



Affection: Elements and limits of multi-parenting

Afetividade: Elementos e limites da multiparentalidade

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ABSTRACT

The article identifies the elements and limitations considered for the effectiveness of multi-parentality, emphasizing the principle of affection for considering it a determining factor for the recognition of the socio-affective bond. It also discusses the procedures used to achieve the recognition of social-affective relationships, as well as the inheritance rights generated by this recognition. Our objective is to analyze the principle of affectivity and its relevance in the recognition of the socio-affective bond and, further, the possibility of accomplishment in the extrajudicial realm, highlighting the characteristics of multi-parentality and the succession effects generated after the established multi-parental bond. We used the hypothetical-deductive method to develop this article, since the conclusions were deduced based on articles, literature and jurisprudence about affectivity and new family models. We were able to verify, then, that the multiparentality marked the new concept of family resulting from the transformations in civil law, because it expanded the understanding of paternal and maternal figures, which should not be determined only by the genetic factor, but by the relationship based on affection, love and care between family members.

Palavras-chave: Affectivity, Multiparentality, Social-affectivity, Family.

1 INTRODUCTION

With the development of society, new family conjugations are being built, based on the principle of affection, which, in turn, is solidifying a new family model that is characterized by plurality of genitors, whether biological or affective.

Indeed, the principle mentioned is not expressed in the Federal Constitution, however, currently, affection is considered the main foundation of family relations, since it is linked to the principle of Human Dignity that has express provision in the Federal Constitution as one of the foundations of the Democratic State of Law.



However, until recently, only those who generated children were considered parents, that is, maternity and paternity were determined by the genetic factor. With the evolution of society and the social changes that have taken place, the family scenario has undergone considerable changes, and currently some families have come to be constituted in a variety of ways, and all of them require legal protection.

Therefore, we seek to identify which elements and limitations are considered for the recognition of multiple parenthood, since the family bond has been established based on affection, a principle of the Family Law branch that seeks to ensure the fundamental right of those who were raised by people other than their biological parents.

However, once the state of possession of a child and the possibility of social-affective recognition are confirmed, it is certain that the recognized son or daughter, after a regular judicial or extrajudicial procedure, will have, in his/her birth certificate, the plurality of fathers and/or mothers, since the legal act in question does not result in the loss of the family power of the biological parents.

It is verified, thus, the relevance of the theme in screen, since it disciplines rights guaranteed to the several family arrangements of the modern world, providing the legitimate and deserved legal security. Note that the act of accomplishment of the socio-affective recognition is, as a rule, irrevocable, besides the several effects it generates, among them the hereditary ones. However, for this recognition to be effective, the parties must prove the affective bond, and it is not recognized by mere declaration.

The main objective of the study is to identify the preponderant elements for the effectiveness of social-affective recognition, as well as the limitations imposed by the Brazilian legal system. Some important issues are also pointed out for the procedure to be effective, such as the proof of affection between members, the characteristics of multiple parenthood, its limits and its realization in the extrajudicial sphere and, finally, its succession effects.

Furthermore, the bibliographical method was used, as well as the documental study, through the analysis of the legislation and of the jurisprudences related to the theme of multiparentality, having, as base, the understanding of several Brazilian Law doctors, since they approach, in their works, the issue of family relations and affection with depth, highlighting how affection plays an important role in the construction of new family groups, such as the case of the socio-affective filiation.



2 THE PRINCIPLE OF AFFECTIVITY AS A DETERMINING FACTOR IN FAMILY RELATIONS

With the changes that have occurred over the years in the concept of family, it appears that affection has been considered the main foundation of family relationships, because it transcends the biological issue and is intrinsically linked to the principle of human dignity, one of the foundations of the Democratic State of Law.

Indeed, in interpreting the new family scenario, it is evident that affectivity has become a basic element, since it has become a recurring theme. However, initially, due to the lack of express regulation in the Federal Constitution, it was object of jurisprudential constructions, in which the superior courts, through these jurisprudences, played an indispensable role in guaranteeing rights related to the recognition of the bond constituted by affection. Since then, it has been increasingly recognized by the Brazilian legal system.

In this sense, Calderón (2013, p. 87) explains that:

Case law has played a key role in consolidating the legal category of affection in the Brazilian system, and long before any express legislative provision, it has already recognized affection in several cases. There are countless decisions that, more incisively from the last decade, have granted legal effects to affection in several concrete situations.

And, in the same sense, it is important to note the decision of the Court of Appeals of the State of São Paulo, in the following terms:

JUDICIAL ACKNOWLEDGMENT OF PATERNITY. MULTIPARENTALITY. Action filed by the biological father for recognition of paternity of the defendant. Appealed sentence that recognized the paternity based on the result of a positive DNA test. Appeal filed only by the biological father, challenging the value related to alimony and requesting the exclusion of the name of the registered father from the minor's birth certificate. Alimony for the case of unemployment or informal employment fixed in sentence at ½ of the minimum wage. Presumed needs of the minor. Non-existence in the records of elements relative to the current position occupied by the alimonious. Remuneration received when employed (until June 2017), however, that allow concluding the need to reduce the amount set in sentence to 1/3 of the minimum wage in case of unemployment or informal employment, to fit the possibilities of the feeder. Unreasonable claim of exclusion of the registered father from the minor's register. Typical situation of multiparentality, confirmed by multidisciplinary team report. Existence of socio-affective paternity with the registered father does not exclude the biological paternity of the applicant. Normative Precedent pronounced in Extraordinary Appeal with general repercussion by the Federal Supreme Court. Request that meets the interests and is formulated by all those involved (daughter, registered/social father, mother and biological father) (Court of Justice of São Paulo. Civil Appeal: AC 1001117 - 95.2018.8.26.0125 SP 1001117 - 95.2018.8.26.0125. Judicial acknowledgment of paternity. Multiparentality. 1st Private Law Chamber. Rapporteur: Francisco Loureiro. February 28, 2020).



In fact, until recently, the principle of affection had no protection in the legal world, because affection among family members was not given the importance it deserved. It was the changes in society that made this principle evident. But it was only with the promulgation of the Federal Constitution in 1988 that the freedoms of human beings in the constitution of their families were expanded in favor of affection.

In view of this change, article 227 of the Federal Constitution (BRASIL, 1988) states that:

It is the duty of the family, the society, and the State to ensure the child, the adolescent, and the youth, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom, and family and community life, in addition to protecting them from all forms of neglect, discrimination, exploitation, violence, cruelty, and oppression. (Redrafted by Constitutional Amendment No. 65 of 2010)

(...)

§ 6th Children, whether born or not out of wedlock, or by adoption, shall have the same rights and qualifications, any discriminatory designations regarding filiation being prohibited. (our emphasis)

Thus, it is verified that there is no need to speak of distinction in the recognition of children, because all are now equal and have the same rights, being forbidden any distinctions as to their legitimacy.

Moreover, it is also certified that the principle of affectivity, even if implicit, is the result of the reflections generated by the essential foundations, constitutive of this social evolution, as occurs with adoption, an affective choice whose family life is seen as an absolute priority assured to children and adolescents.

In view of this, Dias (2015, p. 52) states:

Even though the word affection is not in the constitutional text, the Constitution has linked affection within the scope of its protection. Here is an example. Once the stable union is recognized as a family entity, deserving of legal protection, as it is constituted without the seal of marriage, this means that affection, which unites and binds two people, has acquired recognition and insertion in the legal system, that is, there has been the constitutionalization of a model of eudemonistic and egalitarian family, with more room for affection and individual fulfillment.

It is important to note that Tartuce (2021) elucidates that the principles serve to structure the legal system, generating concrete consequences, for its remarkable function for society. And there is no doubt that affectivity constitutes a strong code in Contemporary Law, generating profound changes in the way of thinking the Brazilian family.

However, the importance of the principle in question is notorious since it stabilizes the socio-affective relationships and the communion of life with emphasis on the affection built between parents and children, with reach in every family relationship, whether between spouses,



between partners, or between children due to the cultural nature that goes beyond the biological bond of the family.

Indeed, although the legal nature of Family Law is private law, it is salutary that the State issues rules to protect family relationships, establishing limits and rules that must be observed, as occurred with the publication of Provision No. 63/2017 of the National Council of Justice, subsequently amended by Provision No. 83/2019, which allowed the recognition of socio-affective parentage through extrajudicial means.

According to Madaleno (2018), the favorable doctrines work based on the constitutional values of human dignity and the principle of affection, because the socio-affective parentage arose after the biological truth that gained body with the sacralization of DNA, because, before the existence of genetic tests, the truth of parentage was always registral, appearing the socio-affective parentage still in a second plan in front of the biological truth.

With the social and family changes that have occurred in recent years, new principles have emerged with the aim of achieving the momentary reality of society, and thus reshape the legal system according to the reality of family structure today, among which stands out the principle of affectivity, intrinsically linked to the principle of dignity of the human person, considered the principle mater.

3 CHARACTERISTICS AND LIMITATIONS OF THE REALIZATION OF THE SOCIO-AFFECTIVE BOND

Multiparentality consists in giving to socio-affectivity the same values given to consanguineous reality, therefore it is a way to recognize, in the legal field, what occurs in the world of facts. However, when a person enjoys family coexistence with biological and consanguineous filiation, the possibility of a person having more than one father or more than one mother simultaneously arises, producing legal effects in relation to all of them, including with regard to the succession issue.

Aligned to this thought, Madaleno (2018) provides that the constitutional text sought to establish the principle of isonomy among all children, thus establishing a new profile in filiation, of complete equality among all the former social classes of perfiliation. Thus, regardless of how the relationship is sedimented, there will be the same treatment.

The existence of socio-affective kinship, however, is recognized by means of proof of certain elements, being the state of child possession the main one, which occurs when a person exercises parental authority as father or mother of a third party, that is, when someone who is not



biological father and/or mother practices necessary conducts to create and educate children, providing love, affection, support and assistance to the offspring.

It is important to note what Madaleno (2018, p. 660) asserts:

The notion of the possession of the status of a child has been receiving shelter in the reforms of comparative law, which does not establish parental links with birth, but rather in the desire to be a parent, and this desire is sedimented in the field of affectivity, and puts into question both the legal truth and the scientific certainty in establishing parentage.

Madaleno (2018) warns us that the legal value is not based on genetic ancestry, but on the emotional bond, because many parents generate children by unwanted carelessness, which may reflect in a prompt rejection.

Furthermore, there are several situations that allow the constitution of socio-affective parenthood. We can cite the case of socio-affective maternity and preservation of biological maternity when the biological mother dies due to complications during childbirth and a third person raises the child as if it were her son and, during the cohabitation, the affection between them is clear and notorious.

Another case of this same nature is separation, divorce or widowhood, when the child, the fruit of the union, starts living with the stepfather or stepmother, establishing a harmonious relationship, full of affection and care. In this case, the possibility of double maternity and/or paternity by socio-affective recognition arises, to be performed in a proper procedure. This procedure can be judicial or extrajudicial, and after it is registered on the birth certificate, there is a legal right to include the name of a second father and mother to the affectionate child.

In the aforementioned cases, it is verified that the son stopped having a coexistence with the people of biological filiation and started having a relationship with the affective family.

Besides these situations, there are others in which the socio-affective recognition occurs, and there is also the preservation of coexistence between both bonds, i.e., biological and blood, due to the protection of the child's best interests, especially if the child is still in the formation of personality, in which the two paternities or maternities will coexist, because one will not exclude the other.

Let us add the elucidation of Madaleno (2018, p. 659):

Julie Cristine Delinski identifies well this new structure of the Brazilian family, which starts to give more importance to affective ties, and states that genetic or civil descent is no longer enough, and that the integration of parents and children through the sublime feeling of affection is fundamental to the current family. He adds that paternity and maternity have a deeper meaning than the biological truth, where zeal, filial love and natural dedication to the child reveal an affective truth, a filiation bond built by the free will of acting in interaction between father mother and child of the heart, forming true



bonds of affection, not always present in the biological paternity, even because the real paternity is not the biological, but cultural, the result of bonds and relationships of feeling cultivated during the coexistence with the child and adolescent.

On the other hand, it is important to verify that, even though affectivity is present in the new family compositions, for the effectiveness of the socio-affective recognition, there are some limitations:

DECLARATORY ACTION OF MULTIPLE PARENTHOOD. Action filed by the minor, represented by his mother, and by the maternal grandfather against the biological father, with the purpose of having the grandfather also recognized as the minor's father. Sentence that rejected the initial and judged the process extinguished without resolution of merit. Nonconformity of the plaintiffs. Multiparentality based on the principle of human dignity and responsible parenthood. Thesis approved by the Federal Supreme Court, in the judgment of Extraordinary Appeal 898.060 (General Repercussion 622). Biological paternity that does not prevent the recognition of the concomitant filial tie, based on the socio-affective origin, with its own legal effects. Article 42, § 1, of the ECA, however, that expressly prohibits the adoption of descendants by ascendants. Case that does not fit into the exceptions allowed by the jurisprudence of the Superior Court of Justice. Situation that can generate confusion in the family structure, as well as in the hereditary rules. Sentence that must be maintained. RESOURCE NOT PROVIDED. (São Paulo Court of Appeals. Civil Appeal: AC 10223348720198260602 SP 1022334 - 87.2019.8.26.0602.

Declaratory action of multiparentality. 6th Private Law Chamber. Reporting Judge: Ana Maria Baldy. October 28, 2020)

From what is clear from the text of the declaratory action, although there is the possibility of coexistence of paternity and maternity, it is not possible to have the social-affective recognition between the person who will be recognized and his ascendants and siblings, this prohibition is expressed in Article 10, paragraph 3 of the CNJ Provision No. 63/2017 (BRASIL, 2017), which deals with the social-affective recognition in the extrajudicial sphere. Here is:

Art.10. The voluntary acknowledgement of paternity or maternity of social-affective paternity of a person of any age will be authorized before the civil registry officers of natural persons.

§ 1º The voluntary acknowledgment of paternity or maternity will be irrevocable, and can only be deconstituted through a court of law, in the hypothesis of willful addiction, fraud or simulation.

§ 2º Those older than eighteen years of age, regardless of marital status, may request the acknowledgement of paternity or maternity of a child.

§ 3º Siblings and ascendants cannot recognize the social-affective paternity or maternity. (our emphasis)

It is necessary to note that, on August 14, 2019, the CNJ's Provision no. 83 changed article 10, previously mentioned, providing more clearly the list of documents required for the procedure, thus prohibiting the socio-affective recognition for children under 12 years of age in the extrajudicial way, avoiding the Brazilian adoption, since the socio-affective recognition has, as



one of the requirements, the social recognition of such bond and, in the case of children, it would not meet such requirement.

Another essential requirement for the procedure is that the intended father and/or mother must be of legal age, and that the age difference between them and the child to be recognized must be at least sixteen years. It should be added that only the inclusion of a socio-affective ascendant is allowed, whether on the paternal or maternal side, as provided in paragraph 1, article 14 of Providence No. 83 (BRASIL, 2019).

"art. 14

§ 1º Only one socio-affective ascendant may be included, either on the paternal or maternal side.

§ 2º The inclusion of more than one socio-affective ascendant must be processed through the courts. (emphasis added)

Such limitations were imposed to prevent the Brazilian adoption or even the recognition of the socio-affective bond by other interests, without there being effectively the existence of affection between family members. This is because, unlike adoption, whose affection between the parties, in most cases, is only built after the favorable decision of the judiciary, in the effectiveness of multiple parenthood, affection is an essential prerequisite, because it must be proven that affection and animus to create such a person as if it were his son already existed for a certain time, which is clear and irrefutable demonstration of the possession of the status of child.

In this way, it can be seen that the National Council of Justice innovated with the publication of the mentioned provisions, because it overcame the initial obstacles brought about by Law No. 6.015/1973 (Law of Public Records), which does not provide for multi-parental filiation and even the Brazilian Civil Code, which provides implicitly in Article 1593 (BRASIL, 2002), when it mentions "other origin". As follows:

Art. 1.593. The kinship is natural or civil, according to whether it results from consanguinity or other origin. (emphasis added)

However, with this advance, there is, a priori, no kind of prevalence or hierarchy of biological kinship on the socio-affective, and may even coexist, because the factual situation must be weighed and considered for purposes of regularization and legal protection.

Thus, in view of the many changes that have occurred and the new family configurations in the world today, the decisions of higher courts have been correct in order to expand and respect all and any type of family constitution, whose blood ties and socio-affectionate ties should go



together whenever this union proves beneficial, especially considering the social and affective interests of the child or adolescent involved.

4 PROCEDURES FOR THE IMPLEMENTATION OF MULTI-PARENTHOOD

With family transformations and the expansion of the concept of family, based on the principle of affection, which has recognized the multi-parenthood, it appears that, initially, such bonds were possible to be enforced only through the courts. However, when analyzing the specific case, the judge would make a decision acknowledging or not the social-affective parenthood.

Thus, as previously mentioned, with the advent of CNJ Provision No. 63/2017, the possibility of the social-affective bond being enforced out-of-court arose, and this document was amended in 2019 by Provision No. 83/2019, which established some criteria for the procedure.

Thus, it is notorious the scope taken involving the theme since the demands related to social-affective recognition started to be performed directly in the extrajudicial offices, in a faster, accessible and simplified way, regularizing countless consolidated de facto situations and avoiding the filing of lawsuits.

As mentioned, Providence 63/2017 was innovative on the issue of socio-affective recognition, since it brought, in section II, article 10, providing on socio-affective paternity and maternity and guiding how to proceed with socio-affective recognition in the extrajudicial sphere and its limitations, such as minimum age and limits of fathers or mothers.

In fact, for the procedure to be carried out, it is necessary that the affective bond be stable and socially known, so that the Official Civil Registrar will certify the existence of such bond by means of objective verification, i.e., concrete elements will be verified, as oriented by the Provision.

With the intention of coating the act with more security, Providence No. 83 was published in 2019, which amended Article 10 of Providence No. 63, and added some documents, capable of attesting to the existence of the bond, namely, the school appointment as the student's guardian or representative; enrollment of the alleged child in a health plan or pension agency; official registration of residence in the same household; conjugal ties - marriage or stable union - with the biological ascendant; enrollment as dependent of the applicant in associations; photographs of relevant celebrations; notarized statements from witnesses.

However, the list presented, although important, is not exhaustive, and the absence of such documents does not prevent the Officer from accepting the act and making the annotation on the



margin of the birth certificate. From then on, it will confer on the recognized individual the plurality of father or mother, and all legal effects will come into existence.

On the other hand, it is important to note that, even if the affective relationship is public knowledge, it will not be legally recognized automatically. If the acknowledged person is under eighteen years of age, the express consent of his/her parents must be given, and in their absence, it will be sent to the local court, except in case of death of one of the parents.

In this sense, the referral may be dispensed with, as recently approved in Statement No. 6, during the I Conference on Notarial and Registration Law, held on August 04 and 05, 2022, at the headquarters of the Federal Regional Court of the 5th Region (TRF5), which reads as follows:

Statement 6: "The procedure for recognition of socio-affective filiation should not be referred to the Judiciary when the absence of the genitor's consent occurs due to his previous death".

Moreover, in the case of adults and capable people, the Officers, endowed with public faith, will analyze the facts and the documents attached and will decide whether or not to grant the request. However, in the case of a minor under the age of eighteen, the records must necessarily be submitted to the Public Prosecutor's Office, in addition to the consent of the minor, a situation similar to adoption processes for those over the age of 12.

Once the records have been forwarded, and after the Public Prosecutor's opinion is favorable, the annotation will be made, which will include the name of the affectionate parent in the birth certificate of the recognized person. However, if the Public Prosecution Service finds that the documents attached are not sufficient to meet the requirements and the opinion is unfavorable, the Officer will notify the applicant, and the case will be closed.

Furthermore, as stated, both in the administrative and judicial spheres, it is possible to have the recognition of the socio-affective filiation concomitantly with the consanguineous filiation. However, unlike the judicial route, in the administrative route there is a limitation, and it is only possible to include a socio-affective ascendant, whether on the paternal or maternal side. And, furthermore, it is possible only in cases of children older than 12 (twelve) years of age. In all other cases, the procedure must be carried out in court..

4.1 INHERITANCE EFFECTS

Article 5th, XXX of the Federal Constitution provides for the guarantee of the right of inheritance, and the right of succession is also regulated by the Brazilian Civil Code, which lists



the following as possible forms of succession: general succession, lawful succession, testamentary succession and inventory and partition.

In view of the provisions of art. 227, § 6th of the Federal Constitution (BRASIL, 1988), on the equality among children, whether or not arising out of marriage, it is certain that all have the same rights and obligations.

In the same sense, the Civil Code of 2002 prohibits any difference between children, as well as the Federal Constitution, which grants the guarantee of inheritance rights to all consanguineous children, adopted or, still, recognized socio-affectively, as per the National Council of Justice's Provision.

As for the inheritance effects arising from socio-affective recognition, Kümpel and Ferrari (2017, p. 491) describes:

Right to inheritance: if multiple parenthood is admitted, the child will be entitled to receive his or her legitimate share from as many fathers or mothers as he or she has. In the opposite situation, if the child has no descendants or spouse, his or her legitimate portion will be divided among all the deceased person's fathers and mothers. Thus, there is a fractioning of inheritance.

And further, article 1.836 of the Brazilian Civil Code states:

In the absence of descendants, the ascendants are called to the succession, in competition with the surviving spouse. First Paragraph. In the ascendants' class, the closest grade excludes the most remote grade, without distinction of lines. Second paragraph. In case of equality in degree and diversity in line, the ascendants of the paternal line inherit half, the other half going to those of the maternal line (BRASIL, 2002, art. 1.836).

Thus, it is of utmost importance to mention the reverse succession issue, which occurs when the death of a child recognized socially-affected precedes that of his biological and/or affective parents. And this child, leaving no descendants or spouse, will have his inheritance divided equally among his ascendants, or, if there is a spouse, divided in competition with the latter.

On the subject, Gonçalves (2019, p. 200), precepts that:

Multiparentality, which "may not be so beneficial, either to the person of the child or to society itself, since, through it, the child could claim alimony from two fathers or two mothers, increasing the resources for their survival, and could also claim increased inheritance rights, in view of the doubling of genitors. However, in view of the bilateral nature of family actions, the child would also have the duty to support a greater number of parents, who could also claim custody of the child and still have inheritance rights upon his or her pre-death".



It is understood the importance, also, in verifying the content of Article 1.784 of the Civil Code (BRASIL, 2002) which states that "Once the succession is opened, the inheritance is immediately transmitted to the lawful and testamentary heirs".

Indeed, as described Gonçalves (2019), the inheritance is not restricted to the transmission of property left by the deceased, it also encompasses the credits and debts, rights and obligations, claims and actions held by the deceased, and those proposed against him since they are transferable.

Thus, when the deceased child has plurality of fathers and/or mothers in his/her birth certificate, his/her debts, obligations, credits and debts, as well addressed by the author mentioned above, are transferred to the genitors, therefore the parties respond for the equivalent part of each one.

Furthermore, article 1.786 of the Civil Code (BRASIL, 2002) states that "the succession occurs by law or by last will disposition". Therefore, it is necessary to verify the types of succession, observing their source, i.e., whether legitimate by operation of law and testamentary as a result of the last will, which is materialized through a will, whether drawn up through a public or private instrument.

Thus, due to the equality of filiation protected in the Brazilian legal system, in the case of children recognized socio-affectively, whether in or out of court, they will have the same rights and the same obligations of consanguineous children, and therefore will be legitimate heirs of the socio-affective father or mother without any distinction.

5 CONCLUSION

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Therefore, initially, the principle of affectivity was addressed as a determining factor for the protection of family law, which enabled a dynamic in the family scenario, no longer being considered only fathers and mothers by consanguinity, as well as the important role played by the judiciary regarding the demands concerning multiple parenthood.

Given the numerous proposed actions, it appears that many studies and decisions were made until the Federal Supreme Court judged in 2016, the Extraordinary Appeal 898.060, Theme 622, with binding effect for any similar decision. Then, the publication of the National Council of Justice Ruling No. 63 of 2017, which regulated the recognition of social-affective parentage in administrative seat, based on the affection that is intrinsically linked to the principle of Dignity of the Human Person, which is one of the foundations of the Democratic State of Law and enshrined in Article 1 of the Federal Constitution.

In fact, it was found that the principle of affectivity is of paramount importance in family relations in the world today, so it is necessary to observe its characteristics, elements and limitations of the effectiveness of the bond socio-affective in order to clarify the various social issues related to affection, especially today, when the socio-affective recognition is performed, in most cases, by extrajudicial route, being judicialized only in some specific situations, such as when it involves a child under 12 years or in cases of post-mortem recognition.

It is also known that, with the socio-affective recognition, several effects arise, among which (i) the inheritance of both the legitimate inheritance and the reverse inheritance, the latter when the socio-affective recognized dies and leaves no descendants or spouses, and (ii) the rights and obligations, which must be analyzed in light of the plurality of genitors.

Finally, it should be noted that the theme studied has been received with fervor by jurists and is of utmost importance, since it protects the various types of family constitutions. However, not all social issues related to the theme are regulated by law, because, despite the numerous factual



situations that have been regularized, the possibility of realization by administrative means and the standardization before the courts only occurred after the publication of CNJ Provision No. 63/2017 since they still lack an express provision in the Brazilian Civil Code.



REFERENCES

Brasil. [constituição (1988)]. Constituição da república federativa do brasil. Brasília, df: presidência da república, 1988. Disponível em: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Acesso em: 7 nov. 2021.

Brasil. Lei nº 10.406, de 10 de janeiro de 2002. Institui o código civil. Diário oficial da união: Brasília, df, 2002. Disponível em: http://www.planalto.gov.br/ccivil_03/leis/2002/110406compilada.htm. Acesso em: 10 nov. 2021.

Brasil. Conselho nacional de justiça. 2017. Disponível em: https://atos.cnj.jus.br/files//provimento/provimento_63_14112017_19032018150944.pdf. Acesso em: em 10 de ago. De 2022.

Brasil. Conselho nacional de justiça. 2019. Disponível em: https://atos.cnj.jus.br/files/provimento/provimento_83_14082019_15082019095759.pdf. Acesso em: em 10 de ago. De 2022

Calderón, ricardo. Princípio da afetividade no direito de família. Rio de janeiro: forense, 2017.

Conselho de justiça federal. 2022. Enunciado 6. I jornada de direito notarial e registral. Disponível em: <https://irib.org.br/app/webroot/files/downloads/files/caderno%20provis%c3%b3rio%20i%20jdnr%20-%20completo.pdf>. Acesso em: em 10 de ago. De 2022

Dias, maria berenice. Manual de direito das famílias. 10. Ed. Rev. Atual. Aum. São paulo: thomson reuters, 2015.

Duderstadt, bruna nayara. Coparentalidade: aspectos jurídicos da paternidade/maternidade compartilhada. 2019. Trabalho de conclusão de curso (bacharelado em direito) – universidade federal de santa catarina, florianópolis, 2019.

Gonçalves, carlos roberto. Direito civil brasileiro: direito das sucessões. 8. Ed. São paulo: saraiva, 2014.

Kümpel, vitor frederico; ferrari, carla modina. Tratado notarial e registral. São paulo: yk, 2017. (coleção, v. 2).

Madaleno, rolf. Direito de família. 8. Ed. Ver. Atual. Aum. Rio de janeiro: forense, 2018.

São paulo. Tribunal de justiça de são paulo. Apelação cível: ac 1001117 –

95.2018.8.26.0125 sp 1001117 – 95.2018.8.26.0125. Reconhecimento judicial de paternidade. Multiparentalidade. 1ª câmara de direito privado. Relator: francisco loureiro. 28 de fevereiro de 2020. Diário da justiça: seção 1, são paulo, 28 fev. 2020a.

São paulo. Tribunal de justiça de são paulo. Apelação cível: ac 10223348720198260602 sp 1022334 – 87.2019.8.26.0602. Ação declaratória de Multiparentalidade. 6ª câmara de direito privado. Relatora: ana maria baldy. 28 de outubro de 2020. Diário da justiça: seção 1, são paulo, 28 out. 2020b.

Tartuce, flávio. Direito civil: direito de família. 16. Ed. Rev. Atual. Aum. Rio de janeiro: forense, 2021.