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BETWEEN THE NORMS AND REALITY: THE RECOGNITION OF STABLE UNIONS OF MINORS UNDER 16 YEARS OF AGE IN THE BRAZILIAN JUDICIARY

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ABSTRACT

The research intends to investigate the legal treatment given to the recognition and dissolution of stable unions involving girls under 16 years of age, highlighting the existing normative gap regarding the definition of a minimum age for the constitution of these relationships. The phenomenon is approached from a socio-legal perspective, allowing a critical analysis of its implications. From this context, two judicial decisions rendered by the Courts of Justice of Minas Gerais and São Paulo are compared, which reveal divergent positions. The study aims to understand the criteria used by judges in their deliberations, seeking to identify which approach provides greater protection to children and adolescents. The social relevance of this theme justifies the research, aiming to contribute to the critical review of Brazilian legislation, which still lacks adequate rules to ensure the full protection of minors involved in early unions, in addition to providing a clear view of the understandings adopted by the courts in similar cases.

Keywords: Child marriage. Marriageable age. Stable union.

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INTRODUCTION

The term "child marriage" refers to a union in which one of the spouses or partners is under the age of 18, according to the definition of the United Nations[3]. This definition encompasses both formal (marriage) and informal (stable union) unions, which, although related, present significant differences in their factual and legal nature, thus requiring a different analysis for each of them.

In relation to child marriage in its formal meaning, Brazilian legislation still has gaps that favor the perpetuation of this phenomenon. Although the minimum age for marriage is 18 years old, article 1,517 of the[4] Civil Code of 2002 allows adolescents from the age of 16 to marry with parental consent, representing a normative loophole that facilitates the formalization of early unions.

In the case of child stable union, there is only a silent general rule, which does not regulate or restrict, which makes it more vulnerable, since there is no defined minimum age for its constitution. This legislative vacuum exposes girls, in particular, to exploitation and roles that do not correspond to their emotional and psychological maturity.

In view of this gap, the research seeks, through a qualitative approach based on bibliographic and jurisprudential research, to understand how judges have judged the actions of recognition and dissolution of stable unions involving girls, considering the absence of a specific norm that defines the minimum age for the constitution of these unions.

The study focuses on two court decisions: one from the Court of Justice of Minas Gerais (TJMG), which recognized stable union before the age of 16, and another from the Court of Justice of São Paulo (TJSP), which recognized stable union only after reaching the nubile age provided for marriage (16 years). In this context, the main objective of the research is to analyze which of the decisions is more protective, considering the rights of children and adolescents and, especially, the principle of full protection[5] and their best

[3] "Child marriage refers to unions, formal or informal, in which at least one of the spouses is under 18 years of age, as determined by the Convention on the Rights of the Child, to which Brazil is a signatory" (**TIRA** o véu: estudo sobre casamento infantil no Brasil. São Paulo: Plan International, 2019, p. 8).

[4] "Article 1,517. A man and a woman who are sixteen years old can marry, requiring the authorization of both parents, or their legal representatives, until they reach the age of majority" (BRASIL. **Law No. 10,406, of January 10, 2002**. Establishes the Civil Code. Official Gazette of the Federative Republic of Brazil, Brasília, DF, 11 jan. 2002).

[5] As jurist Maria Berenice Dias explains, the principle of full protection is not only an ethical recommendation, but a fundamental guideline that guides the relationships of children and adolescents with their parents, family, society and the State. Due to their greater vulnerability and fragility as developing individuals, those under 18 years of age need special treatment. Therefore, they are guaranteed rights as an absolute priority, including

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interest. To this end, we sought to understand and compare the criteria adopted by the judges. The choice of decisions was based on a nationwide survey, carried out in JusBrasil[6], in which we identified these cases as those that presented relevant grounds on the recognition of stable union before the age of 16, in addition to addressing similar concrete situations.

The social relevance of the theme justifies the research, since child marriage and stable union, despite their severity, continue to be phenomena often ignored or naturalized by patriarchal society, perpetuating gender inequality, as it negatively affects, in a decisive way, the lives and future of girls/women.

SOCIO-LEGAL ANALYSIS OF CHILD MARRIAGE: THE TRANSFORMATION OF GIRLS INTO WIVES AND MOTHERS

According to Heleieth Saffioti (2015), the analysis of gender-based violence shows that women face more violence perpetrated by men than the other way around; This reality demands the adoption of a more specific concept, that of "patriarchy", which refers to the social phenomenon that characterizes the "domination-exploitation of women by men".

In this intellection, the way Patriarchy operates involves the granting of "sexual rights to men over women, practically without restriction" (Saffioti, 2015, p. 60) and the perpetuation of unequal social roles arising from the gender binarism. When born with specific biological characteristics, female bodies are identified as belonging to the female gender, which results in the imposition of behaviors that, if rejected, can lead to social exclusion. Among the norms and symbolic representations of patriarchy, the objectification of female bodies to satisfy male sexual desires and the normalization of the functions of the female caregiver and the male provider stand out.

In patriarchal logic, the objectification of female bodies reaches extreme levels, especially when analyzed in the light of the eroticization and adultization of children's bodies. Jane Felipe (2006), in her article entitled "After all, who is really a pedophile?", observes that girls are sexualized through different cultural artifacts. As an example, the

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the right to life, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and community life. In addition, they must be protected against any form of negligence, discrimination, exploitation, violence, cruelty and oppression (DIAS, Maria Berenice. **Manual de Direito das Famílias**. 14 ed. rev. ampl. and current. Salvador: Editora JusPodivm, 2021, p. 71).

[6] Available at: https://www.jusbrasil.com.br/jurisprudencia/busca?q=idade+n%C3%BAbil+uni%C3%A3o+est%C3%A1vel&msockid=1a1f9ec96120691a250a8c9060ee6829.

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author states that pornographic magazines aimed at heterosexual males often exploit this dynamic, using models that incorporate elements of childhood, such as schoolgirl clothes and toys, which contributes to the early dehumanization and sexualization of girls.

The songs are also notable cultural artifacts that illustrate this dynamic. Brazilian musical productions of different genres reproduce the macho ideology, finding in their lyrics "the devaluation of the historical struggle led by feminist movements that, little by little, tried to insert women into society, valuing them as human beings – and not as mere objects" (Oliveira; Bastos, 2013, p. 53). As an example, let's think of the nationally acclaimed rock band Raimundos, which in several songs, such as "Me Lambe" (1999) and "Bestinha" (1995), describes sexual scenes between an adult and a teenager:

> What is this child doing there every girl? See, you already know how to twerk, and nowadays who doesn't? If she goes soft, I swear I don't do anything. It gives jail and is against custom. But if I'm on the street and she's holding hands with another guy. I die of jealousy (...) How old are you? I think that at your age you can already play at making babies (...) How beautiful the view is from the Ferris wheel, it's so big. I think she traveled that I was a popsicle. Lick me. It was at the amusement park that she became a woman. Das forte. Girl takes the doll and puts it on its feet (1999).
>
> She saw me so much that I struggled. She smiled today I wasn't even late. So young, it was mine, it was the best. What a little ass, round and so lonely. She asked, to take it easy I went. She smiled, very slowly I put it on. I just wish every day was the same. Ralaria, lavava a cozinha (1995).

This eroticization in the national cultural sphere not only reinforces gender stereotypes, but also legitimizes practices such as pedophilia, rape of the vulnerable, and child marriage. The latter, the object of the research, is a phenomenon understood as the union, formal or informal, in which one of the spouses, usually the woman, is under 18 years of age (Tavares, 2019). This emerges as a manifestation of Patriarchy, where female children and adolescents are seen as objects of desire and are often forced to assume roles as wife and mother even before reaching the necessary physical and psychological maturity, severely hindering their life trajectory (Plan International, 2019).

Although Brazil occupies the fourth position in the international ranking of girls' unions, being among the five countries in Latin America and the Caribbean with the highest incidence of cases, the agenda is invisible (Plan International, 2019). This is because unions at early ages are structurally naturalized at the national level, as shown in the documentary entitled "Just Girls", directed by Bianca Lenti and produced by HBO Max in 2021. In the work, five cases of child marriages are presented, demonstrating the main consequences of the phenomenon, such as school dropout, domestic violence, early

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pregnancy, loss of autonomy and suffocation of professional dreams by the unilateral exercise of domestic services.

All the cases presented in the aforementioned documentary reveal that child marriage is, to a large extent, a prevalent reality in contexts of socioeconomic vulnerability, where girls often lack legal guardians who fulfill their duties arising from family power recommended in the Statute of the Child and Adolescent. Many girls are forced to marry in the face of an early pregnancy, or even feel the urgency to escape situations experienced in their family nucleus, such as sexual abuse, material and affective abandonment, and even homophobia (HBO Max, 2021).

The girls' individual stories illustrate this reality in a striking way: Agnes married because she became pregnant; Ruama, with the desire to have a family; Renata, to avoid life on the streets; Adriana, in search of protection against sexual abuse; and Roberta, to escape from an unbearable home. These narratives not only highlight the seriousness of the phenomenon of child marriage, but also highlight how these decisions are often made under pressure and in response to adverse circumstances, not mere "wish".

In legal terms, regarding child marriage related to early formal union (marriage itself), although there has been an apparent legislative evolution in its combat, especially with the amendment of article 1,520 of the Civil Code by Law No. 13,811/2019, it is observed that the legislation still has significant gaps and, in a way, can even be seen as a factor that contributes to the continuity of the phenomenon.

According to the national legal system and the laws of 157 other countries, the legal age for marriage is 18 years old, with the reaching of the age of civil majority. However, Brazil and 138 of these countries have exceptions to this age rule, with parental consent being the most common (World Bank, 2014). This is the case of Brazil, which, in its Civil Code, in article 1,517, allows the marriage of minors under 16 years of age (marriageable age), as long as it is with the authorization of the parents or their legal representatives.

Historically, article 1,520 of the[7] Civil Code reflected a legal conservatism that perpetuated harmful practices, allowing not only the marriage of minors under 16 years of age, but also authorizing it, before reaching this age, in cases of early pregnancy or to

[7] Original wording of article 1520, before the amendment made by Law No. 13,811/2019: "Exceptionally, the marriage of those who have not yet reached the age of marriage will be allowed, to avoid the imposition or fulfillment of a criminal penalty or in case of pregnancy" (BRASIL. **Law No. 13,811, of March 12, 2019**. Gives new wording to article 1,520 of Law No. 10,406, of January 10, 2002 (Civil Code), to suppress the permissive legal exceptions of child marriage. Federal Official Gazette, Brasília, DF, Section 1, 13 Feb. 2019).

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avoid serving a criminal sentence. That provision, therefore, not only neglected the adequate protection of children and adolescents, but also offered a solution that further reinforced the vulnerability of young people, especially girls, putting them under pressure to assume, early and under social pressure, in addition to the social role of mother, that of wife.

The 2019 amendment, carried out by Law No. 13,811/2019, excluded the exceptions of article 1,520, establishing that "*the marriage of those who have not reached the marriageable age will not be allowed, subject to the provisions of article 1,517 of this Code*". Although the exclusion of exceptions represented an advance, the maintenance of the possibility of marriage with parental consent at the age of 16 shows that there are still substantial flaws in the legislation. The amendment did not fully extinguish the legal loopholes that can be used to justify early marriages, making the parental consent mechanism a permissive form that, in many cases, can be manipulated so that child marriage remains a reality.

In addition, other provisions of the Civil Code that should be revoked or amended as a consequence of this reform were not. This shows a possible legislative failure or a lack of political will to effectively curb the practice, at least in the ideal plan of the norms. An example of this is article 1,551 of the Civil Code, which allows the validation of the marriage of minors under 16 years of age. The provision establishes that "the marriage that resulted in pregnancy will not be annulled on grounds of age". Isn't it curious that, while one article was amended to prevent early pregnancy from being considered a justification for child marriage, another, which allows for the validation of a child marriage on the basis of pregnancy, remained unchanged? This reveals the incoherence and continuity of flaws in the legislation, which still does not address the issue in a systematized way.

The need to amend several provisions of the Civil Code is such that there is a Bill in progress in this regard, in this case, PL 4/2025, authored by Senator Rodrigo Pacheco. Among the proposals, the repeal of article 1,551, mentioned above, stands out, which reinforces the thesis that its current validity is meaningless.

In addition to the inconsistencies regarding the legal treatment given to child marriage as a formal union, there are criticisms regarding the absence of a normative provision for informal child union. In other words, the Brazilian legislation, in addition to being little protective by establishing the marriageable age for marriage as 16 years and not

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18, as internationally defined by the UN[8] , ignores that the phenomenon occurs, for the most part, in the form of informal union, by omitting the establishment of the minimum age (marriage) to be reached in order to constitute a stable union.

Due to this specific gap, at least three Bills were prepared in an attempt to fill it, and it is understood in this research that the most appropriate for its approval would be PL 3.735/2023, as it is more protective in relation to children and adolescents. This bill, authored by deputies Tábata Amaral and Maria do Rosário, proposes to amend article 1,520 of the Civil Code not only to raise the marriageable age of marriage to 18 years old and include the institute of stable union in this same prohibitive rule, but also to repeal articles 1,518 and 1,517 of the Code, extinguishing the possibility of minors under 16 years of age marrying based on parental consent. Thus, the proposal is that article 1,520 should read as follows: "Marriage or stable union of minors under 18 years of age will not be allowed, in any case".

PL 728/2023, authored by Deputy Clarissa Tércio, proposes only the addition of a third paragraph to Article 1,723, determining: "for the establishment of the institute of stable union, the same requirements contained in Article 1,517 to Article 1,520 of this Code, required for the matrimonial constitution of marriage, apply". This proposal aims, in this way, to equate the requirements of marriage to stable union, not problematizing that the marriageable age for formal union is 16 years. Thus, it appears that the proposal is insufficient to legally curb early marriages. In an even less protective sense, there is PL 404/2021, authored by former deputy Carlos Bezerra, which proposes to waive parental authorization for the celebration of marriage or stable union in the case of emancipated minors.

After the above, it is possible to perceive the existence of normative gaps that, in practice, contribute to the perpetuation of child marriage, both in its formal and informal forms. However, it is important to highlight that the core of the problem lies in the fact that, even with the prohibition (although vacillating and restricted to formal union), relationships

[8] In addition to the criticism of the insufficient protection of Brazilian legislation by adopting 16 years as the marriageable age, there is a reflection on the incoherence of Brazil being a signatory to the UN Convention on the Rights of the Child, which defines, in its article 1, that children under 18 years of age are children. The exception provided for in this article allows a person to be considered a child only if the age of majority in the country is reached before the age of 18. Thus, since the age of majority in Brazil occurs at 18 years of age, when incorporating this Convention into our legal system, through Decree No. 99,710/1990, our rules should classify all persons under 18 years of age as children and, consequently, prohibit child marriage below this age group, and not before 16 years of age (BRASIL. **Decree No. 99,710, of November 21, 1990**. Promulgates the Convention on the Rights of the Child. Official Gazette of the Union. Section 1. 22/11/1990. p. 22256).

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involving minors continue to occur on a recurring basis, generating an impasse on how to legally solve this issue, ensuring the greatest possible protection for girls. Thus, the central issue of this article is the following: should judges recognize early unions as valid or not, taking into account the need to protect property rights — such as the division of assets and alimony — acquired throughout the relationship, especially in relation to children and adolescents, mostly girls, who lose their autonomy when they become wives and mothers, Becoming financially dependent on their partners/spouses? To answer these questions, we now analyze, based on concrete cases, how judges have interpreted this issue.

DECISION OF THE TJMG IN CIVIL APPEAL NO. 1.0000.21.066530-3/001

On July 15, 2021, the 19th Civil Chamber of the Court of Justice of Minas Gerais (TJMG) judged Civil Appeal No. 1.0000.21.066530-3/001. The rapporteur, Judge Carlos Henrique Perpétuo Braga, addressed the issue of recognition of stable union in cases where one of the partners has not yet reached the age of marriage, according to the summary of the decision:

> CIVIL APPEAL - FAMILY LAW - RECOGNITION OF STABLE UNION - INITIAL TERM - MARRIAGEABLE AGE - IRRELEVANCE TO THE CONSTITUTION OF A STABLE UNION -
> LEGAL ACT-FACT. 1. Common-law marriage is a legal act-fact and can be recognized even if one of the partners has not yet reached sixteen years of age. 2 . The nubile age limit aims to protect children and adolescents, and cannot be used to restrict the recognition of the existing stable union to the detriment of the rights of the minor (TJ-MG - Civil Appeal: 1.0000.21.066530-3/001, Rapporteur.: Des.(a) Carlos Henrique Perpétuo Braga, Judgment Date: 07/15/2021, Civil Chambers / 19th CIVIL CHAMBER, Publication Date: 07/21/2021).

The decision analyzes the Appeal filed by J.F.J., plaintiff of the action for recognition and dissolution of stable union, against the sentence of Judge Simone Saraiva de Abreu Abras, of the 6th Family Court of Belo Horizonte. The case involved the recognition of the stable union with C.P.S., a man with whom the plaintiff claimed to have lived since 2013, when she was only 14 years old. The first instance sentence recognized the stable union only from September 2014, when the plaintiff turned 16 years old, applying the concept of marriageable age, provided for marriage.

Dissatisfied with the sentence, the appellant appealed, arguing that stable union is distinct from marriage and is not subject to the minimum age requirement of 16 years. She maintained that there was no legal provision to limit the constitution of the stable union to

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the marriageable age and that, according to witnesses, the couple had lived together since 2013, configuring the characteristic elements of a stable union.

In his vote, the rapporteur accepted the appellant's argument and partially reformed the sentence. He agreed with the reasons presented in the sense that there is no legal requirement that both partners be 16 years old for a stable union to exist. According to the rapporteur, the approximation of the two institutes – stable union and marriage – carried out by doctrine and jurisprudence, is not absolute, and relevant differences persist between these two forms of family constitution.

The rapporteur stated that marriage is classified as a formal legal transaction, while stable union would be a legal act-fact. As such, it understands that the informal union dispenses with the negotiating capacity of the individuals who constitute it, being an existing legal act-fact, regardless of whether or not there is a marriageable age.

To support his understanding, the rapporteur used the doctrine of Maria Berenice Dias, who understands the stable union as a legal act-fact because it arises from cohabitation, being a simple legal fact, which, regardless of the will of the parties, evolves and converts to the constitution of the legal act, by virtue of the rights that arise from this relationship/the legal effects produced.

He also cited the jurist Humberto Theodoro Júnior, who defends the idea that the legal capacity for the constitution of a legal act-fact is irrelevant, because the Law recognizes the legal effects of certain behaviors, even in the absence of full negotiating capacity. The example cited by Humberto was the copyright of an absolutely incapable, recognized over his intellectual creation, regardless of his legal capacity, because, at the moment the fact materialized (created something), legal effects were born (copyright on the creation).

Continuing in his line of argument, the rapporteur states that the prohibition of child marriage is consistent with the principles of full protection and the best interest of children and adolescents, but that "not recognizing a stable union constituted by minors under 16 years of age would be to subvert this protection, since it would leave them helpless, without the guarantee of the rights inherent to the institute".

The rapporteur also mentioned the jurist Flávio Tartuce, who defends the recognition of stable union by minors under 16 years of age, if they present discernment for such a decision, based on Statement No. 1389 of the III Conference on Civil Law. In addition, Tartuce understands that, although marriage is restricted to adults, the creation of a family

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should not be prohibited to those under 16 years of age, as private autonomy and rights related to the constitution of a family should prevail. The rapporteur also referred to Tartuce's points that address the fact that marriage and stable union, in some cases, suffer a kind of "prior legislative condemnation", with the intention of protecting people in vulnerable situations. As an example, Tartuce recalls that the marriage of people with mental disabilities was prohibited by the original wording of article 1,548, I, of the Civil Code, but the repeal of this rule, with Law No. 13,146/2015, allowed the marriage of these people, signaling a change in understanding about the impact of the constitution of the family. Tartuce points out, however, that the idea of restricting the formation of families resurfaced with the Law

No. 13,811/2019, which amended article 1,520 of the Civil Code to prevent marriages to those who have not yet reached 16 years of age.

The rapporteur also cites the passage from Tartuce's text that questions whether it would be appropriate to extend this prohibitive logic to the marriage of minors under 16 years of age to a stable union, suggesting that there are reasonable arguments for not doing so, since the legal system offers some flexibility for the exercise of private autonomy in the choice of different family entities.

Although there are decisions that deny the recognition of stable unions for minors under 16 years of age, the rapporteur pointed out an opposite jurisprudential trend, including the position of the TJMG itself in REsp 1638459. In this judgment, it was concluded that the requirement of marriageable age should not be invoked for the benefit of the person who establishes the marital bond with the minor, but rather serves to protect the interests of the minor.

At the end of his vote, the rapporteur recognized the beginning of the stable union between the parties prior to reaching the nubile age provided for marriage (16 years old), when the de facto union came into existence. The two judges of the panel agreed with the rapporteur, thus ending the trial in favor of the recognition of the stable union before the age of 16, considering that this limit of the marriageable age for marriage aims to protect children and adolescents, "cannot be used to restrict the recognition of the existing stable union to the detriment of the rights of the minor", according to the summary.

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DECISION OF THE TJSP IN CIVIL APPEAL NO. 1012518-17.2020.8.26.0224

On May 16, 2022, the 6th Chamber of Private Law of the Court of Appeals of São Paulo (TJSP) rendered judgment on Civil Appeal No. 1012518-17.2020.8.26.0224. The reporting judge, Judge Vito Guglielmi, addressed the same issue addressed in the judgment previously described, that is, the recognition of stable union in contexts in which one of the partners has not yet reached the age of marriage, as expressed in the summary of the decision:

> **RECOGNITION AND DISSOLUTION OF STABLE UNION. DECLARATION OF THE BEGINNING OF THE STABLE UNION IN 1994 INTENDED. PLAINTIFF WHO WAS ONLY ELEVEN YEARS OLD AT THE BEGINNING OF THE RELATIONSHIP. IMPOSSIBILITY OF RECOGNITION OF STABLE UNION UNTIL IT TURNED SIXTEEN YEARS OLD, IN 1999. SENTENCE UPHELD. APPEAL DISMISSED**. DIVISION OF ASSETS. PROPERTY. LITIGANTS WHO DO NOT ENJOY PROOF OF OWNERSHIP OF THE DOMAIN. PROPERTY OWNED BY A THIRD PARTY. PROCEDURAL INSTRUCTION THAT DEMONSTRATED THAT THE PROPERTY BELONGS TO THE MUNICIPALITY. ASSET OF A PUBLIC NATURE AND THAT, WHILE NOT DISAFFECTED, IS SUBJECT TO THE RULES OF INALIENABILITY, IMPRESCRIPTIBILITY, UNSEIZABILITY AND IMPOSSIBILITY OF ENCUMBRANCE. PUBLIC GOOD THAT IS NOT SUBJECT TO LEGAL RELATIONS OF PRIVATE LAW, SO THAT IT CANNOT BE PART OF THE DIVISION. AMENDMENT OF THE SENTENCE ON THIS POINT. APPEAL GRANTED FOR THIS PURPOSE. FOOD. EX-PARTNER. TEMPORARY FIXATION. ADEQUACY. INTENDED TRANSFORMATION INTO DEFINITIVE . INADMISSIBILITY. ABSENCE OF NECESSITY. AUTHOR WHO IS YOUNG AND ABLE TO WORK. MAINTENANCE OBLIGATION BETWEEN PARTNERS THAT SHOULD ONLY BE ADMITTED ON AN EXCEPTIONAL BASIS. A PENSION THAT SHOULD NOT SERVE AS AN INCENTIVE TO IDLENESS. SUFFICIENT TIME. SENTENCE PARTIALLY REFORMED. APPEAL PARTIALLY GRANTED (TJ-SP - AC: 10125181720208260224 SP
> 1012518-17.2020.8.26 .0224, Rapporteur: Vito Guglielmi, Judgment Date: 05/16/2022, 6th Chamber of Private Law, Publication Date: 05/16/2022) (emphasis added).

The decision addresses the Appeal filed by S.O.D.S., plaintiff in the action for recognition and dissolution of stable union, against the sentence rendered by the court of origin. The case involved the request for recognition of the stable union with V.A.B., a man with whom the plaintiff claimed to have lived since 1994, when she was only 11 years old. The first instance judgment recognized the stable union only from September 1999, when the plaintiff turned 16 years old, applying the concept of marriageable age, as provided for marriage.

Dissatisfied with the sentence, the appellant appealed, arguing that the appellant himself recognized the stable union in the period indicated in the initial petition (1994). She questions the decision, arguing that the sentence could not disregard the five years of cohabitation, which occurred between the ages of 11 and 16, simply as a matter of formality

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that did not materialize in the case in question. The appellant argues that the existence and validity of the stable union of a minor under 16 years of age should be analyzed from the perspective of a "legal act-fact", that is, even if the beginning of the relationship was not formally valid, it should be considered by the effects generated over time.

Finally, the appellant argued that it cannot be disregarded that the constitution of a stable union is an existential situation. According to her, if the minor is able to discern about this family act, the union can be considered fully valid, supported by Statement No. 138, approved at the III Conference on Civil Law (whose literalness is transcribed in footnote No. 9).

In his vote, the rapporteur disagreed with the arguments presented by the appellant and decided to uphold the sentence, with regard to the impossibility of recognizing the stable union before reaching the marriageable age. Although he recognized that part of the doctrine defends the existence of distinctions between the institutes of stable union and marriage, the rapporteur considered that Statement No. 138, approved at the III Conference on Civil Law, should not be applied to the case. This Statement deals with the supposed legal relevance of the will of the absolutely incapable in the constitution of "existential situations" concerning them, provided that there is sufficient discernment to do so.

However, the magistrate adopted a different understanding, concluding that the criteria applicable to marriage, such as the marriageable age, should be observed by analogy. This position was supported by precedents, such as Civil Appeals No. 0011778-29.2010.8.08.0030 (TJES) and No. 2008.007832-0 (TJSC).

The rapporteur highlighted excerpts from these two judgments that point to the impossibility of qualifying as a stable union the affective relationship maintained by someone who has not yet reached the marriageable age, since it lacks the necessary capacity for the full manifestation of the intention to form a family. In addition, he stressed the importance of applying, by analogy, to stable unions the provisions of the Civil Code regarding marriage, considering that both institutes are similar in nature.

In this context, the rapporteur maintained that it would not be possible to recognize the common-law union before the appellant's 16th birthday, reaffirming the decision of the first instance. The other judges followed the vote of the rapporteur, concluding the judgment in an unfavorable way to the recognition of stable union before this age, under the premise that the marriageable age required for marriage also applies, in an analogous way, to stable union.

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COMPARATIVE ANALYSIS: WHICH OF THE DECISION-MAKING PATHS IS MORE PROTECTIVE IN RELATION TO CHILDREN AND ADOLESCENTS?

From the descriptive analysis of the decisions in the previous sections, it can be seen that the recognition of a stable union when one of the partners has not yet reached the marriageable age provided for marriage (16 years) has generated jurisprudential divergences in the Brazilian courts. The decisions of the Court of Justice of Minas Gerais (TJMG) and the Court of Justice of São Paulo (TJSP) reflect this tension, with two different approaches to the subject. I will now critically analyze the content of both, which allows us to understand, at least within the scope of this research, that the decision-making path adopted by the TJMG is more protective in relation to the rights of children and adolescents.

In the TJMG's decision, Rapporteur Braga recognizes the beginning of a stable union when the woman involved was still a girl, under 16 years old. On the other hand, in the TJSP decision, Rapporteur Guglielmi recognizes this beginning only from the moment the woman involved turned 16 years old, disregarding 5 years of stable union (from 11 to 16 years old).

Rapporteur Braga based his decision on two lines of reasoning. First, it understands – assertively, in our understanding – the stable union as a legal act-fact, which, in itself, allows its recognition even if one of the partners has not yet reached the age of 16, since the act-fact produces legal effects from the moment human behavior is materialized, dispensing with the negotiating capacity or the will of the individuals who constitute it. This interpretation of the rapporteur Braga is corroborated by the majority doctrine dedicated to the study of the Theory of Legal Facts. The references to the doctrinaires Maria Berenice Dias and Humberto Theodoro Júnior are correct in this sense.

The second line of reasoning adopted by Rapporteur Braga addresses the idea that the nubile age limit for marriage should not be used to restrict the recognition of a stable union to the detriment of the minor's property rights. The rapporteur argues that the equivalence between marriage and stable union should not be seen in an absolute way, but rather with a focus on the protection of the parties involved, especially in the defense of the rights of the vulnerable party, and not to their detriment.

However, although the absence of a specific rule on the minimum age for stable unions is a relevant argument for the current recognition of these unions, we consider that Rapporteur Braga could have addressed this issue with greater care. The mere lack of

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provision regarding the minimum age cannot be a justification for the unrestricted recognition of informal child unions. By partially resorting to the doctrine of Flávio Tartuce, the Rapporteur adopts a view that, in a way, legitimizes these early unions, as will be analyzed below.

Tartuce's defense, in sustaining the recognition of stable union before the age of 16, is based not on the protection of patrimonial effects, but on the defense of private autonomy and family constitution. This argument disregards not only the fact that girls' motivation to marry adults early stems from situations of socioeconomic vulnerability – and is therefore not a mere desire, from the perspective of private autonomy – but also ignores the countless physical, emotional and psychological damage caused by these early unions. We understand that this position disregards how the phenomenon is expressed in the real, factual world, lacking, in this sense, a sociological perspective on the subject. The lack of an explicit norm on the minimum age for stable unions should not be interpreted as a permission for the constitution of such unions, but rather as a gap that needs to be corrected by the legislator, in order to protect minors from inappropriate relationships for their age group and ensure their emotional and psychological protection.

In addition, there is another criticism of Tartuce's understanding, based on Statement 138 of the III Conference on Civil Law of the Federal Justice Council, which was cited by Rapporteur Braga to justify the recognition of stable union before the age of 16. According to this statement, the will of absolutely incapable minors can be relevant in the realization of existential situations, as long as they demonstrate discernment. However, we consider that this argument is unnecessary for the issue under analysis, since Rapporteur Braga had already recognized the common-law union as a legal act-fact. In this context, the negotiating capacity and the will of the parties involved are irrelevant, as he himself had already highlighted in his vote.

On this specific point, we understand that Rapporteur Guglielmi, in the judgment of the TJSP, adopted a more appropriate stance, by not applying this statement to justify the validity of early stable unions based on the "discernment" of the minor. Although we agree with the TJSP's decision in this regard, we believe that it is not the most protective. This is because, by adopting a more conservative and formalistic approach, which restricts the recognition of stable union before the age of 16 only based on the analogy with marriage, the Court ends up disregarding the need to protect the property rights of the vulnerable party, in this case, the ex-partner, during the period in which the union, in fact, Existed.

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Therefore, the TJSP's decision ignores the possibility of an exceptional recognition of the stable union, which could be applied if the recognition of the legal effects of this union was beneficial to the minor at the time of its dissolution. This recognition "by exception" would be a more flexible approach, adapted to the concrete circumstances of each case, ensuring greater protection of the rights of those involved.

FINAL CONSIDERATIONS

In view of the above, we understand child marriage as an invisible and naturalized phenomenon, prevalent especially in contexts of socioeconomic vulnerability. The early eroticization of girls, amplified by cultural artifacts, perpetuates this practice by objectifying childhood and consolidating the imaginary that they should assume roles as wives and mothers, ignoring their condition as a person in development. This process reinforces the gender inequality that crosses generations, restricting the field of possibilities of minors, who, as wives and parents, are deprived of exercising their autonomy in a world that should rightfully belong to them.

Despite some apparent legislative advances, see the amendment to article 1,520 of the Civil Code, in 2019, the rules still have several gaps. The permission for the marriage of minors under 16 years of age from parental consent continues to be a legal loophole that enables the continuation of the practice in its formal modality. In addition, the absence of a rule that provides for a minimum age for stable union aggravates the issue. Bill 3,735/2023, by raising the minimum age to 18 and including stable unions, proposes an important step, but the legal gaps still reflect the lack of an effective commitment to eradicate violence against girls and protect their autonomy.

In the absence of a norm that establishes a minimum age for the constitution of a stable union, the research raised the question of how judges have decided cases of recognition of this type of union, especially when one of the parties involved is under 16 years old. By analyzing the decisions of the Court of Justice of Minas Gerais (TJMG) and the Court of Justice of São Paulo (TJSP), it was concluded that the TJMG's approach is more protective. Rapporteur Braga, when recognizing the stable union before the age of 16, based his decision on two lines of reasoning: the first, that the stable union is a legal act-fact, which would allow its recognition regardless of the age of those involved, as long as the behavior took place. The second, by arguing that the equivalence between marriage and stable union should not be absolute, highlights the protection of the rights of the

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vulnerable party, especially with regard to property rights, which demonstrates a greater sensitivity to the protection of minors in early situations.

Although the TJMG's decision is more protective, there is a criticism of the lack of a more careful analysis of the emotional and psychological impacts of early unions. However, it is important to note that, in terms of asset protection, Braga's decision is more favorable to the minor involved, as it recognizes the union even in contexts where the minimum age for marriage has not been reached.

The ideal, however, would be a clear prohibition, both for marriage and for the stable union of children, of minors under 18 years of age, as a way to guarantee the full protection of children and adolescents. In concrete cases, and considering that the phenomenon of early unions still exists in reality, exceptional recognition would be necessary from the actual beginning of the factual relationship, but always with a focus on protecting the property rights of the minor involved.

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