


**HYBRID RETIREMENT AND ITS REGULATION BY CONSTITUTIONAL AMENDMENT
NO. 103/2019 AND NORMATIVE INSTRUCTION NO. 151/2023**

**DA APOSENTADORIA HÍBRIDA E SUA REGULAMENTAÇÃO PELA EMENDA
CONSTITUCIONAL Nº 103/2019 E INSTRUÇÃO NORMATIVA Nº 151/2023**

**JUBILACIÓN HÍBRIDA Y SU REGULACIÓN POR LA MODIFICACIÓN CONSTITUCIONAL
N.º 103/2019 Y LA INSTRUCCIÓN REGLAMENTARIA N.º 151/2023**

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ABSTRACT

The study addresses the types of retirement that make up the General Social Security Regime, a fundamental right guaranteed by Social Security. Initially, it seeks to understand the aspects of social security, bringing essential explanations for the development and understanding of work. Next, the granting of retirement and the transition rules introduced by the Social Security Reform, established by Constitutional Amendment No. 103/2019, are analyzed. Finally, the work emphasizes hybrid retirement, which mixes urban retirement with rural retirement, created through Law No. 11,718/2008 and analyzed with Normative Instruction No. 151/2023 after many discussions and several debates in the courts to update the granting of the benefit, so the present work carries out a study based on legislation, jurisprudence, academic works and scientific articles.

Keywords: Hybrid Retirement. Benefits. Social Security. Social Security.

RESUMO

O estudo aborda os tipos de aposentadoria que compõem o Regime Geral da Previdência Social, um direito fundamental garantido pela Seguridade Social. Inicialmente, busca-se compreender os aspectos da seguridade social, trazendo explicações essenciais para o desenvolvimento e entendimento do trabalho. Em seguida, são analisadas a concessão da aposentadoria e as normas de transição introduzidas pela Reforma da Previdência, estabelecida pela Emenda Constitucional nº 103/2019. Por fim, o trabalho enfatiza a aposentadoria híbrida, que mescla a aposentadoria urbana com a aposentadoria rural, criada mediante a Lei nº 11.718/2008 e analisada com a Instrução Normativa nº 151/2023 após muitas discussões e vários debates nos tribunais para atualizar a concessão do benefício,

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assim o presente trabalho realiza um estudo com base nas legislações, jurisprudência, trabalhos acadêmicos e artigos científicos.

Palavras-chave: Aposentadoria Híbrida. Benefícios. Previdência Social. Seguridad Social.

RESUMEN

Este estudio aborda los tipos de jubilación que componen el Régimen General de la Seguridad Social, un derecho fundamental garantizado por la Seguridad Social. Inicialmente, busca comprender los aspectos de la seguridad social, proporcionando explicaciones esenciales para el desarrollo y la comprensión de su funcionamiento. A continuación, analiza la concesión de la jubilación y las normas transitorias introducidas por la Reforma Previsional, establecida por la Enmienda Constitucional n.º 103/2019. Finalmente, el trabajo hace hincapié en la jubilación híbrida, que combina la jubilación urbana y rural, creada por la Ley n.º 11.718/2008 y analizada mediante la Instrucción Normativa n.º 151/2023 tras extensas discusiones y debates judiciales para actualizar la concesión del beneficio. Por lo tanto, este estudio se basa en legislación, jurisprudencia, trabajos académicos y artículos científicos.

Palabras clave: Jubilación Híbrida. Prestaciones. Previdência Social. Seguridad Social.

1 INTRODUCTION

Due to the rural exodus, a process of migration of people from rural areas to cities, or vice versa, in order to seek better economic conditions, hybrid retirement was created. It is a type of retirement by age that considers, in its calculations, the contribution time of the insured both in the countryside and in the city, provided that it is duly proven.

Therefore, when rural workers are unable to exclusively meet the requirements for rural retirement, it is possible to add other contribution periods, such as urban employees, individual contributors, special or optional insured persons, for the purposes of granting hybrid retirement. It is not necessary that there is a preponderance of one type of activity over the other, nor does it matter if the last bond of the insured was urban or rural. The rural period can be considered at any time — before or after 1991 — and, in the courts, the status of insured is not required at the time of the request, a requirement that applies only in the administrative sphere.

Thus, the present work seeks to answer the following questions: What is the importance of hybrid retirement for taxpayers who did not meet the grace period requirements in other retirement modalities? What were the main changes brought about by Constitutional Amendment No. 103/2019 and Normative Instruction No. 151/2023 in relation to the granting of hybrid retirement?

The justification for the choice of the theme lies in the fact that the recent creation of hybrid retirement represents an advance in the protection of insured persons who do not have a minimum contribution time for exclusively rural or exclusively urban retirement. The possibility of mixing periods of rural and urban work prevents these insured persons from being helpless. Considering that Social Security Law is a dynamic branch, subject to constant updates and reforms in search of financial and actuarial balance, influenced by economic factors, mortality and birth rates, and the number of contributors, it is important to highlight that such changes are usually accompanied by transition rules to meet the particularities of the insured. In the current context, the main changes brought about by the reform concern the minimum age, the contribution time and the way of calculating the initial monthly income (RMI) and the benefit salary.

As for the methodological aspects, it is a bibliographic research, based on the analysis of jurisprudence, legislation, scientific articles, books and academic works. The research is classified as pure, since it seeks to expand knowledge on the subject, without being restricted to possible immediate practical benefits. It also assumes an exploratory and

descriptive character, providing a clearer understanding of the situation studied and allowing the formulation of hypotheses. The approach adopted will be qualitative, with data collection and analysis aimed at understanding the proposed theme.

The general objective is to analyze the means of granting hybrid retirement, instituted by Law No. 11,718/2008, its feasibility after the enactment of Constitutional Amendment No. 103/2019 and Normative Instruction No. 151/2023, addressing its legal provision, the objectives of its creation, its beneficiaries, the requirements for obtaining it and the applicable calculation basis.

The present work is structured in three sections. The first section deals with the conceptual aspects of social security, a necessary basis for understanding social security, which is characterized as a contributory system aimed at protecting its insured persons, covering the various types of retirement, including hybrid retirement. The second section presents the concept of hybrid retirement, its requirements and details of the two modalities that compose it, addressing the transition rules and the types of tests accepted. Finally, the third section describes the changes that occurred with Constitutional Amendment No. 103/2019 and Normative Instruction No. 151/2023, with regard to the granting of hybrid retirement.

2 CONCEPTUAL ASPECTS OF SOCIAL SECURITY

At the outset, it is important to clarify that social security is governed by Social Security Law, and it is necessary to differentiate its normative scope from the scientific one. Social Security Law is conceptualized as the set of principles, rules, and institutions that aim to protect people from contingencies that prevent them from providing for the basic needs of individuals and their families (Martins, 2023).

Social security, in turn, has the character of universal protection, composed of a set of actions, policies, and institutions aimed at supporting the social security, assistance, and health spheres, and is governed, in legal terms, by Social Security Law (Garcia, 2023).

Historically, there have always been individuals in society in a situation of greater lack of protection, either due to disability or socioeconomic vulnerability, conditions that may be innate or result from adverse circumstances. These people need support and planning to face present or future contingencies. Among the possible risks that affect the individual, the following stand out: illness, unemployment, old age, work accident, family

responsibilities, maternity, disability, and death of the head of the family, as provided for in ILO Convention No. 102 (Garcia, 2023).

It is up to the State, together with society's actions, to meet the needs arising from the adversities faced by the individual and his family, guaranteeing them a dignified and healthy life. This action aims to protect society from misery and social inequalities, both in the present and in the future. It should be noted that it is the exclusive competence of the Union to legislate on the subject, as established in article 22, item XXIII, of the Federal Constitution. To this end, it is essential to understand the functioning of universal Social Security coverage and its three aspects: Social Security, Social Assistance and Health, governed by article 194 of the Federal Constitution (Brasil, 1988).

Health, under the terms of article 196 of the Federal Constitution, is a right of all and a duty of the State, regardless of contribution (Brasil, 1988). It must be offered directly or indirectly, as provided for in Law No. 8,080/1990, which deals with "the conditions for the promotion, protection and recovery of health, the organization and functioning of the corresponding services" (Brasil, 1990), which can be performed alone or jointly by natural or legal persons, under public or private law (article 1). Health actions and services are coordinated by the Unified Health System (SUS), financed by the Union, the States, the Federal District and the Municipalities, according to article 198, paragraph 1, of the Federal Constitution. Complementary Law No. 141/2012 establishes the minimum amounts to be applied annually (Martins, 2023).

Social Assistance, constitutionally based on article 203 of the Federal Constitution of 1988 and regulated by Law No. 8,742/1993 (Organic Law of Social Assistance – LOAS), does not depend on contributions and aims to provide the social minimums, ensuring the satisfaction of basic needs and ensuring dignity to people in vulnerable situations. This benefit is especially aimed at those who are excluded from social life under equal conditions, due to long-term intellectual, physical, mental or sensory disabilities (more than two years), as well as people aged 65 years or older who live in a state of misery and vulnerability, as established in current legislation (Brasil, 1988).

3 RETIREMENTS

Retirement is a fundamental guarantee provided for in article 7, item XXIV, of the Federal Constitution, with the purpose of ensuring the subsistence of people who, through their efforts, have contributed for years to social security. Thus, it seeks to guarantee their

own livelihood and that of their families, as well as the enjoyment of rights such as education, health, food, work, housing, transportation, leisure and security, when they reach advanced age, through their income, without the need to continue working (Brasil, 1988).

3.1 URBAN VOLUNTARY RETIREMENT

Seeking to meet the coverage of the event of advanced age, urban voluntary retirement is one of the modalities that covers the largest number of insured persons, with legal provision in article 201, item I, § 7, of the Federal Constitution (Brasil, 1988). This provision was amended on November 13, 2019, through Constitutional Amendment No. 103, whose main change was the joint requirement of contribution time and minimum age for granting retirement.

Before Amendment No. 103 came into force, there were two forms of retirement: by contribution time, requiring 35 years of contribution for men and 30 years for women, and by age, requiring the man to be at least 65 years old and the woman, 60 years old. In both cases, a minimum grace period of 15 years of contribution (180 contributions) was required (Brasil, 2019).

Scheduled retirement was instituted by Constitutional Amendment No. 103/2019, requiring, for those who joined the General Social Security System after its entry into force and who do not have an acquired right or fall under the transition rules, 62 years of age and 15 (fifteen) years of contribution for women, and 65 years of age and 20 (twenty) years of contribution for men, according to article 19 of the aforementioned amendment, in addition to a 180-month grace period (Brasil, 2019).

Therefore, currently, only the retirement of people with disabilities, according to article 22, and cases of acquired right, under the terms of article 3, do not require a minimum age for the granting of the benefit. However, the number of contributions required is provisional, until a specific law regulates the necessary time. On the subject, Leonardo Cacao Santos La Bradbury (2020, p. 577) discusses:

Unlike the age requirement, which can only be changed by means of a new amendment to the Constitution disciplining the matter, the grace period for urban voluntary retirement can be modified through a mere ordinary law. Such a situation weakens the Principle of Legal Certainty and the stability of social security legal relations. This is because, in the event that a supervening ordinary law increases the grace period of the benefit, there must be a provision for a new transition rule, which in addition to restricting its granting ends up hindering the predictability of the social security right.

The reform established, for the granting of the benefit to teachers who perform teaching functions in early childhood education and high school, the requirement of 25 years of contribution time for both sexes, with a minimum age of 57 years for women and 60 years for men (art. 19, § 1, II, of EC No. 103/2019). For federal public servants who entered the public service until the date of entry into force of this Amendment, it is required, cumulatively, 57 years of age and 30 years of contribution, in the case of women, and 60 years of age and 35 years of contribution, in the case of men, in addition to the fulfillment of 10 years of effective exercise in the public service and 5 years in the position in which the retirement will take place (art. 20 of the EC No. 103/2019) (Brazil, 2019).

In the old retirement by age, "as of January 1, 2020, the age of the woman, provided for in item I of the caput, will be increased by six months each year, until she reaches 62 years of age", as provided for in article 18, paragraph 1, of the Constitutional Amendment, with the age of 65 years for men and the minimum contribution time of 15 years for both (Brasil, 2019). The amounts of this retirement, as well as those of the scheduled retirement, are established according to article 188-H of the Social Security Regulation:

Art.188. [...] § 3. The amount of the retirement referred to in this article shall correspond to sixty percent of the benefit salary defined in the manner provided for in article 32, with an increase of two percentage points for each year of contribution that exceeds the time of twenty years of contribution, for men, and fifteen years of contribution, for women. (Included by Decree No. 10,410, of 2020). (Brazil, 2020).

Those who acquired or are entitled to the benefit until November 12, 2019 will have the amount calculated "based on the simple arithmetic average of the highest contribution salaries corresponding to eighty percent of the entire contribution period, multiplied by the social security amount" (Art. 188-E, I, of the Social Security Regulation) (Brasil, 2019).

To avoid a sudden change that could cause losses to insured persons about to reach the benefit, retirement by age was maintained for those who joined the General Social Security Regime (RGPS) until 11/13/2019, guaranteeing the acquired right and the application of the transition rules.

Retirement through the points system ensures the right to the benefit for women who, in addition to contributing for at least 30 years, reach 86 points in the sum between age and contribution time. For men, 35 years of contribution and 96 points in the same sum are required. It is worth noting that, as of January 2020, this score gradually increased, one

point per year, until it reached 100 points for women and 105 points for men, according to article 15 of Constitutional Amendment No. 103/2019 (Brasil, 2019).

The rule of retirement by progressive minimum age, provided for in article 16 of EC No. 103/2019, is guaranteed to taxpayers who, until the entry into force of the Amendment, have cumulatively fulfilled the following requirements: 30 years of contribution and 56 years of age, if a woman; and 35 years of contribution and 61 years of age, if male. As of January 2020, this minimum age has been increased by six months each year, for both men and women, until the age of 62 years for women and 65 years for men is reached. For teachers, there is a five-year reduction in the minimum age required, and the teacher must reach 57 years old and the teacher, 60 years old (Brasil, 2019).

The 50% toll transition rule, provided for in article 17 of EC No. 103/2019, is in disuse and does not require a minimum age. This rule is applicable to women who, on the date of enactment of the aforementioned amendment, had more than 28 years of contribution, and to men over 33 years of age. The right to retirement is guaranteed when 30 years of contribution for women and 35 years for men are cumulatively completed, in addition to an additional period corresponding to 50% of the time that, on the date of entry into force of the amendment, was missing to reach these minimum contribution times (Brasil, 2019).

The 100% toll rule applies to insured persons or federal public servants who joined the RGPS until the date of entry into force of EC No. 103/2019 and who, cumulatively, present: 57 years of age and 30 years of contribution, if a woman; and 60 years of age and 35 years of contribution, if male, as provided for in article 20 of the aforementioned Constitutional Amendment (Brasil, 2019).

Those insured persons who do not meet the requirements to fit into one of the transition rules or to exercise the acquired right will be subject to scheduled retirement.

3.2 RURAL RETIREMENT

Rural retirement is due to workers who carry out activities in a family economy regime, including rural producers, miners and artisanal fisherman, provided that they meet the grace period of 180 contributions (rural activity), even if discontinuously, and reach the minimum age of 60 years, if a man, and 55 years, if a woman, five years less compared to urban workers, as provided for in article 201, § 7, item II, of the Federal Constitution (Brasil, 1988).

For the purposes of granting the benefit, the following insured persons are considered rural workers, according to article 247 of IN PRES/INSS No. 128/2022: rural employees; individual taxpayers who provide services of a rural nature to companies or other individual taxpayers equivalent to a company or individual rural producer; individual taxpayers who are miners who demonstrably operate in a family economy regime; casual workers who provide services of a rural nature; and the special insured, according to article 11, VII, of Law No. 8,213/91 (Brasil, 2022).

Domestic employees, rural producers (owners or not), professional fishermen and individual taxpayers who do not prove the exercise of the activity under a family economy regime are not considered rural workers, with the exception of rural producers and fishermen who qualify as special insured, under the terms of the sole paragraph of article 247 and article 248 of IN PRES/INSS no. 128/2022 (Brazil, 2022).

Rural employers, individuals, who explore agricultural activity in an area greater than four fiscal modules, or even less, but with the help of employees, are considered individual taxpayers, according to article 9, V, of Law No. 8,212. In these cases, they must collect, on their own, a rate of 20% on the remuneration earned during the month. Rural employees who provide services of a continuous nature, with personality, remuneration and subordination, are considered employees by the Consolidation of Labor Laws (CLT), even if they work in rural areas, and must therefore have a signed work card, according to article 9, I, of said law. On the other hand, according to article 9, VI, "a", of Law No. 8,212, the rural workers provide services to companies, but without an employment relationship (Brasil, 1991).

To acquire the right to retirement, in addition to the minimum age, it is necessary to comply with the minimum number of monthly contributions indispensable for the beneficiary to be entitled to the benefit. This is usually the greatest difficulty faced by rural workers. To facilitate the contribution of these more vulnerable workers, whose work is hard and exhausting, who are more likely to get sick and have a lower life expectancy due to the difficult conditions in which they live, often in remote, unhealthy and scarce places, the Federal Constitution, in its article 195, establishes specific measures for social protection of this category:

Art.195. [...] § 8. The producer, the partner, the sharecropper and the rural tenant and the artisanal fisherman, as well as their respective spouses, who carry out their activities in a family economy regime, without permanent employees, will contribute

to social security by applying a rate on the result of the commercialization of the production and will be entitled to the benefits under the terms of the law. (Brazil, 1988).

Unlike special insured persons, who, in order to acquire retirement due to age or disability, sickness benefit, imprisonment benefit or death pension, all in the amount of one minimum wage, need to prove the exercise of rural activity, albeit discontinuously, during the number of months required for the granting of the required benefit, according to article 201 of INPRES/INSS No. 128/2022 (Brazil, 2022), rural workers can alternate urban and rural contribution periods, provided that, before applying for special rural retirement, they comply with the necessary grace period for this type of benefit.

SOCIAL SECURITY LAW. RURAL RETIREMENT BY AGE. CONCESSION. FAMILY ECONOMY REGIME. RURAL WORK. PROOF. DISCONTINUITY. URBAN ACTIVITY FOR SHORT PERIODS. MAINTENANCE OF THE LINK WITH THE RURAL ENVIRONMENT. 1. Hit

the minimum age required and proven to carry out rural activity in a family economy regime, for the period required by law, through the production of the beginning of material evidence, corroborated by consistent testimonial evidence, the insured is entitled to rural retirement by age. 2. Urban work, interspersed or concomitant with rural work, by itself does not detract from the condition of special insured. Only a long period of withdrawal from rural activity, with signs of definitive departure from the rural environment, could annul any history of rural work in a family economy regime. Previous. (Brazil, TRF-4 - AC: 50232873020204049999 5023287-30.2020.4.04.9999, Supplementary Regional Panel of SC Rapporteur: Paulo Afonso Brum Vaz, 10/08/2021).

The value of the benefit for rural employees, individual taxpayers who provide services of a rural nature to companies, individual taxpayers who are miners in a family economy regime, casual workers who provide services of a rural nature and special insured persons who contribute optionally will be 70% of the benefit salary, with an increase of 1% for each year of contribution (art. 233, VII, "b", of IN No. 128, of 2022) (Brazil, 2022).

As for the proof of the condition of special insured, the required evidence is, for the most part, unknown to the insured. These are generally people who lack information and knowledge about legislative updates, often illiterate, who face difficulties in accessing digital media, and the legislation is not clear or accessible. For this reason, many do not bother to keep supporting documents and only seek their rights when they are already at an advanced age.

The case law allows the presentation of testimonial evidence by these workers; However, due to the rural exodus, many of the people who accompanied the 15 years of work required are in unknown whereabouts. In view of this, judicial decisions have sought to make the means of proof more flexible.

PENSION. CIVIL PROCEDURE. RETIREMENT DUE TO RURAL AGE. SPECIAL INSURED. FAMILY ECONOMY REGIME. BEGINNING OF MATERIAL EVIDENCE. SUITABLE TESTIMONIAL EVIDENCE. AGRICULTURAL PARTNERSHIP. GRANTING OF THE BENEFIT. SPECIFIC RELIEF. 1. The time of rural service for social security purposes can be demonstrated through the initiation of sufficient material evidence, provided that it is complemented by suitable testimonial evidence. 2. To characterize the beginning of material evidence, it is not necessary that the documents presented prove year by year the exercise of rural activity, either because continuity in the immediately close periods must be presumed, especially in the period prior to the proof, considering that the reality in our country is the migration from rural to urban areas, and not the other way around, since the informality of peasant work is inherent to the scarcity of documents. 3. It cannot be disregarded that rural workers who carry out their activities on third-party lands (borrowers, partners, sharecroppers) are, with the exception of rural workers who are rural workers, perhaps the most harmed when it comes to proving rural labor. As they do not have a property title and, most of the time, sell the production in the name of the owner of the property, they end up without any document that links them to the exercise of agriculture. 4. Once the age requirement and the exercise of rural activity are proven in the records, during the grace period, the Rural Age Retirement must be granted to the plaintiff, as of the administrative request, in accordance with the provisions of article 49, II, of Law 8,213/91. 5. Immediate compliance with the judgment is determined with regard to the obligation to implement the benefit, as it is a decision of mandatory effectiveness that must be carried out through the activities of compliance with the judgment *stricto sensu* provided for in article 497 of the CPC/15, without the need for an autonomous executive proceeding (*sine intervallo*). (Brazil, TRF-4 - AC: 50227604420214049999 5022760-44.2021.4.04.9999, 6th Panel, Rapporteur: João Batista Pinto Silveira, 06/15/2022).

In the legislation, proof of rural activity for the period prior to January 1, 2023 will be carried out through a self-declaration ratified by public entities, by filling out a form called "Self-declaration of the Special Insured – Rural". This procedure is similar to that adopted for the self-declaration of artisanal fisherman and rubber tapper or plant extractivist. Such self-declarations will be automatically ratified through integration with the INSS database (article 115 of INSS/PRES No. 128/2022) and with other records provided for in article 106 of Law No. 8,213/91 (Brasil, 1991; Brazil, 2022).

It is possible to recognize the length of service prior to the oldest documents presented by the insured, as long as it is accompanied by testimonial evidence. Thus, material proof covering the entire period corresponding to the grace period of the benefit is not required.

4 HYBRID RETIREMENT

This retirement was introduced into the Brazilian social security system by Law No. 11,718/2008, in force since June 23, 2008, which reworded articles 11 and 48 of Law No. 8,213/1991, as well as by Normative Instruction PRES/INSS No. 128, of March 28, 2022, having been updated by Normative Instruction No. 151/2023.

This is the modality of voluntary retirement by age, which allows the sum of the time of rural service with the time of urban activity, benefiting and supporting both rural and urban workers. Many of these workers migrated to urban centers due to the rural exodus, fleeing the difficulties faced in rural areas and seeking better conditions of survival through labor relations in urban areas. On the subject, Leonardo Cacao Santos La Bradbury (2020, p. 611) discusses:

In Brazil, there was a great movement of rural exodus, that is, the displacement of several rural workers, with their families, who left the countryside and went in search of better living conditions in the city. However, it is very common that, when they reached an advanced age, they were not entitled to either rural voluntary retirement or urban voluntary retirement, which is why they were unprotected from the social security system, even though they were at risk, due to their advanced age. In this context, hybrid voluntary retirement emerged to avoid these situations in which the insured was unemployed by the social security system, even though he was in a situation of social risk generated by advanced age, which affects his or her work capacity.

The main changes were the change in the minimum age for women, the contribution time required of men and the way of calculation to obtain the benefit. With the system that allows the computation of the time of rural work added to the contribution periods under other categories of insured, including for grace period purposes, the benefit can be requested when reaching the age of urban voluntary retirement, without, however, taking advantage of the age reduction provided for rural workers.

All insured persons are considered beneficiaries: employee, individual contributor, casual worker, special insured and optional insured. The requirements for granting the

benefit were the minimum age, compliance with the grace period and proof of 180 monthly contributions or months of rural activity, and the quality of insured was also required, that is, being in activity or in the grace period at the time of applying for the benefit, as provided for in article 257-A, paragraph 1, of Normative Instruction No. 128/2022, as amended by IN No. 151/2023 (Brasil, 2022).

However, there is no peaceful understanding in the Federal Supreme Court, the body responsible for standardizing the interpretation of federal legislation on the subject, which enables the emergence of new legal theses in judicial proceedings. Considering that retirement by hybrid contribution time is characterized by the combination of age and length of service, it is reasonable to argue that the benefit can also be requested regardless of the maintenance of the status of insured, provided that the other legal requirements are met.

The Social Security Reform (Constitutional Amendment No. 103/2019) brought important changes. Among them, it established the minimum contribution time and the minimum age to retire. These requirements have been adjusted gradually: the minimum age will increase by six months each year until it reaches 62 years for women and 65 years for men. In addition, with the Reform, the retirement conditions for rural workers were equal to those of urban workers. Now, women can retire at 62 years of age with 15 years of contribution, and men at 65 years of contribution with 20 years of contribution. However, there is a transition rule, provided for in article 18 of EC 103/2019, which allows a progressive reduction of the minimum age for women (Brasil, 2019).

A total of 180 contributions is required as a grace period, resulting from the sum of the periods of rural and urban activity, according to the specificity of this benefit. The time of rural activity will be computed even in the absence of contributions by the applicant, provided that it is duly proven, and will be considered, for the purposes of calculating the benefit salary, as equivalent to a contribution in the amount of one minimum wage per month.

4.1 PRACTICE OF HYBRID RETIREMENT AND JURISPRUDENCE

It is important to emphasize that the list of article 106 of Law No. 8,213/91, used to prove the length of rural service, is merely illustrative, as understood by the Superior Court of Justice in the AgRg in AREsp 360761/GO. However, it is required to present contemporaneous evidence of the exercise of rural activity, justifying the need for the

insured to be linked to Social Security during the period in which he requests the benefit of hybrid retirement (Garcia, 2023).

Exclusively testimonial evidence is not admitted, as provided for in Precedent 149 of the STJ and Topic 297 of Repetitive Appeals. However, this evidence can supplement material evidence, which, in turn, does not need to be submitted on a year-to-year basis. Witnesses can even be used to prove the time of rural activity prior to the oldest material evidence, as established in Theme 638 of the STJ. It is also admitted, as a means of proof, the exercise of rural activity before the age of 12, without the need to set an age requirement. In addition, the "material evidence of one of the family members extends to the other members, unless they carry out an activity incompatible with rural labor, such as urban labor", as provided for in Topic 533 of the STJ's Repetitive Appeals (Garcia, 2023).

PENSION. CIVIL PROCEDURE. RETIREMENT BY AGE. RURAL WORKER. REASONABLE BEGINNING OF MATERIAL EVIDENCE. COMPLEMENTATION BY TESTIMONIAL EVIDENCE. URBAN WORK.

HYBRID RETIREMENT. POSSIBILITY. 1. Judgment rendered under the new CPC/2015: there is no need to speak of a necessary remittance, pursuant to article 496, § 3, I, of the new Code of Civil Procedure. 2. The granting of the benefit claimed by the plaintiff requires the demonstration of rural work, complying with the grace period, upon reasonable initiation of material evidence, corroborated with testimonial evidence, or full documentary evidence. 3. Age requirement of the plaintiff (born on 06/14/1954, ID 110892658 - Page 15) for rural retirement on 06/14/2014 (grace period of 180 months) and for hybrid retirement on 06/14/2019 (grace period of 180 months). 4. Beginning of material evidence: marriage certificate celebrated in 1975 ID 110892658 - Page 18 and birth certificate of a child that occurred in 1980 ID 110892658 - Page 20, in both of which the plaintiff is listed as a farmer. 5. The CNIS (ID 110892658 - Page 22) proves the author's urban work, for more than thirteen years, between 1977 and 1990. 6. The oral evidence produced in the case file confirms the plaintiff's status as a rural worker. 7. The case is of hybrid retirement (article 48, paragraph 3, of Law 8,213/91, as amended by Law 11,718/08). Sum of urban and rural working time, excluding age reduction. Precedents of the STJ and TNU. 8. Arrears: the monetary adjustment and interest on arrears, to be levied on the overdue installments, must occur in accordance with the Federal Court Calculation Manual, in accordance with the parameters established in the judgment of RE-RG No. 870,947/SE (Topic 810) and REsp No. 1,495,146/MG (Topic 905). 9. Attorneys' fees are increased by 2% (two percent), in accordance with the provisions of article 85, paragraphs 2, 3 and 11 of the NCPC, totaling the quantum of 12% (twelve percent) calculated on the installments due up to the date of delivery of the judgment. Costs, in accordance with the law. 10. The implementation of the benefit must take place within 30 days (obligation to do), by application of article 497 of the NCPC. 11. INSS appeal dismissed. (TRF-1 - AC: 10083564020214019999, Rapporteur: Federal Judge César Jatahy, Judgment Date: 07/21/2021, 2nd Panel).

Another change brought about by Normative Instruction No. 151/2023 was the change in the way the grace period is computed. Previously, the length of service of the insured who had exercised rural activity before the competence of November 1991 was not considered, according to article 194 of Normative Instruction No. 128, of March 2022 (Brasil, 2022). With this new interpretation, many courts have been issuing decisions that benefit the insured, who already faces difficulties in proving urban activity through documentary evidence, as follows:

PENSION. RETIREMENT BY HYBRID AGE. PERIOD OF

GRACE PERIOD PROVEN. 1. The right to retirement by mixed or hybrid age is recognized, according to article 48, paragraph 3, of Law 8,213/91, as amended by Law 11,718/08, if the minimum age and grace period are implemented, considering the time of rural and urban service. 2. The length of rural service prior to the enactment of Law No. 8,213/91 may be computed for the purposes of the grace period necessary to obtain retirement due to hybrid age, even if the payment of contributions has not been made (Topic 1007 of the STJ). 3. Once the legal requirements are met, the plaintiff is entitled to hybrid retirement as of the date of the administrative request. (TRF-4 - AC: 50144089720214049999 5014408-97.2021.4.04.9999,

Rapporteur: Julio Guilherme Berezoski Schattschneider, Judgment Date: 09/08/2021, 6th Panel).

It is important to emphasize the relevant difference between rural retirement and hybrid retirement. In rural retirement, it is not necessary to prove the exercise of peasant activity for a continuous period, and it is sufficient that the time worked prevails and that the last bond was in the condition of rural insured. In this case, the period in which the insured worked outside the rural area is not considered for the purposes of the grace period. This rule differs from hybrid retirement, which allows the sum of periods of rural and urban work, regardless of whether the last contract was as a rural worker, a change introduced by Normative Instruction No. 151/2023 (Brasil, 2023). In specific cases, alternative claims may be presented in the initial petition or the judge may promote the adequacy of the claim, respecting the principle of instrumentality of forms:

CIVIL PROCEDURAL LAW. PENSION. MATERIAL ERROR. CORRECTION OF THE LETTER. RETIREMENT DUE TO RURAL AGE.

LEGAL REQUIREMENTS FULFILLED. FEES. - Necessary correction of the provision of the sentence, since, although the grounds of the decision led to the granting of rural retirement, the granting of the benefit in the hybrid modality was included in the provision, so that the material error is evident.

- The benefit of retirement by age is guaranteed to rural workers, pursuant to Law No. 8,213/91, to the insured who completes 60 (sixty) years of age, if a man or 55 (fifty-five) years of age, if a woman, upon proof of the exercise of rural activity, even if discontinuously, in the period equivalent to the grace period required, under the terms of article 26, III, and article 142 of the aforementioned legal text - Set of evidence that shows compliance with the grace period and permanence in rural activities until the moment immediately prior to the implementation of the age requirement - Since the month of the enactment of Constitutional Amendment No. 113, of 12/08/21, the calculation of the debt will be made only by the SELIC rate, monthly and in a simple way, pursuant to the provisions of its article 3, the incidence of the SELIC rate cumulated with interest and inflation adjustment is prohibited
- Attorneys' fees shall be fixed in the settlement of the judgment, pursuant to item II, paragraph 4, c.c. § 11, article 85, of the CPC/2015 - Correction of material error.
- Appeal granted in part. (TRF-3 - ApCiv: 50657016520234039999 SP, Rapporteur: Gilberto Rodrigues Jordan, Judgment Date: 10/26/2023, 9th Panel, 11/06/2023).

As for the value of the benefit, the Constitutional Amendment changed the way of calculating the benefit salary of hybrid retirement. Before, this calculation followed the criteria for rural retirement. With the change, the simple arithmetic average of all contributions made in the basic calculation period is now used, similar to the retirement by contribution period, considering only the contribution salaries from July 1994 onwards, maintaining the percentage of the RMI (Initial Monthly Income).

However, if the insured has fulfilled the requirements before the entry into force of the Constitutional Amendment, the previous rule applies: the RMI corresponds to 70% of the benefit salary, plus 1% for each group of 12 monthly contributions, limited to 100%. In this case, the benefit salary is calculated based on the average of the 80% highest contribution salaries, excluding the 20% lowest, according to the criterion used in the old hybrid retirement, thus guaranteeing the acquired right, along the lines of the rural retirement in force at the time.

5 CONCLUSION

Based on the analysis of the work entitled "On Hybrid Retirement and its Regulation by Constitutional Amendment No. 103/2019 and Normative Instruction No. 151/2023", it can be concluded that hybrid retirement is a big step in the social security system in Brazil, especially when looking at the various types of professional life of the insured. The unification of contribution times in the countryside and in the city facilitates access to retirement for those who, migrating from rural to urban areas, are unable to meet the

necessary requirements to retire exclusively with the contribution time in only one of these regimes. This possibility promotes greater social justice by benefiting workers who are in a situation of vulnerability, often neglected by the conventional rules of social security.

The combination of rural and urban contribution periods enables access to retirement by those who, due to the rural exodus and legal requirements, are unable to complete the requirements for an exclusively rural or urban retirement. This modality confers greater social justice by supporting workers who are in vulnerable situations, often marginalized by traditional social security rules.

The changes introduced by Constitutional Amendment No. 103/2019 and Normative Instruction No. 151/2023 were decisive for the improvement of the hybrid retirement regime. The new normative guidelines not only redefined age and grace criteria, but also adjusted the calculation of the benefit, harmonizing it with the reality of those who lived between the countryside and the cities. Jurisprudence has also played an important role in making evidentiary requirements more flexible, recognizing the complexity of the trajectory of insured persons and ensuring the effectiveness of social security rights in the face of document scarcity.

Finally, the study reinforces the need for continuous legislative and interpretative updating, in order to ensure the effectiveness of the principle of human dignity in the context of social security. Hybrid retirement symbolizes an instrument of social security inclusion that should be strengthened by public policies sensitive to demographic and economic changes. The recognition and appreciation of hybrid work trajectories contribute to a more equitable social security system that is appropriate to the reality of the Brazilian population.

REFERENCES

- Bradbury, L. C. S. L. (2020). **Curso prático de direito e processo previdenciário** (3rd ed.). São Paulo: Atlas.
- Brasil. (1988). **Constituição da República Federativa do Brasil de 1988**. https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm
- Brasil. (1991a). **Lei nº 8.212, de 24 de julho de 1991. Dispõe sobre a organização da Seguridade Social, institui Plano de Custeio, e dá outras providências**. https://www.planalto.gov.br/ccivil_03/leis/L8212compilado.htm
- Brasil. (1991b). **Lei nº 8.213, de 24 de julho de 1991. Dispõe sobre os Planos de Benefícios da Previdência Social e dá outras providências**. https://www.planalto.gov.br/ccivil_03/leis/L8213cons.htm

- Brasil. (2019). *Emenda Constitucional nº 103, de 12 de novembro de 2019. Altera o sistema de previdência social e estabelece regras de transição e disposições transitórias*. https://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc103.htm
- Brasil. (2020). *Decreto nº 10.410, de 30 de junho de 2020. Altera o Regulamento da Previdência Social, aprovado pelo Decreto nº 3.048, de 6 de maio de 1999*. https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/d10410.htm
- Brasil. (2022). *Instrução Normativa PRES/INSS nº 128, de 28 de março de 2022. Disciplina as regras, procedimentos e rotinas necessárias à efetiva aplicação das normas de direito previdenciário*. *Diário Oficial da União, 60*(1), 132. <https://www.in.gov.br/en/web/dou/-/instrucao-normativa-pres/inss-n-128-de-28-de-marco-de2022-389275446>
- Brasil. (2023). *Instrução Normativa PRES/INSS nº 142, de 4 de janeiro de 2023. Dispõe sobre cessão e requisição de servidores e define os critérios objetivos para instrução dos pedidos*. <https://www.in.gov.br/web/dou/-/instrucao-normativa-pres/inss-n-142-de-4-de-janeiro-de-2023-456629905>
- Brasil. Tribunal Regional Federal da 1ª Região. (2021). *AC 1008356-40.2021.4.01.9999* (2ª Turma, Relator: Desembargador Federal César Jatahy, July 21, 2021).
- Brasil. Tribunal Regional Federal da 3ª Região. (2023). *ApCiv 5065701-65.2023.4.03.9999* (9ª Turma, Relator: Gilberto Rodrigues Jordan, October 26, 2023).
- Brasil. Tribunal Regional Federal da 4ª Região. (2021a). *AC 5014408-97.2021.4.04.9999* (6ª Turma, Relator: Julio Guilherme Berezoski Schattschneider, September 8, 2021).
- Brasil. Tribunal Regional Federal da 4ª Região. (2021b). *AC 5023287-30.2020.4.04.9999* (Turma Regional Suplementar de SC, Relator: Paulo Afonso Brum Vaz, October 8, 2021).
- Brasil. Tribunal Regional Federal da 4ª Região. (2022). *AC 5022760-44.2021.4.04.9999* (6ª Turma, Relator: João Batista Pinto Silveira, June 15, 2022).
- Garcia, G. F. B. (2023). *Curso de direito previdenciário: Seguridade social* (7th ed.). São Paulo: SaraivaJur.
- Martins, S. P. (2023). *Direito da seguridade social: Direito previdenciário* (41st ed.). São Paulo: Atlas.