



THE LEGAL REFLECTIONS OF THE RECOGNITION OF MULTIPARENTALITY FACE OF NATIONAL LEGAL ORDINANCE

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Abstract: Contemporaneity is marked by the possibility of the existence of innumerable forms of affective unions, so that discussions about the possibility of the coexistence of paternity and / or maternity socio-affective due to multiparentality have always been controversial. With the issuance of Proceedings n° 63 by the Corregedoria (Comptroller) of the CNJ in 2017, there is no room for criticizing the full validity of dual membership. In this sense, this article, using the method of legal dogmatism, having, for that, a doctrinal revision and revision of the legislation related to the subject in question. This article also briefly analyzes the historical evolution of the concept of family, kinship and affiliation, as well as studying the details of the family formed by multiparentality to understand its content. To the extent that, as the specific object of this study, it will deal with the juridical consequences of the recognition of dual membership.

Keywords: Multiparentality; Family Arrangement; Socio-activity.

1 Introduction

The post-modernity brought into focus the possibility of the existence of countless forms of affective unions, which, in turn, lack clarification to verify the actual treatment that should be conferred on individuals living in these new family arrangements. Thus, discussions about the possibility of coexistence of paternity and/or maternity socio-affective, multiparenting have always been controversial. This is because, despite the factual existence of the pluriparentality, sometimes it was argued that it was possible the duplicity of fathers/mothers, sometimes it was argued that it could not coexist paternity and/or maternity biological concomitantly with the socio-affective.

With that, disregarding this possibility, which, arguably, was contrary to the effectivity of fundamental rights, in particular, the principle of the dignity of the human person and the best interest of the minor or adolescent, with the edition of the Proceedings n° 63 by the internal affairs

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of the National Council of Justice (Portuguese acronym: CNJ) in November 14, 2017, there is no room for criticizing the full validity of the double affiliation.

In this sense, the present article, using the method of juridical dogmatic, having, therefore, the doctrinal revision and the revision of the legislation related to the theme in question, makes a summary analysis of the historical trajectory of the evolution of the concept of family, kinship and affiliation, so that these institutes can be understood in contemporaneity and, likewise, sustain the validity of the multiparentality.

In addition, the details of the family formed by multiparentality are studied – or pluriparentality – with the aim of understanding its content and understanding the discussions and criticisms about this model of family arrangement, as well as clarifying the forms of recognition in the internal planning of paternity and/or maternity socio-affective.

Finally, it is the legal consequences arising from the recognition of double affiliation, because, in view of the precepts established in the Republic Constitution of 1988, it cannot, in any way, confers differentiated treatment on the children with regard to rights and duties, regardless of the origin of the bond of parentality.

2 CONCEPTION OF FAMILY, PARENTALITY AND AFFILIATION

To understand the object of the present work, it is indispensable, even if summarily, to examine how the evolution of the current conception of the family is given and, likewise, what is the current conception of parentality, with the purpose of demonstrating the effects arising from multiparentality, below discriminated.

2.1 The Family

Since the beginning, the family is a social entity founded by affectivity, embodied in the "**fundamental basis of society**. Its existence is, therefore, secular. Perhaps, it can be considered one of the oldest formations" (ALMEIDA; RODRIGUES JÚNIOR, 2012, p.1, our emphasis). In antiquity, these entities were composed of a large number of individuals, and the biological criterion was fundamental to delineate parental relations, that is, "the extended family involved all the people connected by the bond of blood and originated from a common ancestral branch" (MADALENO, 2017, p. 51).

Because of human evolution, the understanding of the family entity has also changed, so that the family "no longer has the characteristics of before, those who have limitations on the consanguineous kinship of the model of a [...] family as a primary social nucleus" (RIZZARDO, 2014). According to Denis Fustel de Coulanges (1959, p. 47) "the old family is thus a religious association, more than an association of nature", guided by the divine supremacy and subsistence of the entity. Since in ancient Rome it was organized, hegemonically, in the power and position

of the father, *sui juris* person and with unitary and absolute character in the leadership of the whole family, who lived under his command, what had been called the fatherly power.

In this follow-up, for Arnaldo Wald (2002, p. 9, our emphasis), the family

[...] was, at the same time, an economic, religious, political and judicial unit. Initially, there was a heritage only belonging to the family, although administered by the pater. In a more evolved phase of Roman law, individual patrimonies emerged, such as the savings, administered by persons who were under the authority of the pater.

With regard to canon law, the only way to constitute a family and, consequently, to be recognized, was through the hetero-affective union, formed solely and exclusively by marriage, considered indissoluble due to its sanctity, and its dissolution occurred exclusively with the death of one of the consorts, because it was understood that man could not dissolve a union formed by God (WALD, 2002).

In Brazil, by means of the Civil Code of 1916, the Roman and canonical precepts were, in a certain way, maintained, because, similarly, the legal diploma defined as a family entity only the monogamous heterosexual relations formed by marriage and their eventual children. To the extent that the aforementioned code "ignored the illegitimate family, that constituted without marriage, making only rare mentions to the then called concubinage solely in the purpose of protecting the legitimate family, never knowing rights to the union in fact" (VENOSA, 2010, p. 21).

Moreover, the code in question was disdained with the other modalities of family formation, so that it granted only rights to legitimate descendants, that is, to the children of the marriage, demonstrating a violation of equality among the other affiliation states.

In this sequence, only with the promulgation of the Constitution of the Federative Republic of Brazil of 1988, they were excised any references to the children and the forms of constitution of a family nucleus. Thus, by the new constitutional order, the precepts entrenched and, above all, excessive on the judgment of what is understood as a family were mitigated and, as a consequence, the inscribed discrimination by patriarchal traditionalism supported by the Civil Code at the prevailing time had to segregate itself so that the dignity of the human person, the basic principle of the Democratic State of Law, fulfilled the social desires in search of equality.

Confirming the precept of equality brought by the Constitution, laws that enabled such parity were edited, such as Law No. 8,971, of 1994, that established the right of companions to food and succession, and Law No. 9,278, of 1996, that regulated art. 226, § 3 of the Federal Constitution, which deals with the stable union, to guarantee the relations formed without the solemn act of marriage the rights ensured by the constitutional text.

In fact, the constitutional directives that relate to the family introduced by the new constitutional text were instituted only by infra-constitutional legislation with the promulgation

of Law No. 10,406, of January 10, 2002, the current Civil Code (BRASIL, 2002), which is why a civil-constitutional interpretation was required due to the temporal lapse of 14 years of the promulgation of the Constitution and the advent of the new civil order. Thus, with the publication of the new Civil Code, it can be inferred that this codification, in fact, did not present innovation, given that it only evidenced the provisions already established by the Magno Text of 1988.

Contemporaneity is marked by several forms of relationship, abstracting from the traditional understanding of the concept of family, that is, that formed by hetero-affective couples and their children, to encompass the most varied forms of affective unions. That is because,

[...] the understanding of the traditional family concept was present in 49.9% of the households visited, while in 50.1% of the time, the family gained a new form. The homo-affective families already totaled 60000, 53.8% of them formed by women. Women living alone are 3.4 million, while 10.1 million families are formed by mothers or single parents. (IBGE, 2010).

Thus, as provided above, it is noted that the Brazilian society does not organize itself only around traditional marriage, because the concept of family was enlarged, and the State began to recognize the existence of various forms of affective union as family entities.

2.2 The Parentality

Kinship consists in the "binding legal relationship existing between people who descend from one another or from the same common branch and between one spouse and the relatives of the other and between adopter and adopted" (DIAS, 2017, p. 467). Besides being a natural bond, kinship is also a legal link established in law, which holds rights and assigns reciprocal duties. For this reason, these are relations that are not constituted, much less they are undone by simple act of will.

Furthermore, for Sílvia Rodrigues (2017, 318), "kinship is not limited only to the concept that binds people who are descendants of each other or of a common branch but also encompasses civil kinship and kinship by affinity". In other words, the "kinship is not only the one who binds the people who descend one of the other or the same branch but also between a spouse or companion and their relatives, between adoptive and adopted and between institutional father and socio-affective son" (DINIZ, 2017, p. 467).

There are, therefore, classifications about kinship, namely: natural kinship; kinship by affinity; civil kinship; socio-affective kinship (DINIZ, 2017).

By natural kinship, it can be understood as

[...] the descending people of the same ancestral branch, linked, therefore, by the same blood, as is the case of parents and children, grandparents and grandchildren (Art. 25 of ECA) who share the bond of blood, genetic or biological. They have the same biological origin and the bond is established both by the masculine and the feminine side, straight and in a collateral line. (SANCHES, 2015).

Affinity Kinship can be understood as

[...] is the bond that is established between a spouse (or partner) and the relatives of the other spouse (or companion), and reaches up to the 2nd degree (Art. 1595 of the Civil Code). Just as in the natural kinship, also in kinship by affinity the degrees are counted in the straight line and in the collateral line. It is observed that the bond by affinity is irrelevant for succession purposes, a disqualified bond: it is not possible for the son-in-law to ask food to the father-in-law or stepson to the stepfather. (SANCHES, 2015).

While civil kinship

[...] is everyone who has another origin other than that of consanguinity (Art. 1593 of the Civil Code), being the people connected by a legal fact. Example is the adoption and affiliation arising from artificial heterologous insemination authorized by the husband. Adoption is a legal act or business that creates paternity and affiliation relationships between two people and assumes a non-biological, but affective, relationship. (SANCHES, 2015).

And, finally, socio-affective kinship relates

[...] to social and affective elements in relation to the child and is characterized by "possession of the state of child": name, fame, treatment (socio-affective parentality). It does not derive from a biological declaration or fact, but from the coexistence and existence of affective and social ties that unite certain people, parts of a family entity. The "possession of the state of son" is recognized by society, which identifies the parental link of the true relationship between parents and children linked by love, respect and consideration, importing rights and duties (Arts. 1593, 1596, 1597, V, 15605 and 1614 of the Civil Code). Socio-affective kinship gains greater relevance in decisions pertinent to family law to the point that, as different concepts that do not exclude, be accepted the possibility of maintaining biological kinship without the distancing of the kinship socio-affective-exception made to the adoption. (SANCHES, 2015).

In view of the foregoing, it is stated that, irrespective of the nature of kinship, when it comes to affiliation, "the children, whether or not of the relationship of marriage, or by adoption, shall have the same rights and qualifications, prohibited any designations related to affiliation" (BRASIL, 1988).

2.3 The Affiliation

With the promulgation of the Republic Constitution, there is no more distinction between the children coming from the matrimonial relationship and those generated by extra-matrimonial relations, going to consider all as children. "As happened with the family entity, the affiliation began to be identified by the presence of the paternal-filial affective bond" (DIAS, 2016, p. 363).

So, for Silvio Rodrigues (2004, p. 297), "affiliation is the relationship of consanguineous kinship, in the first degree and in a straight line, that binds a person to those who generated it, or received it as if it had generated it". For Paulo Luiz Netto Lôbo (2003, p. 48),

“affiliation is a relational concept; is the relationship of kinship that is established between two people, one of which is considered child of the other (father or mother)”.

Already in this prism, Cristiano Chaves and Nelson Rosenvald (2013, p. 210) predicted that

[...] from the technical-legal point of view, the affiliation is the relationship of kinship established among people who are in the first degree, straight, between a person and those who have generated or who have welcomed and created, based on affection and solidarity, aiming at the personality development and personal achievement. It refers, therefore, to the content of the legal bond between the people involved (father/mother and son), bringing the tow assignments and duties varied.

In view of the above, as can be seen so far in the present study, after the promulgation of CRFB/88, there is no more differentiation between children, so that one cannot attribute any adjective to them. With this, "once the bond of kinship is consecrated among certain people, they are called relatives, that is, those belonging to the same family” (ALMEIDA; RODRIGUES JÚNIOR, 2014, p. 344), and thus established the affiliation, there is no distinction as to the legal effects to be applied to the children.

3 The Multiparentality

As has been discussed so far, family relations have always had a treatment imposed by the State, sometimes delimiting the form of constituting a family, sometimes restricting the recognition of existing family arrangements, always to remain the standards instituted by the central order.

However, with the evolution of the conception of the social body and, even if to a lesser extent, of the internal legal system, several forms of family arrangements were recognized in the Brazilian normative systematic and, therefore, the reflexes should be measured arising from such recognition.

Thus, it will be explained by the institute of multiparentality as one of the various forms of family arrangements present in contemporaneity, so that one can understand the legal consequences arising from its recognition.

3.1 Concept

Multiparentality - or pluriparentality - has always been the object of major discussions in the Brazilian context, because there were divergences of understanding in the homeland order when the possibility of its recognition. It occurs that, in spite of the discussions that were hovering over this phenomenon, this possibility is not discussed any more, as the coexistence of paternity and/or maternity double, regardless of origin, is perfectly admitted, according to the Proceeding n. 63, de 2017, do CNJ.

In accordance with Christiano Cassettari (2017, p. 395), it is understood by multiparentality

[...] the phenomenon in which a person has two paternal and/or maternal figures simultaneously, that is, more than one bond in the ascending line of first degree, whether on the maternal or paternal side. Thus, it would include in this concept the hypothesis of homoaffective adoption, through which the adopted will have two parents or two mothers.

Christiano Cassettari (2017, p. 401) already affirms that the multiparentality is characterized by

[...] legal possibility of inserting more than one parent or mother in the civil registry of a natural person, in other words, is the possibility of a person being legally recognized by two parents and a mother, or two mothers and a father, relying on the possession of child status. This child's possession occurs when, before society, a certain individual is seen as someone's father and this someone is also recognized as their son, even if there is no biological link between them, there is only the issue of affection, care and attention.

Thus, multiparentality/pluriparentality relates to the establishment of bonds of affiliation with more than two people, which may occur concomitantly or in a successive way in time, irrespective of the legal nature of affiliation, being perfectly allowed the coexistence of socio-affective and biological bonds of affiliation.

Therefore, it is argued that the institute of multiparentality, unlike the past dissent, by which it was sustained that paternity and/or maternity were mutually exclusive, shows itself, in fact, as a perfect way of effecting the best interest of the individual – child – as well as his/her integral protection, as biological and affective ancestry can co-exist simultaneously without any prejudice.

3.2 The Multiparentality Legal Recognition

The recognition of multiparentality is synonymous with the protection of those involved and causes phatic situations to be supported by Law, which, as the guardian of society, cannot be immune to the new situations that are posed to them. So, according to Maria Berenice Dias,

[...] For the recognition of the pluriparental affiliation, it is sufficient to catch the establishment of the affiliation bond with more than two persons. Coexisting affective and biological parental bonds, more than just a right, is a constitutional obligation to recognize them, insofar as it preserves the fundamental rights of all those involved, especially the dignity and affectivity of the human person. (DIAS, 2017, p. 385).

Thus, through a hermeneutic analysis of the current Brazilian legislation, it is undoubtedly inferred that there are countless ways of manifestation of the will that lead to the recognition of paternity. In this perspective, Maria Goreth Macedo Valadares (2013, p. 75-76), in her doctoral thesis, analyzes the systematic codified in the internal planning of multiparentality, so that, summarily, it provides that

[...] determines art. 107 of the Civil Code that the validity of the declaration of will does not depend in a special way, except where the law expressly requires. The recognition of paternity occurs through a declaration of will (registration, adoption, presumption of affiliation, socio-affectivity) or a judicial imposition, when there is resistance of the father to spontaneously assume the child, with this hypothesis, a supply of the declaration of will. The conjugation of art. 1,609 with art. 1,605 of the same legal diploma leads to the conclusion that the act of recognition of paternity has numerous forms of materialization, considering that the affiliation may be proved by any permissible means in law, when there are strong presumptions of facts already certain, in the event of failure or defect of the term of birth. If the person has two parents and the certificate presents only one, such defect will be remedied, if proven, for example, the possession of a child's state, revealed by presumptions of already certain facts, such as the externalization of the paternal-filial relationship. The proof of affiliation may also be demonstrated by the DNA test, if the certificate does not have the name of the biological father.

Thus, "for the phatic support of pluriparentality, it is necessary the existence of more than one form of parentality, whatever it is, by more than one agent in relation to one child" (VALADARES, 2013, p. 76). Being that the "manifestation of will for the practice of legal acts, can be expressed or tacit. In the first case, it must be written or spoken, including gestures and signs. It will be tacit when it arises from the behavior of the agent" (VALADARES, 2013, p. 76).

In this prism,

[...] the declaration of will to be recognized by Law, generating the recognition of a paternal-filial relationship has to be externalized, either through the registration, possession of the child condition, the examination in DNA or a judicial sentence (when there is supply of the declaration of will) [...] in the hypotheses that the life story of the child encompasses several parents is proven, Law cannot be omitted, under the pretext that there is no express device of law. (VALADARES, 2013, p. 76).

Therefore, it is pointed out that the law exists for the benefit of society and not the opposite, so

[...] when taking care of state action, personality law, unavailable, imprinted, intangible, fundamental to human existence, as is the recognition of genetic and socio-affective paternities, it should not be sought to understand the human being based on the registral law, which provides for the existence of a father and a mother, but in the reality of the life of those who have, for example, four fathers (two genetic and two affective), always attending to the fundamental principles of citizenship, affection, family coexistence genetic and affective and human dignity, which are understood in the three-dimensional human condition. (WELTER, 2009, p. 222).

In view of the above, it can be seen that the recognition of paternity and/or maternity socio-affective is an unavailable right, since the state of affiliation involves personality rights, for example, the right to name. Therefore, with the aim of guaranteeing the realization of the principle of the dignity of the human person, there is no obvious that the coexistence of multiparentality, whether by judicial or extrajudicial means, is to be declared, according to the analysis presented in this string.

3.2.1 Judicial Recognition of Socio-Affective Affiliation

The recognition of socio-affective affiliation by the judicial approach is made through a declaratory action of law, whose request consists in the recognition of maternity and/or paternity socio-affective, given that the main aspects are the affectivity and the recognition of both the child and the father/mother of this state of socio-affective affiliation. This procedure is subject to voluntary jurisdiction, because "the procedure will be initiated by provocation of the person concerned of the Public Prosecution and of the Public Defender, that must formulate the request duly instructed with the necessary documents and with the indication of the judicial" (BRASIL, 2015).

In the judicial proceedings, it is essential the subpoena of the Public Prosecution to express itself, given that, as concerns the interest of incapable, obligatorily, the said organ must be heard and, if necessary, intervene as a fiscal of public order, as discipline article 178 of the Procedure Civil Code⁴.

The recognition of paternity and/or maternity socio-affective by the judicial protection of the State should always seek the best interest of the child or adolescent, because, as the consequence of recognition concerns the right of personality and, therefore, consists of an inalienable, unavailable right, a right that cannot be invalidated, the magistrate must always be concerned that the faithful situation brought to his appreciation will be effective.

In this sequence, the prescriptions of the Statute of the Child and Adolescent (Portuguese acronym: ECA) are also missing – Law n. 8.069/90, which are:

Art. 26. Children outside the marriage may be recognized by their parents, jointly or separately, on their own terms of birth, by testament, by deed or other public document, whatever the origin of the affiliation.

Art. 27. The recognition of the condition of affiliation is a very personal, unavailable and imprescriptible right, and can be exercised against parents or their heirs, without any restriction, observing the secret of Justice. (BRASIL, 1990).

Thus, according to the Public Prosecution of the state of Paraná,

[...] The formal recognition of socio-affective affiliation is done within the Justice scope. During the process, the judge will observe whether the declared bond is characterized as a demonstrably socio-affective relationship, typical of a subsidiary relationship, which is public, continuous, lasting and consolidated. At the end of the process, with the decision to acknowledge the affiliation, the Justice determines that the birth record of the child is altered, including the name of the father and/or mother socio-affective, as well as the grandparents. The recognition of socio-affective affiliation can be sought at any time, even after the death of the parents. To this end, the judge will observe the evidence that evidences the type of existing relationship.

⁴ Art. 178. **The Public Ministry will be subpoenaed to, within thirty (30) days, intervene as a legal entity in the assumptions provided by law or in the Federal Constitution and in the proceedings involving:**

I - public or social interest;

II - interest of incapable;

III - collective disputes for the possession of rural or urban land. (BRASIL, 2015).

In addition, in this respect, the Public Prosecution of Paraná warns that

[...] it is important, however, to differentiate a socio-affective relationship from that established between a child and his stepfather or stepmother. In many situations, man or woman can maintain a healthy relationship with the stepson, and this bond does not necessarily characterize as paternity or maternity socio-affective.

With regard to the proof of paternity and/or maternity, it deserves to be highlighted the norm of art. 1,605 Civil Code, according to which

[...] in the absence, or defect, of the term of birth, the affiliation may be proved in any way admissible in law: I – when there is a beginning of proof in writing, originating from the parents, jointly or separately; II – where there are vehement presumptions resulting from already certain facts. (BRASIL, 2002).

Finally, in view of all the explanations about legal recognition through the judicial way, it is verified that, after sentenced the recognition of paternity and/or maternity socio-affective, the child ensuring all rights arising from the state of affiliation, without distinction any of the rights conferred on children of biological origin.

3.2.2 Extrajudicial Recognition of Socio-Affective Affiliation

As discussed in the previous topic, the recognition of paternity and/or maternity socio-affective can be performed by the judicial pathway. However, there is also the possibility that the alluded recognition is carried out by the administrative route, directly in the notary civil register. Therefore, in November 14, 2017, the internal affairs of the National Council of Justice (CNJ) edited Proceeding N. 63, whereby the recognition of paternity and/or maternity socio-affective can be administratively effected when the requirements established by it.

With the publication of Proceeding, the discussions that were in the doctrine and jurisprudential understanding of the possibility of coexistence of biological paternity and/or maternity socio-affective were mitigated and, therefore, to celebrate this divergence is pacified.

In this sense, about the Proceeding in comment, the IBDFAM (2017) has said that:

To remedy doubts and assist in the decisions to be taken in cases of multiparentality, the Proceeding n° 63 of the National Court of Justice establishes standards for issuing, by civil registry offices, birth certificate, marriage and death, which will have mandatory CPF (Individual Taxpayer Registration Number). Among the new rules is the possibility of voluntary recognition of maternity and paternity socio-affective.

Already, according to the IBDFAM (2017), for

[...] the lawyer Ricardo Calderón, vice-President of the Legislative Affairs Committee of the Brazilian Institute of Family Law (Portuguese acronym: IBDFAM), states that Proceeding No. 63 is an important breakthrough in registral matters, and with it we take a leap in relation to the scenario previous, with the regularization and simplification of many issues that previously demanded a judicial intervention, becoming another step towards the extra-judicialization of family law.

In the same perspective, Christiano Cassettari recommends that

[...] the note of the ARPEN was enlightening to say that the dismissed authorizes multiparentality, so it is possible to recognize in the registry the affective parentality for those who do not have a father or a mother, which would fill an empty space, or even for those who already have the father and the mother, then instituting the multiparentality. (CASSETTARI *apud* IBDFAM, 2017).

The Proceeding n. 63, of the CNJ, “discusses the voluntary recognition and the endorsement of paternity and maternity socio-affective in the Book “A” and on the registration of birth and the issuance of their children's certificates born of assisted reproduction” (BRASIL, 2017). Thus, it consolidated the understanding by which “voluntary recognition of paternity or maternity socio-affective of a person of any age will be authorized before the civil registry officers of natural persons” (BRASIL, 2017).

In addition,

[...] the recognition of paternity or maternity socio-affective will be processed before the civil registry officer of natural persons, although several of those in which the seat was tilted, by displaying an official document of identification with photo of the applicant and the birth certificate of the child, both in original and copy, without being included in the transfer mentioning the origin of the affiliation. (BRASIL, 2017).

As a result of the systematic adopted by the CNJ, there is the constitutional precept inscribed is present in art. 5th, section LXXVIII, of the Constitution of the Federative Republic of Brazil, included in the Constitutional Amendment n. 45, of 2004, namely: “to all, in the judicial and administrative scope, the reasonable duration of the process and the means to ensure the speed of its processing” (BRASIL, 1988).

Still in this reasoning, it is verified that, by introducing this new rule for the recognition of paternity and/or maternity socio-affective, Proceeding kept relevance with the Consensually foreseen in the Procedure Civil Code of 2015, see:

Art. 3rd – It shall not exclude the judicial assessment threat or injury to the law.
[...]

§ 2nd The State shall, where possible, promote the consensual settlement of conflicts.

§ 3rd Conciliation, mediation and other methods of consensual settlement of conflicts should be encouraged by magistrates, lawyers, public defenders and members of the Public Prosecution, including in the course of the judicial process. (BRASIL, 2015).

Still in this respect, with the edition of the Proceeding

[...] voluntary recognition of paternity or maternity socio-affective is possible for people of any age – if the child is over 12 years old, however, their consent is required. ‘As a recognition, socio-affective paternity gains the same feature of biological paternity, with all the rights and obligations arising from it. The child shall be entitled to inheritance and, in the case of separation of the parents, there is the obligation of food and the right to visit’. (BRASIL, 2018).

It is further that

[...] Voluntary recognition of paternity or maternity socio-affective is irrevocable and can only be revoked by the judicial approach. However, it does not represent an obstacle to a future judicial discussion about the biological truth of the child, that is, an investigation of his origins. But once there is a judicial discussion on the recognition of biological paternity or adoption procedure, the recognition of socio-affective paternity is not possible. (BRASIL, 2018).

In this way, it is also argued that Proceeding comment instituted, in consonance with the constitutional text and with the Procedure Civil Code of 2015, that human well-being, in this case, the best interest of the minor and/or adolescent, should always prevail on the interests of any other natures.

4 The Legal Reflections Due to Multiparentality

In front of the collations presented in this article about the recognition of paternity and/or maternity socio-affective, it is essential to present the possible legal consequences regarding the plurality of fathers/mothers. This is because, also in accordance with the explanation contained in this work, there are no differentiations in the treatment of children, regardless of the nature of the condition of affiliation, so that the same rights and duties are applied hegemonically when the establishment of multiparentality.

In this way, "all legal effects [...] of the two paternities, must be granted to the human being, insofar as the human condition is three-dimensional, genetic and affective and ontological" (WELTER, 2009, p. 14). Mean,

[...] not recognizing the genetic and socio-affective paternities, at the same time, with the granting of ALL legal effects, is to deny the three-dimensional existence of the human being, which reflects the condition and human dignity, insofar as the socio-affective affiliation is so irrevocable as to biological, and therefore the two paternities must be kept unscathed, with the addition of all rights, since both are part of the trajectory of human life. (WELTER, 2009, p. 24).

In view of this, the consequences and/or legal effects, such as the questions concerning the name, the extent of parentality, custody/visits, food and multi-heredity should be extended to socio-affective affiliation without prejudice to biological, as presented in this sequence.

4.1 Right to Name

The person's name is the depositary where rights and duties are materialized, in a way that identifies and individualizes the person and consists of personality right, and in the multiparentality, the discussion is around the best interest of the child. Pontes de Miranda (2000, p. 96) provides that "personality is the possibility of being subject to rights and duties, pretensions, obligations, actions and exceptions. It is not possible to assign something, whether active or

passively, without knowing who” (2000, p. 96).

Moreover, the name, as well as the other personality rights, consists in

[...] rights inherent to human individuality, or to social individuality: fundamental or constitutional rights; rights of the person, or of the citizen: rights that do not result from the particular will, by acts, or contracts, but from our own existence in the species, in society and in the State (1942, p. 168).

Not by chance, the Federal Constitution of the Republic of 1988 provides that the name is a constitutional foundation, guarantee of the right of image provided for in art. 5th, X, of the CF, and refers to the expression that distinguishes the person from other individuals to give him an identity of his own (AMARAL, 2008).

From this point of view, Roxana Cardoso Brasileiro Borges mentions that

[...] throughout history, new personality rights have been identified. As society becomes more complex and injuries to people proliferate, even as a result of certain uses of technology, new problems demand legal response. This is what occurs in the field of personality rights: they are expanding rights. With the legal evolution and the development of research on the law, new situations are revealed that require legal protection and, consequently, new rights are recognized. (BORGES, 2010, p. 251).

Art. 16 of the Civil Code preceded that "every person is entitled to the name, in it understood the first and the surname" (BRASIL, 2002), and "the use of the name of the parents is a fundamental right that cannot be forbidden to anyone. In the case of multiple parentality, it should not be different” (SOUZA, FERNANDES, 2015), even because the addition of the patronymic causes the child to be legally belonging to the family, besides that it is a question that meets the best interest of the child and the adolescent in his construction as an adult human being.

Souza and Fernandes (2015, p. 21) elucidate that

[...] the National Council of Justice standardized the certificates of marriage, birth and death throughout the country, replacing the parent and mother fields for affiliation only, and paternal grandparents and maternal grandparents. This was a breakthrough for society, causing no greater problems in accepting the registration of more than two parents on the birth certificate, and the multiparentality could be registered without any record embarrassment.

In addition, it is noteworthy that "there is no denying that it hurts the dignity of the affective father and violates the principle of affectivity, simply to remove the parental relationship, between him and the one who always had as a son, because there are no biological bond” (PÓVOAS, 2012, p. 78).

It is also important to mention, as appropriate, the modification in the Public Records Law (Law n. 6.015/73) by Law n. 11,924, of April 17, 2009 (Clodovil Hernandez Law), in which it was added § 8th to art. 57, passing to admit the adoption of the surname of the stepfather or stepmother, provided that without exclusion of their family nicknames. The said paragraph prescribes that:

Art. 57

[...]

§ 8th The stepson or stepdaughter, with a ponderable motive and in the form of § § 2nd and 7th of this article, may request the competent judge who, in the birth register, be averted the family name of his/her stepfather or his/her stepmother, provided that there is express agreement of these, without prejudice to his/her family nicknames. (BRASIL, 1973).

It is noteworthy the fact that the inclusion of the aforementioned device did not expressly outline a rule for the formation of the name, so as to allow for the name of the surname only of the mother or father and stepfather or stepmother, or all, biological parents and stepfather or stepmother. Just as it does not deal with the withdrawal of the biological family name, but the mere addition of another name of the stepfather or stepmother.

In addition, the legislative amendment in comment brought to the Brazilian legal order a great innovation for the reality of contemporary families, especially for the families recomposed, because in this law allows the stepson or the stepdaughter to use of a name that reflects his/her reality and his/her possession of the condition of son.

In this reasoning, Rodrigues and Teixeira (2010, p. 89) have that "multiparentality inaugurates a new paradigm of Parental Right in Brazilian ordering. To operationalize it, however, it is necessary to be externalized through modifications in the birth register".

Regarding the plurality of patronymics, the Court of Justice of Bahia, in Appellate, understood to be admitted both the registry law multiparentality, about the inclusion of the surname of the affective father to the name of the child, so that the cumulation of the patronymics is fully possible. See:

[...] It remains evident, therefore, that the normative framework of the fatherland, of a constitutional nature, does not admit any discrimination between kinship and affiliation species, nor does it seal the coexistence of relations of the same kind, such as paternity, for not establish any kind of hierarchy between them. It is to say, in the face of a certain concrete situation, in which there is a bond of affective nature, in which the individuals recognize themselves as father and daughter, a fact evidenced by the long, fruitful and public coexistence between them (pages 33/59), there is no legal impediment to realization of that condition of affiliation. In this case neither does the substitution of biological paternity be imposed by the affective, or *vice versa*, notably when, as in the species, the willingness of the applicants is uniform, and it is directed to the recognition of the multiparentality. (...) The situation described in these documents is perfectly consistent with the hypothesis of pluriparentality recognized by the most completed doctrine and jurisprudence, and it is certain that the first applicant, registered as the daughter of her biological father, has always recognized him as such, but after the new marriage of her mother, with the second author, came to see him, also, with father, situation shared by all those with whom they lived, over several years. (...) In view of the above, vote in the sense of GIVING PROCEEDING the appeal, to reform the contested decision, preserving the kinship relationship between the first applicant, her biological father and paternal grandparents, as well as to maintain the registration in the civil registry determined at the origin, in relation to socio-affective kinship, with the of the respective patronymic (Bastos), without any exclusion of surnames. (BRASIL, 2016).

Specifically, about the multiparentality, the National Association of Natural Persons Registers (Portuguese acronym: Arpen-Brasil), according to IBDFAM (2017),

[...] guides the Officers of Civil Registration of Natural Persons to carry out the recognition of paternity and maternity socio-affective, even if there are already a registered father and mother, always respecting the limit established in the provision of maximum count with two parents and also two mothers in the term.

Already in this regard, Cassettari (2017, p. 269) recommends that "if the person already had a father and a mother, a multiparentality hypothesis, there will be an additional name in the affiliation field, and two more names in the grandfather's field". Confirming this premise, whether it is double insertion, Póvoas (2012, 91-92) adducts that

[...] the alteration of the registry, with the inclusion, in the case of multiparentality, of all parents and mothers in the registry, only brings benefits to the children, by giving them undeniably and independently of any other evidence (by the presumption that the record brings in themselves) all rights arising from the parental relationship. And what rights would that be? Now, all that a child has in relation to the father and *vice versa*: the name, the guard, food, kinship, visits, succession.

Thus, as a consequence of the recognition of paternity and/or maternity socio-affective, the child may be able to cumulate the surnames and first names of the biological family with that, so that all rights related to affiliation are inherent to the child, rights which, as provided, correspond, in fact, to the individualization of the individual in society, besides consisting of an unavailable attribute for its construction and development.

4.2 Extension of Kinship Ties

When the recognition of multiparentality, parentality extends and the entire family tree will be altered, and therefore all relatives of the father – or mother – socio-affective, consequently, integrate the set of ascendant and collateral of the child, without any distinction. With this, consolidated the pluriparentality, it is indispensable that it is necessary to watch out for matters of marital impediments, given that there is no distinction because of the origin of the affiliation. That is, according to art. 1,521 Civil Code,

[...] cannot marry: I - the ascendants with the descendants, whether the natural or civil kinship; II - the straight related; III - the adopter with whom he was the spouse of the adopted and the and the adoptee who was the adopter's spouse; IV - brothers, unilateral or bilateral, and other collateral, up to the third degree including; V - the adopted with the adopters son's; VI - married people; VII - the surviving spouse with the convicted of murder or attempted murder against his consort. (BRASIL, 2002)

Similarly, the Civil Code, in the general provisions relating to kinship, already stipulates that:

Art. 1,591. They are relatives in a straight line the people who are with each other in the relation of ascendants and descendants.

Art. 1,592. They are relatives in a collateral or transverse line, up to the fourth degree, people coming from one branch, without descending from one another.

Art. 1,593. The kinship is either natural or civil, as it results from consanguinity or other origin.

Art. 1,594. There are, in the straight line, the degrees of kinship by the number of generations, and, in the collateral, also by the number of them, climbing from one of the relatives to the common ascendant, and descending until they find the other relative.

Art. 1,595. Each spouse or companion is allied to the relatives of the other by the bond of affinity.

§ 1st The kinship by affinity is limited to the ascendants, descendants and siblings of the spouse or companion.

§ 2nd In the straight line, the affinity does not extinguish with the dissolution of the marriage or the stable union. (BRASIL, 2002).

Thus, in front of the socio-affective recognition of paternity and/or maternity, the child becomes an indiscriminate member of the family nucleus to which the socio-affective parents belong, and, therefore, will also be subject to legal impediments due to equality of treatment conferred upon him.

4.3 Right to Guard/Visits

It is not possible to speak of guard without first talking about the affectivity, factor marking the beginning of parental relations, “which is jointed, demonstrates a profound impact of the recognition of affection as the true principle of our order” (TARTUCE, 2012).

However, the marital relationship, based on affectivity, with the passing of times can present conflicts in the face of individualization manifested in the family, destroying the marital relationship. After the dissolution of the affective relationships between spouses and companions, the family re-composition, so that "causes new people to enter the history of the child – stepmother or stepfather and their relatives, new siblings – and with them will establish meaningful relationships” (GERSÃO, 2014, p. 126).

After the family re-composition, the custody of the children must be attributed and regulated, always having, as a maximum rule, the interest of the minor, understood this as all the elements and circumstances that best meet the moral, material and spiritual well-being that. To this end, the Civil Code of 2002 changed the rules laid down in Law n. 6.515/77, regarding custody, establishing as a rule the preservation of the best interest of the child, in obedience to the principle contained in the Universal Declaration of the Rights of the Child.

Subsequently, it is said that the "institute has changed over the centuries, losing the character of parents' power over their children to replace a *world*, a predominance of parents' duties for the benefit of their children," parental authority or power-duty, a responsibility of all parents (MATTA, 2004, p. 33).

The Constitution provides for the principle of equality of children in its art. 226, § 5th, and the Statute of the Child and Adolescent, in its art. 21, establishing that the family power will be exercised equally by the father and the mother, whatever the denomination is used; on the other hand, the CC/2002 preferred to use denomination family power, replacing the father power, which could not persist.

With the primary distinction of family power and custody, the National Council of Justice postulates that

[...] the family power cannot be confused with the guard, since it is not always the person who owns the family's power to have custody of the child. In case of divorce, for example, custody may be granted unilaterally for one of the parents, while both remain holders of family power. In case of shared custody, both parents hold custody and family power.

It is fortunate that custody is the act or effect of storing and saving the child as a minor, of maintaining vigilance in the exercise of his custody and of providing him with the necessary assistance. So, the guard "is the expression that always gives the idea of meeting people to perform a certain goal" (SILVA.1993, p. 469).

Still, the Civil Code, in its art. 1,644, § 1st, claims the guard understands, irrespective of marital status, parents with the power-duty to ensure their children the fundamental rights to them, with the aim of fulfilling the principle of integral protection. With regard to custody in the multiparental relations, the best interest of the child and adolescent will always be analyzed and weighed, so that the principle of affectivity is observed, and there is no preference or distinction arising from the socio-affective or biological parentality, being perfectly possible to establish unilateral or shared custody – models allowed in the national order – in favor of parents/mothers when the dissolution of a multiparental relationship.

Continuous act, it turns out that the shared guard was the best choice in several judged, as points out the referred Bill of Review

Summary: BILL OF REVIEW. GUARD AND FOOD REGULATORY ACTION. REQUEST FOR CHANGE OF UNILATERAL CUSTODY FOR SHARED CUSTODY BASED ON LAW13.058/2014. In the society in which we live, father and mother can separate themselves from each other when they decide, but they must be inseparable from their children, being the judiciary's duty to ensure that this will be the reality. **Fixing the shared custody is regulating that both parents are responsible in every way for their children, have voice in the decisions and therefore actively participate in their formations.** Thus, and there is no negative expressed by one of the parents or any other conduct that should be specially assessed, the guard is shared. FOOD. The food is fixed according to the binomial necessity-possibility, with no exceptional situation in these records regarding the needs of the underage, nor higher paternal possibility, the foods are reduced to the percentage of 20% of income that is normally adopted by this Chamber for similar situations. BY MAJORITY, THEY GAVE PARTIAL PROCEEDING TO THE BILL OF REVIEW, DEFEATED DES. LUIZ FELIPE BRASIL SANTOS, WHO DENIED PROCEEDING TO THE APPEAL. (TJ-RS - AC: 70076484161 RS, Rapporteur: Sérgio Fernando de Vasconcellos Chaves,

Judgment Date: 04/25/2018, Sétima Câmara Cível, Publication Date: Diário da Justiça of the day 04/27/2018).

It is a modality of custody that meets the perspectives of the development of the child, insofar as parents are responsible for their children, in a joint way, about the "potentials of the children", as to the interests of these with equality and effectiveness (SILVA, 2017).

The shared custody is based on maintaining the bonds of affection, seeking to diminish the effects that the separation can bring to the children, and, at the same time, tries to maintain the parental function equally, thus maintaining the rights of children and parents. In this sense, shared custody aims to make parents present more integrally in their children's lives. Although, "in case of divergence from parents, much of the doctrine and jurisprudence does not accept the fitting of shared custody, alleging emotional instability, the inconvenience of more than one home, and the diversity of education criteria" (GRISARD FILHO, 2005).

Moreover, by the writing of art. 1,589 of the Civil Code, "the father or mother, in whose custody the children are not, may visit them and have them in their company, according to what they agree with the other spouse, or is fixed by the judge, as well as supervising their maintenance and education" (BRASIL, 2002). In this respect, Cassettari (2017, p. 127) makes it clear that

[...] there is no preference for exercising the right to visit a child or adolescent as a result of parentality being biological or affective, because what should be answered is the best interest of the child, remembering that such right is extensive, also, to the grandparents, not only biological, but also, socio-affective.

Since the plurality of relationships that are established after a remarriage can be both intra-family and interfamily, culminating in the plurality of new parents and socio-affective mothers, along with the other relatives who will compose the new family, without ignoring biological affiliation. Thus, the multiparentality brings the families recomposed, the paternal or maternal equality, conditioning them to the socio-affective recognition in a voluntary way to live with the children, so that the greater benefit is destined to them.

In the event that the recomposed relationship is extinguished, the magistrate must defer custody to both, in the shared modality and, in not being possible, the right to one, and regulate the visit to the two from the outside. However, to set the custody of the minor, a detailed analysis of each case should be carried out, and the justice consider the right of expression of the child or adolescent, so that the judge decides according to the best interest of the children.

In this sense, "the best for the child and for the adolescent is to stay alongside the people with whom they have more affinity, if there are several the magistrate can opt for shared custody, provided that there is a harmonious relationship between the parties" (SOUZA; FERNANDES, 2015). Besides that

[...] the custody, due to the family power, must be established with observance of the precept of the best interest of the child and the adolescent and considering the desires of the minor whenever his age and maturity allow. Similarly, it occurs with the right of visits, which must meet the needs and interests of the child, considering the right of family coexistence. (VIEIRA, 2015, p. 94).

In addition, the custody of the children "can coexist simultaneously and separately in the hands of various holders; that is, a person may be the holder of parental power and another of the custody of the same child or adolescent" (SILVA, 2017). Therefore, the maintenance of the bond between parents and children, consequently, will confer the same treatment for all parents, in a way that, recognized the multiparentality, any relationship related to the child shall obey the same precepts concerning the normative system of the best interest of the minor and/or adolescent, including provisions regarding visits.

With regard to custody, the best interest of children and adolescents will always be analyzed and weighed, so that the principle of affectivity is observed, and there is no preference or distinction arising from socio-affective or biological parentality. Moreover, "the best for the child and for the adolescent is to stay alongside the people with whom they have the most affinity, if several the judge can opt for shared custody, provided that there is a harmonious relationship between the parties" (SOUZA; FERNANDES, 2015).

In addition, by the drafting of art. 1,589 of the Civil Code, "the father or mother, in whose custody the children are not, may visit them and have them in their company, according to what they agree with the other spouse, or is fixed by the judge, as well as supervising their maintenance and education" (BRASIL, 2002). It should be emphasized that there should be no preference for the exercise of the right to visit a minor arising "from parenting being biological or affective, because what must be answered is the best interest of the child, remembering that such right is extensive, also, to grandparents, not only biological, but also, socio-affective" (CASSETARI, 2017, p. 127).

Already in this reasoning,

[...] the custody, due to the family power, must be established with observance of the precept of the best interest of the child and the adolescent and considering the desires of the minor whenever his age and maturity allow. Similarly, it occurs with the right of visits, which must meet the needs and interests of the child, considering the right of family coexistence. (VIEIRA, 2015, p. 94).

Therefore, the maintenance of the bond between parents and children, consequently, will confer the same treatment for all parents, in a way that, recognized the multiparentality, any relationship related to the child shall obey the same precepts concerning the normative system of the best interest of the minor and/or adolescent, including provisions regarding visits.

4.4 The Food

As demonstrated by the recognition of socio-affective affiliation, all relatives resulting from multiparentality integrate, indiscriminately, the family set of the child, given that kinship ties are extended. The obligation to provide food stems from family power, understood as the "complex of rights and duties as to the person and property of the child, exercised by the parents in the closest collaboration, and in equal conditions" (PEREIRA, 2015, p. 500). Consequently, "the family power would be incontrovertible, non-transferable, inalienable and imprescriptible, and may arise from natural parentality, legal affiliation and even socio-affective" (DIAS, 2017, p. 316).

Regarding family power, it is important to mention that its content

[...] it was modified with the current conception of the child as a subject of law and no longer an object of law, and should be performed in compliance with the best interest of the child and not more in accordance with the supremacy of the paternal will. That is, currently **the family power is seen as a power-function or right-duty**, being a personal right of the parents, but which is limited in the personality of the children, since it should serve their interests. (ELIAS, 2017, p. 54-55, our emphasis).

Thus, scholars such as Caio Mario da Silva Pereira, Maria Berenice Dias and Paulo Lôbo (ELIAS, 2017, p. 55) understand that the most appropriate nomenclature would be parental authority rather than family power, and "because it reflects less power and one more duty/munus of parents towards their children, as well as better representing the principle of full protection" (ELIAS, 2017, p. 55, our emphasis).

So, regarding the ownership and exercise of family power, art. 1.631 of the Civil Code disciplines that "during marriage and stable union, family power belongs to parents; in the absence or impediment of one of them, the other will exercise it exclusively" (BRASIL, 2002), since "diverging parents regarding the exercise of family power, it is assured to either of them resort to the judge to resolve the disagreement" (BRASIL, 2002).

Regarding the exercise of family power in reconstructed families, Paulo Lôbo argues that

[...] the parental authority of the parent remains intact. It could not the separate parent give up the family power to the detriment of the stepfather or stepmother, since, as highlighted, it is not the right available. There would only be the concentration of parental authority to the stepfathers and stepmothers in the face of a possible loss of family power, according to the legal hypotheses, followed by a unilateral adoption. (LÔBO, 2014, p. 81).

In fact, because of pluriparentality, there will be multiple parental authority, given that the exercise of family power by the socio-affective father/mother does not exclude the exercise of family power that must be played by the father/mother biological. It means that, in the face of the recognition of multiparentality, all rights and duties inherent to parental authority are applied to the related parents and must be exercised cumulatively, except in the cases of dismissal of the

parental authority (DIAS, 2017).

In this sense, if there is the simultaneous existence of a biological father/mother with socio-affective, only the loss or suspension of the family power will occur in the following hypotheses:

Art. 1.637. If the father, or the mother, abusing his/her authority, lacking the duties inherent to them or ruining the property of the children, it is up to the judge, requiring some relative, or the prosecution, to adopt as it may seem claimed by the safety of the minor and his/her possessions, until it suspending the family power, when it convenes.

Single paragraph. The exercise of family power is also suspended for the father or mother condemned of an unappeasable sentence, by virtue of a crime whose penalty exceeds two years in prison.

Art. 1,638. The family power shall be lost by judicial act to the father or mother:

I - punish immoderately the son;

II - leave the child in abandonment;

III - practicing acts contrary to morals and good manners;

IV - repeatedly in the absence provided for in the preceding article.

V - irregularly deliver the child to third parties for the purposes of adopting. (BRASIL, 2002).

Thus, as there is no differentiation of the origin of paternity and/or maternity socio-affective with the biological, the family power must be exercised by all parents in parallel and, likewise, the duty to provide food will also occur cumulatively, without distinction from the origin of first-degree ancestry. So, "can the relatives, spouses or companions ask each other the foods they need to live in a manner compatible with their social condition, including to meet the needs of their education" (BRASIL, 2002).

Therefore, as there is no differentiation regarding relations of kinship by affinity or by biological character, respected the binomial necessity and possibility, is due to the provision of food, because "the right to the provision of food is reciprocal between parents and children, and extended to all ascendants, redrawing the obligation in the closest to degree, one lacking from other" (BRASIL, 2002).

Besides that,

[...] the Federal Council of Justice (CJF) determines in its Statement 341 of the IV Journey of Civil Law that the socio-affective relationship can generate the food obligation, nowadays there are several judicial decisions that have acknowledged this obligation, and will occur with multiparentality, since its basis is in the socio-affective bond. (CASSETTARI, 2017, p. 210).

In this respect, the Court of Justice of the State of Minas Gerais, before the consolidated understanding by the CNJ through Proceeding N. 63, of 2017, had already delivered a decision establishing the payment of alimony due to the affinity, whose summary was replaced by the following:

Family Right – Food – request made by the stepdaughter – Art. 1,595 Civil Code – Existence of kinship – Passive Legitimacy. The current Civil Code considers that people linked by affinity bonds are related to each other, which is evidenced by the use of the phrase "kinship by affinity" in the 1st paragraph of its article 1,595. Article 1,694, which deals with the food obligation due to kinship, does not distinguish between consanguineous relatives and related (TJMG. AP. civil 1.0024.04.533394 -5/001 (1); 4th C.C., Des. Moreira Diniz; Pub. 10.25.2005).

Further, due to the alteration in the family tree of the individual,

[...] there is also an increase in the cast of people who can provide food, since art. 1,694 of the Civil Code determines in a broad way that relatives can plead food to each other. The food obligation will work identically to what occurs in the relationships of biparentality, with observance of the binomial necessity/possibility and existence of reciprocity of the obligation between parents and children. (VIEIRA, 2015, p. 94).

By these prepositions, it is inferred that there is no differentiation regarding the duty to provide food by the biological and affective parents, given the equation of the state of affiliation, all of which are solidarity with the obligation to feed. This is because, recognized the multiparentality, the right to plead for food will be extended to the recognized son, so that he can "plead his right, to the extent of his need. This right is an unfolding of the principle of legal equality between children and non-discrimination. That is, the right to food would be a consequence of the recognized multiparental affiliation". (PAIANO, 2017, p. 151).

In addition, in the face of the lack of specific normative rules that regulate the relationships of plural kinship, in the case of pluriparentality, the same devices governing the singular relationships, provided for in the legal planning. And therefore, "it is clear that the rules of articles 1,694 and below of the Civil Code are also applicable to multiparentality, and the child may demand food from any of his/her parents, whether biological or socio-affective, to the extent of his need" (PAIANO, 2017, p. 89).

Therefore, in the face of multiple affiliation, it follows that the child remains entitled to

[...] claim food from the socio-affective father, since it is the duty of the parental functions to provide food, not nulling the responsibility of the biological father, which would persist concomitantly and complementing the food fund or even as a result of an impossibility of the affective parents. (ELIAS, 2017, p. 63).

Thus, it is inferred that, when recognizing the state of affective affiliation, the food obligation will be exercised among the relatives indiscriminate, and, specifically on the child, it may demand the food of both parents in a solidary manner, the binomial of necessity and possibility when it is fixed. This should also apply to multiparental families, "mutual solidarity between parents and children, which implies a food responsibility of children to parents (biological and/or affective), irrespective of how many are" (ELIAS, 2017, p. 65).

In view of what has been discriminated above, it is clearly inferred that the provision of

food from parents to children, as well as children to parents, and the other situations justifying such provision, corresponds to the same treatment conferred on the food obligations in general, so that there is no differentiation with regard to this treatment, because, as has been raised in this work, there is no alterity arising from the affiliation origin.

4.5 The Multi-heredity

The Constitution of the Federative Republic of Brazil of 1988 established full equality between the children, being that "the children, whether or not of the relationship of marriage, or by adoption, shall have the same rights and qualifications, prohibited any discriminatory designations related to the affiliation" (BRASIL, 1988). Similarly, art. 1,596 of the Civil Code confirmed this premise, which is why there is no impediment to the participation in succession due to the multiparentality (BRASIL, 2002).

In addition, the right to inheritance is a fundamental right of the human being and, as such, cannot suffer any restriction or discrimination, nor by virtue of the situations arising from the multiparentality. This premise is prescribed in art. 5th, item XXX, of CRFB/88, and is also supported by the infraconstitutional legislation, in the arts. 1,784 and 1,845, both from the Civil Code. It is therefore considered that there is no legal distinction between biological and socio-affective paternity, and, therefore, being recognized as multiparentality, at the time of the transmission of inheritance (*saisine*), all children have equal rights, figuring as a necessary heir of all parents who have.

The order of the hereditary vocation lies in the arts. 1,829 to 1,844 of the Civil Code and shall be followed without any distinction of kinship, whether biological or affective, with observance of the constitutional principles, among them, the principle of equality between children and of affectivity. Meantime, Lima (2011) discipline that

[...] the right to succession should be granted, because the socio-affective affiliation as previously demonstrated, generates legal effects by itself, provided that it is present in the relationship the name, the deal and the fame. The right should be subsisted even if there is no judicial recognition, and the death of the alleged father will be overcome. Thus, the judiciary is judged according to the specific case, protecting the paternal-filial relationship.

In the same reasoning, Zeno Veloso (203, p. 240) says that

[...] the succession is independent of the bond of kinship, but of the bond of love, because its relevance in the current society must make it follow the same succession rules in force in the Civil Code, where the descendants (in possible competition with the surviving spouse or companion) figure in the first class of call, and the closest ones exclude the most remote. There are, therefore, children of the deceased, they compete with each other in equal conditions, receiving each one by head their share of the hereditary share.

Tauã Lima Verdan Rangel (2016), corroborating this line of understanding, in his article titled "Multi-Heredity in succession law: reflections of multiparentality and the principle of

saisine”, recommends that

[...] with the recognition of multiparentality in the birth register, the children will have, in effect, all rights arising from a parental relationship. As regards non-equity rights – name, condition, kinship – these are already recognized and guaranteed by the legal framework. As regards property rights, it takes care to make some clarifications, especially with regard to the inheritance. In relation to inheritance law, there is no legal support for different treatment, thus admitting the possibility of multi-heredity establishing as many succession lines as the parents, but should have the caveat of not to establish multiparentality with exclusive views to meet the patrimonial interests.

Thus, in multiparentality there is the coexistence of affective and biological parental bonds with more than two people, and, in this sense, the socio-affective child is entitled to the inheritance of how many fathers or mothers have, being reciprocal such right to parents, since, in the absence of descendants, all parents will be heirs on an equal footing, competing with eventual surviving spouse.

In view of the arguments presented, it can be concluded that the socio-affective parents are equated to the biological parents in duties and rights in multiparentality, and all the succession rules will be applied with respect to all parents involved.

5 Conclusion

In view of the set of ideas presented in this article, in an optical perspective, it is verified that the family arrangements have undergone constant evolutions, as can be seen, especially with regard to the direct and excessive influence of the State on the institution analyzed. On the other hand, without embargoes, it is seen that contemporaneity is marked by the most varied ways of constituting a family in the Brazilian social context, clearly derived from the human conception itself about the narrowing of the bonds of parentality from families that rebuild themselves.

Thus, the advancement of the conception of the various forms of establishing a family entity, both by the State and by society, resulted in a dissention about the recognition of multiparentality in Brazil. This is because, as the contemporary family arrangements are – and can – be plural, multiparentality is shown to be the trustworthy reality experienced by society, which is why one cannot forget its recognition and, likewise, the protection of individuals living in such arrangements.

Therefore, according to the demonstration made in this work, the multiparentality, which relates to the possibility of coexistence of biological and affective affiliation to the child, is perfectly valid in the territory of the country when we consider the precepts constitutional. Moreover, with the edition of Proceeding N. 63, of 2017, of the CNJ, there is no longer the possibility of discussing the existence or not of multiple parentality, considering that, by this norm, double paternity and/or maternity consists, in fact, in the effectuation of precepts and

constitutional guarantees, which is why, the recognition of socio-affective paternity and/or maternity represents, unquestionably, the supremacy of the best interest of the child or adolescent.

In addition, as has been raised in this analysis, the recognition of the status of socio-affective affiliation may occur concomitantly with the biological affiliation, inexistent, based on the principle of isonomy, differentiation between the children, deserving highlight the legal consequences arising from the recognition of multiparentality.

Therefore, there is no doubt that any situations that relate to the state of affiliation should be interpreted in an indistinct manner, insofar as all duties, as well as all rights arising from the family relationship, such as the name, the extension of parentality, custody/visits and multi-heredity, should be conferred in a manner equitable.

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