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THE SLOWNESS OF THE JUDICIARY AND ITS IMPLICATIONS IN THE ADOPTION PROCESS IN BRAZIL

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ABSTRACT

The slowness of the Brazilian Judiciary has proven to be one of the main obstacles to the realization of the right to family life of thousands of children and adolescents in institutional care. The main objective of this article is to analyze the impacts of slow proceedings in the processing of adoption actions, relating this phenomenon to state inefficiency and the violation of fundamental principles, such as the best interest of the child, full protection and reasonable duration of the process. The methodology used was based on bibliographic and documentary research, based on scientific articles, specific legislation, official data extracted from the National Adoption and Foster Care System (SNA) and relevant judicial decisions, allowing a critical and interdisciplinary approach to the subject. The results indicate that, despite the legislative advances with the enactment of Laws No. 12,010/2009 and No. 13,509/2017 — which sought to optimize and reduce the deadlines in adoption procedures — there is still a scenario of excessive bureaucracy, deficiencies in the structure of the Childhood and Youth Courts, and lack of technical teams to analyze adoption applicants. Such a situation generates not only unjustifiable delays, but also affective and social frustrations for both the applicants and the minors fostered. The conclusion of the study reinforces the urgent need for institutional restructuring, continued training of legal operators and effective compliance with current rules, ensuring that adoption is a fast, safe instrument aimed at building permanent affective bonds, ensuring the full development of children and adolescents.

Keywords: Children. Vulnerability. Jurisdiction.

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INTRODUCTION

Adoption, as an exceptional and irrevocable measure of protection provided for in the Statute of the Child and Adolescent (ECA), is of notable importance in the Brazilian legal system, especially because it constitutes a mechanism capable of ensuring the right to family life for children and adolescents in vulnerable situations (Kramer; Nunes; Pena, 2020). However, despite legislative and institutional advances over the last decades, the adoption process in Brazil still faces structural and procedural obstacles that compromise its effectiveness, among which the slowness of the Judiciary stands out, recurrently.

The phenomenon of procedural slowness in adoption actions has caused significant practical and legal repercussions, since the processing time directly influences the formation of affective bonds, the psychological development of the adoptees and the implementation of the principle of the best interest of the child (Silva; Portes, 2021). Prolonged stay in shelters, without proper insertion in a definitive family nucleus, causes irreparable damage, making it urgent to reflect on the effectiveness of public policies and legal mechanisms aimed at speeding up these procedures.

The statistical reality reveals a worrying contradiction between the demand and the effectiveness of adoptions. According to data released by the National Council of Justice (CNJ), in October 2024, there were 4,935 children and adolescents available for adoption in Brazil, while 35,622 people were duly qualified to adopt (CNJ, 2024). Such mismatch shows that the obstacle does not lie in the absence of suitors, but in the procedural and bureaucratic barriers that delay the completion of the adoption, especially with regard to the removal of family power and the conduct of the pertinent judicial procedures.

Furthermore, it should be considered that the slowness of the Judiciary in adoption actions is not an isolated problem, but rather a reflection of a series of structural factors, including the insufficiency of specialized professionals in the Childhood and Youth Courts, the overload of lawsuits and the complexity of legal procedures (Deda; Wechinewsky, 2021). The impact of this reality transcends the procedural sphere, directly affecting the fundamental right of children to family life, provided for in the Federal Constitution and in the ECA, thus generating a systemic dysfunction that lacks critical and purposeful analysis.

In view of this scenario, the present research has as a guiding question: *How does the slowness of the Judiciary impact the adoption process in Brazil?* The main objective of the study is to examine the effects of this delay on the effectiveness of the adoption institute, in the light of the national legal system and the fundamental principles that govern the full protection of children and adolescents, proposing, in the end, reflections that can

contribute to the improvement of the justice system and the guarantee of the rights of this vulnerable public.

To achieve this objective, a qualitative methodology is adopted, based on bibliographic and documentary review. The research will comprise the analysis of scientific articles, legal provisions – especially the Statute of the Child and Adolescent and the Federal Constitution – as well as institutional documents and statistical data made available by official bodies, such as the National Council of Justice (CNJ). From this framework, it is intended to build a critical and reasoned study, capable of enriching the academic and legal debate on adoption in Brazil.

THE PRINCIPLE OF PROCEDURAL SPEED AND THE BEST INTEREST OF THE CHILD IN ADOPTION

The replacement of the old notion of "paternal power" by "parental authority" represents an important legal and social advance in the conception of family. The hierarchical model, in which power was exercised unilaterally by parents, was replaced by a structure of authority based on care, protection and affective coexistence. Paulo Lôbo (2018, p. 213) asserts that family authority should be understood as a set of reciprocal duties and rights, centered on promoting the full development of children and adolescents, safeguarding their dignity and progressive autonomy.

With the incorporation of the doctrine of full protection into the Brazilian legal system, the principle of the best interest of the child began to guide all administrative and judicial decisions that concern him. The Federal Constitution, in its article 227, establishes the joint duty of the family, society and the State to ensure, with absolute priority, the fundamental rights of children and adolescents. This constitutional protection is reflected in the Statute of the Child and Adolescent (ECA), which reinforces the exceptional nature of adoption, determining that this measure should be used only when all possibilities of family reintegration have been exhausted (Brasil, 1988).

Brazilian jurisprudence has given an increasingly protective interpretation to this principle. Edition No. 27 of the "Jurisprudence in Theses", published by the Superior Court of Justice in 2014, established the understanding that the best interest of the child must prevail over the chronological order of qualified in the National Adoption System (CNJ, 2019). This flexibility seeks to prevent bureaucratic formalities from preventing the formation of affective bonds and the placement of children and adolescents in stable and safe homes, respecting the specificity of each concrete case.

Procedural speed, in this context, proves to be an indispensable instrument for the realization of the best interest of the child. As Marinoni (1991) points out, time plays a decisive role in the judicial process, as he conceptualized procedural speed:

> [...] If time is the fundamental dimension in human life, it plays the same role in the process, not only because, as Carnelutti said, process is life, but also because, as the process tends to reach its moral end with the utmost promptness, the delay in its conclusion is always detrimental, especially to the poorest or weakest parts, which constitute the immense majority of our population. for whom the delay in receiving the restitution 24 of their small savings can represent psychological and economic anguish, family problems and, not infrequently, hunger and misery.

Especially when it comes to vulnerable populations. Slowness not only delays the resolution of disputes, but compromises the very justice of the decision, especially when it comes to the constitution of family ties. Mendes (2023, p. 2) reinforces that speed should guide the action of the Judiciary, establishing deadlines and parameters that lead the judge to the most efficient and appropriate response to the protection of fundamental rights.

In view of the various obstacles faced in the adoption procedures, part of the doctrine defends the relaxation of formal procedural criteria in favor of the best interest of the adoptee. Franco (2020, p. 6 and 28) argues that this relativization aims to overcome structural and bureaucratic obstacles, allowing the process to occur with greater fluidity and effectiveness. Souza (2020, p. 7), in turn, observes that this principle has been repeatedly adopted by the courts to justify non-compliance with the cadastral order, including in cases of intuitu personae adoption, as long as the well-being of the minor is preserved.

At the normative level, article 39 of the ECA reaffirms that adoption is irrevocable and should be used only when all alternatives for family reintegration have been exhausted. Paragraph 3 is clear in determining that, in the event of a conflict of interest, the rights and interests of the adoptee shall prevail. This guideline reinforces the idea that adoption should not be subjected to excessive formalisms when they prevent the effectiveness of the family bond, and that emotional stability, psychic development and the child's integral health should be prioritized. As Souza (2020, p. 13) argues, the affective bond with guardians or adopters should be considered a central element to ensure a dignified life for the minor.

In addition, it is important to emphasize that the speed in the adoption process does not imply negligence or superficiality in the analysis of the case, but rather in rationalization and efficiency of procedural acts. Delays must be combated not only because it represents a violation of the reasonable duration of the process (art. 5, LXXVIII, FC), but also because of its concrete effects on the lives of those involved, especially children who often wait for

years in institutional shelters. Adoption, being a protective measure and of public interest, requires swift, sensitive and committed judicial action with the real interests of minors.

It is concluded, therefore, that the principle of the best interest of the child, combined with procedural speed, constitutes one of the pillars of the legal system aimed at the protection of children and adolescents in Brazil. Adoption must be conducted efficiently, respecting legal procedures, but without allowing bureaucratic obstacles to delay or make it impossible to establish legitimate family ties. The Judiciary, in this sense, has the duty to adopt an active stance, guided not only by strict legality, but also by the constitutional values of the dignity of the human person and the absolute priority to the rights of children and adolescents.

STRUCTURE AND OPERATION OF THE ADOPTION PROCESS

From a legal point of view, adoption is configured as an institute that aims to formalize, by means of a judicial decision, the filiation bond between adopter and adoptee, even breaking the legal ties with the biological family. Arnaldo Rizzardo (2019, p. 471) explains that, in essence, adoption is a civil act that represents the acceptance of a third party as a child, which is consummated through a judicial pronouncement. It is, therefore, a legitimate way of building parenthood, based not on biology, but on affection and the full protection of children and adolescents.

The adoption procedure in Brazil obeys a detailed normative structure, especially provided for in the Statute of the Child and Adolescent and regulated by resolutions of the National Council of Justice. Adoption is free and begins at the Childhood and Youth Court of the district of residence of the interested party. It is necessary that the applicant is at least 18 years old, respecting the minimum difference of 16 years between him and the child to be adopted, regardless of his marital status (CNJ JUS, 2019). After the presentation of the mandatory documentation, the process goes to the Public Prosecutor's Office for analysis and, later, for psychosocial evaluation by an interdisciplinary technical team.

Once the evaluation phase is positively concluded, the applicant must participate in an adoption preparation program, which addresses legal, social and emotional aspects, aiming to provide subsidies for the conscious decision of adoptive parenthood (CNJ JUS, 2019). The approval of the qualification, based on the opinion of the Public Prosecutor's Office and the technical team, results in the insertion of the candidate's name in the National Adoption and Foster Care System (SNA), respecting the chronological order of qualification. From there, the active search for a compatible profile of child or adolescent

begins, and then the cohabitation stage can begin, an indispensable step before the adoption sentence.

The adoption process also includes the phase of approximation between adopter and adoptee, with judicial monitoring and technical staff. After the initial cohabitation, the adopter must file the adoption action, whose judicial decision must be issued within a maximum period of 120 days, extendable only once for an equal period (CNJ JUS, 2019). Although there is a legal provision for deadlines, forensic practice shows that slowness is one of the main obstacles to the success of the adoption process. The multiple steps, although necessary for legal certainty and child protection, can be sources of delay, especially when there is no adequate structure in the Judiciary.

Another relevant factor that directly interferes in the functioning of the adoption concerns the profile required by the applicants. According to data from the SNA (2021), most adopters express a preference for children up to three years of age, with about 25% exclusively wanting girls and there is still present, although declining, resistance to the adoption of black children. Such data show a mismatch between the profile sought and the profile of the children available for adoption, which contributes to the prolongation of the process. The selection of a very restrictive profile ends up excluding most adoptees, keeping them for long periods in foster care institutions.

The widely publicized case of the adoption of the children of the couple Bruno Gagliasso and Giovanna Ewbank illustrates the complexity of an international adoption process. The adoption of Titi and Bless, both originally from Malawi, involved diplomatic and legal procedures between the two countries, with Titi's case being the first of its kind between Brazil and Malawi. This type of process is even more bureaucratic and requires compliance with the laws of both states, in addition to respect for international conventions, such as the Hague Convention on Intercountry Adoption (CNN, 2025). Cases like this highlight the need for improvement and cooperation between jurisdictions to ensure the best interest of the adoptee.

Historically, the institute of adoption has gone through different conceptions, from Roman law to contemporary molds. Pereira (2019, p. 461) recalls that there were three forms of adoption in Roman law: one with post-mortem effects; another for asset transmission between adults; and one aimed at the protection of the disabled. In Brazil, the legislative evolution has moved towards valuing affection, protection of children and respect for human dignity. Currently, the process aims to meet the socio-affective function of filiation, placing the child at the center of judicial decisions, in line with the principle of the best interest of the child and adolescent.

Therefore, it can be stated that the adoption process in Brazil is legally structured to ensure security, legitimacy and full protection to the adoptee. However, the judicial slowness, combined with restrictive profile requirements on the part of the applicants, ends up compromising the effectiveness of the system. Although the current rules are in line with the constitutional principles of dignity and the absolute priority of children and adolescents, reality shows that it is urgent to promote improvements in the infrastructure of the Judiciary and in the formation of a more inclusive and conscious adoption culture. Thus, the adoption process can, in fact, fulfill its transformative role in the lives of thousands of children and adolescents who are waiting for a family.

BRAZILIAN LEGISLATION ON ADOPTION AND DELAY: ADVANCES AND CHALLENGES

Brazilian legislation regarding adoption has evolved with the purpose of consolidating the principle of the best interest of the child and adolescent, which is a fundamental hermeneutic vector for conducting the entire adoption procedure. With the enactment of Law No. 12,010/2009, called the Family Living Law, a regulatory framework aimed at the agility and effectiveness of processes was consolidated, despite the challenges that still persist.

This rule significantly changed provisions of the Statute of the Child and Adolescent (ECA), the Civil Code and the Consolidation of Labor Laws, creating guidelines to reduce the length of stay of children and adolescents in foster care institutions and prioritizing the right to family life, as highlighted by Gonçalves

> [...] establishes deadlines to speed up adoption processes, creates a national registry to facilitate the finding of children and adolescents in conditions to be adopted by qualified people, and limits the stay of children and young people in shelters to two years, extendable if necessary, (Gonçalves, 2019, p. 383).

In addition, Law No. 13,509/2017 brought relevant changes to the ECA, namely: Priority in the adoption queue, Periodic reassessment of the situation of foster children, Qualification for adoption and Periodic reassessment of qualified applicants, providing for express preferences for the adoption of groups of siblings, adolescents with disabilities, chronic diseases or specific health needs. This regulation seeks to give greater effectiveness to the adoption policy and prioritize situations of greater vulnerability, promoting procedural speed. As Mendes (2023) observes, the Judiciary support bodies, such as FONINJ and the Coordination of Childhood and Youth, play an essential role in the

control and monitoring of legal deadlines, which is essential for the effectiveness of the measures provided.

However, despite legislative advances, slowness is still a reality present in many adoption processes. Several factors contribute to this scenario, such as the scarcity of specialized courts for children and youth, the work overload of judges and technical teams, the insufficiency of trained professionals to carry out the required psychosocial studies, in addition to the slowness in the bureaucratic processing of the procedures. Added to this is the lack of integration between the bodies of the justice system and the reception services, which makes it difficult to make agile and reasoned decisions.

The Federal Constitution of 1988, in its article 5, item LXXVIII, guarantees everyone the reasonable duration of the process, which applies strongly to the acts of adoption. The unjustified delay in these processes directly affronts the dignity of children and adolescents who are waiting for a family. In the words of Maria Sylvia Zanella Di Pietro (2019, p. 831), the State can be held civilly liable whenever the public service "does not work, works late or works poorly", which certainly applies to situations in which the Judiciary is inefficient in completing the adoption procedures quickly.

By way of illustration, according to the National Council of Justice (CNJ), in 2018, more than 47 thousand children lived in shelters, with the highest concentration in the state of São Paulo (Lencioni, 2018). Maria Berenice Dias (2017, p. 106) criticizes this posture stating that "[...] The law imposes a huge amount of procedures in an attempt to make her give up her intent, which only aggravates the bitter taste of the act she needs to perform."

With regard to the legal structure, article 42 of the ECA establishes that only people over eighteen years of age can adopt, regardless of marital status, as long as there is a minimum difference of sixteen years between adopter and adoptee (Brasil, 1990). Once the qualification stage is over, the judicial process of adoption can be followed by provisional custody, which becomes definitive if the judge issues a sentence in favor of the adoption (Gigante, 2018). This procedure, although designed to protect the interests of the child, sometimes encounters practical obstacles that unduly delay its conclusion.

Jurisprudence has also reinforced the understanding that the priority is the well-being of the minor. In the judgment of Civil Appeal No. 0900061-85.2019.8.24.0045, the Court of Justice of Santa Catarina upheld a first-degree sentence that removed the parents' family power, authorizing the referral of the child for adoption, based on the primacy of the best interest of the child (TJSC, 2020). This position is in line with the majority doctrine that recognizes adoptive filiation as a legal and affective bond, distinct from the biological one, but with equal legal and social value (Venosa, 2019, p. 309).

Despite the favorable legislative framework, the current scenario is still marked by bureaucratic obstacles, scarcity of interdisciplinary teams and insufficient infrastructure in the children's courts. This contributes to the mismatch between the number of qualified adopters and the number of children effectively adopted. Compliance with the legal deadline of 120 days for the conclusion of the adoption process, provided for in the National Adoption Law, is often not observed, which compromises the effectiveness of the system (Brasil, 2009).

Given this panorama, it is notorious that the Brazilian legal system has made significant advances in the standardization of adoption, but the slowness is still one of the greatest challenges to its implementation. The legal structure is robust and guided by protective principles, however, its application comes up against operational factors that compromise the effectiveness of the public adoption policy. It is therefore urgent that the Judiciary, together with the other entities of the child protection network, promote the rationalization of procedures, invest in structure and training, and strictly observe the principle of speed, in order to ensure that each child or adolescent finds, with dignity and brevity, the fundamental right to a family.

FINAL CONSIDERATIONS

In view of the analysis carried out, it is possible to affirm that this article achieved its main objective, by demonstrating how the slowness of the Judiciary directly impacts the realization of the fundamental right to family life of children and adolescents. Brazilian legislation has a sufficient normative framework, with protective principles such as absolute priority, full protection and procedural speed, enshrined in the Constitution and in the Statute of the Child and Adolescent (ECA). However, it was observed that the slowness in the processing of adoption processes directly affronts these precepts, especially when analyzing cases in which prolonged stay in shelters compromises the integral development of minors.

It was also found that, although Laws No. 12,010/2009 and No. 13,509/2017 have introduced legal mechanisms aimed at reducing bureaucracy and reducing procedural time, such as the creation of national registries and the establishment of legal deadlines, such measures, in practice, still encounter structural obstacles. The limited performance of interprofessional technical teams, the scarcity of human resources in the Childhood and Youth Courts, and the legal culture still guided by excessive formalisms contribute to the prolongation of the procedures. As Di Pietro (2019, p. 831) teaches, the State responds

civilly when the public service does not work, works late, or inadequately — a hypothesis often observed in the conduct of adoption processes.

Through the legislative, doctrinal and jurisprudential approach developed in this study, it was evidenced that judicial slowness collides head-on with the principle of reasonable duration of the process, provided for in article 5, item LXXVIII, of the Federal Constitution. When the Judiciary fails to promote the swift and effective processing of adoption processes, it not only disrespects a constitutional command, but also perpetuates the undue institutionalization of children waiting for a family. As pointed out by Maria Berenice Dias (2017), procrastination procedures often impose unnecessary suffering on infants and applicants for adoption, making the system ineffective in what matters most: guaranteeing dignity and family affection to the adoptee.

Therefore, it is concluded that combating the slowness in adoption processes should be an institutional priority, requiring integrated administrative, legislative and judicial measures. Adoption, as an exceptional and irrevocable measure, must be fast, safe and guided by the best interest of the child, according to the legal provisions analyzed and the guiding principles of the law of children and youth. Overcoming operational challenges and making legal advances effective depends on the commitment of the State, especially the Judiciary, which needs to reaffirm its role as guarantor of fundamental rights. Thus, it is reaffirmed that the objectives of this article were fully achieved, by identifying the obstacles to slowness and proposing ways to overcome them, in favor of a more humanized, agile and fair adoption system.

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