STABLE UNION OR QUALIFIED DATING?: A DIFFERENTIATION NECESSARY TO GUARANTEE THE ILLEGITIMATE IMPOSITION OF DUTIES AND OUTRAGE OF RIGHTS

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Abstract: This paper presents the advance of the conception of the understanding of the family entity by the society and by the Brazilian State. As, with the new forms of affective unions present in the contemporaneity, these should not, categorically and superficially, be considered as an eminently constituted family, without observing the characterizing elements of family entity prescribed by the national legal order. Thus, it will be demonstrated, using the legal dogmatic method for this purpose, the Doctrinal Review, the Decision Analysis Methodology (DAM) and the review of the legislation related to the topic in question, as fully valid, the recognition of the relationship formed by qualified dating. Such a relationship is understood as a form of relationship in the face of the various forms of affective union in the Brazilian context so as to guarantee the will of those involved, to safeguard them from the illegitimate imposition of duties and the infringement of rights.

Keywords: Qualified dating; Affective unions; Stable union; Family.

1 Introduction

Postmodernity made possible the existence of innumerable forms of affective unions that, in turn, need clarification to verify when an affective union is characterized as a family entity properly constituted in the present. This is because it is verified that contemporaneity is marked by several ways that people relate affectionately, leaving the traditional understanding of the concept of family, that is, that formed by hetero-affective couples and their children – nuclear family – e, and, consequently, encompassing the most various forms of unions, whether with the goal of starting a family or not.

Thus, the discussions about a loving relationship being categorically considered as a family entity already constituted and deserving of total protection from the State – especially Family Law, are inconsistent with the constitutional principles, especially those that concern private autonomy and human freedom. Bearing in mind that with the evolution of the conception of the different ways of relating affectionately to others, both by the Brazilian legal system and by the social body, the loving relationships that, in their superficiality, resemble the family constituted by the stable union, need a thorough analysis of the elements that

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characterize the referred union. Analysis by which it can be maintained that it is not any affective treatment that should be considered as an eminently constituted family, under penalty of illegitimate imposition of duties and outrage of rights.

As in order to resolve the misunderstandings mentioned, in the following pages, using the legal dogmatic method, having, for this purpose, the doctrinal revision and the revision of the legislation related to the subject in question, the historical transfiguration of the concept of family will be analyzed. Then, the family entity formed by the stable union will be analyzed, to support the recognition of this new type of affective union in the Brazilian legal system.

The Decision Analysis Methodology (DAM)[3] will also be used to reconstruct the arguments adopted by the ministers of the Superior Court of Justice (Portuguese acronym: STJ) or the differentiation of the stable union of qualified dating in the judgment of the Special Appeal (Portuguese acronym: REsp) No. 1.454.643 – RJ (2014/0067781-5). Which analyzed the communication or not of a couple's goods was analyzed in a procedure of recognition and dissolution of a stable union combined with the sharing of goods.

2 The Historical Path to Understand the Contemporary Family

The contemporary understanding of the concept of family is adverse to its genesis, so that both the social body and the Brazilian legal system consider the most varied forms of affective relationships as family entities. Thus, to understand the current characterization of the family as a properly constructed family entity and its variations, it is essential to analyze, even briefly, the substantial milestones of its transformation.

2.1 The family in the Roman Law and Canon Law

The origin of the Brazilian family model came from the Roman conception of that institute, systematized in strict rules that made the family a patriarchal society. The family in Ancient Rome was organized, hegemonically, in the power and position of the father, a *sui júris*[4] person and with a unitary and absolute character at the head of every family that lived under his command, which was called the **parental power** (COULANGES, 2007, emphasis added).

In this segment, for Wald (2002, p. 9, emphasis added), the family was, at the same time,

> [...] an **economic, religious, political and jurisdictional unity**. Initially, there was only one asset that belonged to the family, although **managed by the pater**. In a more evolved phase of Roman law, individual goods emerged, such as savings, administered by people who were under the authority of the pater. (WALD, 2002, p. 9, emphasis added)

[3] Law specific method by which a judicial decision is assessed (FREITAS FILHO; LIMA, 2010).
[4] Lord of his Right (COULANGES, 2007).

It is clear, therefore, that the Roman family, conceptualized as a **natural family**, consisted, in fact, of a kinship nucleus with the primary purpose of managing goods under the subordination of the father – as a rule. Or, of the oldest living common ancestor, who exercised his power over his non-emancipated descendants, his wife and the women married to his descendants (COULANGES, 2007, emphasis added).

As of the 5th century, Canon Law, marked by Christianity and regulated by the Catholic Church, considered as family only the relations resulting from religious ceremonies, judged as "sacred" by this order and, therefore, its dissolution occurred exclusively with death of one of the consorts, for understanding that man could not dissolve a union formed by God (WALD, 2002).

As a result, it appears, in accordance with Canonical rule, that the Church played a peculiar role, as its decisions assumed high relevance for the legal and social decisions about the family and, therefore, the Church began to have powers to interfere decisively in family purposes (RUSSO, 2005).

In spite of the intense interference of the Church on individuals, it should be considered a relative advance in rights when compared with the dictates of Roman Law, since women stopped being so dependent on men and became an important part for the institution of the family. However, they still did not represent great forces in relation to the question of the sacrament, but, on the other hand, they had conjugal duties and rights (RUSSO, 2005).

That said, the Christian marriage and the Church dictated the standards of the ideal of a normal family for the time, which would be merely the affective union formed by the marriage as the only accepted conduct, showing that the relationships were directly influenced by the holders of the current order and were embittered by their demands.

2.2 The Family in Brazilian Law before the Promulgation of the 1988 Federal Constitution

Due to the colonization by the Portuguese, Brazil was founded according to the precepts of the Roman Catholic and Apostolic Church, which reflected directly in the law in force at the time, standardized by the Philippine Ordinations. Which recognized as a family entity only the union between man and woman by marriage, which could occur solemnly, when performed in the Catholic Church, not recognizing those performed in different religions; or by public treatment and fame, known as marriage to a known husband, while both, regardless of form, should respect Catholic precepts, especially those that related to indissolubility (WALD, 2002).

It is important to note that in Brazil, for a long time, "the Catholic Church was an almost absolute holder of matrimonial rights; by the Decree of November 3, 1827, the principles of Canon Law governed any and all nuptial acts, based on the provisions of the Council of Trent and the Constitution of the Archbishopric of Bahia" (DINIZ, 2008, p. 51). In addition, marriage

as the only means of legal recognition of a family entity in Brazil was maintained by imperial laws, also adding as valid civil marriage in 1821 to other religious unions, over which also indissolubility hovered (WALD, 2002).

On the other hand, only in 1890, with the edition of Decree No. 181 by Rui Barbosa, the canonical precepts were relaxed and the only valid marriage was that which the authorities performed and the separation of the body was made possible, relativizing the indissolubility of marriage. This decree remained in force until the enactment of the 1916 Civil Code (Law No. 3,071/16), which preserved patriarchalism, including married women in the list of relatively incapable individuals, and enshrined that only through marriage can the family be formed, complicating, in the same way, the adoption and recognition of children outside the family nucleus established by the marriage (WALD, 2002).

Likewise, according to this Code, a project by Clóvis Beviláqua, the family was considered "as an essential social organization based on the system" (FACHIN, 2003, p. 12), as the husband was the head of the conjugal society and had the duty of providing for the maintenance of the whole family, with the woman only having to collaborate with this function. Ceasing to the husband the obligation to support the wife when she left the conjugal habitation and refused to return to him (CAROSSI, 2003).

In addition, the 1916 civil law conferred too much protection on the marriage by making it impossible to dissolve the marital bond, allowing, only in exceptional cases, the so-called "*desquite*"[5], so that "in the narrow view of the 1916 Civil Code, the essential purpose of the family was continuity" (FUGIE, 2002, p. 133).

It should be noted that it was only in 1977, with the enactment of Law No. 6,515, that the possibility of judicial separation and, consequently, its conversion into divorce was created. Provided that requirements such as prior judicial separation for more than five years or proven factual separation for more than five consecutive years and the impossibility of reconstitution[6], according to the original wording of the law, are met.

It can be seen, from the prepositions exposed, that for decades the Brazilian legislation protected at all costs the institution of the family and the blood ties between relatives, prohibiting or creating obstacles for the dissolution of the conjugal relationship, maintaining, at all costs, the family as a basis for society in an imposing way.

Furthermore, all other affective unions, even if they had all the elements of a marriage, such as a stable union, were despised by the legislator of 1916, ensuring no right to such unions, imposing marriage as the only means of constitute a family and have it protected by the State.

[5] Legal act by which the conjugal society is dissolved, with separation of bodies and property of the partners, without breaking the marriage bond (DIAS, 2016).

[6] The time lapse to be proven from the previous judicial separation, as well as the factual separation was changed, respectively, to 1 year by Law No. 8,408/92 and to 2 years by Law No. 7,841/89. And, only in 2010, with the enactment of Constitutional Amendment No. 66, such requirements for the dissolution of marriage were suppressed (DIAS, 2016).

In this segment, relevant is the position of Dias (2004, p. 35) on the outrage of the freedom of the human being by the State's determinations, namely:

> The refusal to recognize children outside of marriage had a clear sanctioning purpose, aiming to prevent procreation outside the "sacred bonds of marriage". Equally, in affirming the law that marriage was indissoluble, it served as a real warning to spouses that they should not be separated. Also, denying the existence of extramarital affective bonds aims at no other purpose than to inhibit the emergence of new unions. The "*desquite*" – a strange figure that broke, but did not dissolve the marriage – tried to keep everyone in the bosom of the families originally constituted. Disregarding the legal recommendation, even so, the formation of another family was prohibited. (DIAS, 2004, p. 35).

With regard to the constitutional order, the 1934 Federal Constitution was a pioneer in attending to the family, dedicating a chapter to it, to expressly guarantee the special protection of the State to this institution; these precepts were repeated by the subsequent constitutions (LÔBO, 2009).

Despite the constitutional protection given to the family, the Constitutions that survived after the 1934 Federal Constitution hardly changed the rules of the Civil Code under discussion, maintaining the legal concept of family with the same characteristics. Therefore, it continued to follow the patriarchal structure; marriage as an exclusive form of family formation; the express discriminatory treatment given to children born out of marriage and those adopted; and the absence of references to companionship (LÔBO, 2009).

In effect, these standards instituted from the concept of family started to be relativized, especially by infra-constitutional laws, such as the aforementioned Divorce Law (Law No. 6,515/77), the Adoption Law (Law No. 3,133/57), and the Statute of Married Women (Law No. 4,121/62). The latter returned full capacity to the married woman, clearly demonstrating the supremacy of the political-state interest over the human being's desire to have full private autonomy (DIAS, 2016).

Therefore, in view of the arguments presented, it is clear that prior to the promulgation of the 1988 Federal Constitution, changes in constitutional orders and infra-constitutional laws did not innovate the concept of family, recognizing this institute only with the celebration of marriage, ignoring any other forms of relationship that did not fit the current regulatory system. In addition, the legislator was also not concerned with prohibiting discrimination between consanguineous and adopted children, maintaining, in turn, the imperativeness of the state ideal over the reality experienced by individuals.

2.3 The Family in the 1988 Federal Constitution and the 2002 Civil Code

With the promulgation of the Constitution of the Federative Republic of Brazil, on October 5, 1988, known as the Citizen Constitution, the family begins to have new outlines, enshrined in principles and rights conquered by society, contrasting the authoritarian and

patriarchal model prescribed by the 1916 Code Civil. Thus, according to the new constitutional text, the family takes on different perspectives, founded on precepts such as equality, solidarity and respect for the dignity of the human person, which must be understood as fundamentals and as objectives of the Brazilian State (LÔBO, 2009).

In view of this, the understanding by which the family was considered only the marriage relationship between man and woman is overcome and, in contrast, new forms of relationship are assimilated. Because the stable union between man and woman, as well as the community formed by any of the parents and their descendants (single-parent family) are constituted as a family entity.

In this respect, Gomes (2002, p. 34, emphasis added) in his Family Law work, provides that

> [...] **the 1988 Constitution made enormous progress in the concept and protection of the family**. It did not abolish marriage as an ideal form of regulation, but it also did not marginalize the natural family as a social reality worthy of legal tutelage. Thus, the family that performs the function of cell comes from marriage, such as that resulting from the "stable union between man and woman" (art. 226, third paragraph), as well as that established between "any of the parents and their descendants ", regardless of whether or not there is a marriage between the parents" (art. 226, fourth paragraph). (GOMES, 2002, p. 34, emphasis added).

For these arguments, it appears that with the advent of the 1988 Constitution, the ingrained and too many precepts on the judgment of what is understood as family, were mitigated. Moreover, as a direct consequence, the discrimination inscribed by patriarchal traditionalism supported by the Civil Code at the time had to be segregated so that the dignity of the human person, principle basis of the Democratic Rule of Law, could satisfy social anxieties in search of equality.

Confirming the precept of equality brought by the Constitution, Laws were enacted to make such parity feasible, such as Law No. 8,971 of 1994, which established the right of companions to food and succession. And Law No. 9,278 of 1996, which regulated article 226, third paragraph, of the Federal Constitution, which provides for a stable union, guaranteeing the relationships formed without the solemn act of marriage the rights guaranteed by the constitutional text (DIAS, 2016).

Indeed, the constitutional guidelines that concern the family introduced by the new constitutional text were only instituted by infra-constitutional legislation with the publication of Law No. 10,406 of January 10, 2002, the current Civil Code (BRASIL, 2002). For this reason, a Civil-Constitutional interpretation was required, due to the time lapse of 14 (fourteen) years from the promulgation of the Constitution and the advent of the new civil order.

This time, with the publication of the new Civil Code, it can be inferred that the referred codification, in fact, did not present innovation, because it only evidenced the provisions already established by the great text of 1988 (DIAS, 2017).

Regarding the importance of innovations, then codified, Leite (2008), says that

> [...]that which concerns marital equality, consecrating that through marriage, men and women mutually assume the condition of consorts, or companions, and are responsible for the family's responsibilities (namely: reciprocal fidelity, life in common in the marital or *more uxorio* domicile, mutual assistance and support, custody and education of children, with the addition of mutual respect and consideration. (LEITE, 2008).

That said, it is clear that the family that, in its origin, had a primordial respect for the maintenance of the patrimony and with the marital indissolubility, becomes fundamental for the development of the individual, not for the development of the offspring or of the State, corroborating with the argument that the State must safeguard the demands of the community and, above all, adapt to the reality experienced by individuals in society.

2.4 The Family from a Contemporary Point of View

In general, when considering the historical context, the individual's freedom to relate affectionately was driven by issues of indissolubility, inequality of rights resulting from sex, discrimination of offspring according to their origin, impossibility and/or difficulty in dissolving an existing marital relationship and by hostility to the dissonant relationships of the current order, which were not considered and even censored (DIAS, 2016).

However, contemporaneity is marked by several ways of relating, leaving the traditional understanding of the concept of family and encompassing the most varied forms of affective unions, with or without the present goal of starting a family (DIAS, 2016). Because the 2010 Census of the Brazilian Institute of Geography and Statistics (Portuguese acronym: IBGE), when analyzing the family, concluded, according to the data transcribed below, that:

> [...] the understanding of the traditional concept of family was present in 49.9% of the homes visited, while in 50.1% of the times, the family took on a new form. Homo-affective families now number 60,000, 53.8% of them were women. There are 3.4 million women living alone, while 10.1 million families are made up of single mothers or fathers (IBGE, 2010, no pagination).

Still on the 2010 Census, it is emphasized that this considered as family "the group of people connected by kinship ties, domestic dependence or coexistence rules, living in the same home unit, or person who lives only in one home unit" (IBGE, 2010).

In this respect, Maria Berenice Dias (2016, p. 43) teaches that the contemporary family "[...] exists and contributes both to the development of the personality of its members and to the growth and formation of society itself, thereby justifying, its protection by the State".

Likewise, Cristiano Chaves de Farias and Nelson Rosenvald (2017, p. 37) attest that:

> By putting the traditional family structure in check, contemporaneity (in the midst of countless technological, scientific and cultural innovations) allowed us to understand the family as a fundamental subjective organization for the individual construction of happiness. And, in this step, it is necessary to recognize that, in addition to the traditional family, founded on marriage, other family arrangements fulfill the function that contemporary society has assigned to the family: entity that transmits culture and the formation of the dignified human person.

Thus, the conception held for a long time that the family was the nucleus formed by two people of different sex and their eventual children is outdated, whereas, today, people besides forming a family in the most varied ways, have been related similarly, but not hegemonic, to what is understood as family. This is because it is notable that Brazilian society is not organized only around traditional marriage, as the concept of family has expanded and the State has come to recognize the existence of various forms of affective union as family entities (GOMES, 2009).

Therefore, this set of ideas presented needs to be observed in the specific case of an affective relationship to verify if the union really has the goal of starting a family. For, if this is neglected, in the same way that the freedom to establish a relationship was, for a long time, imposing, the same will happen if the State compels the taxation characterization as a family entity, without observing the subjective link of those who relate and continually disrespect the individual's will.

3 The Stable Union as One of the Several Ways of Relating in the Contemporary Times

Today, it is considered that the concept of family boasts both the national legal system, as well as the Brazilian social body, a broader view, as the most varied forms of affective relationships can be considered as a family nucleus (DIAS, 2016).

In the meantime, in which individuals, as a rule, have the freedom to relate, either in line with the legal rules that govern the issue or according to their own subjective understanding of relating, many ways of establishing a family nucleus and consequently, having recognized such a relationship as a family, the problem of having any affective relationship between two people emerges categorically considered as a family entity (MALUF; MALUF, 2013).

This is because, with society's current understanding of the new models of two individuals constituting a family, henceforth ratified by the hermeneutics of the Judiciary Branch (BRASIL, 2015a), these various ways of relating that are conceptualized as family should not, by design, be characterized as a family entity, to have all the legal effects on those who are often related in a similar way to a constituted family, but which, in the specific case do not correspond to such understanding (MALUF; MALUF, 2013).

Thus, in spite of the existence of the most varied ways of constituting a family nucleus and the unique importance of each one of them, this work will explore the minutiae of the family entity formed by the stable union so that the variables of this institute can be demonstrated in the specific case, with the purpose of maintaining that its constitutive elements in contemporary times should not be imposed on any affective relationship, under penalty of infringement of rights and unlawful imposition of duties.

3.1 The Stable Union in the Brazilian Legal System

Article 226 of the Federal Constitution equated the stable union between a man and a woman with marriage, stipulating in the third paragraph that "[...] the stable union between man and woman is recognized as a family entity, and the law must facilitate its conversion into marriage" (BRASIL, 1988), and in the fourth paragraph, it states that "[...] it is understood, also, as a family entity, the community formed by any of the parents and their descendants" (BRASIL, 1988).

The 2002 Civil Code, in article 1.723, establishes the fundamental requirements for the constitution of a stable union, so that it prescribes that "[...] the stable union between man and woman is recognized as a family entity, configured in public, continuous and lasting coexistence and established with the goal of starting a family (BRASIL, 2002).

In the same way, the aforementioned Code disciplines in article 1,790, the patrimonial effects of the unions stable by the death of one of the partners, specifically, on the form of participation in the succession of the other. In this sense, guaranteeing the right to inheritance when constituting a family in this modality, in goods acquired onerously in the constancy of the union (BRASIL, 2002).

In view of this, it appears that the current Civil Law, unlike the other rules that preceded it, expressly recognizes the stable union and, in addition, disciplines the succession consequences that concern the goods of those who relate and constitute family in accordance with the family institute under study (DIAS, 2016).

While it prescribes, in general lines, for the characterization of the stable union the existence demonstrated in an essential way of the following elements: I) public coexistence; II) continuous; III) lasting; and IV) established with the goal of starting a family, the first three elements being objective for the constitution of the family formed by the stable union, and the last, the subjective element for the configuration and recognition of the referred family entity.

With regard to the patrimony constituted by the companions, art. 1.725 of the Civil Code provides that "[...] **in a stable union**, unless a written contract between the partners, **applies to patrimonial relations**, where applicable, **the partial communion of goods regime**" (BRASIL, 2002, emphasis added), and points out that in cases of stable union between people over 60 (sixty) years old, the regime to be applied is that of mandatory separation of goods,

admitting as an exception the applicability of Precedent No. 377 of the Federal Supreme Court (Portuguese acronym: STF), which provides for the communication of goods acquired onerous in the constancy of the union, in view of the presumption of the common effort (BRASIL, 1964).

After the generic discrimination of the stable union according to the wording included in the 2002 Civil Code, it is important to mention the advances of the family entity in discussion about the equality of sexes and the recent jurisprudential understanding about the partner's participation in the succession. Given that, according to the literalness of the civil diploma, only family relationships are understood as relationships formed by men and women, the possibility of homo-affective relationships not being recognized and, therefore, it was up to the jurisprudence, the extension of the application of the law to those relationships.

Thus, the recognition of the stable union constituted by individuals of the same sex, resulted from the judgment of the Direct Action of Unconstitutionality (Portuguese acronym: ADI) of No. 4.277 and of the Argument of Non-Compliance of Fundamental Precept (Portuguese acronym: ADPF) No. 132 y the Federal Supreme Court, which when judging the requests of these claims as valid, suppressed this situation by pairing the homo-affective relationships with the hetero-affective ones, affirming the understanding by which people of the same sex may also marry or form a stable union (BRASIL, 2011).

Similarly, it was also up to the STF to remove the discrimination contained in article 1,970 of the Civil Code, which establishes differences between the partner's and spouse's participation in the succession of goods with the recent judgment of Extraordinary Resources (Portuguese acronym: RE) 646721 and 878694, both with general repercussions, in May 2017, declaring the unconstitutionality of the referred device and equating the rights between spouse and partner for succession purposes, including in homo-affective unions (BRASIL, 2017).

According to the Supreme Court, in view of the general repercussion granted to the judged, the understanding by which "[...] in the current constitutional system, the differentiation of the succession regime between spouses and partners is unconstitutional and the regime established in article 1829 of the Civil Code must be applied in both cases" (BRASIL, 2017).

Considering what has been demonstrated, there is a progression in the concept of family and, in particular, about the family entity formed by the stable union, confirming the imminent mutation in the ways of relating and that the State in its role as regulator must stick to the reality of individuals in life in society.

Therefore, for the analysis of the object of the work on screen, it is necessary to study how a relationship is established as a stable union in a family entity, given the existence of relationships that resemble this institute, in view of the existence of the relationships that are similar to this institute, as well as examining its characterizing elements, which consist of the

coexistence between two people – regardless of gender – in a public, continuous, lasting way and with the present goal of starting a family.

3.2 The Constitution of the Stable Union

Both the 1988 Federal Constitution and the 2002 Civil Law did not prescribe a solemn form for the characterization of a stable union, so that such a family entity, even exempted from the legal requirements as occurs in marriage, constitutes itself as a family and deserves total protection of the State (DIAS, 2016).

In this same perspective, Patrícia Fontanella, quoted by Farias and Rosenvald (2017, p. 472), ponders that "[...] the legislator chose to avoid conceptual rigor, because by refraining from rigidly conceptualizing the stable union, he left it up to the judge – in front of each specific case – the task of analyzing it and recognizing it or not".

Thus, the **stable union consists of a situation in fact** existing between two people and unimpeded to contract marriage, who share their lives, as if they were married, which is called *more uxorio* coexistence[7], which is in no way confused with dating, regardless of its intensity (FARIAS; ROSENVALD, 2017, emphasis added). That is why it can be said that the aforementioned love relationship consists of "[...] a de facto marriage, [...] deserving special protection from the State, because it is a natural social phenomenon, resulting from a freedom of self-determination of a free person that chooses to live a free union" (FARIAS; ROSENVALD, 2017, p. 472).

That said, it appears that for the constitution of the stable union the cohabiting members do not need legal solemnities for its formation and, consequently, to be considered as a family entity. In turn, they must only respect the rules of impediment to marriage governed by the Civil Code for its institution, whereas if this occurs, this union can be considered as **concubinage or as a de facto society**, so that such institutes will be **regulated by the rules of mandatory law** and the common effort between those involved in the eventual sharing of goods must be proven (DINIZ, 2008, emphasis added).

However, in spite of the legislator not requiring a specific form for the institution of the stable union as a family entity, any relationship cannot be understood as such, to the extent that, in the specific case, there must be elements that characterize the referred form of coexistence in an undoubted manner. For this reason, many couples who live in this situation actually choose to make a declaration, by public or private instrument, of the existence of the stable union. So that many companions use it in this way – generally and mainly – to define the goods regime that will affect their family entity, because, as already mentioned, according to the Civil

[7] Living together as a husband and wife (DIAS, 2016).

discipline, it applies to this union, in the absence of a contract established by cohabitants, the regime of partial communion of goods.

Likewise, it is important to note that the declaration described above is also used as a means of judicial evidence to demonstrate the union between the cohabitants when the stable union is dissolved. It is also used as a device to prove rights resulting from the succession, as well as to qualify as dependents of social security, for inclusion in health insurance and life insurance (DINIZ, 2008).

In this same segment, it is peculiar to note that the statement made by the partners, whether public or private, does not change the marital status of those who are related under this form of family entity, therefore maintaining the status of single, unlike what occurs when the marriage is formed (DIAS, 2016).

It is noted, for the foregoing, that the family entity formed by the stable union, according to the national legal system does not require a solemn form as occurs in marriage for its constitution, so that because it is a de facto situation, it is up to the cohabitants to meticulously prove the elements that characterize this union.

This proof, in addition to the aforementioned statement, has been made by the cohabitants when taken for consideration by the judiciary based on Decree 3,048 of May 6, 1999[8], as amended by Decree No. 4,079 of January 9, 2002 which regulates the social security laws, which was supported, for six years, by the Resolution No. 40 of August 14, 2007 of the National Council of Justice (CNJ) which prescribed, until its revocation in 2013 by the Resolution No. 167 of January 7, 2013 also from the CNJ (BRASIL, 2013), in its article 2, the presentation of three documents of the aforementioned decree (BRASIL, 2007).

As a result, the cohabiting ones are valid and mistakenly still use (DIAS, 2016) the above rule, in the part that regulates the form of proof of the stable union, for the purpose of defining the partner, to be included as dependent of the insured, subject treated in the Article 16 of Law No. 8,213 of July 24, 1991, which requires the dependent to submit three documents within an exemplary list provided for in the third paragraph of Article 22 to prove the condition of partner (BRASIL, 1991).

According to the aforementioned rule, the documents that serve as evidence to outline the existence of a stable union and, therefore, configure the bond of dependency before Social Security, among others, consist of: birth certificate of child in common; religious marriage certificate; testamentary provisions; special declaration made before a notary; proof of the same household (BRASIL, 1991).

However, such a requirement is considered illegal by the Superior Court of Justice (Portuguese acronym: STJ) and by the National Standardization Panel of the Federal Special

[8] BRASIL. Decreto n. º 3.048 de 6 de maio de 1999. Approves the Social Security Regulation, and makes other provisions. Diário Oficial da União, Brasília, May 6, 1999.

Courts (Portuguese acronym: TNU), considering that neither the Social Security Law nor the Civil Law require that the stable union be proven through documents, therefore, this formality could not have been instituted by the regulatory decree (KERTZMAN, 2017).

In addition to the unenforceability and the non-existence in the Constitutional order and in the civil diploma on statements that evidence the proof of the family entity under study, it is important to note that the aforementioned documents to prove the dependency bond with the Social Security are disciplined through an act of Power Branch (BRASIL, 1999).

Therefore, according to item IV of article 84 of the 1988 Federal Constitution, this normative species, as a private competence of the President of the Republic, is concerned with "sanctioning, promulgating and publicize the laws, as well as issuing decrees and regulations for its faithful execution" (BRASIL, 1988), so that by this norm it is not possible to institute or modify the content of the Law, being arrested to the legal text in an unswerving way.

Corroborating this point of view, it is essential to transcribe the positioning of Ráo (1976, p. 269, emphasis added) by which he mentions that

> [...]**the Executive Branch in exercising its regulatory function must not: create new rights or obligations, which the law did not create**; expand, restrict or modify rights or obligations under the law; order or prohibit what the law does not order or prohibit; provide or prohibit in a manner different from that established by law; extinguish or annul rights or obligations that the law has conferred; create new, diverse principles, alter the form that, according to the law, an act must be carried out, reaching in any way the spirit of the law. (RÁO, 1976, p. 269, emphasis added)

In this sense, reaffirming that the proof of the stable union depends only on the precise proof of its constituent elements, the TNU consolidated its position through the Precedent No. 63, published on August 23, 2012, stating that "[...] proof of a stable union for the purpose of granting a death pension does not require the initiation of material evidence" (BRASIL, 2012).

That is why it is inferred that the national legal system does not specifically provide for a definitive and/or exemplary list to prove the constitution of the family entity under study. Reason why it is up to the magistrate to pay close attention to the constitutive elements of this union, according to the provision established by the Constitutional and Civil order, mainly regarding the subjective elements of the family entity in question.

In view of this, the elements that characterize the family entity under study must, obligatorily, be confirmed by the cohabitants, given that as this confirmation is, in general, the only legal requirement, it cannot be neglected in any way on them, under penalty of breach of duties. Sometimes they are mistakenly checked, sometimes they are mitigated when the superficiality of the veracity of the said elements (MALUF; MALUF, 2013).

In addition to that, in view of the various ways of relating present in the contemporary world, many affective relationships may appear superficially, as a family entity, but, in essence,

they do not correspond to a constituted but as a mere projection to substantiate it in the future (BRASIL, 2015a).

Therefore, it is up to the State, mainly through the Judiciary Branch, in the systematic analysis of each family nucleus taken for recognition in court, to observe whether there is the stable union declared by the cohabitants. Because, being the guarantor of the application of the subjective norm to the individual, the neglect of a superficial verification would culminate in the same state imposition that has remained present throughout the family's history, only now, the imposition would be given by disrespecting the real will of those who relate affectively.

4 Qualified Dating: A Critical Analysis of a New Modality of Affective Relationship

It can be said that the understanding of family is constantly changing (IBGE, 2010). While it can also be inferred that the State has always intervened directly in this institution in an excessive way, often restricting the individual's freedom to relate to others, other times imposing its formalization in an imposing way (LÔBO, 2009).

Consequently, considering society's understanding of the union between two people, who today organize themselves in different ways, it is important to demonstrate that the State should not conclusively and at its own pleasure, define how a union materializes as a family entity, mainly due to the constitutional principles of freedom and the autonomy of the human being's will (DIAS, 2016).

For it is known that today the family is not constituted only by its archaic concept of a union between man and woman and their children; many unions, no matter how similar they are to a formed family entity, at its core, do not match the imminent consolidation of that institution (BRASIL, 2015a).

Thus, based on the family formed by the stable union, it will be shown that one should not readily define any love relationship as a family by the mere superficiality of the similarities existing in the ways of relating. Which lack a detailed assessment of their constituent elements to support its existence or not as a family entity already constituted.

4.1 The Understanding of Qualified Dating

As already mentioned, at the present time, the various forms of affective relationship have been the subject of great discussions about the concept of family, in view of the various variants and concepts that relate to its peculiarities (DIAS, 2016).

In this sense, the argument for framing an affective union in a specific form of family, becomes a distressing role for magistrates and indoctrinators. That is why the aforementioned question does not corroborate with the idea of correlating the specific case with a definitive list

of family framing, delimiting and formulating the scope of personal life in a strictly dogmatic (DIAS, 2016).

This is because the new perspective of "Civil-Constitutional" Family Law encompasses more comprehensive values and principles, reaching fundamental rights, such as the dignity of the human person (article 1, III, of the FC); social solidarity (article 3, I of the FC); and the affectivity that, in this context, gains a legal dimension; isonomy, by reaffirming the equal rights and duties of men and women and the equal legal treatment of children (article 5, I of the FC). (BRASIL, 1988).

Consequently, because the stable union is a de facto situation, free of solemnities for its formulation, as it was verified in the previous chapter, many romantic relationships have been mistakenly understood with such a family institution. Because unlike the stable union that is conceptualized by the Law, dating does not rely on demands in the national normative order. "Therefore, there are no requirements to be observed for its formation, other than the moral requirements, imposed by society itself and by customs" (MALUF; MALUF, 2016, p. 6).

Indeed, supported by custom and morals, many loving relationships, especially those that have a greater emotional narrowing, such as engagement, transmit to the social body a similar idea of a family constituted by a stable union (COSTA, 2007).

Still in this respect, the couple's misguided appearance to society as a family, is supported by the publicity, fidelity and a possible intention of marriage or constitution of a stable union in the future demonstrated, but that, differently from the idea transmitted, the surroundings are not in a consolidated family relationship (DIAS, 2016).

About this ambiguity of understanding, the authors Maluf; Maluf (2016, p. 7, emphasis added) mention that

> [...] **the confusion that can arise between dating and a stable union occurs in relationships where there is observance of the moral rules imposed by society**. They are those long-lasting relationships, with continuous coexistence of the couple, in which there is mutual fidelity, at least in appearance, in which both present themselves in society as lovers. (MALUF; MALUF, 2016, p. 7, emphasis added)

It is in this sequence that the so-called qualified dating emerges as an alternative response to a stable union, therefore maintaining the individual freedom of those who relate, above all, the illegitimate imposition of duties resulting from an addicted understanding of a relationship between two people as a family constituted in the present (MALUF; MALUF, 2013, emphasis added).

This is because, despite the aforementioned change in the Brazilian family that, currently, has been formed in an optional way to the rule established in Law, a relationship between two people, however similar it is to the contemporary understanding of the family,

should not be categorically framed as such, in view of the spirit of establishing it in the future (DIAS, 2016).

The existence of qualified dating is seen, in an exemplified way, when a couple, superficially, shows themselves as a stable union and, consequently, is treated as a family already constituted, resulting in the illegitimate imposition of duties, especially the property ones, for interpreting them as if they were the same, when in fact, in the specific case, it should be understood as the mere prospect of starting a family (BRASIL, 2015a).

Based on this premise, it is verified that the family must be protected by the State, according to the caput of article 226 of the Magna Law, which provides that "[...] Based on this premise, it is verified that the family must be protected by the State, according to the caput of article 226 of the Magna Law, which provides that" (BRASIL, 1988), however, in the same way, the conception of affective interpersonal relationships with a future purpose of forming a family deserves to be noted (DIAS, 2016).

Thus, qualified dating, lacking in *affectio maritalis*[9], cannot have undesirable legal consequences for those who submit to this relationship. Becoming incongruent to devote to this institute what applies in the stable union, since without the manifestation of both individuals of this union in forming a family it would be a step backwards to adopt a generic legal prescription to the specific case (BRASIL, 2015a).

In this segment, it is essential to respect the freedom and dignity of the human person in order, as they wish, to decide the desired family institute, and, in the absence of consent, the personal intention of those who unite must be considered (ALVES *et al*., 2016).

With this understanding, regarding the autonomy of those who relate, Costa (2007, p. 165-166, emphasis added) states that

> [...] **private autonomy allows the parties to determine the guidelines of their personal life**, private autonomy allows the parties to determine the guidelines of their personal life, but, according to the new split of the law, in no sphere these same individuals have an unlimited volitional and creation possibility, because the social function of the institutes do not allow this to happen. In this sense, **current norms will determine the concept and the new limits of the autonomy of the will**. (COSTA, 2007, p. 165-166, emphasis added)

Isabela Paranaguá guides the differences between the aforementioned relationships, explaining that

> [...] the difference between qualified dating and a stable union, which deal with the desire to start a family. Qualified dating is a relationship between two mature people, who live together, stay overnight or cohabit. But this creates confusion, if at a certain point in the relationship it will be a dating or a stable union. This term qualified dating will have the same objective elements as the stable union (the one that is public, lasting, notorious), but it has no subjective element, which is the present desire to start a family. In the stable union, this will is present. (PIAUILINO, 2015).

[9] The mood to start a family (MALUF; MALUF; 2016).

Given this, if the purpose of the union is not to constitute a family in the present, being just a project of joint affective life for the future, it is necessary to respect the choice of both in the way of relating, being able to characterize this ideal perfectly as qualified dating (BRASIL, 2015a).

In this same bias, the STJ, on the existence or not of a stable union between a couple, brought reflections and notes to the case discussed in court that proved to be a means of better understanding for the topic under discussion (BRASIL, 2015a).

About the referred judgment, referring to Special Appeal no. 1,454,643 - RJ (2014/0067781-5), reported by Minister Marco Aurélio Bellizze, the Third Panel of the STJ undertook a serious analysis of the qualified dating institute in the face of the stable union, with the following statement of the judgement:

> special appeal and special adhesive appeal. action of recognition and dissolution of a stable union, allegedly understood in the two years before the marriage, c.c. sharing the property acquired in that period. 1. allegation of non-provision of the constitutive fact of the author's right. pre-questioning. absence 2. stable union. no configuration. boyfriends who, in virtue of contingencies and particular interests (work and study) abroad, they began to coabitate. strengthening the relationship, culminating in engagement and, later, in marriage. 3. qualified dating. verification. property repercussion. no existence. 4. marriage celebration, with election of the partial communion goods regime. term from which then the boyfriends/grooms, matures, resolved to consolidate, consciously and voluntarily, the love relationship experienced, to constitute, effectively, a family nucleus, as well as to communicate the goods exhausted. observance. need. 5. special appeal provided, in the known part; and impaired adhesive appeal. (BRASIL, 2015a).

In this analysis, for the Minister reporting the decision there was no stable union, "[...] but rather qualified dating, in which, due to the narrowing of the relationship, they projected for the future – and not for the present – the purpose of constituting a family entity*"* (BRASIL, 2015a).

Minister Bellizze continued, in his vote on the REsp under review, mentioning that it should be recognized, in fact, qualified dating, which often has "[...] as its only distinctive feature of the stable union, the absence of the present intention of starting a family. At most, in this kind of loving relationship, there is planning, the projection of forming a family nucleus in the future" (BRASIL, 2015a).

Consequently, regarding simple dating, the Reporting Minister claimed (BRASIL, 2015a) that

> [...] for the beginning of dating to take place, it is enough for two people to start a romantic relationship, which ranges from casual encounters to more serious relationships, in which there is publicity, loyalty and a possible intention of marriage or constitution of a stable union in the future. The confusion that can arise between dating and a stable union, however, occurs in relationships where there is observance of the moral rules imposed by society. They are those long-lasting relationships, with continuous coexistence of the couple, in which there is mutual fidelity, at least in

> appearance, in which both present themselves in society as lovers. The doctrine divides dating into simple and qualified. Simple dating is easily differentiated from stable union, as it does not have even one of its basic requirements. (BRASIL, 2015a).

With regard to qualified dating, also in his vote, the Minister stated that

> [...] **qualified dating has most of the requirements also present in the stable union. It is, in practice, a mature loving and sexual relationship between adult and capable people, who, despite enjoying each other's company and, sometimes, even spending the night with their boyfriends, do not have the goal of starting a family.** That is why it is so difficult, in practice, to find the differences between a stable union and qualified dating. Despite the similarities between the two, what differentiates them is the primary goal of starting a family - present in the stable union and absent in qualified dating. (BRASIL, 2015a, emphasis added).

In view of these arguments, a family constituted nowadays in a full form that conveys the external image of a marriage is considered stable union. In contrast, qualified dating is a relationship in which boyfriends merely feed an expectation of building a family in the future, devoid of *affectio maritalis* (ALVES *et al*., 2016).

Carlos Alberto Dabus Maluf and Adriana Dabus Maluf, in their Family Law Course, address the theme and add that

> [...] in qualified dating, on the other hand, although there may be a future goal of starting a family, there is still no such communion of life. Despite establishing a public, continuous and lasting loving relationship, one of the boyfriends, or both, still preserves his/her personal life and his/her freedom. His/her private interests are not confused at present, and mutual moral and material assistance is not entirely unrestricted. (MALUF; MALUF, 2013, p. 371-374).

Regarding the stable union, Maluf (2010) understands:

> It can be concluded, therefore, that the family formed by a stable union, represents a natural fact and quite present in society throughout historical times, legitimized in Brazilian reality by the jurisprudence, by sparse laws, until it finds constitutional support, thus breaking with the injustice, casuism, prejudice, allowing the person inserted in the family typology that best suits him/her to have his/her intrinsic dignity valued, to develop the attributes inherent to his/her personality. (MALUF, 2010, p. 108).

Therefore, the differentiation of the stable union from qualified dating is notable, because in this

> [...] although there may be a future goal of starting a family, **there is still no such communion of life**. Despite establishing a public, continuous and lasting loving relationship, one of the boyfriends, or both, still preserves his/her personal life and his/her freedom. His/her private interests are not confused at present, and mutual moral and material assistance is not entirely unrestricted. (MALUF; MALUF, 2016, p. 9-10, emphasis added).

Furthermore, it should be emphasized that in a stable union, unlike qualified dating, it is "[...] absolutely necessary that among the cohabitants, framing their relationship of affection, there is this spiritual element, this *affectio maritalis*, the deliberation, the will, the

determination, the purpose, in short, the personal and mutual commitment to start a family " (VELOSO *apud* BRASIL, 2015a).

In the same way, it appears that the jurisprudence also faced the distinction between the two types of relationship, under the proposition that "[...] a relationship cannot be understood as a family entity in which there is no sign of possession of ownership of the married state, any communion of efforts, solidarity, loyalty (concept that includes frankness, consideration, sincerity, information and, without a doubt, fidelity)". (BRASIL, 2010).

This is what the REsp judgment of No. 1,157,273 - RN, reported by Minister Nancy Andrighi, who delivered the following judgment:

> Civil and family law. civil appeal. actions of recognition of stable post mortem union. marriage. divorce. breach of the matrimonial bond. restoring the affective relationship. configuration of concomitant stable unions. death of the companion. federal police. right to receive pension for death. proportional rating between companions. possibility. precedents of this court and of the STJ. knowledge and development of the appeal (BRASIL, 2010).

Given this, it is significant to note that for the establishment of a stable union, the couple must necessarily demonstrate the eminent will to start a family in the present, and must live and present themselves to society as if they were married. In other words, "it means to say that there must be unrestricted moral and material assistance, a joint effort to achieve common dreams, real participation in the other's problems and desires, among others" (MALUF; MALUF, 2016, p. 9).

Regarding qualified dating, even though the couple has the future purpose of starting a family, there is no full communion of lives. Because, although they are related in a public, continuous and lasting way, the subjective element of forming a family, called *affectio maritalis*, it is not present in the affective relationship, as one of the boyfriends or even both keeps his/her individual life and freedom preserved (BRASIL, 2015a).

Thus, to have a stable union, it is necessary to have notoriety, the *more uxorio* coexistence and the constancy of the relationships with the goal of constituting a family, not forming a stable union the merely affectionate relationships and with no objective of prolonging the time or even those that seek this end, but that in the present has only an expectation of constituting family.

Consequently, in view of the arguments presented, it is ensured that in view of the most varied ways of relating present in contemporary times, one should not, in any way, consider without examining the constituent elements of an affective union, especially, the present spirit of constituting family, an affective union as a stable union, so as to cause negligence, an indirect interference by the State in the unions in which it is discussed. Because, even though the referred affective unions have tenuous similarity, in reality, such unions must be interpreted

based on the real will of those who relate, not just on the image transmitted to the people in the environment in which they live.

In view of this, when glimpsing the difference between a stable union and qualified dating, in general, the stable union translates into the family already constituted in the present and the qualified dating in the loving union with the mere prospect of forming a family in the future,, In this context, the State, through its judicial function, must stick to the peculiarities of these unions and then qualify them. With this, safeguarding the illegitimate imposition of duties, especially the property ones, due to the legal consequence of the sharing of goods, among others, if a union comes to be mistakenly considered a family entity formed by the stable union.

4.2 The Recognition of Qualified Dating according to the Brazilian Legal System

As can be seen, the imprecise understanding that a loving relationship that superficially maintains the constituent elements of a stable union should not be dogmatically understood as such, in accordance with the present conjecture of current unions (MALUF; MALUF; 2013).

Whereas a union characterized by qualified dating when framed wrongly as a family entity already formed, it can, without any doubts, have unintended and incongruous consequences with the constitutional precepts for those who relate emotionally (ALVES *et al*., 2016).

In this sense, as sustained in this work, the State must guarantee lovers in a relationship their faithful will, systematically analyzing in the specific case the existence or not of the present objective of establishing a family through a stable union. Therefore, the State does not seek interference in the private life of those who are related, but rather the protection of the consequences resulting from the mistaken understanding of dating qualified as a stable union, giving rise, through the legal system, to the rights arising from the latter by applying the partial communion of goods regime[10] (DINIZ, 2008).

In this way, these recognitions of rights "only relationships that, due to their duration, lead to the involvement of lives to the point of causing a real mix of goods, generate responsibilities and burdens" (DIAS, 2016, p. 171-172).

It should be noted, as appropriate, that the narrowing of a loving relationship, regardless of its intent to do so, as can be seen in an engagement, aspiring to a future constitution of the family may "[...] occur the formation of a de facto partnership between the bride and groom, in which case there is no type of contract or document that stipulates the rights and obligations of

[10] As discussed in this paper, the family entity formed by the stable union when it is devoid of a contract that establishes the regime of goods to be applied in the relationship of cohabitants, the regime of partial communion of goods applies, conferring, among other rights, the division of goods acquired onerous in the constancy of the union (BRASIL, 2002). Indeed, as qualified dating resembles that referred family and, as a rule, they do not have any deed in most cases, if such a relationship is understood as a stable union, obviously the rules regarding stable union (MALUF; MALUF, 2016).

the partners, nor the social objectives of the company, or registration with the competent body" (MALUF; MALUF, 2016, p. 17).

That said, with regard to **qualified dating**, one can, similarly, understand "[...] the **configuration of a de facto partnership between the couple**, with the objective of building a common goods, with a view to the future marriage. In this way, a true partnership between the bride and groom is created when, trusting in each other, they acquire goods in the name of only one of them" (MALUF; MALUF, 2016, p. 17, emphasis added).

Consequently, the recognition of qualified dating as a de facto partnership is fully applicable, which, in turn, will be governed by the rules of the Law of Obligations, by demonstrating a common effort for the acquisition of goods in the constancy of dating, respecting, in each specific case, the contradictory and the broad defense to confirm or not the mutual aid that, perhaps, may be alleged (FARIAS; ROSENVALD, 2017).

Observing, in this logic, the principle of good faith, in the manner of article 422 of the Civil Code[11], so that it can be verified, after the de facto society proved by the boyfriends in court, the veracity of what is claimed as a common effort for eventual sharing of goods (FARIAS; ROSENVALD, 2017).

In addition, attention should also be paid, to keep the affective institute formed through qualified dating recognized, the precepts brought by the new Code of Civil Procedure (Portuguese acronym: CPC), instituted by Law 13.105 and promulgated on March 16, 2015, effective since March 2016 (BRASIL, 2015a).

For the reason that, with the new procedural order "[...] **judicial precedents also link judicial decisions today**, because the new CPC establishes that any judicial decision that fails to follow precedent or jurisprudence invoked by the party is not considered to be justified [...]" (FERNANDES, 2016, emphasis added).

This issue is addressed by the wording of Article 489, first paragraph, VI, of the Code of Civil Procedure, which provides that "[...] any judicial decision [...] that [...] fails to follow the statement of a summary, jurisprudence or precedent invoked by the party, without demonstrating the existence of a distinction in the case under trial or the overcoming of the understanding" (BRASIL, 2015b).

Likewise, the same legal text asserts that "the courts must **standardize their jurisprudence** and keep it stable, complete and consistent" (BRASIL, 2015b, emphasis added). Thus clearly demonstrating the need to respect the decisions handed down by the superior courts, especially by the uniformity of the understanding of a certain matter already considered by the Judiciary Branch in extraordinary ways.

[11] Art. 422. The contractors are obliged to keep, at the conclusion of the contract, as well as in its execution, the principles of probity and good faith (BRASIL, 2002).

If the vast imposition mentioned above was not enough, Article 927, also of the Code referred to, it is stated that Judges and Courts must always observe the decisions already analyzed and decided (BRASIL, 2015b).

This system adopted by the Code of Civil Procedure, can be better understood, according to the position of Francis Ted Fernandes (2013), who clearly states that "[...] the next chapter of each 'novel' must necessarily 'keep correlation with the previous chapter'. A total break between similarity of decisions is only possible, through a load of justified arguments, based on the peculiarities of the specific case.

In view of this, it is known that qualified dating has already been known on the basis of a REsp by the STJ and based on the guidelines of the Civil Procedural Law on the necessary observation of precedents, the amorous institute under analysis must undoubtedly be recognized in the Brazilian legal system.

So that, as it was examined in the provisions above, considering the individualities of each affective relationship, primarily, when the Judiciary Branch appreciates a specific case, considering the elements that characterize the family formed by the stable union, it deserves serious attention when considering the various forms of loving relationships present in the national social context.

As one cannot forget the main element of the family constituted by the stable union, that is, the present desire to constitute a family, which, unlike the discriminated family entity, is not present in the eminence of dating, but is made up as a mere future projection of starting a family.

In this line of understanding, Viegas and Poli (2015, p. 95) state that the law "[...] is systematic and the application of legality imposes the teleological interpretation of the entire legal system and, therefore, all the principles and rules that conform to the legal situation of the new families that are emerging in society must be considered."

For this reason, they understand that "[...] the law cannot turn a blind eye to social facts, but, rather, to face them not to legitimize inequalities, illicit enrichment, thereby effecting the dignity of the members of the new formats of family that has been emerging in society" (VIEGAS; POLI, 2015, p. 96).

Therefore, in view of all the arguments already presented, the State, through its primary function of applying and interpreting the norm in the specific case, must necessarily consider the existence of qualified dating so that, in this way, everyone is guaranteed the rights of those who relate more consistently than simple dating.

To respect the trustworthy will of those who are related and not imposing or neglecting, as occurred in the entire historical context of the family, the supremacy of state interest over individuals and, consequently, qualifying such relations, in a regulatory manner, in a strictly dogmatic in the generality of the broad models of affective unions.

5 Conclusion

In view of this set of ideas presented, from an optics perspective, it appears that affective unions have undergone constant evolutions, especially those constituted as a family, so as it can be seen, this institution has always suffered direct influence from the State when defining which relationship could be considered as a family entity or limiting the freedom of individuals who were effectively involved with others.

On the other hand, however, it appears that the most varied forms of love relationships mark contemporary times in the Brazilian social context. Clearly derived from the human conception of relating to another individual without necessarily establishing a union understood as a constituted family, even if there is a narrowing of lives between couples.

Thus, the advancement of the conception of the various ways of relating, both by the State and by society, resulted in a mistaken understanding that such relationships are conceptualized as a stable union, when mistakenly considering the constituent elements of this union in the relationships that are most evident close to that family entity.

This is because, as today's affective unions are often very similar to the stable union, because they appear superficially as the aforementioned family entity, several affective relationships have been considered as an eminently constituted family, when, in truth, it consists in the mere projection of starting a family.

Thus, according to the demonstration made in this work, qualified dating, which concerns the mere future expectation, of those who relate emotionally, of forming a family and maintains their individual freedom in the present, is fully valid according to the legal system and with the current understanding of the social body. As a solution to the mistaken understanding that the institute consists of a stable union and, consequently, the provisions related to this type of family should apply to a situation that does not match the faithful will of the individuals who date.

Therefore, considering the difference in the relationships formed by qualified dating and stable union, however simple it may be, the illegitimate imposition of duties on lovers should not be allowed, especially the property ones, in any case and without observing the faithful intention of the individual who finds himself/herself in this type of union, due to his/her addicted understanding as a family already constituted.

In addition, as it was raised in this analysis, on the relevance of judicial precedents, according to the provisions of the Code of Civil Procedure in the application of subjective Law to individuals, it is known that qualified dating was recently known by the STJ, new cases must respect the same systematic. Thus, the State, in the analysis of the specific case taken for its appreciation, must recognize this new type of loving affection and apply it in the court issues brought to its appreciation, thus guaranteeing the faithful will of the individual who relates to

another person due to advances in social understanding in the face of new forms of affective unions.

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Article submitted on 2018-20-04

Resubmitted on2020-20-03

Accepted on 2020-28-04