



Brazilian-Style Adoption: Between Love and Illegality – Ethical and Legal Dilemmas

ADOÇÃO À BRASILEIRA: Entre o Amor e a Ilegalidade – Dilemas Éticos e Jurídicos

ADOPCIÓN A LA BRASILEÑA: Entre el Amor y la Ilegalidad – Dilemas Éticos y Jurídicos

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Abstract:

Adoption is an important instrument for protecting children and adolescents, guaranteeing their right to family life and full development. However, the practice known as "Brazilian-style adoption," characterized by registering someone else's child as biological without observing the legal adoption procedures, still persists in Brazil. This study aims to analyze this practice from legal, ethical, and social perspectives, investigating the existing conflicts between affection and illegality. The research is qualitative, descriptive, and exploratory in nature, developed through bibliographic review, legislative analysis, and examination of doctrinal and jurisprudential understandings. It was found that, although "Brazilian-style adoption" constitutes illicit conduct, its occurrence is frequently associated with the formation of socio-affective bonds that influence the actions of the Judiciary. It is concluded that the full protection and best interests of the child should guide the resolution of conflicts, without disregarding the need to improve the Brazilian legal adoption system.

Keywords: Brazilian-style adoption; socio-affective filiation; best interests of the child; Family Law.

Resumo:

A adoção constitui importante instrumento de proteção à criança e ao adolescente, garantindo o direito à convivência familiar e ao desenvolvimento integral. Entretanto, ainda persiste no Brasil a prática denominada adoção à brasileira, caracterizada pelo registro de filho alheio como biológico sem a observância dos procedimentos legais de adoção. O presente estudo tem como objetivo analisar essa prática sob as perspectivas jurídica, ética e social, investigando os conflitos existentes entre a afetividade e a ilegalidade. A pesquisa possui natureza qualitativa, descritiva e exploratória, desenvolvida por meio de revisão bibliográfica, análise legislativa e exame de entendimentos doutrinários e jurisprudenciais. Verificou-se que, embora a adoção à brasileira constitua conduta ilícita, sua ocorrência frequentemente está associada à formação de vínculos socioafetivos que influenciam a atuação do Poder Judiciário. Conclui-se que a proteção integral e o melhor interesse da criança devem orientar a solução dos conflitos, sem afastar a necessidade de aperfeiçoamento do sistema legal de adoção brasileiro.

Palavras Chave: Adoção à brasileira; filiação socioafetiva; melhor interesse da criança; Direito de Família.

Resumen:

Adoption constitute an important instrument for the protection of children , girls and adolescents, guaranteeing el right to family coexistence and full development . However , it still persists in Brazil practice called adoption a la Brazilian , characterized by registering as biological the child of another person without observing them procedures adoption legalities . The present studio its objective is to analyze this practice from las legal , ethical and social perspectives, investigating them existing conflicts between afectividad y la illegality . The investigation posee a qualitative , descriptive and exploratory approach , developed through bibliographic review , legislative analysis and examination of understanding doctrinal and jurisprudential . It was verified that, even there adoption to the Brazilian constitutes illicit conduct , occurrence is frequently associated with la formation of socio-affective bonds that influence en there actuación of the Judicial Power. If you conclude that there integral protection and the superior interest of boy they must guide the resolution of the conflicts , sin leave aside there need to perfect the legal adoption system Brazilian .

Palabras Clave: Adopción a la brasileña; filiación socioafectiva; interés superior del niño; Derecho de Familia.

1. Introduction

Adoption is an important instrument for protecting children and adolescents, aiming to ensure their right to family life, affection, and full development. In the Brazilian legal system, this institution is grounded in the 1988 Federal Constitution, the Statute of Children and Adolescents, and the Civil Code, which establish mechanisms designed to protect the best interests of the child. However, alongside the legally established model, the practice known as "Brazilian-style adoption" persists in Brazil, characterized by the registration of another person's child as biological, without observing the legal procedures required by the legal system.

Although "adoption à brasileira" (informal adoption) is classified as a crime under Article 242 of the Penal Code, the practice involves issues that go beyond mere formal illegality. In many cases, it is related to the legitimate desire to form a family, to affection, and to the attempt to provide shelter for children in vulnerable situations. In this context, conflicts arise between the need to preserve legality and the recognition of consolidated socio-affective bonds, especially in light of contemporary transformations in Family Law, which has come to value affection as a fundamental element of family relationships.

The choice of this theme is justified by the legal, social, and ethical relevance of "Brazilian-style adoption," especially given the persistence of this practice even after the legislative advancements promoted by the Federal Constitution and the Statute of Children and Adolescents. Furthermore, the theme demands critical reflection on the structural flaws of the

Brazilian adoption system, frequently described as bureaucratic and slow, as well as on the legal and emotional impacts that irregular adoption can have on the lives of children and adolescents.

The general objective of this work is to analyze the practice of "Brazilian-style adoption" from legal, ethical, and social perspectives, investigating its causes, consequences, and the existing conflicts between affection and illegality. Specifically, it seeks to understand the historical and legal evolution of adoption in Brazil, analyze the value placed on socio-affective filiation in contemporary families, and discuss doctrinal and jurisprudential positions related to irregular adoption and the comprehensive protection of children and adolescents.

The research problem consists of understanding how it is possible to reconcile the legitimate desire for family formation and the affective bonds built in "Brazilian-style adoption" with the need to observe legal norms aimed at protecting children and adolescents. It starts from the hypothesis that, although frequently motivated by legitimate feelings of affection and acceptance, "Brazilian-style adoption" remains an illicit practice, demonstrating the need to improve the legal adoption system, making it faster, more accessible, and more humane.

Regarding methodology, this research is characterized as qualitative, descriptive, and exploratory in nature, developed through bibliographic review, legislative analysis, and examination of doctrinal and jurisprudential understandings related to Family Law, socio-affective filiation, and the rights of children and adolescents. The study will utilize books, scientific articles, legislation, and decisions from higher courts, seeking to understand "Brazilian-style adoption" from legal, social, and ethical perspectives, allowing for critical reflection on the existing conflicts between affection and the illegality of this practice.

2. The evolution of adoption and child protection in the Brazilian legal system.

2.1 Historical evolution of adoption

Adoption is a legal institution whose existence accompanies the very formation of human social organizations, although its purpose has undergone profound transformations throughout history. Initially, adoption did not possess the protective and affective function attributed to the institution in contemporary times, being directly related to family continuity, patrimonial preservation, and the perpetuation of family lineages. In this context, the child's best interests did not occupy a central position, with the economic, political, and inheritance interests of the adoptive parents prevailing (Ghidorsi , 2018).

The earliest records related to adoption date back to antiquity, especially to the Code of Hammurabi, drawn up around the 18th century BC in Mesopotamia, where there were already provisions regarding the rights and duties arising from adoptive filiation. In Rome, adoption assumed an important political and patrimonial role, being widely used by aristocratic families as a mechanism for family continuity and maintenance of power. As Ghidorsi (2018) explains, the Roman institution was strongly linked to the figure of the *pater familias*, responsible for controlling the family and patrimonial structure, which is why adoption had a predominantly successional and political purpose.

During the Middle Ages, the practice of adoption suffered a significant reduction due to the increased value placed on blood ties and the strong religious influence on family organization. Blood lineage came to occupy a central position in kinship relations, especially among European noble families, causing adoption to be viewed with social and legal resistance. During this period, orphaned and abandoned children were frequently sent to religious institutions, which began to perform sheltering and caregiving functions, albeit in a limited way. According to Costa (1998), the Church exerted an important influence on the creation of the first institutional mechanisms for child protection, contributing to the formation of future structures for child welfare.

With the social and legal transformations that occurred in modernity, adoption gradually acquired new purposes, partially moving away from the exclusively patrimonial character that predominated in previous periods. The Napoleonic Code, promulgated in the 19th century, contributed to the reintroduction of the institution into the European legal system, still maintaining inheritance influence, but enabling advances in the regulation of adoptive filiation. As Pereira (2020) points out, it was only with the evolution of human rights and the strengthening of discussions on child protection that adoption came to be understood from a more humanized perspective and linked to the right to family life.

In Brazil, adoption was initially regulated by the Civil Code of 1916, a legal instrument marked by a strong patrimonialist and conservative influence. In this model, the institution was much more related to the interests of the adoptive parents than to the protection of the adopted child, maintaining a significant distinction between biological and adopted children. Kozesinski (2016) observes that Brazilian adoption, in its initial period of regulation, functioned primarily as an instrument of family continuity, with no real concern for the emotional and psychological aspects of the child.

Throughout the 20th century, however, social transformations and the expansion of debates on human rights contributed to the progressive alteration of the legal understanding of

childhood and the family. The 1988 Federal Constitution represented a fundamental milestone in this process by establishing the comprehensive protection of children and adolescents as a duty of the family, society, and the State. In this context, the affective bond began to acquire greater relevance in family relationships, gradually breaking with the strictly biological model that previously prevailed. As Lôbo (2023) explains, the 1988 Constitution promoted a significant appreciation of affectivity as a structuring element of contemporary family relationships.

Subsequently, the Statute of Children and Adolescents, established by Law No. 8,069/1990, consolidated the doctrine of integral protection in the Brazilian legal system, recognizing children and adolescents as subjects of rights and prioritizing the principle of the best interests of the child. Adoption came to be understood as an exceptional measure aimed at guaranteeing the right to family life and the integral development of the child, definitively moving away from the old, merely patrimonial conceptions. According to Maciel (2010), the Statute of Children and Adolescents strengthened the understanding of adoption as an instrument for protecting human dignity and forming family bonds based on affection.

Given this historical evolution, it is clear that adoption has ceased to represent merely a mechanism for family continuity and has become an important instrument for protecting human dignity, affection, and the integral development of children and adolescents. This transformation demonstrates not only legislative changes but also profound alterations in the very social conception of family, filiation, and parenthood, factors that directly influence contemporary debates involving informal adoption practices and the existing conflicts between affection and illegality (Dias, 2023).

2.2. Adoption in the Brazilian legal system

Adoption in Brazil began to receive specific regulation with the Civil Code of 1916, which established norms aimed at preserving the family institution, under strong influence from Roman Law. Initially, the institution had a predominantly patrimonial and inheritance character, being focused on the continuity of the family and not specifically on the protection of the child. With the enactment of Law No. 3,133/1957, important advances occurred, such as the reduction of the minimum age required for adoptive parents, expanding access to adoption and strengthening its social and humanitarian character (Kozesinski, 2016).

Despite these advances, the adopted child was still not fully integrated into the substitute family. The Civil Code of 1916 maintained several legal ties with the biological family, as

provided in its article 378: “The rights and duties that result from natural kinship are not extinguished by adoption, except for parental authority, which will be transferred from the natural father to the adoptive father.” (Brazil, 1916).

The limitations imposed by the legislation of the time contributed to the emergence of informal filiation practices, among them the so-called "Brazilian adoption," characterized by the registration of another person's child as if it were their biological child. This practice sought to circumvent existing legal requirements in the adoption system and remained present in Brazilian social reality for many years (Kozesinski, 2016).

From the 1980s onwards, movements defending children's rights began to question the legal treatment afforded to children and adolescents, contributing to important legislative transformations. This process culminated in the promulgation of the 1988 Federal Constitution, which elevated the protection of children and adolescents to the status of absolute priority, establishing that:

Article 227. It is the duty of the family, society, and the State to ensure, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life for children, adolescents, and young people, as well as to protect them from all forms of neglect, discrimination, exploitation, violence, cruelty, and oppression (BRAZIL, 1988).

Furthermore, the Constitution ensured equality between biological and adopted children, eliminating previously existing distinctions and strengthening the legal protection of adoption.

In accordance with constitutional principles, the Statute of Children and Adolescents (ECA), established by Law No. 8.069/1990, consolidated the doctrine of integral protection and recognized family life as a fundamental right. The Statute establishes that the child's permanence in their natural family should be prioritized, admitting placement in a substitute family only in exceptional situations. "Article 19. It is the right of the child and adolescent to be raised and educated within their family and, exceptionally, in a substitute family, ensuring family and community life, in an environment that guarantees their integral development" (Brazil, 1990).

With the goal of ensuring that adoption takes place in an environment suitable for the child's development, the Statute of Children and Adolescents establishes rigorous criteria for placement in substitute families, requiring an analysis of the family, emotional, and social conditions of prospective adoptive parents. In this sense, the legislation determines that only

those who demonstrate that they possess conditions compatible with the full protection of the child may receive guardianship or adoption, as stipulated in Article 29 of the ECA: “Art. 29. Placement in a substitute family shall not be granted to a person who reveals, in any way, incompatibility with the nature of the measure or does not offer a suitable family environment.” (BRAZIL, 1990).

In addition to evaluating the suitability of prospective adoptive parents, the legal system also provides mechanisms for controlling and monitoring adoption processes, seeking to provide greater security and transparency to the procedure. Among these measures, the maintenance of specific registries of children eligible for adoption and of persons qualified to adopt stands out, as established by Article 50 of the Statute of the Child and Adolescent: “Art. 50. The judicial authority shall maintain, in each district or regional court, a registry of children and adolescents eligible for adoption and another of persons interested in adoption.” (BRAZIL, 1990).

Currently, adoption is understood as an exceptional protective measure aimed at placing a child or adolescent in a substitute family when all possibilities of remaining with their natural or extended family have been exhausted. It is an irrevocable legal act that establishes a parent-child relationship with the same rights and duties arising from biological parentage, ensuring the adopted child's full integration into the family unit and guaranteeing their fundamental rights. In this way, the institution ceases to primarily serve the interests of the adoptive parents and focuses on promoting the best interests of the child and adolescent (Maciel, 2010).

Subsequently, the 2002 Civil Code and specific legislation, such as Law No. 12.010/2009 and Law No. 13.509/2017, improved the Brazilian adoption system, seeking to make it more efficient and compatible with the principles of comprehensive protection and the best interests of the child. Law No. 13.509/2017, for example, regulated the so-called voluntary surrender, allowing pregnant women or mothers to surrender their children for adoption with appropriate judicial supervision (Campos, 2020).

Thus, it can be observed that the legislative evolution of adoption in Brazil demonstrates a significant change in the understanding of childhood and family. The contemporary model has come to prioritize the dignity of the human person, family life, and the best interests of the child, essential foundations for understanding the debates surrounding informal adoption practices and the existing conflicts between affection and legality .

3. Affectivity and socio-affective filiation in contemporary families

The social transformations that have occurred in recent decades have brought about profound changes in the contemporary family structure, causing the concept of family to cease being exclusively linked to biological and patrimonial ties. The traditional family model, primarily based on consanguinity and patriarchal authority, has gradually come to coexist with new forms of family organization based on cohabitation, affection, and solidarity. In this context, affection has come to occupy a central position in family relationships, becoming an important element in the legal recognition of parenthood (Lôbo, 2023).

The 1988 Federal Constitution played a fundamental role in this process by promoting the appreciation of human dignity and equality among family members. With the constitutionalization of Family Law, legal protection ceased to exclusively privilege biological ties, beginning to recognize the importance of relationships built in daily family life. According to Dias (2023), the contemporary family has come to be understood much more as a space for personal fulfillment, emotional protection, and personality development than as a mere patrimonial institution.

In this context, socio-affective filiation has gained progressive doctrinal and jurisprudential recognition in the Brazilian legal system. This type of filiation stems from the existence of consolidated affective bonds between parents and children, regardless of the existence of a biological link. Continuous cohabitation, care, moral and material assistance, and public recognition of the family relationship have come to be considered relevant elements for the recognition of parenthood. As Pereira (2020) explains, socio-affective parenthood is based on the possession of the status of a child, characterized by stable family cohabitation, affectionate treatment, and the social externalization of the parent-child relationship.

The increased value placed on affection in Family Law represents a direct consequence of the constitutional evolution of fundamental rights, especially the principles of human dignity, family solidarity, and the best interests of children and adolescents. In this sense, the affective bond has come to be recognized not only as an emotional element of family relationships, but also as a legal value protected by the Brazilian legal system. According to Tartuce (2021), affection has become a true implicit principle of contemporary Family Law, directly influencing the interpretation of parental relationships.

In the jurisprudential context, the Supreme Federal Court and the Superior Court of Justice have consolidated understandings favorable to the recognition of socio-affective filiation, even admitting its prevalence over biological truth in certain situations. The judgment of Theme 622 by the STF consolidated the understanding that socio-affective paternity, declared or not in public records, does not prevent the simultaneous recognition of biological

filiation, demonstrating the legal strengthening of affectivity in family relationships (Brazil, 2017).

This jurisprudential evolution demonstrates that contemporary Family Law has begun to prioritize the affective reality experienced by individuals over strictly biological formalisms. The protection of the emotional stability of children and adolescents has come to occupy a central position in judicial decisions related to filiation, especially in cases where consolidated affective bonds already exist. As Madaleno (2023) observes, the legal recognition of socio-affectivity represents an important mechanism for protecting human dignity and family identity.

In light of this new family paradigm, it is clear that affection has come to play a fundamental role in the construction of contemporary parental relationships. This transformation directly influences debates surrounding informal adoption practices, especially because many cases involve family bonds built on affection, cohabitation, and the legitimate intention to exercise parental functions. Thus, understanding the evolution of socio-affective filiation is essential for analyzing the conflicts between the formal illegality of irregular adoption and the protection of affective bonds formed within the family environment.

4. The origin and persistence of Brazilian-style adoption in the Brazilian context.

The practice known as "Brazilian-style adoption" consists of registering a child as a biological child when the declarants know they did not conceive the child, without observing the legal adoption procedure established in the Brazilian legal system. Although classified as a crime under Article 242 of the Penal Code, this practice has historically remained present in Brazilian society, often associated with the desire to form a family, the informality of social relations, and the structural difficulties of the legal adoption system. As Gonçalves (2023) explains, "Brazilian-style adoption" has become a recurring social phenomenon in Brazil, especially during periods when the legal system presented excessive bureaucracy and little effectiveness in protecting children.

Historically, adoption in Brazil developed within a context marked by informal family relationships and the absence of efficient mechanisms for registration control and child protection. For much of the 20th century, the formal adoption process proved excessively restrictive, time-consuming, and bureaucratic, which contributed to many families resorting to irregular registration as an alternative to integrating children into the family environment. According to Kozesinski (2016), the culture of family informality in Brazil favored the

persistence of irregular practices related to filiation, especially in regions marked by social vulnerability and difficulties in accessing the Judiciary.

Beyond state bureaucracy, emotional and affective factors also contributed significantly to the persistence of "Brazilian-style adoption" in Brazilian society. In many cases, the practice was motivated by the legitimate desire to exercise motherhood or fatherhood, as well as the intention to offer shelter and protection to children in situations of abandonment or social vulnerability. As Dias (2023) observes, "Brazilian-style adoption" frequently involves genuine affective relationships, which is why legal conflicts involving this practice cannot be analyzed exclusively from a criminal perspective.

However, although often motivated by legitimate feelings of affection and solidarity, informal adoption represents a serious violation of the comprehensive child and adolescent protection system. This irregular procedure prevents adequate judicial and psychosocial monitoring of the adoption, and compromises fundamental rights related to the child's biological identity, genetic origin, and legal security. According to Maciel (2010), adherence to legal adoption procedures is essential to guarantee the effective protection of children's and adolescents' rights, preventing situations of vulnerability and potential violations of fundamental rights.

Article 242 of the Penal Code classifies as a crime the act of registering another person's child as one's own, providing for penal sanctions for those who practice irregular adoption. Despite this, Brazilian jurisprudence has begun to relativize certain situations involving "Brazilian-style adoption" when a consolidated socio-affective bond already exists between the child and the registered family. As Madaleno (2023) points out, the Judiciary frequently faces conflicts between the need to protect legality and the preservation of the emotional stability of the child within an affectively consolidated family nucleus.

In this context, the principle of the best interests of the child has come to play a fundamental role in judicial decisions related to irregular adoption. In several situations, the courts have come to recognize that the abrupt rupture of affective bonds established over time could generate even more serious psychological and emotional harm to the child or adolescent. According to Pereira (2020), the comprehensive protection of childhood requires careful analysis of the particularities of each specific case, especially when there is already a consolidated family relationship based on affection, care, and continuous cohabitation.

The persistence of informal adoption practices also highlights structural weaknesses in the Brazilian adoption system itself. Procedural delays, excessive bureaucracy, and the incompatibility between the profiles of children available for adoption and the preferences of

adoptive parents are frequently cited as factors contributing to the search for informal means of parenthood. According to Tartuce (2023), the effectiveness of child protection depends not only on the repression of illegal practices, but also on the construction of more accessible, faster, and more humane mechanisms within the legal adoption system.

In Brazil, the civil birth registration system still has weaknesses that can favor the practice of so-called "Brazilian adoption," including through irregularities related to the Live Birth Declaration (Bedin, 2018).

This type of conduct is often associated with the difficulties encountered by people who wish to formalize situations built upon existing affective bonds between adoptive parents and adoptees. In many cases, the intention to consolidate these ties ends up leading to disregard for the legal requirements stipulated for the regular adoption process (Bedin, 2018).

Thus, considering that the bureaucracy and slowness of the adoption process are customary and presumed factors in the Brazilian system, it ends up motivating people to discard legal adoption, mainly due to the strong emotional impact caused by the expectation of becoming a father or mother, which will certainly take years or even decades to occur (Bedin, 2018, p. 43).

Another aspect that deserves highlighting is the delay frequently observed in adoption processes. Data released by the National Council of Justice (CNJ) indicated that, in 2019, there were 43,891 registered applicants awaiting the possibility of adoption, of which 20,721 were located in the Southeast region. In contrast, the National Adoption Registry recorded 8,889 children eligible for adoption during that same period (Cabette ; Rodrigues, 2019). These numbers highlight the existing mismatch between the demand from applicants and the actual completion of adoption processes.

The data shows that the number of people seeking to adopt far exceeds the number of children available. Even so, factors such as the length of legal proceedings and the preferences expressed by adoptive parents regarding the child's profile, involving aspects such as age, skin color, and race, end up hindering the completion of adoptions. In many cases, the frustration generated by the long wait and the desire to start or expand a family can lead some people to seek informal ways to achieve this goal (Cabette ; Rodrigues, 2019).

This scenario highlights the need to improve the mechanisms that regulate adoption in Brazil, making them more efficient and compatible with social reality. Reducing bureaucracy and speeding up processes can contribute to children and adolescents being placed more quickly in stable and welcoming family environments, as well as reducing the incidence of adoption practices carried out outside the law.

Thus, it becomes clear that "Brazilian-style adoption" constitutes a complex phenomenon, situated between formal illegality and the existence of legitimate affective bonds built within the family environment. Analyzing this practice requires a broad understanding of contemporary transformations in Family Law, especially the emphasis on affection and the comprehensive protection of children and adolescents. In this context, debates surrounding irregular adoption reveal the need for a balance between preserving legality and protecting human dignity and consolidated socio-affective bonds.

5. On ethical dilemmas and jurisprudential understandings

An analysis of case law related to "Brazilian-style adoption" allows for a deeper understanding of a practice that is in constant tension with the legal parameters established by the Brazilian legal system. The topic sparks relevant discussions in the legal and ethical fields, as it involves the protection of the rights of children and adolescents, as well as the preservation of the legal security of family relationships. By examining judicial decisions on adoptions carried out irregularly, it becomes possible to identify the difficulties faced by the Judiciary in seeking solutions that reconcile legality, the established emotional bonds, and the social and emotional impacts resulting from these situations.

Case law regarding informal adoption practices in Brazil also reveals weaknesses and shortcomings in the legal mechanisms designed to protect children and adolescents. An analysis of judicial decisions allows us to observe how courts have been addressing situations involving adoptions carried out outside the law, revealing not only the challenges encountered in applying the law, but also aspects of the legislation that still require improvement.

The study of these cases contributes to the identification of recurring understandings and practical difficulties faced by the justice system in a reality marked by conflicts between legality, affection, and the comprehensive protection of the child.

Regarding the Superior Court of Justice's position, it is observed that there is no absolute uniformity concerning adoption in Brazil. As an example, a judgment from October 2016 stands out, in which the claim of a couple seeking to regularize the situation of twins who had been in foster care since they were nine months old was recognized (Jurídico, 2018).

At the time, the husband initially declared himself to be the biological father of the children, claiming that they were the result of an extramarital affair, while his wife expressed interest in formalizing the adoption. The analysis of this case demonstrates the complexity of

situations involving already consolidated affective bonds and the difficulty of rigidly applying the rules in the face of the particularities presented in each process (Jurídico, 2018).

Subsequently, a DNA test ruled out the claim of a biological link between the adoptive parent and the twins. During the course of the proceedings, it was found that the biological mother had expressly agreed to the surrender of the children, and serious situations of violence were identified within the family of origin, including sexual abuse perpetrated against older siblings by the father and grandfather, with the mother's tolerance. Given this context, Minister Raul Araújo, the case rapporteur, ruled in favor of the twins remaining with the adoptive family, basing his position on the principle of the best interests of the child, considered a central element in resolving the controversy (Jurídico, 2018).

In the judgment of habeas corpus no. 597.554 in 2020, the Superior Court of Justice established the following position:

HABEAS CORPUS. CHILD AND ADOLESCENT STATUTE (ECA). PROTECTIVE MEASURE. SEARCH AND SEIZURE OF MINOR. SUSPICION OF INTUITU PERSONAE ADOPTION. CHILD GIVEN BY MOTHER TO REGISTERED PARENTS SINCE BIRTH. "BRAZILIAN-STYLE ADOPTION". EXCEPTIONAL PROTECTIVE MEASURE. INSTITUTIONAL PLACEMENT. VIOLATION OF THE MINOR'S BEST INTERESTS. ORDER GRANTED. 1. It is settled understanding of this Court that, in exceptional situations, the obstacle of Precedent 691 of the STF may be overcome in cases of flagrant illegality or when indispensable to guarantee the effectiveness of the jurisdictional service. 2. The Statute of Children and Adolescents (ECA), by advocating the doctrine of integral and priority protection of minors, makes it imperative to observe the best interests of the child. 3. This Superior Court has a settled understanding that, except in cases of evident risk to the physical or psychological integrity of the minor, institutional care is not in their best interest to the detriment of family care. 4. In this vein, the removal of the protective measure of search and seizure complies with the principle of the best interests of the child, since, at this moment, the greatest benefit to the minor is to keep them with their registered parents until a final judgment in the main action. 5. Habeas corpus order granted, with preliminary injunction confirmed. (HCn . 597.554/PR, rapporteur Minister Raul Araújo, Fourth Panel, judged on 11/24/2020, DJe of 12/2/2020) (Brazil, 2020).

The case analyzed involved the removal of a child from the care of her legal parents after evidence emerged of an adoption carried out without observing the legal procedures stipulated in the Brazilian legal system. Although the initial courts understood that the irregularity of the registration justified the institutional placement of the minor, the controversy went beyond a mere discussion about the legality of the act, coming to involve the protection of already established family ties and the possible emotional impacts resulting from the child's separation from the environment in which she was integrated.

Upon re-examining the matter, the Superior Court of Justice prioritized the analysis of the specific circumstances and the child's best interests, concluding that the mere suspicion of

irregularity in the adoption procedure was not sufficient to justify the child's immediate removal from their legal family. The decision emphasized the importance of family life and the child's comprehensive protection, recognizing that, in the absence of elements demonstrating a risk to their physical or psychological integrity, maintaining the family bond was more compatible with the principles guiding the Statute of the Child and Adolescent. Thus, the ruling highlighted the need to balance adherence to legality with the preservation of the child's best interests, especially when consolidated emotional ties already exist.

However, despite the favorable positions presented, there are also cases where they are unfavorable, as seen in the judgment of Habeas Corpus No. 625.030 in 2021:

HABEAS CORPUS. CHILD CUSTODY. ACTION FOR TERMINATION OF PARENTAL RIGHTS AND REVOCATION OF CUSTODY. EVIDENCE OF IRREGULAR ADOPTION AND CHILD ABUSE. CHILD AND ADOLESCENT STATUTE (ECA). PROTECTION MEASURE. INSTITUTIONAL CARE. OBSERVANCE OF THE PRINCIPLE OF THE BEST INTERESTS OF THE CHILD. ORDER DENIED. 471. This Superior Court understands that, except in cases of evident risk to the physical or psychological integrity of the minor, institutional care is not in their best interest, and their maintenance in a family environment should be favored whenever possible, provided that this environment proves to be reliable and safe, capable of receiving the child with comfort, affection and care. 2. In this case, the Public Prosecutor's Office filed an action for termination of parental rights combined with revocation of guardianship and an action for institutional placement, due to allegations of "Brazilian-style adoption" and mistreatment of the child by the guardian. Urgent relief was granted to order the institutional placement of the child. An interlocutory appeal was filed, but the suspensive effect of the appeal was denied, giving rise to the present writ. 3. In this context, the jurisprudence of this Court, in observance of the principles of the best interests and full protection of the child, opts for the institutional placement of the minor, to the detriment of maintaining the child in the family that received him/her. 4. Writ denied. (HC No. 625.030/SP, Rapporteur Justice Raul Araújo, Fourth Panel, decided on 23/2/2021, DJe of 26/2/2021) (Brazil, 2021).

In this case, the controversy originated from the judicial granting of custody of a child to a third party, formalized through an agreement between the biological parents, who claimed they did not have adequate conditions to provide parental care. Subsequently, in light of complaints related to the possible irregularity of the situation and the existence of conduct that could compromise the child's well-being, the Public Prosecutor's Office initiated legal measures aimed at reviewing the custody and protecting the child, resulting in the child's placement in institutional care.

Upon analyzing the situation, the Superior Court of Justice understood that there were insufficient elements to demonstrate the existence of a consolidated emotional bond capable of justifying the child's immediate return to living with the guardian. Furthermore, the court considered the indications of possible harm to the child's physical and emotional integrity, as well as the technical information produced during the institutional monitoring. Given this

context, the prevailing understanding was that maintaining the child in foster care best served the principle of the child's best interests, prioritizing their protection and safety while the family situation was properly investigated.

HABEAS CORPUS. LAW OF CHILDREN AND YOUTH. "BRAZILIAN-STYLE" ADOPTION. SOCIO-AFFECTIVITY. REGISTERED FATHER. NON-EXISTENCE. CIRCUMVENTION OF THE NATIONAL ADOPTION REGISTRY. INSTITUTIONAL CARE. TEMPORARY NEED. GUARDIANSHIP. EXTENDED FAMILY. FAMILY BOND. PREVALENCE. POSSIBILITY. ARTS. 1 AND 100, SOLE PARAGRAPH, X, OF THE ECA. BEST INTEREST OF THE CHILD. 1. The Statute of Children and Adolescents - ECA, by advocating the doctrine of integral protection (art. 1 of Law No. 8.069/1990), makes the observance of the best interest of the child imperative. 2. 1. Absence of a socio-affective bond with the registered father and evident attempt to circumvent the national adoptive parents registry. 2. The manifest risk to the child's physical and psychological integrity temporarily necessitated institutional care until custody was granted to her maternal aunt. 3. As a rule, every effort should be made to integrate the child into their natural family before opting for any measure that entails adoption by a substitute family. 4. Order denied. (HC No. 673.722/RS, Rapporteur Justice Ricardo Villas Bôas Cueva, Third Panel, decided on 8/24/2021, DJe of 8/31/2021) (Brazil, 2021b)

In this case, the discussion arose after a newborn was registered by someone other than her biological mother, under circumstances that raised suspicions of adoption carried out outside the legal procedures established by Brazilian law. This situation prompted the intervention of the Public Prosecutor's Office, which sought to protect the child through judicial measures aimed at reviewing the registered parentage and investigating the legality of the actions taken. Due to these circumstances, the institutional placement of the minor was ordered, and the parental rights of the involved parties were suspended until the situation is clarified.

Upon analyzing the case, the Judiciary understood that there were no elements present capable of demonstrating the existence of a sufficiently consolidated socio-affective bond to justify maintaining the child with the registered family. The lack of observance of the formal procedures required for adoption was also considered, especially the prior registration of interested parties in official registries. Furthermore, the possibility of reintegrating the child into the extended family was verified, a measure prioritized by the Statute of the Child and Adolescent. Given these factors, the understanding prevailed that protecting the best interests of the child required maintaining the measures adopted, prioritizing their placement in a legally appropriate family environment compatible with the guidelines of comprehensive protection.

Thus, it can be seen that the length of cohabitation is one of the most relevant elements in assessing cases of informal adoption. In addition to analyzing the child's protection and well-being, courts often consider the duration of the relationship established with the foster family, since prolonged cohabitation can foster the formation of significant emotional bonds. In these



cases, the existence of consolidated socio-affective ties directly influences the legal solution adopted, especially when the disruption of this cohabitation could harm the child's or adolescent's development.

It is also observed that the decisions of the Superior Court of Justice that determine institutional placement are usually based on the principles of comprehensive protection and the best interests of the child, as provided for in the Statute of Children and Adolescents. When there is no sufficiently consolidated emotional bond or when risks to the physical, emotional, or psychological integrity of the minor are identified, the adoption of more rigorous protective measures prevails. From this perspective, guaranteeing a safe and adequate environment for the child's development takes priority over existing irregularities in the formation of the family bond.

6. FINAL CONSIDERATIONS

This research has shown that "Brazilian-style adoption" is a complex phenomenon, situated between formal illegality and the existence of legitimate affective bonds built within the family environment. Although the practice is classified as a crime under Article 242 of the Penal Code, it was found that its occurrence is frequently associated with the desire to form a family, the welcoming of children in vulnerable situations, and the difficulties faced in the legal adoption system. Furthermore, the evolution of Brazilian Family Law, especially with the increased value placed on affection and socio-affective filiation, has contributed to debates surrounding irregular adoption being analyzed not only from a legal perspective, but also in light of the comprehensive protection and best interests of the child and adolescent.

It is concluded that the protection of consolidated affective bonds cannot serve as justification for the unrestricted legitimization of informal adoption practices, but neither can the emotional impacts resulting from the rupture of family relationships built over time be ignored. In this context, the Judiciary has sought to balance compliance with legal norms with the preservation of the child's dignity, analyzing each situation individually. Finally, the need to improve the Brazilian adoption system is evident, through greater procedural speed, reduction of bureaucracy, and strengthening of public policies for the protection of children, in order to guarantee that the right to family life is realized within the limits of legality and legal certainty.

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