights obligations inside consumer credit context, and also to guarantee that debtors will be able to provide an adequate standard of living or minimum of dignity.

It is important to say that poverty creates desperate situations, in which people does not have access to basic needs, such as housing, health assistance, water etc. Although poverty itself affects human rights, regulating consumer credit (or its absence) should not aggravate these problems or create other concerns regarding human rights. Besides, so-

lutions to consumer credit can be a useful tool, at least, in part, in order to restrain the debt.

From this point of view, in order to effectively protect debtors, other regulation would be necessary, aiming to guarantee the protection of due legal process, privacy right, freedom over prejudice, and other universal principles of human rights.

HUMAN RIGHTS IMPLEMENTATION STRUCTURE

Consumer protection comprises a wider human rights approach, and includes the accountability role of non-profit organizations, governmental organizations, and, of course, the legislators. Velten (2013, p. 135) goes beyond when asserts that consumers are also responsible by the correct disposal of solid waste. In some way, this idea dispels the notion of the State as provider of health, education, and housing, as the Republican Constitution states:

[...] law has created consumer responsibility; Influenced by CDC, consumers are used to account just producers/merchants; however, consumers now have to understand the other side of the coin, which imposes responsibilities, as sending household waste to producers.⁷

Based on the ideas exposed above, human rights principles and obligations can make several changes into consumers credit rules. *A priori*, consumer credit contracts do not include the action of the State, but the application of the loan contract general clauses. Furthermore, government or Legislative Power has the obligation of improving consumerist regulation when the loan practices are violating human rights. Finally, there is a growing pressure on companies to require the compliance of the universal principles of human rights.

⁷ Mas, há mais, a lei criou também a responsabilidade do consumidor; por força do CDC, o consumidor está acostumado a responsabilizar apenas o produtor/comerciante; entretanto, agora, o consumidor deverá entender que há o verso da moeda, aquela que lhe impõe responsabilidades, como proceder à devolução do lixo domiciliar ao produtor (VELTEN, 2013, p. 135).

Accordingly, a discussion about credit companies responsibilities, regarding human rights, arises. John Ruggie's – special UN deputy – final report proposes a scenario that guides human rights obligations to companies, and focuses on three pillars named UN Guiding Principles on Business and Human Rights, approved by UN, in June, 2011.

PROTECTING: States' obligation of protecting human rights; RESPECTING: companies' responsibility of respecting human rights; REPARING: the need of adequate and effective resources, in case of companies' noncompliance of these rights (COMPANIES AND HUMAN RIGHTS, 2012).⁸

Such guiding principles provide suggestions of how States see their obligations, regarding human rights, in relation to corporate conduct. Facing these pictures, regulations do not need use human rights language in a precise way.

Besides, guiding principles enable consumers to press companies to comply their commitments, both directly as indirectly. The impact of these orientations should not be underestimated, especially in social media times, since it is possible that human rights violations, as boycott on offensive companies' products and services, be promptly spread.

In the same illustrative way, a resolution of World Health Organization (WHO) and United Nations International Children's Emergency Fund (UNICEF) promoted an action directed to consumers, including publicity related to industrialized breast milk substitutes during 1970's. This action imposed direct requirements on producers and dealers, including the obligation of not distributing gifts and products that promotes the usage of breast milk substitutes (BRAZIL, 2009, p. 114).

Under the assumption that the universal principles of human rights can dissuade companies of selling products that not complies with this approach, corporations must change practices which go against these rights.

⁸ PROTEGER: a obrigação dos Estados de proteger os direitos humanos; RESPEITAR: a responsabilidade das empresas de respeitar os direitos humanos; REPARAR: a necessidade de que existam recursos adequados e eficazes, em caso de descumprimento destes direitos pelas empresas. (EMPRESAS E DIREITOS HUMANOS, 2012).

In this context, civil and consumerist rules of loans and financing should not be applied if, at the moment of contract assignment, they would unable debtors of meet minimum of dignity. Therefore, companies have to be stimulated to accept such obligation as a social action.

HUMAN RIGHTS OBJECTIONS INSIDE CONSUMER CREDIT STRUCTURE

The universal principles of the human rights should not be subjected to economic efficiency arguments, since protections are inviolable. For some people, this would be a good reason to leave human rights approach behind, since keeping credit access always has a cost. For others, global costs increase would explain the absence of a reason to adopt this approach, in case a severe reduction in the credit access occurs, or even the cost increase to obtain it. Apart from the issue of economic efficiency and from human rights point of view, these concerns are relevant.

In this sense, the possibility of human rights approach on consumer credit does not generates systemic risks is questioned. This concern of guaranteeing a fundamental protection base to debtors can represent macroeconomic risks, related to credit access reduction and to threats to financial economy. However, financial regulation can mitigate the relations between creditors and debtors.

Should creditors approve high interest rates loans, which debtors cannot pay-off and, at the same time, meet their basic needs, then such loans would not be authorized, unless the risk could be transferred to another financial institution and/or to other investor.

Until now, consumer credit regulations have been limited to macroeconomic issues, specifically to three Basel Agreements (BASEL I, II and III), which comprise just the international regulation of commercial banks regarding credit risk (CARNEIRO; DE BOLLE, 2010).

Moreover, the only way to guarantee bank products safety is regulating consumer credit, since there are not macroeconomic solutions yet, which can eliminate the systemic risks to the financial system. This time, the appropriate objective of economic regulation is to reach a sustainable global economy by guaranteeing that debtors' fundamental human rights are respected.

In this context, a human right approach of consumer credit, in long term, includes State actions in order to guarantee to citizens the ability to meet their basic needs. Therefore, the State has to provide more resources to guarantee food, housing etc., at affordable prices and/or subsidies credit, in order it does not affect basic needs and guarantee an adequate standard of living.

HUMAN RIGHTS PROPERLY PROTECT COMMERCIAL INTERESTS

Human rights approach may cause the impression that its structure does not take into account the fair creditors' commercial interests, or that it excessively protects debtors' rights. Nevertheless, human rights structures protect both sides' interests. For example, creditors' property rights are protected by principles of human rights. In fact, States determine to creditors the property interests' scope, since it defends the public interest.

As a matter of fact, public interest should guide government regulation regarding consumers. As well mentioned by Silva Neto (2013, p. 16):

In order to avoid this information deficit consequences, the State must regulate the sector, imposing, for example, the obligation to indemnify creditors in cases of delays or no justifiable delays, or even the obligation of provide aircraft maintenance in accordance with pre-established rules. If good legislative policy rules are applied (in summary, if regulatory capture has not been occurred), this regulation should always privileges consumers' interests and offer the best cost-benefit solution.⁹

⁹ Para evitar as consequências deste déficit de informação, o Estado pode regular o setor, impondo, por exemplo, um dever de indenizar em caso de atrasos, ou em casos de atrasos injustificados ou ainda o dever de realizar manutenção em aeronaves de acordo com regras preestabelecidas. Se aplicadas regras de boa política legislativa (em síntese, se não tiver ocorrido captura regulatória), esta regulação deverá sempre privilegiar o interesse dos consumidores e proporcionar a solução de melhor custo-benefício (SILVA NETO, 2013, p. 16).

Human rights also provide support to creditors and debtors, when apply universality to financial products by means of clear and equitable loan practices. When universal standards are not present, companies can violate the obligations of shareholders from some country.

Consumer protection has, currently, status of a fundamental right, which, in its turn, is closely related to its financial protections; to rights to human dignity, housing, water, health and education; to the right of freedom over prejudice; to freedom over slavery and not be arrested due to inability of paying a debt off; to the right to the due legal process; and to the right to privacy.

CONCLUSION

This research assessed the necessity of protecting consumers due their technical, factual and judicial vulnerability by adopting human rights in the credit massification aspect. This assessment enabled a better comprehension that, although there have been substantial advances regarding debtors' protection, some gaps still remain, since consumers' safekeeping have not caused an immediate legislative measures adoption.

Over-indebtedness does not result from predatory loans, but from shortage of income and consumers' needs, which, unable to meet minimum of dignity, accept the risk of becoming defaulters.

Notwithstanding, legislation that comprises consumer defense aims to balance all the interests, since only the concerns about economic efficiency proved not being enough to solve credit problems. The intention of protecting consumers highlights their weakness in the contract relation, and search to avoid some behaviors, as promoting misleading advertising, and prevent that market defects affect the balance.

Thus, credit have to be provided to consumers so that their basic needs are met, minimizing the risks of dissatisfaction. Human rights structure can work together with consumer protection approach, in order to guarantee the minimum protection to all creditors and credit contractors.

In this sense, human rights without consumers' protection infrastructure are not sufficient to protect debtors from damages caused by

excessive burn credit contracts. Besides, the current consumer credit infrastructure can benefit from human rights principles and work with human rights organizations.

REFERENCES

ALMEIDA, J. B. **A proteção jurídica do consumidor**, 7. ed. rev. and updated, São Paulo: Saraiva, 2009.

BANQUE DE FRANCE. **Endettement des agents non financiers**. Available in: <<https://www.banque-france.fr/economie-et-statistiques/stats-info/detail/endettement-des-agents-non-financiers.html>>. Access in November 28, 2016.

BENJAMIN, A. H. V.; MARQUES, C. L.; BESSA, L. R. **Manual de direito do consumidor**, 5. ed. rev. enlarged and updated. São Paulo: Publisher Revista dos Tribunais, 2013.

BRAZIL. Law nº. 9.307, September 23, 1996. It provides on arbitration. **Diário Oficial da República Federativa do Brasil**, 1996. Available in: <http://www.planalto.gov.br/ccivil_03/leis/L9307.htm>. Access in March 15, 2016.

_____. Ministry of Health. Health Care Secretariat. Department of Strategic Programmatic Actions. **A legislação e o marketing de produtos que interferem na amamentação: um guia para o profissional de saúde/Ministério da Saúde, Secretaria de Atenção à Saúde, Departamento de Ações Programáticas Estratégicas**. Brasília: Ministry of Health Publisher, 2009, 114 p.

BRAZILIAN INSTITUTE OF GEOGRAPHY AND STATISTICS (IBGE). **Pesquisa Mensal de Emprego**. Available in: <http://www.ibge.gov.br/home/estatistica/pesquisas/pesquisa_resultados.php?indicador=1&id_pesquisa=38>. Access in March 23, 2016.

CARNEIRO, D. D.; DE BOLLE, M. B. As Propostas Americanas: o Blueprint de Paulson versus o White Paper de Geithner. In: **A reforma do sistema financeiro americano: nova arquitetura internacional e o contexto regulatório brasileiro**. CARNEIRO, Dionísio Dias; DE BOLLE, Monica Baumgarten (Orgs.), Rio de Janeiro: LTC, 2010.

CARVALHO, J. C. M. **O Direito do Consumidor: Fundamentos doutrinários e visão jurisprudencial**, Rio de Janeiro: Destaque, 2002.

CASTILHO, R. **Direitos humanos**, 3. ed., São Paulo: Saraiva, 2015.

CLARK, M. J. Integrating Human Rights: Participation in John Paul II, Catholic Social Thought and Amartya Sen. In: **Political Theology (on-line)**. Available in: <<http://dx.doi.org/10.1558/poth.v8i3.299>>. Access: March 16, 2016.

COMPANIES AND HUMAN RIGHTS. **Parâmetros da ONU para proteger, respeitar e reparar relatório final de John Ruggie** – Special Deputy of the General Secretary, 2012. Available in: <[http://www.conectas.org/arquivos/editor/files/Conectas_Princ%C3%ADpiosOrientadoresRuggie_mar2012\(1\)\(2\).pdf](http://www.conectas.org/arquivos/editor/files/Conectas_Princ%C3%ADpiosOrientadoresRuggie_mar2012(1)(2).pdf)>. Access: March 17, 2016.

COUTINHO, N. C. A. **O Estado e a proteção do consumidor**, 1. ed., Brasília: Coutinho, 2016.

DOMINGUES, D. S.; CONRADO, I. S. Medidas judiciais necessárias à solução de controvérsias antes e durante a arbitragem. In: **Arbitragem e mediação: temas controvertidos**. Coordination: VERÇOSA, F. [et al.], Rio de Janeiro: Forense, 2014.

FERRETTI, F. The over-indebtedness of European consumers: time for a ‘fresh-start’ of the EU policy and legal agenda? **European Review of Contract Law**. Vol. 11, Issue 4, p. 346-375, ISSN (On-line) 1614-9939, ISSN (Print) 1614-9920, November, 2015. Available in: <<http://dx.doi.org/10.1515/ercl-2015-0021>>. Access: March 18, 2016.

G1. **Juros do cartão de crédito ao ano se aproximam de 400%, diz Anefac**. Available in: <<http://g1.globo.com/economia/seu-dinheiro/noticia/2016/01/juros-do-cartao-de-credito-se-aproximam-de-400-diz-anefac.html>>. Access in: March 16, 2016.

INSEE. **Statistiques**. Tableau de bord Conjoncture: Ile-de-France. Available in: <<https://www.insee.fr/fr/statistiques/2109644>>. Access in November 28, 2016.

INTER-UNION DEPARTAMENTO OF STATISTICS AND SOCIO-ECONOMIC STUDIES (DIEESE). **Custo da Cesta Básica aumenta em todas as cidades**. Available in: <<http://www.dieese.org.br/analisecestabasica/2016/201601cestabasica.pdf>>. Access in: March 23, 2016.

MARTINS, F. R. Constituição, direitos fundamentais e direitos básicos do consumidor. In: MARTINS, F. R.; LOTUFO, R. (Coords.). **20 anos do Cód**

go de Defesa do Consumidor: conquistas, desafios e perspectivas, São Paulo: Saraiva, 2011.

MIRAGEM, B. **Curso de direito do consumidor**, 5. ed. rev., enlarged and updated, São Paulo: Publisher Revista dos Tribunais, 2014.

NISHIYAMA, A. M. **A proteção constitucional do consumidor**, 2. ed. rev., enlarged and updated, São Paulo: Atlas, 2010.

OLIVEIRA, F. G. Capitalismo e consumo: por uma política pública de prevenção e combate ao superendividamento do consumidor de crédito no Brasil. In: **Direito, globalização e responsabilidade nas relações de consumo** [eletronic information on-line] organization CONPEDI/UFGM/FU-MEC/Dom Helder Câmara; coordinators: FERREIRA, K. P.; STELZER, J. – Florianópolis: CONPEDI, 2015. Available in: <<http://www.conpedi.org.br/publicacoes/66fsl345/17v087sz/m3G21dlFB97b36Bk.pdf>>. Access in March 15, 2016.

PACTO GLOBAL. **Os 10 princípios**. Available in: <<http://www.pactoglobal.org.br/artigo/56/Os-10-principios>>. Access in March 16, 2016.

RYDER, N.; THOMAS, R. Convenient credit and consumer protection – a critical review of the responses of Labour and Coalition governments. **Journal of Social Welfare & Family Law**. Vol. 33, nº. 1, March 2011, p. 85-95. Available in: <<http://dx.doi.org/10.1080/09649069.2011.571474>>. Access in March 18, 2016.

SEN, A. **Desenvolvimento como liberdade**. Translation of MOTTA, L. T. São Paulo: Companhia das Letras, 2000.

SILVA NETO, O. C. **Comentários ao Código de Defesa do Consumidor**, Rio de Janeiro: Forense, 2013.

SOUZA, L. A. F. Avanços e dilemas dos direitos humanos no mundo contemporâneo. In: BUCCI, D.; SALA, J. B.; CAMPOS, J. R. (Coord.). **Direitos humanos: proteção e promoção**, São Paulo: Saraiva, 2012.

SPAGNOL, A. S. Sociologia do direito. In: MACIEL, J. F. R. (Coord.). **Formação humanística em direito**, 2. ed., São Paulo: Saraiva, 2015.

SPC BRASIL. **Principal meta dos brasileiros para 2016 é sair do vermelho, mostra SPC Brasil**. Available in: <<https://www.spcbrasil.org.br/imprensa/>>

noticia/948-principalmetadosbrasileirospara2016esairdovermelhomostraspc-brasil>. Access in March 21, 2016.

STELZER, J., Florianópolis: CONPEDI, 2015. Available in: <<http://www.conpedi.org.br/publicacoes/66fsl345/17v087sz/m3G21dlFB97b36Bk.pdf>>. Access in March 15, 2016.

VELTEN, P. Política nacional de resíduos sólidos – destinação final. In: BECHARA, E. (Org.). **Aspectos relevantes da política nacional de resíduos sólidos**. Law nº. 12.305/2010, São Paulo: Atlas, 2013.

Submetido em: 24-7-2016

Aceito em:29-11-2016