Legal effects of socioaffective kinship[1]

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1. Relations founded in affection: legal recognition. 2. Kinship. 3. Socioaffectivity as a criterion of kinship. 4. Legal effects of the socioaffective kinship.

The Constitution of the Federative Republic of Brazil of 1988 has promoted deep changes in family law, not only to align it with the values enshrined therein, as well as to complete and consolidate the process of the reception in the legal system of the family situations which had been already accepted by society. Among the guidelines governing family relations established in the Constitution, stands out the principle of human dignity and the principle of solidarity. The family, hitherto synonymous with marriage, has passed through sensitive changes in its vocation and in the way it is constituted, due to economic and social factors, to which were added the effects biotechnoscience. New family arrangements have emerged, challenging the legal order. The affect gained prominence before the law, creating bonds, rights and obligations in the family orbit. In this list of 'innovations', scholars and courts started to refer to "socioaffectivity[2]", especially in disputes over paternity.The matter, however, still provokes controversy and the concept and legal effects of the *socioaffectivity* are not consolidated as a criterion of kinship, which should be constructed in the light of constitutional principles. The interests of all involved must be weighted, and the analysis of the issue should consider not only the affective bonds, but mainly the social repercussions (*social*) generated by these bonds (*affectivity*).

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[2]Free translation of the word "socioafetividade", of the original version in Portuguese. The term in English was derived from the mix of words "social" and "affectiveity", that relates also to the noun "affection" (a feeling of fondness or tenderness for a person or thing; attachment). Access in: http://www.collinsdictionary.com/dictionary/english/affectiveness, in 10.28.13.

1. The relations based on affection: legal recognition

As important as the legal proscriptions, the affective bonds and the social roles generated by it started being recognized by the law, and the perfect example is the stable union. Originated from affective bonds, the union between man and woman without marriage was once considered immoral[3] at the beginning of the last century, and only after decades of legal battles has been recognized as a family, passing first through concubinage, second through companionship and finally reaching the stable union[4]. However not only the affection led to the legitimacy of free unions, that is without marriage. The social situation of the couple, acting and being recognized as "husband and wife", surely more than the affection, was decisive for it.Initially focused on the protection of women, the admission of such unions, for the purpose of producing legal effects, required the meeting of three requirements*: reputatio, nominatio* and *tractatus*, namely, the female partner should have the treat, the name and the fame of wife, being the couple as such for their friends and for society[5].

Since 1988, under the Constitution, the stable union between a man and a woman was recognized as a family, and the law shall facilitate its conversion into marriage. The final part of the constitutional provision (art. 226, § 3) has raised controversy regarding the prevalence of marriage as a family model[6]. According to the Civil Code, the stable union is set in the public, continuous and lasting conviviality established with the goal of starting a family. (art. 1723). Three aspects are worth mentioning in this process of legitimization of unions without marriage, with regard to the production of legal effects, and that are of direct interest to this work. The first concerns the prevalence of "family"

[3] Appeal 11.975 – São Paulo/1923. Relator F. Whitaker. Pub. RT 45/327.
[4]Simão Isaac Benjóhas made interesting distinctions between companionship and stable union, higlighting the durability and notority of the last one in "Uniãoestável e seusefeitoseconômicosem face da Constituição Federal, in RevistaBrasileira de DireitoComparado", v. II, 1991, p. 59 e seg.
[5] Id., p. 61.
[6]About the jurisprudential and doctrine treatment of the subject, it is recommended to GAMA, GuilhermeCalmonNogueira da. "O companheirismo: umaespécie de família". São Paulo: RJ, 1998, p.78-87.

nature, rather than the "corporate/societal" nature[7]. The property consequences, resulting from stable union, have their foundation on the principle of solidarity and the principle of freedom of choice, supplemented by the law, no longer requiring proof of a factual partnership for sharing the common heritage[8]. The second is the *locus* of stable union configuration. Although by nature it is a private relationship, it is necessary that recedes as a family life and the living has to be public. It is not enough that the union is continuous and lasting, it must be taken as a family before the society. The third aspect, no less important, is its legal nature: a stable union always has been, and continues to be a fact. Not having any evidence pre-recorded, such as marriage, the existence becomes evident in the relationship life, on social contact, or, as either the Civil Code, the public living. The production of the effects prescribed by law depends on the judicial recognition of this living, the socioaffective bond that was built there.

Other factual situations, with family nature, likewise generated by affection, are very accepted by the law, under the name of "possession of the marriage state"[9] and "possession of the descendent state"[10]. Constructed under the emperor of the marriage, then only legitimate form of family and of legitimization of the children, the notion of **possession** has been reinterpretedin the light of constitutionalguidelines.As noted CaioMário da Silva Pereira, the law does not specify in what constitutes the possession of a state, and the doctrine conceives such a state of fact, in parallel to the possession of things, as a legal state[11], once characterized by *nominatio*, *tractatus*and*reputation*.

2007.001.16970 - Civil Appeal

DES . ROGERIO OLIVEIRA DE SOUZA - Judgment: 06/13/2007 - SEVEN TENTH CIVIL CHAMBER

[7]About the jurisprudential and doctrine treatment of the subject, it is recommended to GAMA, GuilhermeCalmonNogueira da. "O companheirismo: uma espécie de família". São Paulo: RJ, 1998, p.78-87.
[8]Confronting the docket 380 of the Supreme Federal Court of Brazil (Proven existence of a factual partnership between cohabitees, is appropriate to its judicial dissolution, the sharing of assets acquired by joint effort) with the Article 1725 of the Civil Code (in the stable, unless written agreement between the partners, applies to property relations, as applicable, the regime of partial property).
[9]Freetranslationof "posse do estado de casado".
[10]Freetranslationof "posse do estado de filho"
[11] PEREIRA, Caio Mário da Silva. Instituições de Direito Civil , v. V, ed. 14, atual. Tânia da Silva Pereira. Rio de Janeiro: Forense, p.125.

POSTHUMOUS ADOPTION.STATUTE OF THE CHILD AND ADOLESCENT.INTERPRETATION EXTENSIVE.SOCIO – AFFECTIVE AFFILIATION.

Adoption procedure.Statute of the Child and Adolescent.Posthumous adoption. Statute of the Child and Adolescent , art. 42 , par. 5 . Extensive interpretation .Slowdown in formal rigor, given the evolution of the concepts of socioaffective affiliation and the importance of such relationships in modern society.Precedent of the STJ.Unequivocal proof of the possession of the descendent state in relation to the couple.Recognition of the pre-existing factual situation with unequivocal proof that there was tacit adoption, prior to the process, whose landmark occurred when the couple began to exercise factual custody of the minor. Principle of preserving the best interests of the child enshrined in the ECA (Statute of the child and adolescent). Recognition of motherhood for registration of birth. Appeal granted.

TJRJ, 17th Civil Chamber , 200700116970 - Civil Appeal , Des . Rogerio de Oliveira Souza ,judgement. 06.13.2007.

The possession of the married state was at the time of the 1916 Civil Code (art. 203) "the best evidence" to prove the existence of the marriage, though it was not enough. Characterized by *nominatio, tractatus* and *reputatio*, it supplied the missing of the wedding registry, in order to benefit the common children[12], that were only legitimates, that is, would have the state of children/descendent with the right of its own, *if* their parents were married. Essential, however, is to meet the legal requirements: that the parents were dead, who had lived in the possession of the state of married and the children have to prove that quality, which is not always easy before the advent of DNA test. The Civil Code remained the prior guidance in force, including, in addition to deceased persons, the ones who cannot express their will. The proof of the parents' marriage matters currently only for purposes of the presumption of paternity, providing or complementing the proof of membership, due to of the constitutional principle of equal treatment of every child. Although not prescribed by law, but originally with the

[12] GOMES, Orlando. Direito de Família, 7 ed.. Rio de Janeiro: Forense, 1987, p. 105.

same purpose of supplying the lack or defect of the birth record, the possession ofa descendent state, admitted by the doctrine, is constituted “by a set of circumstances able to externalize the condition oflegitimate child of the couplewho creates and educates it"[13]. Apart from being characterized equally by *nominatio* (having the parent's name), *tractatus* (continuously be treated as the legitimate child) and *fame* (to be constantly recognized by parents and society as a legitimate child), parents should be married or have lived in the possession of the married state, a prerequisite for the legitimacy of children.

No longer legitimacy is considered, but the possession of a descendent state, as advocated Orlando Gomes from another point of view, should be considered an "excellent proof" of affiliation (which after 1988 cannot have any discriminatory designation), "because it constitutes a continuous, persevering, daily, public and prominent recognition of affiliation", which, due to these qualities, could only be built based on affection. According to the author, to possess the descendent state is to be treated as the descendent[14]. This assertion is valid nowadays as a sufficient proof of affiliation, if are present the features mentioned, regardless of the legal status of the parents, since it is no longer required their marriage, especially in view of Article 229 of the Constitution.

It should be noted thatthe legitimization of determined facts as a legal situation able to produce rights and duties is not new, not only in family law, but also in law of obligations[15] and property law[16]. In each case, there is going to be legal effects of personal and patrimonial nature, respectively. It should be pointed especially in the case of family relationships, the importance of social repercussions for the occurrence of legal recognition of the existence of the factual situation. It is essential to highlight, however, that to produce legal effects in such cases there should be legal provision or

[13] Idem, p. 311.
[14] GOMES, Orlando. Ob. cit. p. 311-312.
[15]Certain behaviors of the debtor or creditor generate presumptions, as the one provided in art. 330 of the Civil Code.
[16]The acquisition of the property by usucaption is by continued possession, factual situation par excellence.

sentence that recognizes the fact and gives it legal force, authorizing those involved to enjoy the advantages granted and to bear the pertinent charges.

Relations that arise between people who live as if they were parents and children are included in the factual situations, founded in affection, which are able to be legally recognized. The study of the issue must take into account: a) the important role that affection has on family relationships, especially in building links as marriage, stable union and kinship b) the expansion of affection, emerged in a space eminently private to the public space, and because of which people exert social functions that allow the legal recognition of relationships thus created c) the consequent permanence of the legal effects of the bonds generated by the exercise of those functions, since met certain requirements, even if the affection, that has originated it, ceased.

2007.001.36262 - Civil Appeal TJRJ

DES. VERA MARIA SOARES VAN HOMBEECK - Judgment: 18/09/2007 - NINTH TENTH CIVIL CHAMBER. CIVIL APPEAL.ACTION FOR ANNULMENT OF THE REGISTRATION OF BIRTH.CASE DISMISSED. SOCIOAFFECTIVE AFFILIATION."BRAZILIAN ADOPTION"[17]. The socioaffective affiliation was configured in this case, which, as doctrinal and jurisprudential understandingprevails before the biological, due to the spontaneous act, hidden by the purest demonstration of affection, solidarity and willingness to have someone as a son. It is undeniable that, despite the suspicion of not being the biological parents of the defendant,they are adopted parents, who were responsible for the child development since 7 years old, forming strong socioaffective bonds. APPEAL dismissed. SENTENCE THAT REMAINS.

TJRJ, 19th Civil Chamber, 2007.001.36262 - Civil Appeal, Judge who delivers the opinion, Des. Vera Maria Soares Van Hombeeck, judgement. 18.09.2007.

[17] Free translation of "Adoção à brasileira", which is an expression commonly used to refer to the adoption that is done without going through the regular legal procedure.

These aspects have to be considered, taking into account that *truly* family relations are affective, although many *legal* family relations are not. The real family is a grouping, a communion of affections, prior to be a legal institute.

2006.001.57822 - Civil Appeal TJRJ

DES. FERNANDO FOCH LEMOS - Judgment: 28/08/2007 - THIRD CIVIL CHAMBER SOCIOAFFECTIVE AFFILIATION. ANNULMENT OF THE REGISTRATION OF BIRTH.IMPOSSIBILITY. PRINCIPLE OF HUMAN DIGNITY

Civil Law.Family.Socioaffective affiliation.Annulment of the Civil Registration.Action proposed by an individualthat married with a women, who was already mother of a teenage son, in whose birth certificate the name of father was blank. He intended to adopt the son, but, in the end, was included as father in the birth registration through rectification, developing with him paternity relationship and socioaffective affiliation for, years later, in the moment he was divorcing, propose action in the face of the child, to pursue the annulment of the registration of birth. The case was dismissed. 1. Proved the socioaffective kinship, there is not the deconstitution of the registration, which is equivalent to the adoption, as so immutable, that also preserves the defendant's right of dignity. 2. Our times shifted the axis of the biological paternity relationto the socioaffective, which , moreover, besides considering that it come to terms with a new reality that Bio-law seeks to understand, it fits better with the cultural reality of Brazil, in which stands out the "Brazilian adoption". 3 The predominance of socioaffective affiliation, the parenthood in this hue, does not betray the perpetuation of the truth, which is one of the civil registration of individuals, in reason that it is a truth of life , on which - and not on an idealization of reality - focuses the law. 4. Dismissal of the appeal. Unanimous.

TJRJ , 2nd Civil Chamber , 200600157822 - Civil Appeal , Des . Ferdinand Foch Lemos ,judgment. 28.08.2007.

A stable union, like gay marriage (homosexual union), also called homoaffective union has its origin and existence due to the affection between its members. The affection is a feeling that translates into facts for the law, facts that occur in social life, leading to the

socioaffectivity. Similarly to the family entities already mentioned, kinship can be generated only by socioaffectivity, which is a fact.

PietroPerlingieri explains that the term "fact" has more than one meaning: the "fact" object of natural science is not the same object as a practical science like law, for which the fact is any event that evokes the idea of conviviality or relationship. Fact is the event or state valued by the norm, the effect is the legal consequence that binds to the fact. The fact, in its occurrence, acts when prescribed by law: the legal order assigns it a qualification and a discipline[18]. To have a state is to have in fact the corresponding title, to enjoy the advantages connected to it and support its charges[19]. To Orlando Gomes, possession of state is a rebuttable presumption (*juristantum*)[20].

There is a belief that the facts effectively produce by themselves legal effects. Indeed, the sequencefact-legal effect can be considered truly causal, because it is steady and necessary, but a more detailed examination shows its anomalies. Two elements of a different kind/order are connected in so far as one enhances the history, the other the normativity, namely, the intellectual representations[21].

According to Michel Virally, it is necessary the intervention of an external determination, overlaid, that gives legal effect to a fact, attributing to it the character of cause and is appurtenant itself to the same legal order. In one word, the passage from the fact to the law requires the existence of a legal rule,[22]which represents the first cause, and the fact, to which the legal consequences binds, that is the second cause. For the author the seizure of the fact by the law is verified verbally, being the task of the law to designate the fact to which it attaches legal consequences.Law holds only language features for it. Although it is a simple fact, which is summarized in naming, many uncertainties arise therefrom, since in some cases there is no consensus on definitions, and, in others the rule should resort to an abstract description, sometimes vague, which

[18] PERLINGIERI, Pietro. ManualediDirittoCivile. Napoli: EdizioniScientificheItaliane, 2002, p. 53-55.
[19] PLANIOL, RIPERT e ROUAST, *apud* GOMES, Orlando, ob. cit. p. 311.
[20] GOMES, Orlando. Ob. cit. p. 312.
[21]VIRALLY, Michel. La penséejuridique. Paris: L.G.D.J, 1998, p. 11-23.

[22] Idem.

raises difficulties and challenges in applying it in the case. Furthermore, the facts to penetrate into the law have to to be renowned, operation that also involves controversy, though the conceptualization of the fact does not change the nature, as there is only the submission of a fact to an intellectual treatment.

Law is therefore more interest in its own creation, for what he added, than by the objective reality. This creates a risk of deformation and unawareness of the real, as the jurist, sometimes is more concerned with details that seem important and allow it, finally, to quote an article of the Code. On this aspect, Michel Virally[23] does an interesting observation: according to the author, law gives more importance to the ways of verification of facts than the facts themselves, which may lead to absurdity. The one, who by a substantive error was registered with the opposite sex or was declared dead, will have to seek a judicial decision, the court, to be recognized as a male person or to prevent the opening of the succession. Without judicial intervention, law shall consider him as a female person (woman) or dead. It is arriving in a limit in which there is no connection between the truth of the facts and their legal meaning.

At the moment when the protection of the human person, in his dignity, and solidarity, are the guidelines taken, it must be rejected, especially in family matters, any deviation from the truth of the facts and their legal meaning. Familial relations, especially the affiliation, is generated by the affection and built both in the private and public space, being by nature socioaffective.

2. Kinship

The Civil Code, which is originated from a project that was previous to the Constitution in an attempt to "adapt" to the new constitutional order, ended in establishing several questions, many of which are still unanswered. In this line of inquiry, is included the kinship, a bond of strong personal and financial implications, that is constituted within the recognized families and the new family arrangements, as exemplified the

[23]VIRALLY, Michel.Ob. cit. p. 11-23.

homoaffective unions, which defy the law to demand the recognition of the rights of the people who comprise it.

Is worth remembering that, for civil purposes, every kinship is legal, since the law provides the criteria for recognition of such bond and sets its limits. The Civil Code of 1916 admitted the kinship up to the sixth grade (Article 331), but the prevailing civil law limits the kinship to the fourth degree (Article 1592).

There was also a significant alteration in the criteria of kinship. For the 1916 Civil Code, kinship was: legitimate or illegitimate, if the marriage was proceeded or not; natural, or civil, as resulted from blood or adoption (Article 332[24]).

According to the Civil Code, kinship is natural or civil, as the result of consanguinity or *another source* (art. 1593), and is divided into lines and grades in accordance with established therein (Articles 1591, 1592, 1594 and 1595). The current doctrine and jurisprudence understand "natural kinship",resultant of inbreeding (consanguinity), is the genetic or biological kinship, and "civil" as a result from "another source", is the socio-emotional, including the adoption and the affiliation that is derived from technique of heterologous assisted reproduction, in which there is participation of the donor of the fertilizing material who is a person external to the couple.

It has been already stated as incontrovertible truth that kinship always derives from affiliation[25]. Effectively is what is verified: in order to determine the line or the degree of kinship, it is taken always as a reference the relation of ascendancy and descendants, that is, affiliation. Once created the bond of affiliation, all lines and degrees of kinshipare also instituted, starting to produce legal all personal and patrimonial legal effects.

Consequently, a judicial recognition of certain kinship, like the one between two brothers, or between uncle and nephew, either based in genetic or socioaffective fundament, will necessarily imply in binding others who are part of the family chain, since it has to trace back to the common ancestor or stem (Civil Code, Article 1594). In

[24] Este artigo foi revogado em 1992, pela Lei 8.560.
[25] SANTOS, J. M. Carvalho. Código Civil Brasileiro Interpretado, v. V, p. 312.

other words, the brothers will have at least one common ancestor or parent. Similarly, the uncle and nephew, at least for a line of ancestry, paternal or maternal, have a common ancestor (the father of the uncle and the grandfather of the nephew).

The isolated recognition of a determined kinship, as the affiliation that does not reach the other relatives or even kinship in the collateral line, similar to the provisions of Article 376 of the Civil Code of 1916 does not finds out constitutional protection. Rather, it violates the principle of equal treatment of every child who starts or are affected by the family chain.

3. The socioaffectivity as a criterion of kinship.

The affection has no pacific acceptance as an element that legitimates the legal recognition of the socioaffective bond. Such rejection usually occurs by the natural instability of affective relations: ended the affection, it would be questionable foundation for the maintenance of legal effects. Despite a number courts have always favored the socioaffective bond on the biological. This understanding considers only, or privileges, the affective component of the bond, leaving aside the social effects, sometimes irreversible, that cohabitation generates.

TJRS, Civil Appeal no. 70018812214, 7th Civil Chamber.

CIVIL APPEAL.ACTION TO ANNUL AN ACKNOWLEDGMENT OF PATERNITY. The legal act of acknowledgment of paternity may be set aside only if proven to be the result of addiction as duress, mistake, fraud or deception. BIOLOGICAL AND SOCIOAFFECTIVE BOND. The first does not overlap the second, if proven its existence. SOCIOAFFECTIVE PATERNITY.INDISSOLUBILITY. The consolidation of a free and spontaneous father-daughter relationship is not available to other interests that may remove from the child the condition of daughter of the father that was to her presented. APPEAL DISMISSED.

TJRS, 7th Civil Chamber, 70018812214 - Civil Appeal, Des. Ricardo RauppRuschel, judgment. 29.08.2007, publ. DJ 05.09.2007.

The socioaffectivity as the origin of the kinship is a criterion for establishing family relations generated by affection, which are externalized in social life. It is a fact to be seized by the law. Its recognition by a judicial decision is a prerequisite for its legal effect. For this, it must be proved the existence of the elements that compose it: the external (social recognition) andthe internal (affectivity). The external component translates the internal, which can be identified objectively through the measurement of the typical requirements of relationships based on affection: *tractatio, reputatioand nominatio*. Also should be added the care devoted to the socioaffective relative, verifiable in an objective way, as one of the best ways of expressing affection.

Civil law.Family. Special Appeal .Action for annulment of registration of birth.Absence of lack of consent.Maternity socioaffective.Consolidated situation.Preponderance of the preservation of family stability.

The peculiarity of the dispute centers on the claim made by a sister in the face of the other, through which it seeks to annul the birth certificate. For this reason, she basesthe request on claim of misrepresentation perpetrated by the deceased mother , that in the terms in which were described the facts in the judgment appealed - considered its immutability through this special appeal -, registered newborn daughter of others as her own.

Not considering any sophism in the interpretation given by TJ/SP on the provisions of art. 348 of CC/16, where both the falsity and the error of the registry are sufficient to allow the investigating to vindicate contrary state to that resulting from the birth, underlies, the factual scenario described in the contested judgment, the absence of any defect of consent on the free will of the mother, even aware that the child was not linked by blood bond to her, recognized it as a daughter, as a result of the bonds of affection that united them. In the focus on this premise - the existence of socioaffectivity - is that this controversy should be resolved.

It is noted in the judgment under appeal that there was a spontaneous recognition of motherhood, to which the annulment of the birth of the child could only occur with the presence of robust proof - that the mother would have been induced to error, to ignore

the genetic child, or else resorting to misconduct and inbad faith, declare as true family bond nonexistent. There are no means of undoing an act carried out with perfect demonstration of the will of the one who, one day, before the society said in a solemn ceremony and public recognition, being mother of the child, using to this end, of the truth socially constructed, based on affection, demonstrating thereby the effective existence of family bonds.

The mismatch of birth registration with the biological reality, as a result of a conduct that disregards the genetic aspect, can only be vindicated by the one who had falsely attributed the affiliation and the resulting effects can only operate against the one who performed the act of family recognition, probing, in its fullness, the manifestation of will in order to assess the existence of socioaffective affiliation bond. In this case, there is no state sanction that should be imposed, in consideration of the principle of the best interests of the child, to whom can never relay injury derived from an act committed by a person who offered the security of being identified as a daughter.

Added to this reasoning, that, in the judgment under appeal, the peculiarity of the legal fact of death prevents the sanction of the State on the mother who recognized her daughter due to a bond that was not originated from the blood, but from affection.

In this context, socioaffective affiliation finds foundation in the Art. 227, § 6º, of the Constitution, involving not only adoption, but also "kinship from another source", as introduced by art. 1.593 of Civil Code, beyond those resulting from consanguinity arising from the natural order, to contemplate the socioaffectivity emerged as a cultural element.

So, although devoid of genetic ancestry, socioaffective affiliation constitutes a factual relation to be legally recognized and supported. That's because motherhood that is born from a spontaneous decision should take shelter in Family Law as well as other bonds arising from affiliation.

The general clause of the protection of human personality erects as the strongest foundation to consolidate the acceptance of socioaffective affiliation, which safeguards the affiliation as an essential element in the formation of human identity.

Allow the deconstitution of recognition of maternity supported in relation of affection would have the power to eradicate from the child –an adult nowadays, considering that the course of the proceedings has taken 17 years –a predominant factor of construction their of her identity and definition of her personality . And the identity of that person, rescued by affection, cannot be set adrift in the face of uncertainties, instability or even patrimonial interests of a third-party submerged in family conflicts.

Thus, keeping in mind the particularities and factual elements in the case, the peculiar version given by TJ/SP , in which it identified the setting of true "Brazilian adoption" in order to characterize a bond of affiliation built through interaction and affection, accompanied by maternal treatment - must be legally ensured the continuity of the relationship lived between mother and daughter. In the moments that are configured the component elements of the factual support of socioaffective affiliation, one cannotquestion on the grounds of genetic diversity the act of registration of birth of the minor once leaned on affection, all based on the doctrine of integral protection to the child.

While the "Brazilian adoption" is not the validity on its own in relation to the adoption carriedout based on the legal rule, escaping from the discipline established in arts. 39 – D, art. 52, art.165 and art. 170 of the ECA, it has to prevail on assumptions as the one judged - considering the specificities of each case - the preservation of family stability in the consolidated situation and widely recognized in the social environment, without the identification of lack of consent or bad faith, in which, driven by the noblest feelings of humanity, A. F. V. expressed the true intention of accepting C. F. V as a daughter assigning to her affection and care inherent to motherhood constructed and fully exercised.

The guarantee of the pursuit of biological truth must be interpreted related to circumstances inherent to investigatory paternity, never to the ones that deny, under the danger of subverting the order and security that were given to who investigates the real identity.

The contested judgment is maintained, imposing the irrevocability of the voluntary recognition of maternity, under the absence of addiction in the manifestation of the will, even if there is discordance with the biological truth. Prevails in this case, the socioaffective bond built and consolidated between mother and daughter, that has indelible protection given to human personality through the general clause that protects and finds support in the preservation of family stability.

Special appealed dismissed.

STJ , 3rd T, Resp.1.000.356/SP , Min Nancy Andrighi , judgment . 25.05.2010, 07.06.2010 DJe

The possession of the descendent state, interpreted according to constitutional guidelines, is a sufficient proof for the purposes of declaration of affiliation, generating the kinship of "another source", in accordance with the criteria of socioaffectivity. Similar to what happens with the declaration of paternity at the biological or genetic criteria, the relatives of thesocioaffective father, recognized by a judicial decision, becomes also relatives of the socioaffective son, within the law, or otherwise affront the constitutional principle of equal treatment of every child.

The recognition of the socioaffective bond of affiliation, generating socioaffective kinship for all purposes of law, respecting the limits of civil law is legitimized in the interest of the child. If the child is a minor (underage),it is based on the principle of the best interests of the child and adolescent, if it is not, by virtue of the principle of human dignity, which does not admit a restricted kinship or a "second class kinship". The solidarity principle applies to both cases, behold foundation of the bond of kinship, whatever the criterion adopted. Possible limitations of kinship depend on the law, which must be harmonized with the constitutional guidelines.

For the same reasons above mentioned, the criterion of socioaffectivity shall prevail in case of conflict with the biological. Once recognized by a judgment the socioaffective kinship, its effects remain indefinitely, except for court deconstitution bond. Note that even if the ceased the affection that originated the bond, the social repercussions remain and its eventual reversion may cause moral damages, and also patrimonial, to those

involved. As an example it is mentioned the name change, which can irreversibly impair the person's identity.

2006.001.57822 - Civil Appeal TJRJ DES. FERNANDO FOCH LEMOS - Judgment: 28/08/2007 - THIRD CIVIL CHAMBER. SOCIOAFFECTIVE AFFILIATION.ANNULMENT OF THE REGISTRATION OF BIRTH.IMPOSSIBILITY. PRINCIPLE OF HUMAN DIGNITY

Civil Law.Family.Socioaffective affiliation.Annulment of the Civil Registration. Action proposed by an individual that married with a women, who was already mother of a teenage son, in whose birth certificate the name of father was blank. He intended to adopt the son, but, in the end, was included as father in the birth registration through rectification, developing with him paternity relationship and socioaffective affiliation for, years later, in the moment he was divorcing, propose action in the face of the child, to pursue the annulment of the registration of birth. The case was dismissed. 1. Proved the socioaffective kinship, there is not the deconstitution of the registration, which is equivalent to the adoption, as so immutable, that also preserves the defendant's right of dignity. 2. Our times shifted the axis of the biological paternity relation to the socioaffective, which , moreover, besides considering that it come to terms with a new reality that Bio-law seeks to understand, it fits better with the cultural reality of Brazil, in which stands out the "Brazilian adoption". 3 The predominance of socioaffective affiliation, the parenthood in this hue, does not betray the perpetuation of the truth, which is one of the civil registration of individuals, in reason that it is a truth of life , on which - and not on an idealization of reality - focuses the law. 4. Dismissal of the appeal. Unanimous.

TJRJ , 2nd Civil Chamber , 200600157822 - Civil Appeal , Des . Ferdinand Foch Lemos , judgment. 28.08.2007.

The socioaffective kinship, generally, is derived from the recognition of the socioaffective paternity or maternity, generating all personal and patrimonial effects inherent to it. It should not be discharged the possibility of recognition in other line or

degree, as the second degree collateral line (brothers). In such cases, as it was already observed, there will be, necessarily, the bond of other people who are part of the family chain, since it must go back to the common ancestor or stem. This possibility deserves greater depth, especially because of the constitutional principles involved, but escapes of the narrow aims of this study.

4. Legal effects of the socioaffective kinship

In order to identify the effects of socioaffectivity, it is necessary to determine its legal nature and to establish its concept. The socioaffectivity is a fact, in which are noticed two aspects (social + emotional). Generated by affection, the bond is externalized in social life, like other relationships based on affection, by (at least) *reputatio, nomination* and*tractatus*, that are its requirements and that remain even when affection is ended, because they are built inside the coexistence in society. If these requirements are met, socioaffectivity is one of the criteria for recognition of the kinship bond from *another source*, as referred into Article 1593 of the Civil Code.

To produce legal effects, the socioaffectivity must be recognized by a judgment (judicial decision), once made the proof of the affection, undoubtedly of subjective nature and, necessarily, of the social effects resulting from it, objectively verifiable. The proof of the social effects authorizes the recognition of the kinship bond, even against the will of the father (or the mother),who has no more affection for the one who, until then, was his child.

Socioaffective kinship produces all the same effects of natural kinship. The personal effects are a) the creation of a kinship bond in straight and collateral line (up to the forth degree), allowing for the adoption of the family name and creating impediments in the civil orbit as impediments to marriage, and in the public orbit, as the impediments of assuming certain public functions (offices); b) the creation of an affinity bond. Under the patrimonial aspect are generated both child support (child alimony)rights (duties) and inheritance rights.

2006.001.51839 - 2006.001.51839 - Civil Appeal

JDS .DES . MAURO NICHOLAS JUNIOR - Judgment: 30/01/2007 - TWELFTH Civil Chamber

CHILD SUPPORT[26] DUE TO GREATER SON .LEGAL POSSIBILITY.ABSENCE OF PRESUMPTION OF NECESSITY THAT, THEREFORE, MUST BE DEMONSTRATED, ALONG WITH THE PARENTS POSSIBILITY.EXCEPTIONAL SITUATION WHICH ALLOWS THE SON, EVEN BEING OF AGE AND CIVIL CAPABLE, TO SEEK ITS CHILD SUPPORT FROM HIS PARENTS BASED ON ARTICLE 1695 OF THE CIVIL CODE, 229 AND 1ST, III OF THE FEDERAL CONSTITUTION.SOCIOAFFECTIVE PATERNITY LEGAL POSSIBILITY OF CARACTERIZING CHILD SUPPORT OBLIGATION. REJECTION OF THE STATEMENT OF CLAIM (PETITION) FOR LEGAL IMPOSSIBILITY CLAIM CARACTERIZES A VIOLATION OF THE ACCESS OF JUSTICE, WHICH IS NOT ADMITED BY THE CONSTITUTION . PRINCIPLES OF AFFECTIVITY AND SOLIDARITY FIND CONSTITUTIONAL AND ETHICAL SUPPORT AND SHOULD PERMEATE THE CONDUCT AND THE DECISIONS OF THE MODERN JUDICIARY, AWARE OF THE WORLD'S CURRENT REALITY .

TJRJ , 12th Civil Chamber , 2006.001.51839 - Civil Appeal , Jds . Des . Mauro NicolauJunior , judgment. 30.01.2007.

ACTION TO ESTABLISH AN ACKNOWLEDGMENT OF SOCIOAFFECTIVE PATERNITY.ANNULMENT OF THE DIVISON OF COMMON ASSETS AND OF THE PETITION OF INHERITANCE. INVENTORY ALREADY ENDED. SUSPENSION OF THE EFFECTIVENESS OF THE SENTENCE. There being no dispute about the validity of the will, and considering that the total value of the legacy does not exceed the amount available, even if it could come to be recognized the necessary heir, it is appropriate to release the formal division of common assets concerning the legatees, resting maintained the measure in respect to the rest of the patrimony. Interlocutory appeal granted.

[26]Equalto "Childalimony".

TJRS, 7th Civil Chamber, 70019072511 - Interlocutory, Des.Sérgio Fernando de Vasconcellos Chaves, judgment. 08.08.2007.

The recognition of kinship based on socioaffectivity should exercise caution, since, as demonstrated, it involves third parties, not necessarily involved in the socioaffective relationship, but that surely will be attained by the duty of solidarity that is inherent in family relationships.

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