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21

THE RECOGNITION OF SOCIAL-AFFECTIVE PARENTHOOD AND MULTI- PARENTHOOD IN THE BRAZILIAN CIVIL REGISTER IN LIGHt OF THE PRINCIPLES THAT REGULATE FAMILY LAW

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RESUMO

Recentemente, o Conselho Nacional de Justiça (CNJ), por meio do Provi- mento nº 63, regulamentou o reconhecimento da filiação socioafetiva no Registro Civil, desburocratizando os casos de reconhecimento da filiação com base na afe- tividade, bem como permitiu a multiparentalidade. Tal inovação coaduna-se com o arcabouço principiológico do direito de família brasileiro, em especial com os princípios da afetividade, da dignidade da pessoa humana e do melhor interesse da criança. Dessa maneira, o presente estudo teve por objetivo analisar o papel do reconhecimento da filiação socioafetiva e da multiparentalidade no registro civil brasileiro, à luz dos princípios que regem o direito de família. Metodologicamente, utilizamos a abordagem qualitativa. Já o método de pesquisa adotado foi o dialéti- co, e as técnicas de coleta de dados foram a documental e o estudo bibliográfico. Nossos resultados apontam que o Provimento nº 63 do Conselho Nacional de Justiça, de 2017, representou um marco para o direito de família brasileiro, uma vez que possibilitou a

regularização e o reconhecimento de situações fáticas de arranjos familiares diversos, com base na afetividade.

Palavras-Chave: Multiparentalidade. Afetividade. Arranjos Familiares. Re- gistro Civil.

ABSTRACT

Recently, the National Council of Justice (CNJ), through Provision No. 63, regulated the recognition of socio-affective affiliation in the Civil Registry, bureaucratizing the cases of recognition of the affiliation based on the affectivity, as well as allowed multi-parenting. Such an innovation is consistent with the principiological framework of Brazilian family law, especially with the principles of affection, the dig- nity of the human person and the best interest of the child. Thus, the present study aimed to analyze the role of recognition of socio-affective affiliation and multipa- rentality in the Brazilian civil registry, in light of the principles that govern family law. Methodologically we use the qualitative approach. Already the method of research adopted was the dialectic and the techniques of data collection were: bibliographic and documentary. Our results indicate that the CNJ's provision 63/2017 repre- sented a milestone for Brazilian family law, since it allowed the regularization and recognition of factual situations of diverse family arrangements, based on affectivity.

KEYWORDS: Multi-parenting. Affectivity. Family Arrangements. Civil Registry.

1 INTRODUCTION

Family formation has undergone several changes throughout the ages; for a long time the patriarchal and matrimonial family model was maintained, that is, the one formed according to the social standards established by society. This family was originated from marriage, and was therefore considered legitimate, since it was formed by the union of a man with a woman, from which children were born. This family format was based on hierarchy, patrimony, and individualism, and did not consider affection as the driving force of the family formation.

The Civil Code of 1916 supported this family format and admitted the judicial separation and divorce to break it up. Thus, until the 20th century, any other type of family than the legitimate one was not recognized and, as such, remained on the margins of society.

But the reality was different from what the normalization proposed. There were several families formed other than by marriage. And the State was forced to recognize them, in this way, the protection of children conceived outside marriage began to emerge, then it came the recognition of stable unions.

The Magna Carta of 1988 brought, in its article 226, the protection of the family by the State and the recognition of the various types of families. These are generally formed by the bond of affection, and the principles of hierarchy, patrimonialism and individualism that promoted matrimony in the past are no longer important.

The Civil Code of 2002, in family law, recognized the equality between children and the stable union, as well as, valued the relationships beyond marriage, maintaining monogamy. However, the focus has always been on safeguarding family property.

Since then, jurisprudential changes have admitted same-sex marriages and the adoption of children by homosexual couples; more recently, changes in the civil register have been allowed, with the inclusion of the affective patronymic in addition to the biological one, allowing the child to have dual paternity, by means of Provision Number 63 of the National Council of Justice, 2017.

Therefore, the general objective of this study is to analyze the role of the recognition of social-affective parenthood and multiparenthood in the Brazilian civil registry in the light of the principles governing family law. The specific defined objectives were: to describe the importance of the principles that govern family law today; to understand the legal recognition of the factual diversity of family arrangements; and to evaluate the regulation of multi-parenting by the National Council of Justice's Provision number 63 of 2017.

With the changes brought about by the constitutional and infra-constitutional rules, the principles of hierarchy, patrimonialism, and individualism are being almost replaced by the principles of affection, family solidarity, integral protection of children and adolescents, including the best interests of children and adolescents, and responsible parenthood, besides others that will not be discussed in this study.

However, the principle of affection is the precursor of the principles mentioned above, because affection represents the interaction and connection among individuals living under the same roof, with the intention of generating the family, the home. This interaction takes place through subjectivity, focusing

not only on property interests, but also on affinity and affective bonding among family members.

Methodologically, the qualitative approach was used, which was privileged, considering that the focus of our study was not centered on quantitative aspects, but on the understanding of a social reality, based on human relations. The research method adopted was the dialectical one, which aims to study the object of study in its entirety, observing its positive and negative points. The study was bibliographic, constituted by means of support from theoreticians on the subject addressed, carried out in books, scientific articles, and academic papers. Finally, as for the data collection technique, the documental one was used, carried out in the judgments and normative acts, in particular in the Provision nº 63 of the National Council of Justice, of 2017.

In a first moment, the principles that govern Family Law were addressed, describing the importance they have nowadays; then, it was commented how such principles have provided the legal recognition of the diversity of family arrangements existing in society; finally, it was focused on the Provision nº 63 of the National Council of Justice, 2017, evaluating how it has impacted family relationships.

2 THE IMPORTANCE OF THE PRINCIPLES THAT GOVERN FAMILY LAW IN BRAZIL

The principles are sources of law of relevant utility for the regulation of social relations, mainly because they are the driving force behind the rules of conduct, from the Maximum Charter to the Rules and Regulations of the legal relations of a country. Everyday, the principles are recognized as species of norms, just like the rules. And the scholars who adopt this thesis are based on the theory of weighting and suitability are: Josef Esser, Ronald Dworkin, Robert Alexy (PEREIRA, 2015).

Brazilian family law was and is no different; the regulatory norms were also based on principles. However, the principles were used as supplementary rules to the laws. As time went by, they gained more effectiveness and, as Valadares (2005, p. 3) states, "With the evolution and development of civil-constitutional law, the principles gained a new normative force. They have left their supplementary character to become the focus and center of normative interpretation". This interpretation was crucial to avoid the pure application of

the law and also to rule out moral judgments in the application of family conduct rules. This idea is supported by the weighting and adequacy of the best interpretation in the application of norms.

In family law, initially, the basic principles were those of hierarchy, patrimonialism, and individualism, as already mentioned.

The principle of patrimonialism is very similar to patriarchy, in which there is a source of power, and this is the power of the husband, who becomes the lord of the house, through marriage and often through formal unions based on family interests and alliances. The woman, the wife, is subordinated to the husband, her lord, through economic, financial and emotional dependence, and she has no voice. This is very similar to slavery. The husband/landlord gives the domestic orders, judges conflicts, and applies disciplinary power. The wife and children just comply. He holds all the power of command and property, acquired from the established patriarchal relationship, which makes him lord of all things and people (AGUIAR, 2000).

The principle of hierarchy, originating in patriarchy, establishes the hierarchical power and authority of the husband. A person who no one can overrule, he is the maximum authority of the home. The bond is given by affection, many times through marriage, but it privileges the arbitrariness before the authoritarianism of the pater familia (AGUIAR, 2000).

The principle of individualism represents the idea of transmission of the patrimony and procreation, with a little regard for family welfare in the aspect of affection. Children often seek distance from their genitor, establishing their own home, away from the oppression experienced since birth. What favors is self-centeredness (SOUSA; WAQUIM, 2015).

These basic principles of family law were contemplated in the constitutions prior to 1988 and in the Civil Code of 1916. However, they gradually began to be questioned, especially as women assumed an important role in the family context. Such changes gained strength and were consolidated with the enactment of the Citizen's Magna Carta of 1988[1], based on the realities arising from the social changes resulting from the several movements for equality

[1] Antes da CF/88, podem ser citadas duas normas importantes na reformulação da família no Brasil, a primeira foi a o Estatuto da Mulher Casada (Lei 4.121/1962) que influenciou a promo- ção da "emancipação da mulher, que pôde tornar-se economicamente ativa sem necessitar da autorização do marido, passou a ter direito sobre os seus filhos e compartilhar do poder familiar, podendo pleitear a guarda em caso de separação" (SOUZA; BELEZA; ANDRADE, 2012, p. 107). A outra foi Lei do Divórcio (Lei 6.515/1977), a qual permitiu a dissolução do casamento, permitindo que as pessoas pudessem reconstruir suas vidas, quando não houvesse mais sentido a continuidade da relação conjugal.

among family members and the change in the behavior of the woman, abandoning her submissive role to be side by side with her husband/partner in the domestic administration.

With it, new principles have gained relevance in Family Law, of which the following will be highlighted in this study: the principle of human dignity, the principle of affection, the principle of family solidarity, the principle of integral protection of children and adolescents (associated with the principle of the best interests of the child) and the principle of responsible parenthood. Next, each of these principles will be studied individually.

It begins with the principle of the dignity of the human person, due to its relevance to the other principles in the regulation of Family Law, considered as a maximum principle, having a fundamental character in the Magna Carta of 1988, which promotes a depatrimonialization of Private Law, making room for respect for the human person over the patrimonial aspect (TARTUCE, 2017). This principle prioritizes the "being" in the sense of the existence of the person before any value judgment of origin and various prejudices (HINORAKA, 2000). It is a principle that privileges and promotes the human person by its existence.

The class struggles and the social movements contributed a lot to the breaking up of that patriarchal family format, for a family with more democracy and egalitarian division of roles, supported not only in the patrimony, but with affection, through an affective and interactive bond that connected the members in the home. What used to be a house, with a patriarchal, individual lord, became the home, with affection in the bonds that united the relatives, no longer just father, mother, and children, but all those who formed the family bond.

The principle of affectivity has taken the place of the rigidity that involved the old family entity. Marriage is now formed by people who love each other, and when love ends there is no need to live together, and sadness, anger and many negative feelings start to move the relationship. Affection is not love, it is much more. It is understanding (VALADARES, 2005). There is a rupture of the old legal discourse of family (PEREIRA, 2015).

"The subject of law is also a subject of desire. It changes everything. Women see themselves, then, as subjects in the marital and parental relationship, and no longer as subjected to the father or husband" (PEREIRA, 2015, p. 3). They are no longer objects of the home, to be entities of the home with rights and obligations, not only property, but also affection and desire. They are no longer obliged to maintain the marital bond out of obligation, but out of pleasure. "It

breaks, thus, a historical resignation of women who supported marriages" (PEREIRA, 2015, p. 3). The principle of affectivity questions the prevalence of patriarchy, prioritizing affection, understanding and the desire to be in the same domestic space to family members.

The principle of the family solidarity, in the words of Lisbon (2002, p. 46): "are vectors that indicate the duty of mutual cooperation among family members and among relatives, for the purposes of immaterial (affection) and material (food, education, leisure) assistance". It means that there is a need for collaboration of all the entities that form the family in all aspects. Primordially the affection, the understanding, the mutual help, and then there is the economic-financial division. People respect each other and respect the individual liberties.

There is a desire to be in the same domestic space, for everything that is practiced, distributed, and established democratically among the cohabitants. Wives and children have the same rights, duties, and desires as their parents. The latter do not dictate the rules. Families are not only the presence of a father, a mother and the children. There are several affective bonds involved from the most diverse members that form the family relationship. There is a diversity of types of families, according to the affection that unites those involved in the relationship.

Then, another principle arises, that of full protection of children and adolescents, and it includes the principle of the best interests of children and adolescents. These principles complement each other, since, in the words of Santos (2006, p. 130).

> A doutrina da proteção integral da criança e do adolescente afirma o valor intrínseco como ser humano; a necessidade de especial respeito à sua condição de pessoa em desenvolvimento; o valor prospectivo da infância e da juventude, como portadora da con- tinuidade de seu povo e da espécie e o reconhecimento da sua vulnerabilidade o que torna as crianças e os adolescentes mere- cedores de proteção integral por parte da família, da sociedade e do Estado, o qual deverá atuar através de políticas específicas para promoção e defesa de seus direitos.

The principle of integral protection is based on respect for children and adolescents, as they are individuals in biological, physical and psychological development, then the need for special care and attention for the proper development of these beings until adulthood, reaching maturity supported by the welfare and the fullness of their rights. Thus, both the family and the State are

responsible for the formation and development of these people. Protection means to minimize or avoid risks to the dignity of the child and adolescent.

Children and adolescents are vulnerable because they are exposed to the most diverse adult actions and lack the maturity and understanding to make decisions or free themselves from risk, violence, and especially to stay alive without the support, protection, and care of someone who knows how to defend them from all the storms of life.

As for the principle of the best interests of children and adolescents, in the words of Diniz (2010), this guarantees the full development of the personality of these subjects and servers as a parameter to settle conflicts and servers as a parameter to settle conflicts in family relationships, such as divorce, custody, visitation rights, etc.

Therefore, children or adolescents, within the family, must be respected, and not treated as objects of their parents' desires. Much less be used as objects of revenge for the break-up of the conjugal life of the parents. Then the possibility of the dismissal of the family power, in the most diverse cases of violence against them.

And finally, the principle of responsible paternity, which, according to the Federal Constitution of 1988, in its article 226, paragraph 7, establishes that:

> Art. 226. A família, base da sociedade, tem especial proteção do estado:[...]
>
> § 7º. Fundado nos princípios da dignidade da pessoa humana e da paternidade responsável, o planejamento familiar é livre decisão do casal, competindo ao Estado propiciar recursos educacionais e científicos para o exercício desse direito, vedada qualquer forma coercitiva por parte de instituições oficiais ou privadas.

It is understood from the article in question that responsible parenthood inhibits the intervention of the State in family planning. The idealization of free and spontaneous will of the couple. It is up to the State to seek to provide and guarantee conditions of health, education, housing, food, in short, survival to the parents for the realization of these rights.

The responsibility of the parents for the pregnancy, birth, and care of their children is direct, in other words, it does not depend on the action of others to apply a sanction for mistreatment, negligence, and imprudence in the care of their progeny.

Thus, Pires (2001, online) states: “a rational and independent family planning, so that its members can develop naturally”. It means that family planning is to bring the child into the world with responsibility and desire to have it, so that, when born, the baby, then child, then teenager can develop normally, without physical, psychological, biological problems, among others, due to mistreatment, abandonment, disrespect and, worse, the unwillingness of its existence.

Responsible parenthood corresponds to the duty of full protection and guarantee of a healthy life for children and adolescents, due to the fact of their existence, which represents the respect for the dignity of the human person, supported by affection, desire, and pleasure for their life in the family circle, in the most diverse species of families existing nowadays.

3 LEGAL RECOGNITION OF THE FACTUAL DIVERSITY OF FAMILY ARRANGEMENTS

The substitution of the patriarchal and matrimonial family model, based on hierarchy, patrimonialism, and individualism, for the principle understanding of family arose from important social changes that redefined the roles of the people who form a family.

According to Dias (2004), modern society, marked by the globalization, allowed the breaking of three paradigms that conditioned the family, which are: marriage, sex and reproduction, because the advent of female emancipation, the evolution of the customs and the development of studies on genetic engineering made it possible for marriage to no longer be indispensable for the recognition of the family nucleus. In addition, there was the expansion of the sexual freedom, making the idea that sex should be practiced exclusively within marriage and for merely procreative purposes.

The feminist debate has allowed an expansion of the rights of the women and their participation in society, which has had decisive repercussions on families, because women have left the eminently private spaces and the exclusive exercise of caring home and raising children to enter the labor market, leading to a decrease in the number of children, late reproduction (or even the option of not having children), and the sharing of domestic chores[2].

[2] É preciso ressaltar que apesar dos avanços nos direitos das mulheres, o patriarcado não foi totalmente superado (e ainda está muito longe de o ser) das relações familiares, em muitos casos as mulheres acumulam exaustivamente as atribuições produtivas no mercado de trabalho, com as reprodutivas, no seio domiciliar, gerando o que Ávila (2009) denomina de jornada intermiten- te.

In addition, other factors were decisive for changes in the traditional formation of the family, such as divorce and the recognition of children as subjects of rights, based on the doctrine of integral protection of children and adolescents, inaugurated in the Brazilian legal system by the Federal

Constitution of 1988, and ratified and expanded by the Statute of the Child and Adolescent (Law number 8072 of 1990). Lima (2014, p. 25) summarizes the social changes that have influenced the shape of families today, stating that in the Contemporary Age

> [...] houve a formação dos grandes centros urbanos, a revolução sexual, o movimento feminista, que puseram em cheque padrões morais, a disseminação do divórcio e, finalmente, a reformulação do conceito de família que passou a admitir os mais variados ar- ranjos, acompanhando a evolução da humanidade.

In view of this, and considering that the old Civil Code of 1916 only recognized as a family entity that one formed by marriage, and also differentiated the children into "legitimate" and "illegitimate" ones, the latter having arisen outside the conjugal relationship, it was necessary for Brazilian civil law to adjust itself to modern factual reality, recognizing the various existing family formats[3].

In this sense, the Federal Constitution of 1988 was very important, because from it, there was a broadening of the recognition of the family entity, and now the family institutions formed from the Stable Union are considered as such, as well as the cases of single-parent families, endowed with the presence of a father or a mother with children, and the anaparental families, characterized by the absence of the father figure, formed by collateral links.

Moreover, our Magna Carta abolishes the differentiation between children, whether biological, adopted, born, or not, in marriage, all are considered equal, even for the purposes of succession and patrimonial. At this point, as already seen in this study, family law is supported by the principled framework; we can

[3] Conforme Souza e Dias (2000), por muito tempo, a legislação permaneceu omissa para o reconhecimento de outras relações familiares, além de impedir efeitos jurídicos de qualquer outro vínculo afetivo, que não fosse o casamento, contudo, na prática os relacionamentos ocor- riam, levando os envolvidos a procurar o judiciário para dirimir conflitos decorrentes dessas rela- ções, obrigando o judiciário a criar meios alternativos para resolução desses casos. Inicialmente, era aplicado analogamente o Direito Comercial, sendo a relação dos conviventes equiparada a uma sociedade de fato, nas hipóteses em que não havia patrimônio destinado a partilha, equipa- rava-se a relação a uma laboral, a partir do pagamento de indenização pelos serviços prestados.

also deduce that the family entity is closely linked to affection. Souza, Beleza and Andrade (2012, p. 110) point out

> As inúmeras mudanças e transformações dos séculos XX e XXI produziram reflexos nas relações familiares, intensificando novos e variados arranjos familiares, bem como as concepções de con- jugalidade e parentalidade. Na contemporaneidade, o que vai identificar a família já não é mais a celebração do casamento ou do envolvimento de caráter sexual e sim o afeto que permeia o relacionamento. A afetividade será o principal sentimento a sus- tentar a formação dos relacionamentos conjugais.

The family continues to be identified as the locus of the first socialization of the individual, as a sine qua non importance for the formation of the personality of each person, a structured family continues to be fundamental to define who that person will be in the future. However, nowadays the understanding of what would be a "structured family" is based on the affection among the family members, and not on the mandatory presence of the traditional pattern, formed by the presence of father, mother, and children.

It should be warned that the study of the families should be supported in the "deconstruction of our ready-made concepts, seeking the detachment from prejudices so that we can understand the new family configurations" (OLIVEIRA, 2009, p. 84).

It should be noted, however, that since the promulgation of the 1988 Constitution, new changes in social relations have led to the creation of new family arrangements that go beyond marriage, stable union and single-parent families, which were recognized by the constitution. Lôbo (2002) defends that it is necessary to understand families beyond the numerus clausus described in the Constitution; for him, family entities are characterized by the presence of the following elements: affection, stability and ostensibility. The same author, in his doctrine book on Family Law has enumerated eleven family formations, which are directly or indirectly recognized by Brazilian law:

> a) homem e mulher, com vínculo de casamento, com filhos bio- lógicos;
>
> b) homem e mulher, com vínculo de casamento com filhos bio- lógicos e não biológicos, ou somente com filhos não biológicos;
>
> c) homem e mulher, sem casamento, com filhos biológicos (união

estável);

d) homem e mulher, sem casamento, com filhos biológicos ou

apenas não biológicos (união estável);

e) pai ou mãe e filhos biológicos (entidade monoparental);

f) pai ou mãe e filhos biológicos e adotivos ou apenas adotivos

(entidade monoparental);

g) união de parentes e pessoas que convivem em interdependência afetiva, sem pai ou mãe que a chefie, como no caso de grupo de irmãos, após falecimento ou abandono dos pais, ou de avós e netos, ou de tios e sobrinhos;

h) pessoas sem laços de parentesco que passam a conviver em caráter permanente, com laços de afetividade e de ajuda mútua, sem finalidade sexual ou econômica;

i) uniões homossexuais, de caráter afetivo e sexual;

j) uniões concubinárias, quando houver impedimento para casar

de um ou de ambos companheiros com ou sem filhos;

l) comunidade afetiva formado com "filhos de criação", segundo generosa e solidária tradição brasileira, sem laços de filiação natural ou adotiva regular, incluindo nas famílias recompostas, as relações constituídas entre padrastos e madrastas e respectivos enteados, quando se realizem os requisitos da posse de estado de filiação (LÔBO, 2010, p.73).

This list described by the author, however, does not exhaust the possibilities of family arrangements; the social relations are dynamic and, little by little, law has been recognizing other types of arrangements, as in the cases of multiple parenthood, which will be discussed in the next topic.

4 THE REGULATION OF MULTIPLE PARENTHOOD BY THE NATIONAL COUNCIL PROVISION No 63

As described above, the new family arrangements have reflected on family law. Such repercussion has allowed the focus to be changed from the level of

legitimacy to the level of affection, from then on redirecting the traditionally recognized function of the pater is est presumption:

> Destarte, sua função deixa de ser a de presumir a legitimidade do filho, em razão da origem matrimonial, para a de presumir a paternidade em razão do estado de filiação, independentemente de sua origem ou de sua concepção. A presunção da concepção relaciona-se ao nascimento devendo este prevalecer (LOBO, 2004, p.28).

In other words, the presumption of paternity is materialized from the observance of the relationship of the filial status. Lobo (2004) states that the filial state is constituted when a person assumes the role of a child in front of another person(s) who assumes the role of father or mother, and there may or may not be a biological bond between them.

Such author also states that the filiation status can be conceptualized as a legal qualification of the kinship bond, attributed to the people integrating this relationship "understanding a complex of rights and duties reciprocally considered. The child is the holder of the filiation status, in the same way that the father and mother are holders of the paternity and maternity status in relation to the child" (LOBO, 2004, p. 21).

It is necessary to differentiate the filiation status from the right to know the genetic origin, the first, as seen, is associated with the reciprocal assumption of the roles of son and father and mother, generating a series of legal effects; the second, in turn, is related to the knowledge of the individual of his biological parentage, so that he can know his origins, his genetic heritage. It is worth noting that "the existence of registered socio-affective filiation does not prevent the investigation of the biological filiation, precisely because this is a very personal, unavailable and imprescriptible right"

The filiation status cannot be confused with the biological filiation, it is entirely possible that it can be constituted through the affection developed between certain people, building a father-son/father-daughter/mother-child/mother-daughter relationship. In these cases, the social- affective paternity will be configured.

The filiation status, however, for a long time, was restricted to the dual model of parenthood, which "required that the individual was registered by a man and a woman, in other words, always two people, but of different sexes. This dual model has been modified with the adoption of people of homosexual couples" (CASSETTARI, 2015, p. 157).

Thus, some of the first cases of recognition of dual paternity or maternity were associated with homo-affective adoption; however, multi-parenting involves other hypotheses of family formations. The following table defines some parental models, different from the dual standard:

Nomenclature	Concept
Paternal Multi-parenting	3 or more people as genitors, with two or more fathers of the male gender
Maternal Multi-parenting	3 or more people as genitors, with two or more mothers of the female gender
Biparentality	1 father and mother of distinct genders
Bipaternity (or Paternal Biparentality)	2 fathers only of the male gender
Bimaternity (or Maternal Biparentality)	2 mothers only of the female gender

Source: CASSETTARI, 2015, p.160.

In this study, the focus will be given to cases of multi-parenting, whether paternal or maternal. Cassettari (2015) conducted a very interesting and complete survey on the multi-parenting in the judgments of several Brazilian courts. According to the author, as the subject is controversial, initially it was considered impossible that a person could have multiple parenthood, he cites the Civil Appeal 70027112192 of the Eighth Civil Chamber of the Court of Justice of Rio Grande do Sul, under the reporting of Justice Claudir Fidélis Faccenda (2009).

In the case, the author claimed the existence of social affective paternity; however, he did not want it without annulling the paternity of the father registral. At the time, the request was considered legally impossible; since the understanding was that no one could be the child of two fathers. The law, however, could not remain unaware to the factual dynamics of family relationships, and numerous cases were brought to court, where the debate was centered on the possibility of a person having more than one father or mother.

Cassettari (2015) also presents other judgments of recognition of paternity/maternity socio-affective, such as: (i) Civil Appeal number 0006422-26.2011.8.26.0286, judged by the Court of Justice of the State of São Paulo (2011); (ii) the first instance sentence of the first Civil Court of the County of Ariquemes, located in Rondônia, related to the Files of the Case number 0012530- 95.2010.8.22.0002; (iii) the first instance sentence of the Court of Childhood and Youth in the County of Cascavel, in the State of Paraná, concerning the Proceedings of Case number 0038958-54.2012.8.16.0021, among others.

The cases involve several possibilities of family formations, in which the multi-parenting has become effective due to stepfamilial relationships or adoption, as well as cases of Brazilian adoption, besides the cases of death of

one of the genitors or recognition of posterior biological paternity.

In all these cases, there is a trend towards the recognition of social-affective paternity, which gave rise to the maximum "affective paternity prevails over biological paternity", established in jurisprudence.

Artoni (2019) brings up the same perception, based on his studies on "socioaffective filiation" in the judgments of the Superior Court of Justice (STJ), in the period from 2007 to 2019.

The author notes a trend towards privileging the socio-affective parenting, despite listing exceptional cases in which biological parenting prevailed. The great imbroglio, however, was in the questioning about which of the parentalities (the socio-affective or the biological) should be consigned in the birth register, considering all the civil effects resulting from such consignation.

The debate was consolidated, in August 2016, through the decision of the Federal Supreme Court (STF) in the Extraordinary Appeal number 898.060/SC, under the reporting of Minister Luiz Fux, in which the thesis number 622 was adopted: "The socio-affective paternity, whether declared in a public register or not, does not prevent the recognition of the concomitant filiation bond based on the biological origin, with all its patrimonial and extra-patrimonial consequences". The case obtained general repercussion, and this thesis is now being adopted in similar situations, legitimating the possibility of the presence of one more father or mother in a registration record of a person. It is possible to state that:

> A decisão do STF foi inovadora ao redefinir os contornos da filia- ção, reconhecendo juridicamente a afetividade, a isonomia jurídi- ca entre as filiações socioafetiva e biológica, não sendo possível afirmar, a priori, que uma modalidade de vínculo deva prevalecer em detrimento da outra, e acolheu a possibilidade da multiparen- talidade, configurando um avanço no direito das famílias (FRAN- CO; EHRHARDT JÚNIOR, 2018, p, 231).

The decision of the Supreme Court allowed the existence of the multiple parenthood, but the lack of regulation on the subject hindered the full exercise of the right of people inserted in family formations of this type. In order to fill this gap, the National Council of Justice (CNJ) edited the Provision number 63 in November 2017, regulating the recognition of social-affective paternity.

Such provision is extensive and deals with social-affective paternity in its second section, in articles 10 to 15. The text defines that the recognition of social-affective paternity (and maternity) will be voluntary and extrajudicial, and it will be effective spontaneously by the interested party, directly in front of the civil registry officers of natural people. In addition, following the recommendation of the Brazilian Institute of Family Law (IBDFam), multi-parenting has been regularized, allowing the registration of up to two fathers and/or two mothers in the "filiation" field in the birth certificate.

It is observed, therefore, that the 2017 Provision of the National Council of Justice No. 63 has been fundamental in consolidating the legal recognition of multi-parent family formations, being aligned with the principles of family law.

It is understood that the families characterized by multi-parenting, which were once not recognized by Law, had not fully respected the principle of the dignity of the human person, because the family arrangements in which they lived were legally marginalized, and there were even current losses of the successions and alimentary aspects caused by this lack of recognition.

"The constitutional principle of the dignity of the human person has a content that exceeds the fundamental rights listed in the Constitution" (SARMENTO, 2016, p. 308); that way, it is necessary that everyone can have their individuality respected, and have their family formation legally recognized, without discrimination for the fact that the individual is not framed in a family considered as "traditional".

Even the use of the last name of the socio-affective family is important, since it allows the right to personal identity of the individual. It is noteworthy that the name as a whole is recognized by the doctrine as one of the personality rights, since it "is the linguistic sign that identifies the person in the social environment" (VIEIRA, 2009 apud VECCHIAATTI, 2015). It is known that:

> O não ingresso da filiação socioafetiva nos registros públicos marginaliza os indivíduos que vivem a socioafetividade, dificultando-lhes o exercício dos direitos e deveres inerentes à filiação, como, por exemplo, guarda e tutela, alimentos, visitas, direitos inerentes ao parentesco, hereditários, direito ao nome, entre muitos ou- tros (ARTONI, 2019, p. 45).

Therefore, the insertion of socio-affective paternity, even in cases of multi-parenting in the registry records, is in line with the greater observance of the principle of human dignity.

On the other hand, it can be inferred that the status quo prior to the effectiveness of the National Council of Provision of the Justice number 63 of 2017 did not allow full compliance with the principle of affectivity and family solidarity, given that there was a jurisprudential orientation to choose only one father or one mother to appear in the registry seat, when in fact numerous families lived together and socially recognized the presence of another parenthood, expressed in the maternal and/or paternal pole. In this sense, it is interesting to reflect:

> (...) de que não há gesto mais belo do que buscar a declaração da parentalidade de um filho afetivo, com quem não possui laços biológicos, com todas as consequências jurídicas que a parentalidade sanguínea irá ensejar nesse caso, trazendo uma série de deveres para a pessoa que pretende tal pedido (CASSETTARI, 2015, p.178).

This declaration clearly expresses the principles of affection and family solidarity, and therefore the legal recognition of this family relationship is fair. It can also be said that the Normative Act of the National Council of Justice allowed a better compliance with the principle of integral protection of children and adolescents (associated to the principle of the best interest of the child), as well as with the principle of responsible paternity, since it will allow that children and/or adolescents who have two fathers or two mothers will have their rights extended, and will also allow them to conform their birth certificates to the factual reality in which they are inserted.

It is quite true; however, that multi-parenting and the National Council of the Provision of Justice No. 63 of 2017 have also been targets of criticism by some jurists. We can cite the dissenting vote of Minister Dias Toffoli, in Extraordinary Appeal No. 898.060/SC. In fact, the mentioned vote is prior to the provision in question; however, it deserves to be highlighted because of the criticism that the mentioned minister makes about multi-parenting.

According to Toffoli[4], there is a fear of confusion between "the family tie with the registry tie that defines kinship relations from a legal point of view"; for the minister, it is necessary to differentiate the socio-affective paternity, which

[4] TOFFOLI, Dias. Voto vogal, proferido no julgamento do REXT n. 898.060/SC. Disponível em: <http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/RE898060DT.pdf>. Acesso em: 3 ago. 2019.

should be restricted to cases of adoption, with the situations of care, arising from custody or guardianship. In addition, he warns that the thesis on the subject "must be minimalist, given the peculiarity of the concrete case and so as not to open space for a debate that, in our opinion, should be held by legislators. The minister's concern is legitimate; however, it should be considered that it:

> [...] tem como outra face a subestimação à verdade real dos que efetiva e conscientemente vivenciam vínculo filiativo de forma exclusivamente afetiva. Não é justo que o receio de que parte da sociedade faça uso impróprio e vulgar do instituto da filiação socioafetiva acabe por penalizar e marginalizar sujeitos que efeti- vamente vivenciem a filiação socioafetiva de forma consciente e séria (ARTONI, 2019, p.53).

Regarding the Provision number nº 63 of the National Council of Justice, 2017, specifically, the same author points out some gaps that the normative ct has, namely:

> i) the non-participation of the State Prosecution in the out-of-court procedure for recognition of socio-affective filiation; ii) the potentiality for a distorted use of this Provision in order to bypass the traditional adoption procedure; and, iii) the type of normative rule chosen for the regulation of socio-affective filiation[5].

It is necessary, therefore, that there are more doctrinal debates about the Provision number 63 of the National Council of Justice, of 2017, which may trim edges that harm its best applicability in the legal system; despite that, this provision is somewhat relevant because it allows the legal recognition of the multi-parenting families, respecting the logical framework of the family law.

5 FINAL CONSIDERATIONS

The present study aimed to analyze the role of the recognition of social-affective parenthood and multi-parenting in the Brazilian civil registry in light of the principles that govern family law.

Initially, it was performed a description of the principles that govern family law, highlighting the principle of human dignity, as well as the principle of

[5] A autora aponta que há debate sobre a competência do CNJ para regulamentar o tema por meio de provimento, parte da doutrina defende que tal matéria deveria ser regulada por lei. Vale recordar este posicionado está alinhado com o voto vencido do ministro Dias Toffoli no REXT n. 898.060/SC, já comentado neste trabalho.

affectivity and family solidarity, which deal with a new paradigm of characterization of the family model today, based on affection and respect among family members. Moreover, the principle of full protection of children and adolescents was described, which is closely related to the principle of the best interests of the child, and the principle of the responsible parenthood.

Subsequently, it was sought to understand the importance of the legal recognition of the factual diversity of the new family arrangements. It was seen that social changes resulting from the emancipation of women and the discovery of new technologies have provided the development of new customs, allowing gradually other family formations, different from the traditional family model (consisting only of marriage of people of the opposite sex), were being formed, without, however, regulation by law, the relationship between these people, which only began to change more incisively, after the federal constitution of 1988, with the adoption of other standards and the development of jurisprudence based on this new form of view of family law, which main guideline has become the affection. This way, the principle of affection has become the basis for family formation.

Further on, the concept of social-affective paternity was addressed, focusing on the central object of the study, that is, the multi-parenting. In particular, the Provision number 63 of the National Council of Justice, 2017, was analyzed, which enabled the registration of up to two fathers and two mothers in the filiation field of the registry seat.

From then on, it was possible to analyze how the recognition of the social-affective parenthood and multi-parenting in birth registration records, propitiated by the mentioned provision, has allowed a greater alignment of family law with its principled framework.

The applicability of the principle of the dignity of the human person proved to be consistent with this normative act, by making it possible for families, previously stigmatized for being outside the socially accepted "standard", to have their family unit recognized. Moreover, it guaranteed the legal repercussions of such recognition, such as the rights of succession, maintenance, the use of a name (guaranteed right to the personal identity), etc.

Likewise, it was noticeable the alignment of the Provision number 63 of the National Council of Justice with the principles of affection and family solidarity, because from this act it was possible to overcome the jurisprudential understanding that opted for only one parent to appear in the public registry,

when, in fact, there were families that had more than one father or mother who exercised the parental role in the relationship of filiation status.

Regarding the principle of full protection of children and adolescents, which is directly related to the principle of the best interests of the child, and also to the principle of responsible parenthood, once again it was observed an alignment between such principles and the administrative provision of the National Council of Justice, since, from the Provision, it was possible to ensure the legal consequences of the filiation status, protecting and supporting the child and the adolescent, at the same time recognizing the importance of parental responsibility.

Such Provision presents some gaps; in particular, it was highlighted, based on the doctrine, the absence of the State Prosecution during the extrajudicial procedure of recognition of socio-affective filiation; besides the possibility of using the provision to bypass the traditional adoption process, especially in cases of recognition of socio-affective filiation of very young children; finally, the fact that the issue is treated administratively, when it should be a legislative subject.

In spite of it, such provision can be considered a mark for the Brazilian family law, as it enabled the regularization and recognition of diverse family arrangements fact situations based on affection.

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