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SOCIAL NAME AND THE PROTECTION OF THE RIGHT TO PERSONALITY IN THE PROTOCOL FOR JUDGMENT WITH A GENDER PERSPECTIVE AS A REPERCUSSION OF THE DECISION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN BRAZIL

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ABSTRACT

The right to a name is intrinsically linked to ancestry, self-determination and the dignity of the human person. For a long time, the name was somewhat immutable. One was born and died with the name designated by the ancestors. However, with the evolution of society and interpersonal relationships, the name, in some cases, has become a kind of 'prison of the human personality'. This is because he attached himself to a physical image, disregarding how a person recognizes himself within a gender perspective. It is in this context that the law began to protect the use of the social name. Although there are legal provisions that guarantee the change of name under this bias, Brazilian society is still hostage to patriarchal and discriminatory ties that prevent the exercise of this right. It is in this sense that the social name was sheltered by the Protocol for Judgment with a Gender Perspective, created in 2021 by the National Council of Justice (CNJ). This instrument intends to guide judges in their sentences, always taking into account the violence resulting from the violation of human rights based on gender discrimination. Thus, through a documentary analysis, this article intends to assess how Brazilian legislation safeguards this right, how the protection of the social name is given within the scope of the Protocol, as well as to analyze the position of the Inter-American Court of Human Rights (IACHR Court) on the subject. With this, it is expected to demonstrate the importance and scope of the Protocol for the promotion of such a crucial right to the self-determination of the human person.

Keywords: National Council of Justice. Inter-American Court of Human Rights. Personality Law. Discrimination. Social name.

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INTRODUCTION

The social name is one of the newest personality rights, when it comes to a right protected by the Brazilian legal system.

This right began to be fully enshrined in Brazilian legislation from the New Civil Code of 2002, when its Article 16, in its own chapter dedicated to personality rights, proclaimed that everyone has the right to a name, including the first name and surname.

It was based on the recognition of the right to the name as a right of personality that Decree 8727/2016 instituted the social name within the scope of the federal public administration, which, consequently, began to support judicial decisions in favor of people who began to provoke the judiciary to be able to adopt the social name.

Shortly after, in 2018, in the judgment of Direct Action of Unconstitutionality (ADI) 4275, the Federal Supreme Court recognized that the right to a first name is a "fundamental right to the free development of personality" (STF, 2018).

Also in 2018, the Superior Electoral Court (TSE) authorized transvestites and transsexuals to use their social name on their voter cards. That year, 7,945 people across the country requested the change of their birth name to their social name. And it didn't stop there. According to data from the TSE itself, in the 2022 general elections, 37,646 people started using their social name on their electoral documents, an increase of 373%. (TSE, 2023).

It should be noted that, in the absence of a federal law that would bring this right to all people in all social segments, the judiciary began to create mechanisms for the protection of the right to a social name, a right that ends up contributing to the full development of the personality of people who have always been tied to a registered name that was assigned to them at birth.

States and municipalities also create mechanisms and isolated actions throughout the country to promote and protect this right, such as Opinion No. 06/2022, of the Paraná State Department of Education, which authorizes the exchange of the birth name for the social name in students' school records. However, these actions are still not enough to crystallize the right to a social name in the country.

Even the right provided for in Decree 8727/2016, which authorizes the use of the social name in the federal public administration, runs the risk of ceasing to exist due to a formal error when it is approved.

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In progress in the Federal Chamber, the Legislative Decree Project (PDC) 395/16 intends to suspend the effects of Decree 8727/2016, which recognizes the gender identity of transvestite and transsexual people and their right to use their social name. According to the proposal, such a right should have been approved by ordinary law and not by presidential decree.

While the Brazilian legislator does not technically and unrestrictedly define how the domestic system will safeguard such a guarantee, the National Council of Justice (CNJ) inserted the right to use the social name in its Protocol for Judgment with a Gender Perspective.

Created in 2021, the Protocol provides guidelines for judges and bodies that work in the administration of justice, so that processes and judgments in the most varied branches of public and private law are guided with a view to the right to gender equality, removing stereotypes and overturning prejudices.

It should be noted that this protocol was created after the condemnation of Brazil by the Inter-American Court of Human Rights (IACHR Court), in the case of Márcia Barbosa de Souza vs. Brazil, in which the country was convicted of leniency in a case of femicide committed by a politician. Enjoying parliamentary immunity and the slowness of justice to judge the case, he died without being punished. The Court understood that there was gender discrimination in the conduct of the process.

In this aspect, would the Protocol have such a reach as to change mentalities and actually promote the right to use the social name in the country? This is one of the objects of this research.

To this end, in a first session, the study will demonstrate how the social name is housed under the umbrella of personality rights, in addition to analyzing how this right entered the CNJ Protocol. This analysis is contained in the second chapter, which will also demonstrate the differences and the overlap between fundamental rights and personality rights, and how the right to a social name is shaped by the latter.

To achieve the expected result, it will also be necessary to examine Brazil's conviction in the Márcia Barbosa de Souza case, which gave rise to the Protocol for Judgment with a Gender Perspective. The case study is part of the third chapter of the research, in which the influence of the decision of the Inter-American Court of Human Rights on the Brazilian judiciary will be analyzed with regard to gender issues, especially the right to a social name.

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In the fourth chapter, Advisory Opinion No. 24 of the Inter-American Court of Human Rights will be analyzed. The objective of this analysis is to verify how the Inter-American Court of Human Rights positions itself on the social name and how this right has become a human rights standard. This study is fundamental to achieve the objectives of the research, given that the Court's jurisprudence ends up exercising cogent power among the States Parties.

The research will also analyze how the CNJ's Sentence Bank, created to disseminate decisions rendered by magistrates from all over the country, in the most varied branches of law, with the Protocol as a reference, can contribute to bringing information to society and lead to a change in society's posture in confronting prejudice and gender violence.

The study about the Sentence Bank is found in the last chapter, which also brings, as a subtopic, the analysis of a concrete case that created the first jurisprudence dealing with the right to use the social name under the mantle of the Protocol for Judgment for Judgment with a Gender Perspective.

It is hoped, therefore, that the study can shed light on this very important right, but still incipient in the country, contributing to society becoming more and more open and welcoming people who want to assert the right to be identified by a name that represents them as they actually see themselves and recognize themselves socially.

THE SOCIAL NAME AS A RIGHT OF PERSONALITY

The social name is one of the most recent personality rights. This is because these rights are constantly developing and emerge as society evolves.

It is in this sense that Carlos Alberto Bittar (2015) walks, for whom the range of personality rights cannot be inflexible, since they are necessary to satisfy the guarantees of human beings in their interpersonal relationships:

> As observed, these rights refer, on the one hand, to the person himself (as an individual entity, with his physical and intellectual heritage), and, on the other hand, to his position before other beings in society (moral heritage), representing, respectively, the person's way of being and his projections in the collectivity (as a social entity) (Bittar, p. 49, 2015).

The right to a social name derives from the right to a name, and emerges from the Civil Code of 2002, which declines in its Article 16, that "Every person has the right to a name, including the first name and the surname" (Civil Code, 2022).

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According to Bittar (2015), personality rights emerged from Christianity, which built the principle of human dignity, passing through the School of Natural Law, which placed natural rights as inherent to the human essence itself, and crystallized with the Enlightenment theorists, who elevated man to the quality of being of rights, as opposed to the State.

From then on, these rights came to be consolidated in the declarations of human rights present in the emancipatory movements, as occurred in the French and American declarations, culminating in an internationalization of these rights, with the UN Charter, in 1948.

In Brazil, personality rights were enforced in the Civil Code of 1916, but in a dispersed and fragmentary way, according to Bittar (2015). Also according to the theorist, some categories such as author's rights were even standardized and systematized in that code, but most of the personality rights that are known today did not have any protection.

It was in the wake of the Federal Constitution of 1988, based on the prescription of a series of guarantees and fundamental rights, that personality rights began to be systematized in the Civil Code, in federal laws and sparse documents.

For Bittar (2015), fundamental and personality rights are intertwined when thinking about a conjunction of individual rights. However, the latter are more focused on interpersonal relationships, in the private sphere, while the former converge on the protection of the individual against the state apparatus, as can be seen from the excerpt below:

> [...] on the one hand, the "human rights" or "fundamental rights" of the natural person, as the object of public law relations, for the purpose of protecting the individual against the State. This category usually includes the rights: to life; physical integrity; to the parts of the body; freedom; the right of action. On the other hand, the same rights are considered "personality rights", but from the angle of relations between individuals, that is, protection against other men. In this step, generally, the rights are inserted: to honor, to name; to one's own image; freedom of expression of thought; freedom of conscience and religion; to the reserve about one's own intimacy; to secrecy: and the moral right of the author, along with others (Bittar, 2015, p. 56).

From the understanding of Bittar's work, it can be inferred, therefore, that personality rights are rights that emerge from fundamental rights, moving away from a subjective orbit, proper to fundamental rights, to materialize in a material, normalized orbit. Personality rights, therefore, are social constructs that take shape from an ethical interpretation of

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individuality. Therefore, they can be enforced in interpersonal relationships, as attested by Bittar (2015):

> In personality rights, the person is, at the same time, a subject and object of rights, with the collectivity remaining, in its generality, as a passive subject; Hence it is said that these rights are enforceable erga omnes (and, therefore, must be respected by all members of the collectivity). It is, therefore, a relationship of exclusion, which imposes on everyone the observance and respect for each person, in its aforementioned components, under penalty of sanction by the legal system (Bittar, p. 65, 2015).

As personality rights are not all positive, as it is an open category of rights, since they arise from the need to protect and guarantee human individualities, many of these rights have been constructed by jurisprudence and the courts, in response to the demands of society, according to the understanding of Bittar (2015):

> [...] These rights constitute praetorian creation. It is in the courts that they have been taking shape. Jurisprudence has sought to deduce the principles and common characteristics of the different rights, in order to establish them and enable their systematization (Bittar, p. 67, 2015).

Within this perspective, it is clear that the character of erga *omnis enforceability* is a basic principle of personality rights, especially with regard to the right to use the social name. When a person does not see himself, does not recognize himself and is not even identified in his social relations by his birth name, it is a right that can be enforced *erga omnes* to exchange the birth name for the social name. It remains for third parties to recognize this faculty.

In this aspect, it is perceived that personality rights are rights that accompany the individual and as they are linked to image, honor, otherness, dignity and depend on the personal will of the entity to emerge, they are rights linked to the human condition itself, as Bittar (2015) teaches:

> [...] Personality rights are the rights that transcend, therefore, the positive legal system, because they are inherent to the very nature of man, as an entity endowed with personality. Intimately linked to the human condition, for its legal protection, independent of an immediate relationship with the outside world or another person, they are intangible, de lege lata, by the State or by private individuals (Bittar, p. 43, 2015).

Pursuant to Article 11 of the Civil Code of 2002, except in the cases provided for by law, personality rights are non-transferable and non-waivable, and cannot be restricted, except in cases provided for by law. Thus, the right to a social name, as an intrinsic right of

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the human person, should not be restricted and, if so, the judiciary should intervene for it to be effective.

THE INFLUENCE OF INTERNATIONAL JURISPRUDENCE IN THE CREATION OF THE PROTOCOL FOR JUDGMENT FROM A GENDER PERSPECTIVE IN BRAZIL

The Protocol for Trial with a Gender Perspective determines that judges of national courts must always take into account in their judgments the gender conditions of the people involved, in order to avoid prejudice and discrimination.

The document created by the National Council of Justice (CNJ) in 2021 was inspired by other protocols of member countries of the Organization of American States, such as the Mexican Protocol, created in 2013.

The guidelines of the Brazilian Protocol were created by Resolution No. 492/2023, in line with the Sustainable Development Goals (SDGs) of the 2030 Agenda of the United Nations, more specifically with regard to items 5, which aims to achieve gender equality, and 16, with a view to promoting peaceful and inclusive societies.

According to the CNJ resolution, courts throughout the country must create and apply initial and continuing training courses to magistrates and justice officials that address topics related to human rights, gender, race and ethnicity, according to the guidelines of the Protocol.

And in order not to remain only in the field of good intentions, the resolution also creates the Monitoring and Training Committee on Judgment with a Gender Perspective. Under the terms of the resolution, courts will be required to submit annual reports demonstrating what is being done to enable the judiciary to take a fresh look at gender issues.

Courts must also provide access to the external community to the Protocol for Trial with a Gender Perspective, either through information campaigns or through texts and other materials made available in their offices or websites.

The Protocol thus emerges as an important instrument to cool down the deep-rooted patriarchal structures of Brazilian society, which result in antipathy and prejudice against women and transgender people.

However, the Protocol for Judgment with a Gender Perspective emerged not as a freely designed instrument to promote gender equality, to open minds and promote a culture of peace and inclusion.

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The Protocol was born from a condemnation of Brazil before the Inter-American Court of Human Rights (IACHR Court), the highest body for the protection of fundamental rights and personality in the American continent. It is the conviction for the Brazilian State's failure to prosecute and judge those guilty of the death of Márcia Barbosa de Souza, the country's first conviction for a crime of femicide in the Inter-American Court.

MÁRCIA BARBOSA DE SOUZA CASE *VERSUS* BRAZIL: A PARADIGM IN THE FIGHT AGAINST GENDER VIOLENCE

According to the report that supported the sentence of the Inter-American Court of Human Rights that condemned Brazil, Márcia Barbosa de Souza, a 20-year-old black student, poor, resident of Cajazeiras, in the interior of Paraíba, had moved to the capital João Pessoa, in order to get a job and help her family. It was in the state capital that she met the state deputy of Paraíba, Aércio Pereira de Lima.

The report also points out that Márcia lived in a hotel-inn, when on June 17, 1998, around 7 pm, she was invited by the deputy to go out with him. The next day, a person saw a man taking Márcia's body out of the trunk of a car.

Márcia was violently beaten and asphyxiated. The Public Prosecutor's Office denounced Pereira de Lima for double homicide and concealment of a corpse. Four other people were also denounced on suspicion of participating in Márcia's death.

Due to parliamentary immunity, the Attorney General's Office of Paraíba sent the case to the Court of Justice on October 8, 1998. The TJ notified the State Assembly twice, in November 1998 and March 1999, to authorize the processing of the lawsuit against the parliamentarian. Both times, the request was denied.

As Pereira de Lima was not re-elected, losing his parliamentary immunity, in February 2003 the case was sent for trial in the first instance. On July 27, 2005, the court determined that the then former deputy be tried by the Court of Jury.

New appeals were filed until the case reached the Superior Court of Justice, in 2007, which determined that the trial be held. Pereira Lima was then sentenced to 16 years in prison, on September 26, 2007.

The former deputy's defense appealed and, still awaiting the decision of the appeal, he died of a heart attack on February 12, 2008, and the process was closed without him paying for the crime he committed, according to the Inter-American Court of Human Rights report.

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The Commission on Human Rights submitted the case to the Court in July 2019, and in September 2021, the sentence was handed down, which decided that Brazil violated judicial rights and guarantees, in addition to the right to equality before the law and judicial protection, as well as the right to personal integrity.

As a result, the country was ordered to carry out an act of recognition of international responsibility for the facts, in addition to monetarily compensating the victim's direct relatives. The State also committed to reviewing the criteria for parliamentary immunity in cases of human rights violations.

Brazil was also ordered to create a database on cases of femicides and a national protocol for the investigation of these cases, in addition to instituting a plan for training, training and awareness on gender and race issues for security forces and justice operators, as observed in the excerpt from the sentence:

> [...] order the State to create and implement, within two years, a plan for training and continuing training and sensitization of the police forces responsible for the investigation and justice operators of the State of Paraíba, with a gender and race perspective, to ensure that they have the necessary knowledge to identify acts and manifestations of gender-based violence against women, and investigate and prosecute perpetrators, including by providing tools and training on technical and legal aspects of this type of crime (Inter-American Court, p. 56, 2021).

Therefore, it is clear that the Court's decision creates a paradigm, paving the way not only for the protection of women victims of violence, but also for combating the perpetration of any type of discrimination that threatens the dignity of the human person, according to the understanding of the sentence handed down by the Court:

> With regard to the principle of equality before the law and non-discrimination, the Court has indicated that the notion of equality derives directly from the unity of nature of the human race and is inseparable from the essential dignity of the person, in the face of which any situation is incompatible which, because it considers it superior to a given group, leads to treating it with privilege; or that, on the contrary, because it considers him inferior, treats him with hostility or discriminates in any way in the enjoyment of rights recognized to those who are not considered to be included in that situation. At the current stage of the evolution of international law, the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens*. On it rests the legal framework of national and international public order and permeates the entire legal system. States must refrain from taking actions that, in any way, are directed, directly or indirectly, to create situations of de jure or de facto discrimination (Inter-American Court, p. 43, 2021).

It was from then on that the CNJ, in compliance with the decision of the Inter-American Court, created a working group and began a series of discussions involving

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members of the judiciary and organizations linked to the defense of women and other minorities with the aim of creating the Protocol for Trial with a Gender Perspective.

According to the CNJ, the Protocol is aimed mainly at magistrates, who should start judging "under the lens of gender, advancing in the effectiveness of equality and equity policies". (CNJ, p. 14, 2021).

The idea is to make the Brazilian judiciary act effectively in combating stereotypes and promoting equality, as shown in the preface of the document:

> This instrument brings theoretical considerations on the issue of equality and also a guide so that the judgments that occur in the various areas of Justice can be those that realize the right to equality and non-discrimination of all people, so that the exercise of the jurisdictional function takes place in a way that materializes a role of non-repetition of stereotypes, of non-perpetuation of differences, constituting a space for breaking with cultures of discrimination and prejudice (CNJ, p. 7, 2021).

To guide judicial professionals, the protocol brings, first, concepts about sex, sexuality, gender and gender identity.

To support its arguments about the protection of rights related to gender issues, the document discusses constitutional principles, understandings of the Inter-American Court of Human Rights and decisions of the STF, such as ADI 4.275, which authorized people to change their civil names without the need to undergo sex reassignment surgery, and ADPF 527, which guaranteed the transfer of transsexual women to women's prisons.

The Protocol also brings scientific data that point to the need for a document that guides judges to observe concrete cases under the lens of gender. Among the data cited by the CNJ is the analysis by the Institute of Applied Economic Research (Ipea), which demonstrates the perpetuation of gender prejudice in Brazilian culture:

> The Institute of Applied Economic Research (Ipea) reported in November 2019 that, of the more than 6 million Brazilians who dedicate themselves to domestic work, 92% are women – mostly black (63% of the total), with low education and from low-income families. These data are the result of the legacy of slavery, as pointed out by Ipea, of a traditionally patriarchal society, and of the significant income inequality in Brazil (CNJ, p. 24, 2021).

In terms of guidance to magistrates, the Protocol recommends that they make extensive use of the principle of equality when faced with cases involving gender issues, as observed below:

> The use of the principle of equality is often associated with major constitutional demands. In general, in concentrated control actions, aimed at declaring the unconstitutionality of rules. Its use, however, is not limited to the declaration of

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> unconstitutionality. It is also possible to apply the principle of equality in day-to-day decisions, as an analytical tool and interpretative guide for gender-conscious decisions (CNJ, p. 39, 2021).

The Protocol also offers a step-by-step guide for the judge with points inherent to judgments from a gender perspective, ranging from the first approximation to the process, through the approximation of the procedural subjects, through the special protection measures to the procedural instruction.

In addition to the Constitution and domestic norms, the Protocol recommends that judges pay attention to the application of international precedents "that relate to the case under analysis, as well as recommendations, advisory opinions or general observations issued by regional and international organizations for the protection of rights." (CNJ, p. 49, 2021).

With regard to the right to use the social name within the scope of the Protocol, it appears explicitly in the discussion about the treatment of the LGBTQIA+ prison population, who, when serving their custodial or rights-restricting sentences, may choose to use their social name, under the terms of Resolution 348/2020, of the National Council of Justice, and according to the understanding of the STF when judging ADI 4.275.

The Protocol also guides judges on the need to reduce bureaucracy in the request for the use of the social name. To this end, the Protocol suggests that judges follow Provision 73/2018, of the CNJ, which enables the change of the first name and gender in the administrative way, quickly and without costs:

> It is important to emphasize that judicial action in ordinary and extraordinary correction must ensure the effective application of the provision, preventing requests for documentation that cause an embarrassment to the exercise of the right to change, as well as ensuring that the change is free of charge for those who cannot afford the costs of the registration (CNJ, p. 101, 2021).

The Protocol also regulates that access to health services for the LGBTQIA+ population must respect gender issues. According to the text, it is the right of this population to demand care using the social name in health units even if the name change has not yet been carried out.

Under the terms of the Protocol, the lack of specific and specific laws that universally regulate the use of the social name cannot create obstacles to the promotion of equality and the guarantee of individual rights.

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If there is a gap in the domestic system that guarantees unrestricted access to this right, the judge must resort to international documents to which the country is bound, as is the case with the jurisprudence and advisory opinions of the Inter-American Court of Human Rights. This is because, according to the Pact of San José de Costa Rica, every judge of a State Party is an international judge.

SOCIAL NAME AS *A HUMAN RIGHTS STANDARD*: ADVISORY OPINION NO. 24, OF THE INTER-AMERICAN COURT

Beyond the categorizations created by the doctrine, many of them differentiating personality rights and human rights, when analyzing the American Convention on Human Rights, it is possible to see that there is no distinction between these rights.

So much so that the right to a name, considered one of the most recent personality rights, appears in chapter II of the Convention, which is reserved for civil and political rights, that is, alongside rights considered purely as human rights, such as the right to physical integrity. Article 18 of the Convention states: "Everyone has the right to a first name and to the names of his or her parents or to that of one of them. The law must regulate the way to ensure all these rights, through fictitious names, if necessary" (OAS, 1969).

It should be noted that the States Parties must submit to the Convention, under penalty of punishment within the scope of the Inter-American Court of Human Rights, according to Article 1 of the text ratified by the American States:

> The States Parties to this Convention undertake to respect the rights and freedoms recognized therein and to guarantee their free and full exercise to all persons subject to their jurisdiction, without discrimination on grounds of race, color, sex, language, religion, political or other opinions, national or social origin, economic position, birth, or any other condition (OAS, 1969).

It was in this context that the Republic of Costa Rica, a signatory country to the convention, sought the Inter-American Court of Human Rights in May 2016 to find out whether its domestic law could be adequate to define new legal parameters under the terms of the Convention in order to guarantee the right to change one's name from a gender perspective.

According to Costa Rican law, in order for a person to change their name, a judicial authorization was required. Not without first officiating the Public Prosecutor's Office to express its opinion on the request, which should also be published in an official State

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organ, with 15 (fifteen) days to present oppositions. If everything is correct and there is no opposition to the request, the name change would still depend on the presentation of a certificate of good criminal record by the applicant. (Inter-American Court of Human Rights, 2017, p. 65).

Before going into the merits of the Court's position on the matter, it is necessary to clarify the scope of the Court's advisory opinion, that is, whether this interpretative work serves only to elucidate a controversial issue about human rights, or whether this position contains a binding bias.

According to the jurisprudence created by the Court, advisory opinions are binding on the States Parties, since they represent the body's own 'opinion' in relation to human rights matters, and also serve as a cornerstone for the control of conventionality in any case of incompatibility between the text of the Convention and the domestic legal systems of its signatories:

> [...] when a State is a party to an international treaty, such as the American Convention, this treaty binds all its organs, including the judiciary and the legislature, so that the violation by any of these organs generates international responsibility for the State. It is for this reason that the Court considers it necessary for the various organs of the State to carry out the corresponding control of conventionality, also in relation to what is indicated in the exercise of their non-contentious or advisory competence, which undeniably shares with their contentious competence, the purpose of the inter-American human rights system, which is the protection of the fundamental rights of human beings" (Inter-American Court, 2017, p. 14).

Regarding the consultation requested by the Costa Rican government, the Court clarifies that gender identity is an internal and individual situation and that, therefore, it does not need to be linked solely to birth registration, "Gender identity is a broad concept that creates space for self-identification, and that refers to the experience that a person has of his or her own gender" (Inter-American Court, 2017, p. 16).

Thus, in the Court's opinion, the free and informed consent of the applicant would be sufficient for the change of name, without the need to prove surgical or hormonal interventions for the classification of male or female gender, an understanding followed by the Brazilian Supreme Court in the judgment of ADI 4.275/2018:

> [...] upholding the action to interpret article 58 of Law 6.015/73 in accordance with the Constitution and the Pact of San José, Costa Rica, in order to recognize transgender people who so wish, regardless of gender reassignment surgery, or the performance of hormonal or pathologizing treatments, the right to replace their first name and sex directly in the civil registry" (ADI 4.275/2018).

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Under the terms of Advisory Opinion 24, the Inter-American Court of Human Rights understands that, unlike Costa Rican law, which prioritized only the judicial process to obtain the right to change one's name from a gender perspective, the ideal is that these procedures be carried out through administrative or notarial means, which makes the measure less bureaucratic, faster and cheaper. This is when the state cannot offer this service for free.

In the understanding of the Inter-American Court, if the path chosen by the state is judicial, it must be merely declaratory, with no room for "oppositions from third parties and the Public Prosecutor's Office". (Inter-American Court of Human Rights, 2017, p. 67).

With regard to the publication of the request, as recommended by Costa Rican law, the Court understands that the measure directly violates the right to privacy. According to the advisory opinion, this unwanted disclosure may place the applicant in a position of greater vulnerability to acts of discrimination.

Still responding to the government of Costa Rica, the Court reported that the name is directly linked to the development of personality and private life, therefore rights closely related to the very identity of the human being.

And it is on the basis of this identity that, according to the understanding of the opinion issued by the Court, human dignity, the right to privacy and autonomy emerge.

Therefore, for the Inter-American Court, the social name is more than a right of personality. It is a fundamental right:

> […] The name as an attribute of personality is an expression of individuality and aims to affirm a person's identity before society and in actions before the State. This seeks to ensure that each person has a unique and singular sign in front of others, with which they can identify and recognize themselves as such. It is a fundamental right inherent to all people by the simple fact of their existence. In addition, this Court has indicated that the right to a name recognized in Article 18 of the Convention and also in various international instruments, constitutes a basic and indispensable element of the identity of each person, without which it cannot be recognized by society or registered with the State" (Inter-American Court, 2017, p. 48).

Thus, for the Court, when the change of name is prevented, the exercise of a fundamental right is hindered, and it is up to the state not to decide for the agent's right, but to act so that he has this right effective, regardless of any opposition. In this context, the Court has recourse to the Yogyakarta principles:

> Likewise, it is possible to infer that the right to recognition of gender identity necessarily implies the right for the data in the records and identity documents to

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> correspond to the sexual and gender identity assumed by transgender people. In this regard, the Yogyakarta principles impose on States the obligation to adopt legislative, administrative and other measures that are necessary to "fully respect and legally recognize the right of every person to the gender identity that he or she defines for himself", as well as that "procedures exist whereby all identity documents issued by the State indicating the gender or sex of a person – including birth certificates, passports, electoral records and other documents – reflect the deep gender identity that the person defines by himself and for himself" (Inter-American Court, 2017, p. 49).

With regard to interventions to surgical interventions as a condition for the change of name, once again the Inter-American Court of Human Rights draws its analysis from the Yogyakarta principles, which prohibit this type of state practice:

> In the same vein, the Yogyakarta Principles stipulate that no person shall be required to undergo medical procedures, including sterilization, sex reassignment surgery, and hormone therapy as a requirement for legal recognition of their gender identity. In addition, there is legislation from Argentina, Uruguay and Bolivia, as well as decisions by national high courts in Colombia and Brazil that have expressed themselves in this regard (Inter-American Court, 2017, p. 61).

Finally, even recognizing the sovereignty of the States Parties, the Court outlines minimum conditions for the right to use the social name to be introduced and crystallized in the American continent, as a way of combating discrimination and as a formative element of the human essence. The Court, thus, says how a program that promotes such a right should be:

> a) it must be focused on the integral adequacy of self-perceived gender identity; b) it must be based solely on the free and informed consent of the requester, without requiring requirements such as medical and/or psychological certifications or others that may be unreasonable or pathologizing; c) it must be confidential. In addition, changes, corrections or adjustments in records and identity documents must not mention the changes that resulted from the change to conform to gender identity; d) they must be expeditious, and as far as possible, free of charge, e) they must not require certification of surgical and/or hormonal operations (Inter-American Court, 2017, p. 65).

Thus, it can be inferred from the analysis that there is no room for cultural relativism when it comes to guaranteeing the use of the social name, since, for the Court, it is a fundamental right.

As a binding instrument in relation to the States Parties, the content of Advisory Opinion No. 24 must be applied in the decisions of Brazilian magistrates in the context of conventionality control. As a result, judges will not be able to exempt themselves from analyzing a request for a name change simply by claiming that Brazil still does not have uniform legislation on the subject.

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THE BRAZILIAN SENTENCE BANK BASED ON THE BIAS OF THE GENDER PERSPECTIVE

To monitor decisions under the gender bias by magistrates across the country, the CNJ created in early 2024 the Bank of Sentences and Decisions, which aims to assist in the implementation of Resolution 492/2023, of the CNJ, which made the guidelines of the Protocol for Judgment with a Gender Perspective mandatory by the Brazilian courts.

Under the terms of Resolution 492/2023, the Sentence Bank arises in the context of the courts' obligation to create mechanisms to facilitate access to the Protocol in accordance with the decision of the Inter-American Court of Human Rights in the case of Márcia Barbosa *vs* . Brazil, which declined that the State has a "duty to promote awareness and training for all agents of the justice system to eliminate gender stereotypes". Thus, it is the courts themselves that supply the Sentence Bank.

To achieve these objectives, the CNJ recommends that courts use mechanisms such as QRCode, electronic card, link or other social communication resource on the court's premises, on the court's website and on its intranet.

In this regard, the Sentence Bank functions as a repository of judicial sentences available to judicial personnel and the academic community, which based on this data can evaluate the evolution and effectiveness of the judiciary with regard to gender issues.

On 09/09/2024, the Sentence Bank had 2,576 cases in 17 areas of law. Thus, the Sentence Bank also contributes to consolidating the jurisprudence involving judgments from a gender perspective.

The first gender-biased decision launched in the Sentence Database arose from a judgment in the Special Civil Court of the State Court of Londrina, Paraná.

This is a lawsuit in which the plaintiff, a transsexual man, even asking a supermarket to make the registration change by deleting his "dead name" and inserting his social name, did not have his right respected.

The request was made in March 2021, under the supermarket's promise that the change would be made. However, two months later, when making a purchase at the establishment, he was called by his name killed by the cashier in front of several customers. The author was completely embarrassed and even said that the name mentioned by the supermarket employee was that of his wife.

The establishment then informed that it would change the name in the applicant's register, but still, it did nothing.

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The plaintiff filed a lawsuit with the Special Civil Court and filed an action for obligation to do cumulated with moral damages. The lawsuit was dismissed on the grounds that the supermarket changed its name during the course of the lawsuit.

Dissatisfied, the applicant, who even before the confusion with the supermarket had already changed his name on his documents, filed an appeal with the Court of Justice, which reformed the sentence based on the violation of the applicant's identity, honor and personality.

In the decision, the court used the arguments contained in the CNJ Protocol, as can be seen in the excerpt from the sentence:

> In this case, it is necessary to apply the CNJ Gender Protocol, which aims at impartiality in the judgment of cases involving gender issues, "avoiding evaluations based on stereotypes and prejudices existing in society and providing an active posture of deconstruction and overcoming historical inequalities and gender discrimination" (CNJ, 2021, p. 09).

The content of the TJ/PR sentence has already been used to endorse the right to the social name in other proceedings, conforming to the jurisprudence of judicial decisions based on the Gender Protocol, according to the summary of the decision:

> INNOMINATE APPEAL. COMPENSATION FOR MORAL DAMAGES. REQUEST FOR INCLUSION OF SOCIAL NAME IN SUPERMARKET REGISTRATION. CHANGE NOT MADE. PLAINTIFF CALLED BY NAME KILLED DURING A PURCHASE. JUDGMENT OF DISMISSAL. PLAINTIFF'S APPEAL. ADOPTION OF THE CNJ'S PROTOCOL FOR JUDGMENT WITH A GENDER PERSPECTIVE. FAILURE TO PROVIDE THE SERVICE. NEGLIGENCE IN THE REGISTRATION CHANGE. TRANSGENDER CALLED BY HIS DEAD NAME. AFFRONT TO THE RIGHTS OF CONFIGURED PERSONALITY. CHARACTERIZED MORAL DAMAGE. PLAINTIFF'S APPEAL GRANTED. (TJPR - 5th Appellate Panel of the Special Courts - 0023753-88.2021.8.16.0014 - Londrina - Rel.: JUDGE OF THE APPELLATE PANEL OF THE SPECIAL COURTS CAMILA HENNING SALMORIA - J. 02.22.2023)

After the insertion of this first decision in the Sentence Bank, other decisions guaranteeing the right to the social name from the Gender Protocol were launched in the system, thus creating a jurisprudential basis and reinforcing the importance of the Protocol for the promotion of individual rights and the fight against prejudice.

CONCLUSION

The social name is a very personal right of the human being and aims to guarantee his self-determination. This right contributes to a subject presenting himself socially as he actually places himself in the world and as he feels represented. As it is enforceable *erga*

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omnes, it is up to the State and the institutions only to recognize and declare the right to use the social name.

However, the right to a social name still lacks general regulation and is ensured only in sparse diplomas and resolutions, as is the case of Decree 8,727/2016, which instituted the social name only within the scope of the federal public administration.

It took a condemnation of the Brazilian State by the Inter-American Court of Human Rights in a case of violence based on gender discrimination, for the National Council of Justice (CNJ) to create a protocol guiding Brazilian magistrates to pronounce their sentences "under the lens of gender, advancing in the realization of equality and equity policies". (CNJ, p. 14, 2021).

The Protocol for Judgment with a Gender Perspective represents a great advance with regard to the realization of the right to use the social name, since it provides guidance to judges, brings information to society about rights involving gender issues and launches judicial decisions from this perspective in a database of sentences, which collaborates for a jurisprudential training regarding gender issues.

According to what was found throughout the study, in addition to the CNJ protocol, magistrates can also use Advisory Opinion No. 24, of the Inter-American Court, to control conventionality with a view to ensuring the effectiveness of the right to the social name. Advisory opinions are like court decisions and are therefore binding on its member states.

In the Court's understanding, the State must facilitate in every way the inclusion of the social name in the applicants' records, preferably through the administrative route, quickly, free of charge and confidentially.

It is thus concluded that it is still necessary to create other mechanisms for the protection and enforcement of the right to the social name. It is not only up to the judiciary to promote this right. As long as there is no general law that regulates the right to use the social name in all spheres of society, the local executive and legislative powers need to act, issuing rules and resolutions that advocate this right so dear and fundamental to the dignity of the human person.

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