

HUMAN DIGNITY AND THE RIGHT TO RECOGNIZE PERSONAL IDENTITY: AN ANALYSIS FROM EXTRAJUDICIAL PROTECTION INSTRUMENTS

DIGNIDADE HUMANA E DIREITO AO
RECONHECIMENTO DA IDENTIDADE PESSOAL:
UMA ANÁLISE A PARTIR DOS INSTRUMENTOS
DE PROTEÇÃO EXTRAJUDICIAIS

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ABSTRACT

This article sought to establish a link between the principle of the dignity of the human person and the right to recognition of personal identity, addressing some protection instruments, especially extrajudicial ones, such as the provisions of the National Council of Justice. An inductive method will be used to approach it, presenting an overview of the technique of bibliographic research, doctrine and legislation on the right to personal identity recognition, with concepts, nature and data on this recognition in Brazil, establishing a link with the principle of access to justice and on the principle of human dignity. Based on these considerations, a critical analysis will be carried out on the effectiveness of these extrajudicial protection instruments, with the objective of contributing to the realization of the fundamental rights of access to justice and the dignity of the human person.

Keywords: Human dignity. Personal identity. Extrajudicial protection.

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1. INTRODUCTION

Since prehistoric times, dating back to the moment in which man began to congregate and the first communities emerged, individuals started looking for ways to identify themselves, in order to create their own personal identity, to individualize themselves.

According to Calissi(2016),

Identity is a term of recognition before the “other” and a term of self-knowledge. On one end, the person exists because they are internally composed as a manifestation of their mind, their thought, but they also exist, socially, because they are perceived by the “other”. Therefore, identity is the knowledge of the subject from within oneself and from the other. (CALISSI, 2016, p. 115)

The right to personal identification goes beyond the traditional boundaries of Private Law and Public Law, meaning that we must safeguard it in an interdisciplinary approach, in or out of judgement - be it in a repressive way, by repairing damage to identity, or in a fostering way, by disseminating and instigating the protection of this right. In this segment are the rights to a name, to cultural identity, to know one’s origins, to freedom of sexual orientation, among others (KONDER, 2018). The right to a name and identity require substantial and legitimate official records, can protect a culture (as in the case of indigenous ethnicities), reference a genetic origin, as well as reclassify gender as a self-perceived or self-declared condition, in the case of a transgender person.

According to the Brazilian Institute of Geography and Statistics (IBGE in the Portuguese acronym, 2019), in the northern region, the coverage of the Civil Registry of Natural Persons is only 87.5% while in all other regions of the country it exceeds 93.1%. The most affected with under-registration are indigenous people, the street population, rural workers, and the LGBTQ+ population, which translates into a violation of the dignity of the human person (BRAZILIAN INSTITUTE OF GEOGRAPHY AND STATISTICS, 2019).

Errors and omissions in the public registry records of birth, marriage and death in the civil registry offices of natural persons are common, which also hinders or delays the practice of rights such as housing, freedom of movement, property and other public services. Therefore, there is a need to seek the fostering of activities that enable the effective commitment of these fundamental rights that guarantee the exercise of citizenship.

Recently, the Federal Supreme Court (STF, acronym in Portuguese), in the Direct Unconstitutionality Action (ADI, acronym in Portuguese) No. 4275, authorized the change of birth or marriage civil register to adapt to the declared reality of the transgender person. The National Council of Justice (CNJ, acronym in Portuguese) has issued several provisions, allowing extrajudicial registries and rectifications by the civil registry offices of natural persons³, indicating, in both situations, the primacy of the right to dignity of the citizens.

This article has the purpose of justifying the recognition of the right to personal identity as a fundamental right, based on the principle of human dignity, guiding north in the Brazilian Federal Constitution. On the basis of the rights of personhood, a connection was established with the right to personal identity with the purpose of affirming that it is a right that must receive judicial or extrajudicial protection, always in light of the human dignity principle.

Another point of focus was the access to full justice to fulfill these rights, which was done by exploring constitutional principles, laws and administrative enactments of the CNJ. In order to analyze the matter, the inductive approach was employed, out of the necessity of proving that the right to personal identity and its protection are fundamental rights, and that this conclusion is based on constitutional principles and ethical values. As a study technique (procedural methods), the bibliographical, doctrinaire and legislation research were used, since the theme under study is related to these research elements.

The essay is structured, aside from this introduction, in three parts. The first section discusses the right to dignity of the human person, concepts, as well as international and domestic norms and/or principles. The second deals with identity, human identity, recognition, and the right to personal identity from a doctrinal and constitutional perspective, defining concepts and their legal nature. In the third section, considerations are made about judicial and extrajudicial tools of protection regarding these rights based on the law and on technical norms issued by CNJ, focusing on access to justice and on the reasonable timeframe of the process, highlighting the positive and negative measures to extend the protection of the right to identity and citing, in a specific topic, the concrete case of ADI no. 4275 and CNJ's Provision no. 73/2018.

The intention of this work is to contribute to furthering the social knowledge of law, as it discusses teachings on human rights, constitutional principles of the dignity of the human person, and means of access to justice through extrajudicial response.

2. CONSIDERATIONS REGARDING THE DIGNITY OF THE HUMAN PERSON

The Universal Declaration of Human Rights states, in its preamble, that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”, and, in its first article, that “all human beings are born free and equal in dignity and rights” (UNITED NATIONS, Brazil, 1948, p. 2).

According to Piovesan (2019), the 1948 Declaration introduces the contemporary conception of human rights, emphasized by universality and indivisibility. The former because it calls for the universal extension of human rights based on the belief that the condition of being a person is the only requirement for the ownership of rights; and the latter because the guarantee of civil and political rights is a condition for the observance of social, economic and cultural rights, and vice versa.

Human rights consist in a set of rights considered indispensable for a human life based on freedom, equality and dignity. They also emphasize that the dignity of the human person is a legal category which, by being at the origin of all human rights, gives them ethical content and axiological unity to a legal system, providing a material substrate for the rights to flourish. Therefore, the concept of human dignity is polysemic and open, in a permanent process of development and construction (RAMOS, 2020).

The dignity of the human person was included in Article 1 of the Federal Constitution of 1988 (CF/88) as a foundation of the Federative Republic of Brazil, being a unique and

³CNJ Provinces 28, 63, 73 and 82

irradiating principle of the constitutional text. Bulos (2018) states that the dignity of the human person is a directive cogent for the design of the State, determining its way and form of being, and that it guarantees constitutional unity and guides interpretations for decision making.

About the principle of the dignity of the human person, the author further highlights that:

[...] This vector aggregates around itself the unanimity of the fundamental human rights and guarantees expressed in the 1988 Constitution. When the Constitution proclaims the dignity of the human person, it is consecrating an imperative of social justice, a supreme constitutional value. Its compliance represents a victory against intolerance, prejudice, social exclusion, ignorance, and oppression. Human dignity reflects, therefore, a set of civilizing values incorporated into the heritage of man [...] The instrumental character of the principle is notorious, after all it provides access to justice to those who feel aggrieved by its disregard. (BULOS, 2018, p. 513)

In philosophy, there is the Kantian approach, which argues that man is the end in himself and that human dignity is based on the human capacity to propose ends and not only autonomy. In other words, all human beings have dignity, regardless of their condition, so we must always respect humanity as an end in itself and never merely as a means (KANT, 2009). Human dignity exists as a finalistic goal in favor of humanity, as a moral rule and a necessary and universal “ought-to-be”. People have, always, dignity.

For Reale, “man is not a simple psychophysical or biological entity, reducible to a set of facts explained by Psychology, Physics, Anatomy, Biology”. The author continues his thought, affirming that in him there is something that represents the possibility of innovation and improvement. Man represents something that is an addition to nature as an initiator of new objects of knowledge, as in the constitutive act of new forms of life (REALE, 2002, p. 211).

The link that connects the dignity of the human person to the right of personal identity, as a way to establish the longings of belonging, whether individual pertaining to his particular world, or collective belonging, to a cultural context (CALISSI, 2016), is clear.

Accordingly, the dignity of the human person reinforces that the right to personal identity must be perfected as a humanitarian goal, towards the full realization of man as an end in himself.

3. THE RIGHT TO PERSONAL IDENTITY

Social relations are ordered by rules and principles, which aim not only to protect them but also to ensure their rights and impose duties on them.

It is imperative to establish the concepts of identity, human identity, identification, and recognition. In forensic anthropology, forensic medicine states that identity is “the set of characteristics proper and exclusive to people, animals, things, and objects. It is the totality of

signs, marks, and positive or negative characters that, as a whole, individualize a human being or a thing, distinguishing it from others” (CROCE JR., 2011, p. 63).

A distinction must be made between human identity and identification. For Croce Junior (2011), human identity is “the set of personal and peculiar characteristics that differentiate the individual from others and give him a specific temporal-spatial situation and unique social status while identification is the determination of identity, i.e., individuality. It is the delimitation of individuality.”

França (2015) distinguishes between recognition and identification, saying that the former means only the act of certifying oneself, knowing anew, admitting as certain or claiming to know; and identification consists of a set of scientific means or specific techniques employed in order to obtain identity.

In a psychological view, Jacques (1998apud HOGEMANN; MOURA, 2018) argues that personal identity is the way people see themselves and is closely related to self-image, while, from a sociological viewpoint, it is a construction of oneself through the socialization process, which takes place until death.

The Declaration on the Human Genome and Human Rights (DUGHDH) guarantees, in its article 1, that “the human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity. In a symbolic sense, it constitutes the patrimony of Humanity”. Personal identity, under this view, goes through the determination of the genetic origin, granting the characteristic to all those who belong to the human species, and, in particular, expresses the characters of the individualizing genetic heritage received from the parents at conception, fundamental to full psychic integrity (UNESCO, 1997).

Being evidenced that human identity is a set of personal characteristics found by the identification process - which is the means to demarcate it - it is worth noting that human identity must be seen as a psychological, social, individual, cultural, and genetic need.

The context of the dignity of the human person expresses that the man is the center, so that the individual exists, but in a dignified way, with his identity, his differences and his culture, and that the State provides the means for this realization. Emerges from the dignity of the human person, the right to personal identity, also recognized by the Universal Declaration of Human Rights in its Article 6, which states that, “everyone has the right to recognition everywhere as a person before the law” (UNITED NATIONS BRAZIL, 1948, p. 6).

Although the recognition of the right to personal identity is not restricted to the recognition of the right to a name, this element is used here to take into consideration the other needs, because it must be ensured that psychological, social, individual, cultural, and genetic needs are added to the name, a birthright and a very personal right.

One of the elements of personal identity is the name. From the coherent and timely doctrinal classification of Orlando Gomes (2019) for the discussion at hand, there are, in summary, three main theories to explain the legal nature of the right to the civil name: property theory, state theory and personality right theory.

The first understands that the name is a patrimonial nature that the subject enjoys absolutely. The second holds that the name is a fact protected by the legal system. And the third,

which will be further explained in this article, establishes that the name belongs to the rights of personality, a theory adopted by the current Brazilian Civil Code.

The recognition of personal identity goes through personal and social existence, so that every person has the right to a name, including first name and last name, as proposed in Article 10 of the Civil Code. These are rights of personality, foreseen in Book I, Title I, Chapter II of the Brazilian Civil Code.

For Almeida (2017), we must

Recompose the system, regarding the protection of the name in light of the principle of human dignity means to realize a civil qualification consistent with a real individualization before oneself and one's fellows. In other words, the name should serve, as an external and visible distinctive sign of individualization, as a concrete expression of the principle of human dignity. (ALMEIDA, 2017, p. 1,153)

Konder (2018) has been conceptualizing that:

The right to personal identity must give shelter to the collective and dialogical construction of identities, protecting the very process by which identities are intersubjectively constructed [...] it is essential to resort to the scientific developments of psychology, anthropology and sociology, and also, within the law, to the studies of philosophy of law, constitutional law and, of course, civil law. (KONDER, 2018, p. 4-5)

To be the holder of a personality right is a guarantee that the individual may have a name, a specific character and a distinctive feature. This individualization requires, in its formatting, elements that reflect his satisfaction and respectability, without any exposure to ridicule or personal embarrassment, and also that he can express his origins, his culture, and his way of perceiving himself in the cosmos. The need to establish personal and social recognition has made personal identity gain body, with normative matrixes that ensure its protection.

Recognition as a person, individually or socially, is materialized as a personality right, which is born with the human being and reflects the need for substantial defense before society, with guarantees of effective instruments for this protection.

3.1 THE PROTECTION OF THE RIGHT TO IDENTITY: AN ANALYSIS BASED ON EXTRAJUDICIAL INSTRUMENTS

As a logical and balanced roadmap, where there is establishment of rights, there must surely be means of protection. There is no point in establishing rights without rules for protection.

The defense of the rights to personal identity, in the most varied aspects - civil name, adaptation of the name to the biological sex, inclusion in the name of the cultural aspects of a people, name of the biological parents, right to have the name officially registered, as well as its rectifications or alterations - is only possible if the citizen has full access to justice.

At the international level there are covenants and conventions that corroborate the scope of the principle of access to justice and the inalienability of jurisdiction, such as the Universal Declaration of Human Rights, in terms of article 10, the European Convention for the Protection of Human Rights and Fundamental Freedoms, in accordance with article 6, 1, the International

Covenant on Civil and Political Rights, in terms of article 14, 1 and the American Convention on Human Rights of San Jose da Costa Rica, in terms of article 8, 1. The Brazilian Federal Constitution expresses that the law shall not exclude from the appreciation of the Judicial Power, injury or threat of injury, pursuant to article 5, XXXV.

In Brazil, the Law of Public Records, Law No. 6.015/73, guides the state service committed to the authenticity, security, and effectiveness of legal acts; one of the roles of this service is the civil registration of natural persons, such as birth, emancipation, marriage, and death. This law came to embody the existential right, to correct flaws and, above all, to guarantee the means to obtain citizenship.

So that they can fulfill, correctly and efficiently, their duty to watch over the validity and effectiveness, publicity and security of business. Registrars must have extensive knowledge of private law and aspects of public law, which is why they are considered legal professionals. This is so true that the law gives them the functional duty to keep up to date regarding the matters of law and the corresponding administrative regulations that concern their activity, considers Loureiro (2018).

The protection of the rights of personality occurs in various fields of the legal system and may be accomplished in a preventive or repressive way, given the constitutional provision of the principle of the non-obviation of jurisdiction. Preventive protection logically includes the promotional character of this defense.

The protection of personal identification, supported by law or technical standards, can be processed judicially or extra-judicially. It meets the preventive, repressive, or promotional character of the right to personal identity, so that it is an instrument capable of being used by all, with full effectiveness in the results desired by the interested parties. Thus, the dignity of the human person, access to justice, and the celerity of the procedural process are preserved.

Judicial protection of the right to personal identity is always possible in order to obtain, among other things, modification, change or rectification of the name, change or deletion of the first name, correction of primary or accessory data of the civil register of birth, death or marriage. It aims to meet the principle of factual reality between the registration and the individual who bears it, and does not require the exhaustion of extrajudicial channels. Therefore, one can plead in court to defend the rights to an identity that has been authorized by the administrative (extrajudicial) route.

Loureiro (2018) understands that, as a rule, the name possess immutability, but exemplifies the permission of modification for rectifications or alteration of the civil register of natural persons in cases of gender change, as proposed by article 58 of Law No. 6015/73, with interpretation given by ADI 4275(STF).

As a measure of correct and effective protection, Constitutional Amendment No. 45/2004 established the reasonable duration of the process and the means to ensure its speedy processing, as proposed in Article 5, LXXVIII, CF/88, in order to ensure human dignity in the provision of jurisdiction, and created the CNJ, the highest administrative body of the national Judiciary. The Code of Civil Procedure (CPC, in the Portuguese acronym), in its 4th article, as an emphasis on access to justice, echoed Constitutional Amendment 55/2004, making an identical provision.

About the extrajudicial protection, with the creation of the CNJ, it became possible to issue several normative acts such as provisions and resolutions, authorizing the protection of the right to identity through an extrajudicial request directly by the interested party to the civil registry offices of natural persons.

At this point, one can see the effective and necessary action of the CNJ to obtain, without the need for intervention by a law judge or a member of the Public Prosecutor's Office, the alteration, modification or rectification of registrations. The exercise of the right to petition in defense of personal rights can be direct, without a lawyer, without a public defender or without an attorney.

The de-judicializing measure is the expression of the facilitation of access to justice and was also based on technical, jurisprudential, and managerial grounds of the Judiciary, but always aiming at the dignity of the citizen and his full harmonization with his existential ontological order. The extrajudicial guardianship can be sheltered, among others, from the CNJ's provisions.

Thus, there is the provision that deals with late birth registration by civil registry of natural persons (Prov. No. 28/2013); the one that provides for the birth registration and issuance of the respective certificate of children born by assisted reproduction by civil registry of natural persons (Prov. No. 63/2017); the provision on the annotation of the change of name and gender in birth and marriage records of transgender people in the civil registry of natural persons (Prov. No. 73/2018); the provision on the annotation of the change of name and gender in birth and marriage records of transgender people in the civil registry of natural persons (Prov. No. 74/2018). No. 63/2017); the provision on the annotation of the change of name and gender in birth and marriage records of transgender persons in the civil register of natural persons (Prov. No. 73/2018); Prov. No. 82, which provides for the procedure and annotation in the birth and marriage records of children and change of the genitor's name, and other provisions; and Joint Resolution CNJ/CNMP No. 3 of April 19, 2012, which enables the civil registration of indigenous people.

In Provision No. 28, for example, it seeks to combat the occurrence of under-registration of civil births in Brazil, which, in the North Region, represents 12.5% of births (Brazilian Institute of Geography and Statistics, 2019), giving interested parties the direct possibility to have their existence and their belonging embodied before society, no longer living in invisibility. It is the provision that regulates extemporaneous birth registration, i.e., after the deadline.

Provision no. 73, a consequence of the judgment by the Supreme Court of Justice of ADI no. 4275, - which authorized the alteration of the birth or marriage civil register to adapt it to the declared reality of the transgender person -, allows the interested party, without a lawsuit or the opinion of the Public Prosecutor's Office, to have his or her fundamental right to gender identity recorded directly in the registry office, establishing the reality of the psychological sex. The self-perceived reality was privileged as a way to guarantee the fundamental principle of human dignity and the effective access to justice.

The civil registration of non-integrated indigenous people is optional. However, the cultural identity of indigenous peoples is also fostered by Joint Resolution CNJ/CNMP No. 3 of April 19, 2012, in order to enable civil registrations of indigenous people also by extrajudicial means.

Recently, Provision 82/2019 was issued, making life much easier for people who have had changes in their parents' names by adding their spouse's surname due to marriage, separation or divorce. This provision allowed people to go back to using their maiden name, making it possible to register this addition in the birth certificates of their children to reflect the current name of their parents, as well as to register the change in the parents' names when they go back to their maiden names (spouse's surname due to marriage). This will henceforth be possible directly in the civil registry office, under the terms of the aforementioned resolution.

An example of the application of Provision no. 82/2019 is that, in case of divorce or legal separation and the spouse returns to use the single name, he/she may request a modification in the birth certificate of the children, changing the mother's or father's name, modified by the divorce or legal separation, without a court order, to adapt to the current reality of the parents' status. The same postulation was allowed, in case of death of one of the spouses, in which the surviving spouse may request the return to use the single name, directly in the registry office, where the marriage certificate was made, without a court order or the opinion of the Public Prosecution Service.

Such provisions are listed as a demonstration that the principles of human dignity and citizenship are guides to the policies and access to justice. However, it is notorious that justice, although more accessible, can be hindered by the costing system of the activities of the extrajudicial notaries in the country, since the officers and notaries are not paid by the Judiciary, which is the responsibility of those who request the delegated service, according to the fee law of each unit of the Federation. Therefore, the normative affectivity of these protection policies is questioned in face of the need of payment of emoluments by the low income users, as proposed in article 28 of Law no. 8,935/94.

In this circumstance, free acts for people declared to be poor before notaries public are also an efficient instrument to guarantee the full protection of the right to identity. The Federal Constitution, according to Article 5, LXXVII, established that acts necessary for the exercise of citizenship are free of charge, according to the law.

In order to regulate the constitutional norm of contained effectiveness and to guarantee social development, Brazil edited Law nº 9.534/97, establishing in its article 1 that "the acts necessary for the exercise of citizenship are free of charge: ...] the civil registration of birth and death, as well as the first respective certificate". Such norms certainly facilitate access to civil registration services and can reduce the under-registration of births.

There are many causes, for example, that lead to under-registration of civil birth. Guimarães (2015) cites, among others, misinformation, neglect, and ignorance. Córcova (1998) refers to the opacity of law and proposes to inform that, between the law and its addressee (common man), there is an opaque barrier, which is not transparent, making the common man without possibilities to absorb the message and the meanings of the law, as well as to use the instruments from which he could benefit.

The absence of access to information on education policies and dissemination of citizenship rights contributes to hindering full access to the instruments that guarantee full satisfaction of human rights, especially the protection of personal identity.

The ineffectiveness or insufficiency of de-judicialization measures can compromise access to justice, so we must discuss ways to increase their incidence, either by disseminating them or through orientation measures.

For Cappelletti (1988), the meaning of access to justice has basic purposes of how the legal system should be equally accessible to all, and that the results produced need to be individually and socially fair. Furthermore, the author argues that access to justice can therefore be considered as a fundamental requirement of a modern and egalitarian legal system that intends to guarantee, and not only, proclaim rights for all.

Therefore, the extrajudicial rectifications or alterations of the civil register of natural persons emerges as a paradigm to complement the judicial model in the Public Registry Courts, overcoming the limitations of these, because it presents itself as an instrument of extrajudicial conflict resolution based on the dignity of the human person and the rapid duration of the process, on social inclusion, seeking to harmonize access to justice.

3.2 THE CASE OF ADI NO. 4275 AND CNJ PROVISION NO. 73/2018: A CONCRETE ANALYSIS OF PUBLIC DOMAIN

Aiming to demonstrate the strength of the protection of personal identity rights, we cite the judgment of ADI No. 4275, March 1, 2018, by which the STF understood that it is possible to change the name and gender in the civil registry seat directly in the civil registry offices of natural persons, even without performing a surgical procedure for gender reassignment, without submitting medical or psychological reports and without the need for a lawsuit and an opinion from the Public Prosecutor's Office.

The lawsuit was filed by the Attorney General's Office with the purpose of establishing an interpretation, in conformity with the Federal Constitution, of art. 58 of Law 6.015/73, which deals with the possibility of changing one's name and prename.

The Brazilian Judiciary, with this interpretation, took a historical step towards the valorization of gender identity and self-declared by transgender persons, in order to give them dignity in their personal and psychological identification, being able to show in their documents what they really feel in their psychic and social reality, observable by all.

The reasons for the judgment were guided by the founding principle of human dignity, the right to an inclusive legal order, self-identification, non-discrimination on the basis of sex or gender orientation, freedom, and equality.

As Menezes and Lins(2020) pondered

We start from the premise that the human person is free in the process of developing his or her personality and, consequently, in his or her identity affirmation. It is reiterated that gender is not an innate biological condition, crystallized in the determinants of karyotypic sex. It results from a subjective construction throughout life, which must be accepted as a manifestation of personality, to be recognized by the State and respected by society, regardless of 'any' body readjustment of the genetic sex. Therefore, it is not too much to emphasize that gender identity in disagreement with biological sex does not constitute a pathological effect to be corrected, nor a moral deviation to be reprimanded. (MENEZES; LINS, 2020, p. 18)

Soon after the judgment by the STF, there was a national regulatory vacuum on how these administrative requests would be made to the notaries. This occurred for three months from the date of the judgment, when the CNJ then issued Provision No. 73, of June 28, 2018, based on the power of guidance and establishment of technical standards, with the step-by-step to finally standardize the requests of interested parties throughout the country.

Providence No. 73 requires, in order to make the name and gender endorsement, a minimum age of 18, attendance at the civil registry office of natural persons, as well as mandatory and optional requirements. Among the mandatory documents are personal documents of the interested party, proof of address, certificate from the civil, criminal, and criminal execution offices of the place of residence for the past five years (state and federal), certificate from the protest notary's offices, from the Electoral Justice and Labor Justice of the place of residence for the past five years, and certificate from the Military Justice, if applicable. As optional documents, medical reports and psychological opinions that attest to the transsexuality/transvestitability and the completion of gender reassignment surgery.

The arrival of the normatization was much celebrated, but without proof of comprehensive effectiveness that would contemplate a considerable range of transgender people, especially due to the difficulty in obtaining the free-of-charge service in the civil registry offices, since most of the potential interested parties suffer from social and family exclusion.

Although it is important for the enforcement of the rights of the transgender community, Provision no. 73 could be more emphatic when it comes to structuring the sources of funding for these services, expressly and directly foreseeing, in the document, the standardization and simplification of procedures, either in the registry offices or in the Civil Registry Information Center (Provision No. 38/2014 of the National Inspectorate of Justice), for example, to exempt interested parties from directly appearing in registry offices to formalize the request, which could be done by proxies (individuals, lawyers, public defenders).

4. FINAL CONSIDERATIONS

Given the approaches presented in this article, it is imperative to recognize that human rights are necessary for the construction of a social pact, establishing a set of directive values. They constitute the ethical and informative element of an entire legal system and evolve at every historical moment, given the high dynamics of its content and indispensable for a human life based on freedom, equality and dignity.

The legal system focuses on the human being and the state has the duty to promote the dignity of its people. It focuses on the citizens. Man is the center, surely, and coexists with state structures.

Human rights, in the Brazilian Federal Constitution, are inserted in the clause of non-exhaustiveness so that the foundations of the Federative Republic of Brazil are effective, and able to defer with greater concreteness the dignity of the human person, because this is a guiding measure for the interpreters and powers, both in public and private relationships.

It can be seen that human beings, as an end in themselves, should be given an identity, a representative sign of social constructions as an individual, psychological, social, cultural, and genetic need. To this end, an identification process is conferred that can be attested by the recognition of a personal identity.

One of the important elements of personal identification is the name, a personality right, according to the Brazilian Civil Code. We must assign a recomposition to the function of the name, as the north of the right of personal identity, in order to call the needs of those who bear it, especially for psychological purposes, as in the cases of transgender persons, or for cultural purposes, in the case of adding to the name the indigenous ethnicity to which it belongs, or in cases of recognition and late registration for recognition of the genetic identity of the biological father.

It is thus established that the right to personal identification, which in Brazil has the legal nature of a personality right, is the most legitimate expression of the principles of human dignity. To have your sign, your belonging, and your psychological characteristics adapted to the reality of your name represents an existential condition of peace and harmony with your being. Personal identity must be given an interdisciplinary character in order to guarantee greater satisfaction to the human person.

With regard to protection, one can act in preventive or repressive defense. The term “preventively” is added to the need for promotional activity of these rights, even before the imminent threat of injury. It is evident that, at any time, one can resort to judicial protection of this right, since the Federal Constitution did not establish a requirement for jurisdiction conditioned to the exhaustion of administrative channels. Judicial remedies are available to interested parties, even in cases where it is possible to obtain extrajudicial protection, since it is at the discretion of the interested party, as a way to strengthen protection and access to jurisdiction.

However, the emergence of new extrajudicial instruments corroborates the defense of the rights to personal identity. Besides the range, expressly provided for in the Law of Public Records, there is also Constitutional Amendment 45/2004, which brought the guarantee of a reasonable length of process and created the CNJ, the highest administrative body of the national Judiciary.

By acting administratively and regulating technical standards for extrajudicial registry offices, the CNJ has enabled access to justice, without the need for proceedings before a judge or the intervention of the Public Prosecutor’s Office, when it authorized the interested party to request directly from the natural person’s civil registry office changes, rectifications, and annotations to personal registry entries, in a clear demonstration of the human dignity vector.

In terms of legislation, it can be concluded that free civil life acts, such as birth and death certificates and the respective issue of the first copy of these acts, is an instrument that can also stimulate and promote the exercise of citizenship by having an official record of one’s name, including for obtaining other rights, such as electoral and Federal Revenue registration, as well as access to health and education services.

However, it is necessary to note that, even with such extrajudicial measures to promote human rights, it is verified that there is still a number, including under-registration of civil birth, especially in the northern region, given the lack of knowledge and misinformation on basic rights for people to effectively gain the realization of this guarantee.

It is expressed in the judgment of ADI no. 4275, which established a concrete case in the public domain, making it possible for transgender persons to have their first name and gender registered directly in a registry office, without having to undergo a surgical procedure for sex reassignment, without having to present medical or psychological reports, and without the need for a lawsuit and an opinion from the Public Prosecutor's Office.

This judgment gave rise to CNJ's Provision no. 73/2018, which represents a breakthrough for the realization of the right to psychological sex, although it has been silent as to the source of funding for these services, which has led to difficulties in obtaining free services in natural person civil registry offices, since most potential interested parties suffer from social and family exclusion. In addition, it did not foresee the possibility of a proxy request, but required the personal appearance of the interested party at the registry office, culminating, in certain cases, in the impossibility of attendance and infeasibility of access to this service.

It is salutary to teach human rights, dialogue with public policies, in order to establish effective means of promoting the right to identity, guaranteeing access to effective justice, expanding extrajudicial measures, and increasing the incidence of free notary public services.

REFERENCES

ALMEIDA, Vitor. A Disciplina jurídica do nome da pessoa humana à luz do direito à identidade pessoal. **Revista Jurídica Eletrônica Direito Sociedade e Desenvolvimento**. (The legal discipline of the human name in the light of the right to personal identity. **Electronic Legal Journal Society and Development Law**). Year 3, no. 3, p. 1141-1205, 2017. Available at: <http://www.ufrj.br/SEER/index.php?journal=RJEDSD&page=article&op=view&path%5B%5D=3471>. Accessed on: 28 Jun. 2020.

BRAZIL. [Constituição (1988)]. **Constituição da República Federativa do Brasil** ([Constitution (1988)]. **Constitution of the Federative Republic of Brazil**). Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: 16 abr. 2020.

BRAZIL. Conselho Nacional de Justiça. **Provimento nº 28**, of February 5th, 2013. Available at: <https://atos.cnj.jus.br/atos/detalhar/2525>. Accessed on: 27 abr. 2020.

BRAZIL. Conselho Nacional de Justiça. **Provimento nº 63**, of November 14th, 2017. Available at: <https://atos.cnj.jus.br/atos/detalhar/2525>. Accessed on: 27 abr. 2020.

BRAZIL. Conselho Nacional de Justiça. **Provimento nº 73**, of June 28th, 2018. Available at: <https://atos.cnj.jus.br/atos/detalhar/2623>. Accessed on: 20 abr. 2020.

BRAZIL. Conselho Nacional de Justiça. **Provimento nº 82**, of July 3rd, 2019. Available at: <https://atos.cnj.jus.br/atos/detalhar/2973>. Accessed on: 20 abr. 2020.

BRAZIL. Conselho Nacional de Justiça. **Resolução Conjunta 3**, of April 19, 2012. Available at: http://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp132.htm#art1. Accessed on: 27 abr. 2020.

BRAZIL. **Decreto nº 5922**, July 6, 1992. Pacto internacional de direitos civis e políticos. (International covenant on civil and political rights). Available at: http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0592.htm. Accessed on: 27 abr. 2020.

BRAZIL. **Emenda Constitucional nº 45**, of 30th December, 2004. Changes provisions of arts. 5, 36, 52, 92, 93, 95, 98, 99, 102, 103, 104, 105, 107, 109, 111, 112, 114, 115, 125, 126, 127, 128, 129, 134 and 168 of the Federal Constitution, and adds arts. 103-A, 103B, 111-A and 130-A. Available at: http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc45.htm. Accessed on: 27abr. 2020.

BRAZIL. **Law No. 6.015**, of December 31, 1973. Provides on public registries, and makes other provisions. Available at: http://www.planalto.gov.br/ccivil_03/leis/L6015compilada.htm. Accessed on: 18 abr. 2020.

Law No. 8.935, of November 18, 1997. Regulates art. 236 of the Federal Constitution, providing for notary and registry services. (Notaries' Law). Available at: http://www.planalto.gov.br/ccivil_03/leis/l8935.htm. Accessed on: 28 jun. 2020.

BRAZIL. **Law nº 9.534**, of December 10, 1997. Gives new wording to art. 30 of Law nº 6.015, of December 31, 1973, which provides for public registries; adds an item to art. 1 of Law nº 9.265, of February 12, 1996, which deals with free of charge acts necessary for the exercise of citizenship; and changes arts. 30 and 45 of Law nº 8.935, of November 18, 1994, which provides for notary and registry services. Available at: http://www.planalto.gov.br/ccivil_03/leis/l9534.htm. Accessed on: 27 abr. 2020.

BRAZIL. **Law no. 10.406**, of January 10, 2002. Institui o Código Civil. Available at: http://www.planalto.gov.br/ccivil_03/LEIS/2002/L10406.htm. Accessed on: 16 abr. 2020.

BRAZIL. **Law No. 13.105**, dated March 16, 2015. Code of Civil Procedure. Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm. Accessed on: 18 abr. 2020.

BRAZIL. Superior Tribunal Federal. **STF reconhece a transgêneros possibilidade de alteração de registro civil sem mudança de sexo**. (Federal Supreme Court. **STF recognizes to transgenders the possibility of civil register alteration without sex change**). Published on March 1, 2018. Available at: <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=371085>. Accessed on: 28 jun. 2020.

Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade nº 4.275**. Applicant: Attorney General of the Republic. Rapporteur: Edson Fachin, March 1, 2018. Available at: <http://portal.stf.jus.br/processes/downloadPeca.asp?id=15339649246&ext=.pdf>. Accessed on: 18 abr. 2020.

BULOS, Uadi Lammêgo. **Curso de direito constitucional**. 11. ed. São Paulo: Saraiva Educação, 2018.

CALISSI, Jamile Gonçalves. A Identidade como um direito fundamental articulado a partir dos direitos da personalidade. (Identity as a fundamental right articulated from the rights of personality). In: Simpósio Internacional de Análise Crítica do Direito, 7, 2016, Jacarezinho. **Annals [...]**. BREGA FILHO, Vladimir; MACHADO, Edinilson Donisete; SANCHES, Raquel Cristina Ferraroni (org.). Constitutional system of rights guarantee. Jacarezinho: UENP, 2016. Available at: <http://siacrid.com.br/repositorio/2016/sistema-constitucional-de-garantia-de-direitos.pdf>. Accessed on: 20 abr. 2020.

CAPPELLETI, Mauro. Access to Justice: The Worldwide Movement to Make Rights Effective. Translation and revision by Ellen Gracie Northfleet. Porto Alegre: Fabris, 1988.

CÁRCOVA, Carlos Maria. **The opacity of law**. Translation by Edilson Alkimim Cunha. São Paulo: Ltr, 1998.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. **American Convention on Human Rights of San José de Costa Rica**. San José, Costa Rica, 22 nov. 1969. Available at: https://www.cidh.oas.org/basicos/portugues/c-convencao_americana.htm. Accessed on: 21 abr. 2020.

CROCE JÚNIOR, Delton. **Manual de medicina legal**. 8. ed. São Paulo: Saraiva, 2011. p. 63. Available at: <https://integrada.minhabiblioteca.com.br/#/books/9788502149533/>. Accessed on: 28 jun. 2020.

EUROPEAN COURT OF HUMAN RIGHTS COUNCIL OF EUROPE. **European Convention for the Protection of Human Rights and Fundamental Freedoms**. Available at: https://www.echr.coe.int/Documents/Convention_POR.pdf. Accessed on: 20 abr. 2020.

FRANÇA, Genival Veloso de. **Medicina legal**. 10. ed. Rio de Janeiro: Guanabara Koogan, 2015. p. 138. Available at: <https://www.passeidireto.com/arquivo/76438763/medicina-legal-10-ed-2015-franca-genival-veloso-1>. Accessed on: 28 jun. 2020.

GAGLIANO, PabloStolze; PAMPLONA FILHO, Rodolfo. **Manual de direito civil**. 2. ed. São Paulo: SaraivaJur, 2018. Available at: <https://integrada.minhabiblioteca.com.br/#/books/9788553172764/>. Accessed on: 21 abr. 2020.

GOMES, Orlando. **Introdução ao direito civil**. 22. ed. Rio de Janeiro: Forense, 2019.

GUIMARÃES, Raphael Pinheiro Cavalcanti. The procedure of late birth registration in the light of the Provimento nº 28 of the National Council of Justice. *Âmbito Jurídico*, Rio Grande, XVIII, n. 142, nov. 2015. Available at: <http://>

www.ambitojuridico.com.br/site/index.php? n_link=revista_artigos_leitura&artigo_id=16583&revista_caderno=7. Accessed on: 20 abr. 2020.

HOGEMANN, Edna Raquel; MOURA, Solange Ferreira de. The fundamental right to personal identity and the stigma of abandonment. **Interdisciplinary Journal of Law**, v. 9, n. 1, p. 55-68, May 2018. ISSN 2447-4290. Available at: <http://revistas.faa.edu.br/index.php/FDV/article/view/504>. Accessed July 1, 2020.

BRAZILIAN INSTITUTE OF GEOGRAPHY AND STATISTICS. **Civil registration statistics 2017**. Estat. Reg. Civ., Rio de Janeiro, v. 44, p. 1-8, 2019. Available at: https://biblioteca.ibge.gov.br/visualizacao/periodicos/135/rc_2017_v44_informativo.pdf. Accessed on: 20 abr. 2020.

KANT, Immanuel. **Foundations of the metaphysics of manners**. Translated by Guido Antonio de Almeida. São Paulo: Discurso Editorial: Barcarolla, 2009. Available at: http://www.dhnet.org.br/direitos/anthist/marcos/hdh_kant_metafisica_costumes.pdf. Accessed on: 25 May 2020.

KONDER, Carlos Nelson de Paula. The scope of the right to personal identity in Brazilian civil law. **Pensar**, Fortaleza, v. 23, n. 1, p. 1-11, jan./mar. 2018. Available at: <https://periodicos.unifor.br/rpen/article/view/7497>. Accessed on: 20 Apr. 2020.

LOUREIRO, Luiz Guilherme. **Public registries: theory and practice**. 9. ed. rev., atual. e ampl. Salvador: Juspodivm, 2018.

MENEZES, Joyceane Bezerra de; LNS, Ana Paola de Castro e. Gender identity and transsexuality in Brazilian law. *Revista Brasileira de Direito Civil*. Belo Horizonte, v. 17, p. 17-41, jul./set. 2018. Available at: par. Accessed on: 1 July 2020.

UNITED NATIONS BRAZIL. Universal Declaration of Human Rights. 1948. Available at: <https://nacoesunidas.org/wp-content/uploads/2018/10/DUDH.pdf>. Accessed on: 20 abr. 2020.

PIOVESAN, Flávia. **Human rights and international justice: a comparative study of the European, inter-American, and African regional systems**. Foreword by Celso Lafer. 9. ed. rev. e atual. São Paulo: Saraiva Educação, 2019.

RAMOS, André de. **Carvalho curso de direitos humanos**. 7. ed. São Paulo: Saraiva Educação, 2020.

REALE, Miguel. **Philosophy of Law**. São Paulo: Saraiva, 2002.

RODRIGUES, Marcelo Guimarães. **Tratado de registros públicos e direito notarial**. 2. ed. São Paulo: Atlas, 2016.

UNESCO. Universal Declaration on the Human Genome and Human Rights. *In: 29th Session of the General Conference of UNESCO*. November 11, 1997. Available at: http://www.ghente.org/doc_juridicos/dechumana.htm1. Accessed on: 28 June 2020.

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