



**THE ESTABLISHMENT OF THE RIGHT TO CHANGE THE REGISTRATION NAME
AND SEX BY THE SELF-PERCEPTION OF GENDER IN BRAZILIAN CIVIL RIGHTS**

*O ESTABELECIMENTO NO DIREITO CIVIL BRASILEIRO DO DIREITO DE ALTERAR
O NOME E O SEXO DE REGISTRO PELA AUTO-PERCEPÇÃO DE GÊNERO*

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Resumo

Este artigo aborda o direito das pessoas que não se identificam com o sexo registrado de alterá-lo, bem como seus primeiros nomes nos registros públicos, adaptando-os ao seu gênero percebido. Também são levadas em consideração as dificuldades práticas que a não publicação de todo o conteúdo da decisão do Supremo Tribunal Federal, que permitiu essa mudança de maneira abrangente a todos os cidadãos, causou ao estabelecimento desse direito em face dos Registros Cíveis. Outra questão é a solução administrada de forma pioneira pelo Tribunal de Justiça do Ceará e, posteriormente, pelo Conselho Nacional de Justiça, ao publicar procedimentos regulatórios diretamente nos registros públicos, de forma relativamente simples e segura. Uma breve análise comparativa será realizada entre a provisão do Ceará e a provisão nacional. O método dedutivo será utilizado, partindo de algumas normas legais e, principalmente, das disposições do Tribunal de Justiça do Ceará e do Conselho Nacional de Justiça, com análise de seus comandos. Será adotada uma linha de pesquisa teórica-qualitativa, com análise de fontes bibliográficas, leis e regulamentos. Conclui-se que, como resultado de uma luta simbólica e institucional, por mais de meio século, conduzida por minorias sexuais, a sociedade brasileira

incorporou mudanças significativas no direito civil como forma de enfrentar múltiplas formas de violência de gênero. Destacamos como uma dessas mudanças o direito à autonomia na definição da identidade de gênero de qualquer cidadão, sem a necessidade de opinião psiquiátrica ou processo judicial, mas apenas a autodeclaração registrada em cartório.

Palavras-chave: Felicidade. Nome. Mudança de sexo. Lutas pela igualdade.

Abstract

This article addresses the right of persons who do not identify themselves with their registered sex to change it, as well as their first names in the public records, adapting them to their self-perceived gender. The practical difficulties that the non-publication of the entire content of the Brazilian Supreme Court decision, which allowed that change in a comprehensive manner to all citizens, caused for the establishment of this right when facing the Civil Registries is also taken into account. Another issue is the solution given administratively in a pioneering way by the Ceará Court of Justice and, later, by the National Council of Justice, when publishing regulatory proceedings directly in the public registries, in a relatively simple and safe way. A brief comparative analysis will be carried out between the Ceará provision and the National provision. The deductive method will be used, starting from some legal norms, and, mainly, the provisions of the Ceará Court of Justice and the National Council of Justice, with analysis of its commands. A theoretical qualitative research line will be adopted, with an analysis of bibliographic sources, as well as laws and regulations. It is concluded that, as a result of a symbolic and institutional struggle for over half a century conducted by sexual minorities, Brazilian society has incorporated meaningful changes in civil law as a way to confront multiple forms of gender violence. We highlight as one of these changes the right to autonomy in the definition of any citizen's gender identity, without the need of a psychiatric opinion or legal process, but only a self-declaration registered in a registry office.

Keyword: Happiness. Name. Sex change. Struggles for equality.

1 INTRODUCTION

On March 1, 2018, the Federal Supreme Court judged the Declaratory Action of Unconstitutionality number 4275, filed on July 21, 2009, which had as a petitioner the Attorney General. The demand was judged:

[...] it was judged proceeding the action to give interpretation according to the Constitution and the Costa Rica San Jose Pact to article 58 of Law 6.015/73, giving recognition to transgender that wish to, independent from trans genital surgery or hormonal or pathological treatments, the right to substitution of first name and sex directly in the civil registration. Minister Dias Toffoli impeded. The trial was presided by Minister C armenL ucia. Plenary, 1 .3.2018.

Ab initio, it must be highlighted that the trials of the Supreme Court are not used to having its decisions in full content published rapidly. Such fact can take up to months or even a year, which has generated practical consequences concerning the practical implementation in juridical changes that seek to minimize the impacts of transgender population segregation in Brazil.

The present article will discuss this new right through which the people that don't identify themselves with their registry sex can alter it as well as their first names in public registrations, adapting to the self-perceived gender. Therefore, the legal status of the name in the Brazilian law will be initially analyzed, as well as some practical situations in which its alteration is legally authorized or not, especially in the cases of trans people. As the discrepancy between social identity and civil registration became a powerful instrument of social segregation, the right to change in the gender identification and name became a priority agenda in the struggle for the construction of a "sexuality democratic right" (RIOS, 2006). The fight for the end of registry decriminalization in Brazil will be analyzed within a broader context of the feminist critics of right, which sought to demonstrate and transform the existence of a male and heterosexual paradigm of western law that confirms legal legitimacy to the several forms of domination and gender violence.

After, the practical difficulties imposed by the non-publishing in full content of the decision that were caused for the realization of such right together with the Civil Register of Natural Persons will be approached. At last, it will be discussed, consequently, regarding the administrative solution given in a pioneering way by the Cear a Affairs Division of Justice and after, by the National Justice Council, when they

publish the provisions that regulate and seek to make the changes here informed effective directly in the registry office, in a relatively simple and safe manner.

For such, this article will use the deductive method, with resource of critical literature and normative documents. For the first part of the research here presented, that searches to contextualize gender and social name change in the civil registries, were used some reflection of critical feminism of right and gender studies that searched to denaturalize definitions and practices of power in the sexuality field. In the second part, starting from some legal norms and mainly, of provisions from the National Justice Council, with the analysis of their commands and the verification of its convergence with greater objectives, written or not, of our Magna Carta, notably the social objectives of citizen well-being, that seen from a perspective of self-determination, encompasses the right to pursuit of happiness.

It is important to highlight that the research was done within the research group activities about Development Theories of Private Law, linked to the Post-Graduate program in Private Law and Social Relations at the Centro Universitario 7 de Setembro-UNI7. The main objective of the accomplished activities is to map and follow the struggles for citizenship in the state of Ceará, more specifically the struggles which have been strengthened by new instruments of the Brazilian private law. In a second moment, after this bibliographical analysis of the normative innovations, the focus will be to study the effectiveness of the legal arrangements here presented in a more empirical approach founded in participating observation methods.

2 IMMUTABILITY PRINCIPLE (RELATIVE) OF NAME

The 2002 Civil Code, when addressing personality rights, more specifically in its item 16 (BRASIL, 2002), endows to all people the right to name, there understood as the first name, which is the indicative that identifies people to their families and the last name or middle and last names, also called family name. The full name is what individualizes a person to society.

On the other hand, the law number 6015/73, which addresses public registries, in its item 58, is about the immutability of the given name as an overall rule. The registry law, aside from other norms, admits the alteration of the last name, whether by adding a name or having it removed. For example:

Item. 58. The given name will be definitive, therefore admitting its substitution by notorious public last names. (Rewritten by Law nº 9.708, of 1998).

Sole paragraph. The substitution of the given name will be admitted due to founded duress or threat resulting from the collaboration with crime verification, by determination, in sentence, from a competent judge, heard by the Public Prosecution. (Rewritten by Law nº 9.807, of 1999) (BRASIL, 1973).

Other name changes regulated cases, for example, are the recognition of paternity and marriage, aside from separation and divorce, which are opportunities to change the last name. The first name can be altered, *vide gratia*, when the registered completes 18 (eighteen years old), without having the need of express justification according to the law. After 19 (nineteen years old) they can also change their name, but it will be necessary to prove that their first name causes strong distress or embarrassment in the items 56 and 57 of the Public Registry Law (BRASIL, 1973).

Item 56. The interested person, in the first year after reaching age of majority can personally or through assignee, change their name as long as it doesn't affect Family names, endorsing the alteration which will be published by press. (Compensated of item. 57, by Law nº 6.216, of 1975).

Item 57. The subsequent alteration of name, only by exception and with motive, after a hearing of the Public Ministry, will be granted by the determined judge's sentence, archiving the warrant and publishing the alteration by press, with the exception of the hypothesis of item 110 of this Law. (Rewritten by Law nº 12.100, of 2009).

§ 1º It can also be endorsed, on the same terms, the abbreviated name, used as commercial registered firm or in any other professional activity. (Included by Law nº 6.216, of 1975).

When concerning current personality rights, in a prior moment to the Federal Supreme Court trial regarding the name modification of transgender people, Andrade (2013) informed us that one of the most relevant themes for a human person's dignity is exactly the possibility of changing their name, and the first name is included. Such modifications possess legal forecast, and some legislative alterations about the theme have already been made, such as the one that made the change in cases concerning witness protection possible.

The above-mentioned scholar continues to inform that there is no absolute rigidity regarding name immutability. The rule applied is of name stability, however, when there's a need for alteration, due to safety, family right or constraint, the name can and should be altered. The referred scholar yet informs that the Brazilian Civil

Code was silent regarding the theme of data alteration of the person in cases of sex change, different from other countries that addressed the subject in their codes (ANDRADE, 2013).

The logic of the registry system in accordance with the 2002 Civil Code and the Constitution of the Republic is that the name is a personality right, an identifying and individual element of the person for society, in their personal and commercial relationships. As an identifying element, it needs to be defined at birth¹, reason that the option is granted to the parents or responsible, that choose the name of their son or daughter, by representation.

When 18 years old, age of majority, the person can remain inert and confirm tacitly that he/she agreed with their parent's choice of registration or disagree and ask for the alteration through item 58 of the Public Registration Law. This being within the logic that it's the person's name, belonging to their personal heritage and to their inalienable personality right.

It occurs that, the name also being an identifying element for third parties, there must be stability or relative immutability for the purpose of juridical safety, because no right can be used to damage third parties' rights or for someone to evade their responsibilities. Therefore, the legislator granted the expiring short-term of 01 (one) year from the age of majority so that the person informs the name by which he/she wants to be called as by their parents and peers.

However, the Constitution brings a series of inherent rights to the human person and, always when there is a collision of principles or rights apparently antagonistic, the Judiciary should ponder the concrete case and decide which norm should prevail in that situation or which is the best interpretation to be given to the concrete case, balancing each case. The legislator can also predict these hypotheses and regulate the solution to be given. It is due to the prevalence of the right to life and safety, in contrast to the immutability principle of the name that, for example, that there is a legal express authorization of name (both first name and last

¹The importance of the name is so big that there are already states which authorize the civil registers to give a name to the stillbirth, anticipating personality rights to the person only conceived, but was born without life. This honors not only the stillbirth, but also their parents and relatives. A bill was approved with the estimate of including stillbirth name, but was fully vetoed by the current president of the Republic claiming that the alteration could lead to interpretations which counteract the present systematic in the Civil Code, and could include eventual non predicted effects for the succession right." More information can be obtained in <<https://www12.senado.leg.br/noticias/materias/2015/07/01/vetado-projeto-que-permitia-inclusao-de-nome-e-sobrenome-em-registro-de-natimorto>>. Access on July 25, 2018.

name) alteration (temporary or not) in witness protection cases (law n.º 9807/99 and item 58, single paragraph of law n.º 6015/73). There is also the prediction of altering name in cases of adoption, among others.

Since the right of the person to not feel constrained with their name or qualification is also an inherent right of the person, the item 57 expressly permits that the one who loses the deadline of item 56 can still alter their name. It is necessary a legal proceeding in which the justification of the request of rectification will be made.

It is also possible, at any time, an alteration to fix some spelling mistake or data transposition through items 109 and 110 mentioned in the registration law. The alteration of the first name of foreigners (item 71, paragraphs 1º and 2º of law 13.445/2017 – Migration Law and it was already a foreseen right in item 43, III of the revoked Statute of the Foreigner - law n.º 6.815/80) is authorized as well, a right granted exactly to avoid that the foreigner has difficulties in his/her relationships in Brazil due to his/her name being spelled or pronounced with a spelling not common in Portuguese.

Aside from the cases mentioned here, whenever there is constraint or the proven need, the Judiciary has authorized the alteration. As we can see, despite the immutability rule, many are the possible alteration cases, always based in the fact that the name or registered data cannot cause constraint or difficulties to its bearer or must adapt to the person's reality. This explains why it is accepted with such naturalness that a spouse (and nowadays partner) adopts the last name of the other when there is a stable union. It is the simple fact that both now form a family.

An example of judicial alteration, in other words, the non-predicted permission expressly in law, is the case of the widow or widower, if willing, being able to go back to using their maiden name, according to the decisions of the Superior Court of Justice. The decision has existed since 2002 (STJ, 2002), but in 2018 the issue was again confronted, being approved the possibility of alteration. At the time, the third party of the Superior Court of Justice authorized the resumption of the maiden name of a widow, informing that the non-permission would mean a serious violation to her personality rights.

The request for the name alteration, as well as the resumption of the maiden name after being a widow, was denied in the first and second instances for not having legal provision. However, the third party of the Superior Court of Justice claimed that the divorce and the widowhood are related to the same fact, so the

dissolution of marital bond, reason for which there is no justification for that only in the hypothesis of divorce there is authorization for the resumption of the maiden name. In respect to the constitutional norms and to the personality right of the widow and the widower, who are the people distinguished from the deceased, there also should be guaranteed the reestablishment of the name in cases of marriage dissolution by the death of the spouse.

The minister Nancy Andrichi, the rapporteur of the case, highlighted that the right of name is one the structuring elements of personality rights and of the human person's dignity. She also remembered that the Brazilian tradition admits that a person, usually a woman, abdicates great part of her personality rights to incorporate the patronymic of her spouse after the wedding, acquiring a name that did not belong to her originally.

Despite this characteristic, the minister gave a reminder that the evolution of society puts the relative issue of name in the sphere of freedom and of the autonomy of the parties exactly because it is about a substantial alteration in a personality right.

Regarding the proceedings, the minister observed that the allegation for the resumption of name comes from the necessity of redressing a moral debt with the widow's father. She also mentioned that both spouses were born in the 50's, in small towns of Minas Gerais, and got married in the 80's, situations that point to the predominance of a still yet very traditional and conservative in its family aspects. She highlighted that in such particular situations it wouldn't be correct for the Judiciary to enter in private life, in people's values and beliefs, analyzing if the presented justification is plausible or not, mainly when the Judiciary's function is to bring social peace and not make the person's life a torment.

Given the presented arguments, it is understood that in such cases the change must be authorized for several reasons, highlighting the generated trauma due to death, the fact that maintaining the previous name can make the development of a new relationship difficult, or even for professional reasons (BRASIL, 2018).

If in so many cases it is possible to change the name, always based on the prevalence of the person's dignity when in contrast to juridical safety brought by name immutability, why shouldn't it be given the same weight and measurement of transgender people? The above inquiry must be answered in a juridical context,

not having any reason for impeding the change. And so it was decided by the Federal Supreme Court, whose judgement was based on the constitutional presets of human dignity, equality, freedom, privacy and sealing of hateful discriminations (LINS JÚNIOR, MESQUITA, 2019).

The relevance of this juridical fact for the strengthening of citizenship in Brazilian society can only be fully perceived if properly contextualized in a broader movement entitled critical feminism of Law responsible, above all, for changes in laws that address gender issues. Despite the meaningful advances in Brazilian legislation, represented by Maria da Penha Law, typification of femicide crime, homo-affective marriage, among others, feminist law theory is still not so studied and widespread in Brazil (RABENHORST, 2018)

Such advances are a consequence of a historical struggle against crystalized forms of gender violence, naturalized by Law. The necessity of a critical approach in the law field would be justified once law integrated a general system of domination of women and of exclusion and marginalization of groups with dissident sexuality not contemplated by the binary man/woman (BORRILLO, 2010)

It is important to highlight that the critical feminism movement, also in the juridical theory sphere, presents multiple traces depending on the vision of law that is adopted, the law or group of laws that problematized, the methodology used and the concrete reality of each author (CASALEIRO, 2014).

For feminist Carol Smart, British sociologist known for her innumerable works about the relation between women, feminism and law, there are three ways of thinking this juridical phenomenon: law would be sexist, demanding from the critical reflection a positioning in favor of formal equality among sexes and incorporation of all women as well as the multiple gender identities in the space of citizenship; law would be intrinsically masculine, acting as one of the institutional forces to guarantee male domination (heterosexual) – behind what appeared to be a juridical neutrality, there would be an intimate link between laws and law with the legitimacy and naturalization of gender violence (BOURDIEU, 2014; RABENHORST, 2018). In this last stage, the feminist movement incorporated new agendas to their struggle such as racial issues and sexual diversity, recognizing life experiences, forms of violence suffered by women and gender minorities in their concrete experiences.

However, the feminist movement can count on a legal weapon from the end of 1940. The declaration of men's rights was an important juridical tool in advantage

of several minority social movements in practically all western modern societies. The principles of dignity of the human being, autonomy of will and right to personality contributed as well in the construction of a critical reflection about the many forms of violence presents in gender relationships (FREITAS, MARCO, 2013).

It didn't take long for the feminist movement to appropriate itself from these legal resources to contest, in the sphere of national constitutions, the juridical conditions of women and sexual minorities. It should be emphasized that, as we will see here shortly, the importance of the role of the Inter-American Court of Human Rights (ICHR) in the elaboration of a egalitarian and inclusive jurisprudence. Such decisions show that the law, far away from being an ideological construction essentially masculine, presents itself as a space of struggle, dispute concerning peaceful and egalitarian forms of relations between genders (CASALEIRO, 2014).

3 THE PRINCIPLE OF DIGNITY OF THE HUMAN PERSON AS THE APPROVER OF NAME AND SEX CHANGE IN CASES OF TRANSGENDER PEOPLE CONSTRAINT.

The change of name by transgender people is sought because the name is the representation sign of the person, which expresses not only their biological and psychosocial conformation, but also their role in the world, being an extension of the individual. It is continually informed that the right to name must have a social approach, guided by the right to self-determination. Without such understanding it is not possible to talk about Democratic State of Right (ROCHA, 2013). It is important to stress that the Federal Supreme Court, when judging the Declaratory Judgment on Unconstitutionality number 4275 took into account, aside from what is written in our Magna Carta, also the Pact of San Jose and the Advisory Opinion number 24/2017 of the Inter-American Court of Human Rights concerning gender identity, equality and non-discrimination.

Referred advisory opinion (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2018) was consigned on November 24, 2017, but it was only fully released on January 9, 2018. The members of the mentioned court reiterated the jurisprudence of the Inter-American Court regarding the fact that sexual orientation and gender identity are rights protected by the Pact of San Jose and of Costa Rica.

For them, the right to gender identity is linked to the guarantees of freedom and self-determination and their recognition by the members of OAS of vital

importance for the full enjoyment of human rights. Regarding specifically name and civil registration, the Court considered that name and the mention of sex in registration documents according to the self-perceived gender identity are guarantees protected by the Human Rights American Convention. The States that are part of OAS are required to recognize, regulate and establish the proper procedures for reaching these guarantees (PIOVESAN, 2006).

It can be speculated that, somehow, the decision of the ICHR had influence in the decision of the World Health Organization (WHO). Less than six months of the Court's decision, WHO removed transsexuality from the list of mental disorder from the International Disease Classification (IDC). This removal occurs almost forty years after it had been included in ICD, fact that contributed significantly for the development of social perception of transsexuality as a disease. From 1980 to 2018 it was considered as "gender identity disorder", now configuring into "a condition related to sexual health", as an inconsistency of gender and no longer as a deviation capable of being corrected (BENTO, PELÚCIO, 2012).

This change of perspective from WHO was not spontaneous, but the result of more than a decade of struggle of social movements organized around trans population rights. Since 2019, for example, coordinated actions are upheld in October in different European cities entitled STP, Stop Trans Pathologization. From 2012, the movement started counting with the participation of American cities and cities in Oceania. The main demand of the movement was exactly the removal of transsexuality of the mental diagnosis manuals, aside from the health law and the change of first name as an autonomous act (BENTO, 2012).

Regarding mainly name and civil registry, the Court considered, anticipating the WHO decision, that the name and mentioning of sex in registry documents according to the self-perceived gender identity are protected guarantees by the Human Rights American Convention. Therefore, the states part of OEA are obligated to recognize, regulate and establish proper procedures for the fulfillment of these guarantees² (PIOVESAN, 2000). After the decision of the International Court, the Federal Supreme Court came to agree and made the decision of authorizing the

²For more information, see: PUBLIC FEDERAL MINISTRY. FEDERAL PROSECUTOR FOR THE RIGHT OF CITIZENS. **Human Rights American Convention discloses Consultive Opinion about gender identity and not discrimination.** News available in 10 jan. 2018. Available at <<http://www.mpf.mp.br/pgr/noticias-pgr/corte-interamericana-de-direitos-humanos-divulga-opiniao-consultiva-sobre-identidade-de-genero-e-nao-discriminacao>>. Access in 20 jul. 2018.

direct altering in registry offices by a simple declaration.

Before the Federal Supreme Court's decision, transsexuality considered as a mental disorder by WHO and also by the Brazilian law, depended on the authority of an institutional network and specific knowledge to have access to a minimum rights group, as surgery and the so called "social requalification", or change of name. The gathering of the requests and follow ups of the processes was under the responsibility of the State Public Defenders, where each had to gather all necessary "proof" for the requests to be considered pertinent. The "assisted" needed to hand in copies of their civil documents, a list of witnesses and photographs, psychological and psychiatric reports that confirmed transsexuality, medical certificate indicating the need to surgery, medical exams, hormonal prescriptions, social study emitted by psychologists and social workers of the Public Defenders (FREIRE, 2016). All this procedure was destined to construct the "truth" of the trans deviation, condition for the access to the mentioned rights above.

However, will these conquers bring restrictions to some already instituted rights, such as hormone reposition and sexual readjustment surgery by the Sistema Único de Saúde (SUS)? This decision is directly linked to the yet to be taken positioning of the Federal Council (CFM) which, in its last resolution about the theme, in 2010, still defines the trans person as bearer of permanent psychological disorder of sexual identity. In this same resolution, CFM indicates as adequate procedures to such disorder exactly hormonal reposition and surgery. It is important to follow the content of this decision, verifying its convergence to the Federal Supreme Court decision or a binary vision of gender will be maintained, linked to a heterosexual matrix of the social norm (BORRILLO, 2010).

After the decisions of the International Court and the WHO, the Federal Supreme Court ended up agreeing with what was set and made the decision of authorizing the alteration directly in the registries and by simple declaration. Gomes and Pereira (2017) inform that the possibility of choice and even of having a multiple experience throughout life must be recognized to the human person as a way to guarantee a "good life" for them. In addition, such process (of choice) is only fully accomplished when the right institutionalizes and make effective the juridical mechanisms guarantor of the implementation of the verbalized right. In other words, judicial decisions must be concrete. And it was exactly this that started lacking after the decision of the Federal Supreme Court regarding the registry name and sex

changes of transgender people.

This articulation between human rights, especially the ones that are about equality and autonomy of will, and the social struggles surrounding gender issues in Brazil started gaining strength from the 1988 Constitution. Actually, it was verified the possibility of constructing a group of sexual rights founded in the “free responsible exercise of sexuality, creating the basis for a juridical regulation that overcomes repressive traditional approaches which characterized the juridical interventions in these domains” (RIOS, 2006, p. 72). This means transforming sexuality into a fundamental manifestation of citizenship, without being presented as a sign of social inferiority or deviating subjectivities that should be “standardized”.

Due to the proximity between the sexuality field and the moral field, traditionally responsible for its regulation, the struggle for sexuality rights appears as one of the hardest and most polemic. Despite a great mobilization and institutionalization of the feminist, gays, lesbians, transgender, sex professionals among other identities movements, it cannot be affirmed that these social groups participate in social, political and economic lives with equal conditions, without suffering any kind of prejudice or discrimination.

The numbers of violence against the LGBT+ population, for example, confirm this current scenario of violence and segregation. According to the Violence Map of Brasil, published by Ipea (2019), the number of violence cases grew 127% between 2011 and 2017. Despite the argument of an increase of sub notifications being permanent, the decrease of the number of reports about homicide attempt diminished while the homicides increased. The NGO Transgender Europe (TGEU) released in 2018, a report that puts Brazil into first place in a ranking formed by 72 countries. Between October 1, 2017 and September 30, 2018 there were registered 167 deaths of transsexuals.

Imagine if a right that has been denied or not recognized for so many years, with people suffering a strong anguish once their registry name and sex did not correspond to their self-perceived gender, and then they finally have that possibility, but couldn't make the change effective due to lack of regulation of the Federal Supreme Court (DUQUE, 2012). That's what happened for a few months, once the decision of the Court, because it was innovating, would need to have its details checked and the administrative procedure regulated by the National Comptroller of Justice or the States Comptrollers so that the civil registries could act in a safe and

consistent way throughout the country.

4 THE ESTABLISHMENT OF THE RIGHT TO CHANGE REGISTRIES IN ADMINISTRATIVE FORM AND BY SIMPLE DECLARATION, WITHOUT THE NEED OF MEDICAL CERTIFICATE OR SEX REASSIGNMENT SURGERY BY THE PUBLISHING OF PROVISION 09/2018 IN CEARÁ AND BY PROVISION 73/2018 BY CNJ

As collaborators, the notaries and the registers do public service, being only able to act within what is prescribed in the laws and in the norms of the Justice Comptrollers (strict legality principle). The comptrollers sought the full publication of the decision to understand the reach and peculiarity prescribed in the Federal Supreme Court's decision so then they could expand their regulations.

Moreover, some state comptrollers formalized written "recommendations" to the registers so that they would abstain of practicing name and sex change of transgender people, in an administrative form and directly, until subsequent regulation.

As it has already been explained, the problem is that the decisions of the Federal Supreme Court take months or even more than a year for being published, not having the decision made in the ADI 4275 as an exception. It is a fact that until September of 2018, the full content of the decision had not yet been published (LIMA, 2018). Due to the pressure of the benefited group by the Federal Supreme Court decision, Ceará, in a pioneering manner, decided to launch a provision regulating the change procedure and, on May, 7 of 2018 the Provision n.º 09/2018 of the General Comptroller of the State of Ceará Justice was consigned. The people, who did not identify with their first name and their sex, regarding gender, were able to make direct substitutions in the registry office, despite medical certificates or sex reassignment surgery.

The expedition of the local provision brought a standardization of the civil registrars procedures, increasing the capacity of juridical act safety, equalizing the procedures and avoiding that different demands by each of the public register officials could get in the way of the implementation of the claimed right. In addition, it gives the outline to avoid any procedural weakness in the use of this right, which is reserved to the people who do not identify themselves with their registered name and sex (GOMES, PEREIRA, 2017).

The misuse of a right can harm the use of this same right by those who really need it. Consequently the provision of Ceará having solicited the presentation of some certificates that show if the person has any hanging with Justice (if, for example, the person is answering for a crime or is sentenced by any crime, or if they have any civil, labor or tax debts), among others. Even people with some debt can establish the intending change; however, the bodies and institutions where they have debt or judicial issues will be notified about the change so that they can make the adequate changes on their records. Moreover, the necessary nexus of the documents will be established in the birth certificate and, if it is the case, marriage, maintaining the numbers of the original documents such as CPF, which will remain the same.

The provision created an index to be used internally with the past name and the modified name, making it always possible to search for the person by any of the two names, which also makes it difficult to misuse of this important right by dishonest people. This is an effective protection of transgender people and of all whom they have any kind of relationship, whether affective, commercial or any other.

After the consignment of the provision of Ceará, several other states regulated the theme, each with their own demands or different rules, generating a beginning of a new problem due to the divergences among states, mainly when a registered person in a certain state lives in another and wished to do the procedure in their state of residence. The civil registrar of the state of residence would comply the provision of their state and the person presented the required documents. When the documentation was sent to the registry office of the person's registry state, the registrar would refuse to implement the change due to lack of some document or some declaration demanded by their local provision. To end controversies, finally, on June 29, 2018, the National Justice Council, through the National Justice Corregidor, published the provision number 73, which "Disposes about the registration of the alteration of the first name and of gender in the birth and marriage certificates of transgender person in the Civil Registry of Natural Persons-CRNP (CNJ, 2018). Once again, Ceará has corrected and adjusted its decisions, for both provisions being very similar. In other words, almost all the document demands and models brought by the national provision were already in the state provision, and the other states had to adapt to the National Provision.

5 FINAL CONSIDERATIONS / CONCLUDING REMARKS

The universal declaration of human rights (1948) says in its items I and II that all are equal in dignity and rights, where any kind of distinctions between people or by any conditions is not authorized. Now imagine a person with a feminine body, a feminine voice, feminine attitude and clothes having to make a registration in a drugstore, at a bank or in any public place and, when they present their ID they have to hear from the attendant:

“Is your name João?” To think that such situation does not bring previous anguish and constraint to the human being who is there and needs to make their registration is to distort the truth and disregard the declaration mentioned above. The problem is not the attendant, but the divergence between the fateful reality and the registration reality.

The fact that it is already possible to change registration name and sex directly in the notary and from your birth certificate, expedite all new documents with the intended adequacy. The so-called “social name” loses its importance, for it is nothing more than a name once the registration name remained the same. Now the person’s civil name can be changed, being unique and maintaining the main characteristic of the civil name as a personality right: the person’s individuality before their peers, and society.

Some small terminological imprecisions still continue to occur and will keep occurring for some time as a leveling between sex and gender. There is actually a misconception in the Provision when it mentions “gender” alteration in the public registry. In fact, sex and gender have different concepts. What lies in the registration is sex, once that gender is not an integrating element of the birth registry. Therefore, gender would be self-perceived. What is altered is the individual’s sex, which will be modified in the registration so that it fits the self-perceived and experienced gender of the person. The mentioning of sex is a mandatory and constant element in birth certificates. Since what is exposed to third parties, to all society, through the birth certificate is sex and not gender, sex should be altered so that the person is seen socially and through their documents as their real gender, after all, gender is how the person feels and behaves within the body they were born with.

The fact is that the search for equality must be the keynote of all that worry about healthy relationships between people, all who have in fraternity an element of

life. The task of the State must always be that of emancipating the citizen, guaranteeing good manners and prying the least possible in people's personal relations. Such task is restricted to impeding the advance of one's right upon the other's. Historically, the more the State acts or interferes in private relations, the less freedom and opportunities are granted to the people there residing. The excuse for a greater intervention from the State, including in the production means, that it would be to avoid exploitation of man-by-man has proven to be fake. The best way to avoid exploitation is by emancipating people through politeness, through a system of rights and duties where all respond with dignity to their acts, after being given the opportunity to receive proper good manners.

This emancipating politeness will come from a better speech. This fact cannot be denied. The emergence of studies about fundamental rights is much owed to Immanuel Kant and, based on him, declared that fundamental rights are founded in reason, which leads to happiness as long as certain ethical and moral postulates (categorical imperative), concluded that the limits of personality rights are the limits of speech. Hence the importance of discussions concerning the theme. There is still a lot to be done, mainly regarding politeness, but the decision of the Supreme and the administrative regulation of the theme simplify the life of transgender people. With the civil registries properly altered, now it is time to change the attitude and the conception of all.

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