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THE RIGHT TO GENDER IDENTITY AND THE USE OF SOCIAL NAME: A COMPARISON BETWEEN BRAZIL AND ARGENTINA

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SUMMARY
The study aims to compare the Brazilian and Argentine legal systems regarding the right to gender identity and the use of the social name. The methodology used was a bibliographical research, seeking the necessary basis for the development of the study in books, magazines, articles, doctrine and jurisprudence. The conclusion of this comparative study on the right to gender identity and the use of the social name in Brazil and Argentina highlights significant advances, especially in Argentine legislation, which has proven to be more progressive and inclusive. The Argentine Gender Identity Law, approved in 2012, represents a milestone in guaranteeing rights for trans people, allowing the change of name and gender on official documents without the need for judicial authorization or medical diagnoses, ensuring greater autonomy and dignity for individuals. In Brazil, although the use of the social name has advanced, mainly with Resolution No. 270 of the CNJ and the decision of the STF in 2018 that recognized the right to rectify name and gender without the need for surgery, there are still challenges. The lack of specific and comprehensive legislation, such as that in Argentina, creates legal uncertainty and inequality in access to rights. In addition, cultural and social barriers persist, making it difficult to fully accept and respect one's social name and gender identity in everyday life.

Keywords: Gender Identity. Transsexuals and Transgenders. Brazilian Legislation.

ABSTRACT
The study aims to compare the legal frameworks of Brazil and Argentina regarding the right to gender identity and the use of a preferred name. The methodology employed consisted of a bibliographic review, consulting books, journals, articles, legal doctrine, and case law to provide the necessary foundation for the development of this study. The conclusion of this comparative analysis on the right to gender identity and the use of a preferred name in Brazil and Argentina highlights significant progress, particularly in Argentine legislation, which has proven to be more progressive and inclusive. Argentina's Gender Identity Law, enacted in 2012, stands as a milestone in guaranteeing rights for trans individuals, allowing for the change of name and gender on official documents without the need for judicial authorization or medical diagnoses, thus ensuring greater autonomy and dignity for individuals. In Brazil, while the use of a preferred name has advanced, especially with the CNJ Resolution No. 270 and the 2018 Supreme Court decision recognizing the right to amend name and gender without surgery, challenges remain. The lack of comprehensive legislation, like Argentina's, creates legal uncertainties and inequalities in accessing these rights. Furthermore, cultural and social barriers persist, hindering the full acceptance and respect for preferred names and gender identities in everyday life. **Keywords:**Gender Identity. Transsexuals and Transgenders. Brazilian Legislation.

INTRODUCTION

Transsexuality is an incompatibility between an individual's anatomical sex and their gender identity, and is considered by the World Health Organization as a type of gender identity disorder, also called gender dysphoria. Transsexuality consists of a social phenomenon that involves the individual's feeling and desire to be the other sex, being able to venture into therapies. self-medicated hormonal or surgical interventions to achieve their goal.

Studies have shown an association between transsexuality and genetic variations, among which the research carried out by Hare stands out.*et al.*(2009), who identified a significant association between the presence of transsexuality and the disease in the androgen receptor genes, with trans people presenting greater repetitions of these genes compared to non-transsexual people.

Foreman*et al.*(2019) confirmed this genetic link, identifying a significant association between gender dysphoria and the alleles*ERα*,*SRD5A2*and*STS*, as well as in the genotypes*Er α*and*SULT2A1*. The authors also pointed out that several combinations of alleles were also overrepresented in transgender women, most involving androgen receptor genes (*AR-ERβ*,*AR-PGR*,*AR-COMT*,*CYP17-SR-*

D5A2).

This is a very complex topic, considering that it involves people who are misunderstood and, at times, discriminated against by society, making it necessary in this study to address the positioning of the Brazilian and Argentine Legal Systems on social use by transgender people to enable a greater understanding of the topic in the legislation of both countries.

The study aims to compare the Brazilian and Argentine legal systems in relation to the right to gender identity and the use of the social name. The methodology used was a bibliographical research, seeking in books, magazines, articles, doctrine and jurisprudence the necessary basis for the development of the study.

THE RIGHT TO GENDER IDENTITY IN THE BRAZILIAN AND ARGENTINE LEGAL SYSTEMS

Discussions about gender identity have increased in recent times, considering that issues related to transgender people are increasingly in focus. According to Rios, Roger and Raupp (2002), there are conflicts regarding the exclusive existence of the female and male sexes, because they subvert the process of constructing female and male bodies.

The right to gender identity has its essence in the Federal Constitution of 1988, art. 1, III, which guarantees citizens the free development of their personality, as a premise of the right to human dignity. Human rights are asserted through the constant search against domination, exploitation and all forms of aggression against human dignity; it is a permanent struggle for solidarity and fair relationships.

Justice is the only thing capable of guaranteeing the fundamental value of human beings: dignity. Man is a rational animal and has his essence and individuality, and therefore deserves the guarantee of rights to dignity, respect and well-being, with a view to peace and social justice. Thus, considering the issue of individuality, it is understood that the right to gender identity is included in this list. On this subject, Szaniawski and Bengston (1998, p. 11):

> Sexual identity is identified as one of the founding aspects of personal identity, which has a close connection with a plurality of rights, which allow the free development of the personality that it has in its content, the protection of psychophysical integrity, the protection of health and the power of disposal of parts of one's own body, by the person.

Thus, gender identity is focused on a psychological aspect of the individual, fundamental to their well-being and dignity. Marinho (2007) mentions the existence of a psychological sex, much more complex than biological sex, because it does not correspond to the traditional gender identity attributed to morphological sex. As in the case of the individual who was born as a man, but does not feel as such, assuming feminine characteristics, even going so far as to repudiate his sex. Moura (2009, p. 47) rightly states:

> It is necessary to see gender separately from sex. Which brings other problems. If gender is not defined by sex nor does it define it, we can speak of the existence of two opposite sexes, but of innumerable genders, as many as cultural intelligibility is capable of producing. In this way, gender not only stops being seen as linked to sex but is also independent of it.

In this context, it is understood that gender and sex are distinct concepts, and their relationship cannot be seen as one, since there are only two sexes, but genders are numerous, as far as culture has the capacity to produce. Grossi (2012) opines, stating that the idea that people are represented only by the female and male sex is not appropriate, being configured as a way of standardizing and normalizing the bodies.

It is precisely this problem of gender plurality that influences the use of the social name by the transgender individual, assuming a morphological sex, but feeling like part of another gender, with the civil name having the capacity to affect their human dignity, their right to gender identity, to their personality.

Argentina has been recognized as one of the leading countries in promoting and protecting the rights of trans people and recognizing the right to gender identity. The country has implemented a series of progressive measures to ensure equality and respect for gender diversity.

In 2012, Argentina passed the Gender Identity Law, Law No. 26,743/2012, which establishes the the right of people to be recognized according to their self-perceived gender identity. The law allows people to rectify their official documents, such as identity cards, passports and birth certificates, without the need for judicial authorization or a medical diagnosis (Biocca, 2004).

Furthermore, the legislation prohibits any form of discrimination based on gender identity and establishes the State's obligation to guarantee full access to healthcare for trans people, including sex reassignment surgeries and hormone treatments.

Argentina has also made progress in promoting inclusion and equal opportunities for trans people. The government has implemented educational inclusion policies and employment programs specifically aimed at this population. In addition, trans people have the right to access free health care, including sex reassignment surgeries, through the public health system (Armella, 2014).

Recognition and respect for gender identity in Argentina have contributed to the promotion of equality and dignity for trans people. Progressive legislation and inclusive policies have been key to combating discrimination and ensuring the full exercise of human rights for this population (Biocca, 2004). Although there are persistent challenges and there is still work to be done, the Argentine example serves as a reference for other countries in promoting and protecting the rights of trans people and guaranteeing the right to gender identity.

CIVIL NAME AS A PERSONALITY RIGHT

The preference for the chosen name occurs in the birth certificate, and this choice can have a wide range of possible repercussions on the citizen's life. The lack of identity with the original registered name can cause frustration in private life, thus harming the person's dignity. It is important to emphasize that people's potential must be preserved and fostered whenever there are no serious failures in the stabilization of social relations.

The natural person is the human being, endowed with a biopsychological structure, dignity and stature. Legal science exists because of it, and the human being is endowed with the meaning of its existence (Reale, 2022). Once the egg is implanted, it is a person, and, therefore, is endowed with legal protection. Art. 2 of the Civil Code of 2002 states: the civil personality of the person begins at birth with life; but the law protects, from conception, the rights of the unborn child. The natural person is complex, with a greater scope than irrational animals, and therefore holds prerogatives that caress the spirit.

The civil name is made up of the first name and the last name, also known as the patronymic. In addition to these, the name may be accompanied by a surname. The first name may be compound or simple, and is the first element of the name, which identifies the individual (example: John). This choice is not entirely free, as established in art. 55, § 1, of Law No. 6,015/1973, the civil registry officer shall not register first names that may expose their bearers to ridicule, noting that, when the parents do not agree with the officer's refusal, the latter shall submit the case in writing for the decision of the competent judge, regardless of the collection of any fees.

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Every person has the right to a name, including the first name and surname, noting that the surnames of the parents or their ascendants will be added to the first name, in any order, and in the event of adding the surname of an ascendant that is not included in the certificates presented, the necessary certificates must be presented to prove the ascending line (art. 55 of Law No. 6,015/1973).

The surname represents the family origin. It is an identifying element of your ancestors. It is acquired by your ancestors. In this sense, the registered person cannot innovate in the surname, as it is linked to the surnames of his predecessors. It is also noted that, even if the chosen surname does not appear in the name of the first-degree ascendant, the registered person can acquire the surname of his great-grandparents or great-great-grandparents, even if all descendants have excluded this surname, this is what is provided for in art. 55 of Law no. 6.015/1973.

As for the surname, this is a complement to the name, indicating a degree of kinship: Junior, Segundo, Neto. The surname must have a similarity with the name to which it refers. The registered person cannot call himself a grandson if his first name is different from his grandfather's first name. The surname serves to distinguish individuals within a family.

When the declarant does not indicate the full name, the registry officer will enter at least one surname of each parent before the chosen first name, in the order he deems most convenient to avoid homonyms (art. 56, § 2, of Law No. 6,015/1973). The registry officer will guide the parents about the

convenience of adding surnames, in order to avoid harm to the person due to homonymy. (art. 56, § 3, of Law no. 6,015/1973).

THELaw No. 14,382 of June 27, 2022, includes an interesting provision, by providing for the possibility of changing the name within 15 days after the birth registration. The inclusion aims to reconcile differences in the choice of first and last names by the parents at the time of registration. It is relatively common for the mother to go to the Civil Registry Officer requesting the change of the recently registered child, because the father did not meet her requirements at the time of birth registration.

Until then, this modification could only occur through the courts. Many times, the registration was carried out outside the mother's own wishes.art. 56, § 4, of Law No. 6,015/73, ensures that within 15 (fifteen) days after registration, either parent may present, before the civil registry where the birth certificate was drawn up, a reasoned opposition to the first name and surnames indicated by the declarant, noting that, if there is a consensual manifestation of the parents, the procedure for administrative rectification of the registration will be carried out, but, if there is no consensus, the opposition will be forwarded to the competent judge for decision.

In this sense, the civil name reveals the importance of each person being socially identified, individualizing oneself from others. The civil name, therefore, is an attribute of personality, since it is the identifying sign of the subject in the family and in society, as it is through it that he is known.

The name is linked to the psychological and social identity of the individual. Article 16 of the Civil Code provides:Every person has the right to a name, including first and last names. Article 17, in turn, states: A person's name may not be used by others in publications or representations that expose them to public contempt, even when there is no defamatory intent. The civil name, according toFarias and Rosenvald (2015), p. 240), has the following characteristics:

> i) absolute (producing erga omnes effects);
> ii) mandatory (art. 50 of Law 6,015/73 – Law of Public Records proclaims the need for civil registration of all persons born, including stillbirths);
> iii) unavailable (since the holder cannot assign, alienate, renounce, among other forms of disposal);
> iv) exclusive (characteristic inherent only to the legal entity, since it is impossible to apply to the natural person, to whom homonymy is permitted);
> v) imprescriptible (it is not possible to lose the name due to non-use);
> vi) inalienable (recognizing the impossibility of a human person selling or giving his/her name as a logical consequence of the impossibility of disposing of his/her own personal identification. However, it should not be forgotten that a legal entity may dispose of its trade name, which is a component element of its assets);
> vii) inaccessible (private nature, also, of the natural person, inapplicable to the legal entity);
> viii) non-expropriable (not subject to expropriation by the Public Authority, except in the case of the name of a legal entity, in view of its patrimonial content);
> ix) irrevocable (except in special cases, in which the relinquishment of part of the name is permitted);
> x) non-transferable (natural consequence of unavailability).

It is important to note that immutability is relative, with several exceptions in the legal system. Until recently, it could be said that changing a name was an exception, and that a name change could only be changed in exceptional cases, with just cause and as long as it does not cause harm to third parties. However, with the enactment of Law No. 14,382 of June 27, 2022, mutability has undergone significant changes.

Article 56 of Law 6,015/1973, amended by Law No. 14,382 of June 27, 2022, provides that a registered person may, after reaching the age of majority, personally and without reason request a change of his or her first name, regardless of a court decision, and the change will be recorded and published electronically. It can be said, therefore, that a name change is no longer such an exceptional measure as before.

§ 4 of art. 55 of law 6.015/1973 states that within 15 (fifteen) days after registration, either parent may present, before the civil registry where the birth certificate was drawn up, a reasoned objection to the first name and surnames indicated by the declarant, noting that, if there is a consensual manifestation of the parents, the procedure for administrative rectification of the registration will be carried out, but, if there is no consensus, the objection will be forwarded to the competent judge for a decision. The caput of Art. 56 predicts that a registered person may, after having reached the age of majority, personally and without reason request the change of his or her first name, and the caput of 57, that a subsequent change of surnames may be requested

in person before the civil registry officer.

The provision contained in art. 57 of Law no. 6015/1973 does not stipulate a limitation on the number of changes, unlike what is provided for in art. 56, where only one extrajudicial change is permitted. Art. 57 provides for specific situations in which the change is permitted. The possibility of including surnames is provided for in item I of art. 57, but the item does not limit the quantity or number of surnames that can be added.

An individual's name is protected under the right to personality, as it refers to the bearer's private life, honor, image and privacy. In some cases, a name can cause pain, suffering, shame or embarrassment to the person who bears it. In fact, the original name is always attributed by a third party and this attribution can cause embarrassment in the course of a person's life.

Regarding the name as a personality right, it is worth noting that this legal nature is due to the fact that the name constitutes an existential and subjective character in the construction of the individuality of the citizen, thus being inserted into his/her personality. As Peluso (2016) highlights, the name as a personality right is inalienable, being born and extinguished with the person and, in some cases, being protected even after death. Diniz (2017) adds that the name is also an absolute, non-transferable, unavailable, unlimited, indispensable, unattachable and inexpropriable personality right, being both a private and public right.

Miranda (2000) also places the name as a first personality right, being a prerequisite for the other personality rights, considering that one cannot attribute something, whether actively or passively, without knowing to whom. Therefore, the name is fundamental, including for the citizen to enjoy the other rights.

Venosa (2016) explains that the name is on the same level as the state, civil capacity and other rights of the citizen, being one of the main personality rights to be considered, forming part of the person, so much so that, once separated from the name, the person feels as if they have lost their identity.

It is true that birth registration is merely declaratory in nature and does not constitute rights, and that the beginning of legal personality occurs with live birth; it can therefore be said that the right to a name precedes birth registration. It must be repeated ad nauseam that human dignity is the greatest value in society.

RECOGNITION OF THE SOCIAL NAME BY BRAZILIAN AND ARGENTINE LAWS

The social name basically consists of the name by which an individual is recognized in his/her community, and can be said to be his/her nickname, also called pseudonym, surname, epithet, nickname or hypocoristic. It is the affective way of identifying a person. Mendes (2009, p. 49) states about the use of nicknames:

> It is common to designate people by nicknames created from elements of their own name (diminutives or augmentatives such as Zezão, Zezinho, Tonhão), by characteristics of their personality (Fuinha, Fujão, Corisco, Fecha-Tempo, Mala), by their physical appearance (Capitão Gancho, Gigante, Montanha, Bald, Alemão, «Zóio de Burca», Cabeleira, Magrão), by criminally punishable acts (Jack, Pisa Macio, Pezinho de Veludo).

What happens is that there are people who are known only by their nickname in their community, and are not recognized by their civil name, a factor that brings the importance of the social name. For example, a person whose civil name is José Antônio da Civil and in his community is routinely called Magrão, if he is sought out by a court officer or by the police by his civil name, it is unlikely that his neighbors will be able to identify who he is.

Regarding the use of a pseudonym, the civil name is replaced by a name that can be considered artistic, and is generally used by famous people or writers of literary works. França (1975, p. 510) defines a pseudonym as “a name, other than the civil name, used by someone, lawfully, in a certain sphere of action, with the aim of, in that sphere, projecting a special side of one's own personality”.

Examples include actress Susana Vieira, whose real name is Sônia Maria Vieira Gonçalves, Sílvio Santos, whose civil name is Senor Abravanel, and Xororó, whose civil name is Durval Lima, among many other famous people, not only Brazilians, but also from various countries around the world.

It is important to highlight that the pseudonym is protected by the Brazilian Civil Code of 2002, in its article

19, which states: "The pseudonym adopted for lawful activities enjoys the protection given to the name". Thus, This social name also has a personality right to be assured to individuals. However, it is important to highlight that, in order to acquire the right to a pseudonym, it is necessary to have notoriety, so that a personality has been formed from it and the person is not publicly recognized by his/her civil name.

Thus, the use of the social name is done constantly in society, requiring its recognition by the community, and can also be considered as a personality right, since many times the individual is more recognized by his nickname or pseudonym than by his own civil name. Also noteworthy is the use of the vocational name, which according to Pereira (2008, p. 1):

> The vocational name is characterized by being the one by which the individual is commonly known. It can be chosen by the person himself or by third parties, and it is certain that the subject may rebel against this name when it is used inappropriately or offensively. As an example, we can mention the master "Venosa", thus known, whose name was Sílvio de Salvo Venosa, or even "Bilac", truly Olavo Bilac.

It remains to be understood that the vocational name is the name by which the person is known in his/her community, his/her social name. It should be emphasized, once again, that it is a personality right, since it is capable of identifying the individual before society, individualizing him/her. However, its use does not replace the use of the civil name, which must be considered legally.

In this context, it can be seen that the individual has a name as a personality right, with the civil name being irrevocable, definitive and protected by the Brazilian Civil Code, and may also use the social name for informal situations in society, highlighting the protection of pseudonyms as a personality right.

Currently, discussions about the use of social names have been more focused on transgender people, as they feel more comfortable using their feminine or masculine names, depending on the case. In order to better understand the subject, a study is made on the process of constructing gender identity in the next chapter, aiming to understand its social, psychological and biological context and, subsequently, understand the doctrinal position on the use of social names by these individuals.

Changing gender is one of the hypotheses provided for by law for changing a person's civil name, as it harms the social life of an individual who identifies as being of another gender and needs to use the opposite civil name. One of the problems for this right to be applied effectively is the lack of legislation in Brazil aimed at protecting transsexual individuals, as holders of personality rights.

According to Venosa (2016, p. 48), it is essential that the name reflects "the core of the individual personality, be in keeping with their personal and social status, and must be in keeping with their psyche, honor, personal and social image, and cannot be ridiculous or humiliating". Another case law that demonstrates the favorable opinion of judges regarding the change of civil name by transgender individuals is presented below:

> HEADNOTE: CIVIL REGISTRATION. TRANSEXUALITY. FIRST NAME AND SEX. CHANGE. POSSIBILITY. MARGINAL REGISTRATION. 1. The fact that the person is transsexual and expresses such orientation in the social sphere, living publicly as a woman, being known by a nickname, which constitutes a feminine first name, justifies the claim, since the registered name is compatible with the masculine sex. 2. Given the person's peculiar conditions, his or her registered name is out of step with the social identity, being capable of leading its user to embarrassing or ridiculous situation, which fully justifies the change.

Once again, the judge's understanding is found in the case law that, in the specific case of a transsexual, the change of civil name is justified because it is not consistent with his/her social identity, and may expose him/her to ridiculous or embarrassing situations, violating their right to personality and human dignity. Dias (2006) talks about the sensitivity of some judges to grant the name change and criticizes those who still do not do so, stating that:

> Absolutely unjustifiably, there are court decisions that still insist on rejecting the request for change. The reasoning does not even cover up the prejudice. It is alleged that the Law enshrines the principle of relative immutability of the name, not endorsing any claim by the transgender person to change. However, the Public Records Law states that the first name

> may be modified when it exposes its bearer to ridicule [...]. Another objection to denying the change arises from the prohibition of claiming states contrary to what results from the birth registration, unless an error or falsity of the registration is proven. Since the registration was carried out correctly recording the apparent sex, the change does not constitute any error, which leads to the denial of the request for rectification, etc. (Dias, 2006, p. 108).

Thus, it is the author's understanding that changing the civil name of transgender individuals is fully justifiable and, although there is no specific legislation on the subject, it is possible to use hypotheses provided for by law that in themselves justify this change, such as the use of a nickname or prolonged pseudonym, as well as the possibility of exposing the individual to ridiculous or embarrassing situations. In the case of an individual who has already undergone sex change, there is a change not only to their name, but also to the change of gender in their registration, as demonstrated by the following case law:

> CIVIL REGISTRATION. Transsexual who underwent sex reassignment surgery, requesting correction of his/her birth certificate (first name and sex). Adjustment of the certificate to the registrant's appearance is required. Correction that will prevent repetition of the numerous embarrassments suffered by the appellant, in addition to helping to overcome the perplexity of the social environment caused by the current certificate. Precedents of the TJ/RJ. No legal uncertainty, since the appellant will keep the same CPF number. Appeal granted to determine the change of the author's first name, as well as the correction to the female sex (TJ/SP AC 2005.001.17926, 18th. CC, Des. Nascimento Povoas Vaz, Judg. 11/22/05).

Case law demonstrates the judge's understanding that with the change of sex, it is no longer acceptable to use the male sex in documents, avoiding the occurrence of embarrassment when presenting documents and these not coinciding with the social identity seen, highlighting the non-existence of harm to legal security since the individual's CPF number will be maintained.

In this context, it is possible to verify that, even with divergences in the Brazilian legal position regarding the change of name due to gender identity, the doctrine is sensitive to the cases, adopting a favorable position on the change of the civil name of transgender individuals.

It turns out that authorization and a judicial process are necessary to achieve this objective, considering the slowness of the Brazilian justice system, it takes time to achieve this, therefore spending a long period living in society having to face humiliating situations, finding the use of the civil name as an alternative.

The Gender Identity Law, Law No. 8,727/2016, establishes that all people have the right to be identified according to their chosen gender identity, regardless of the sex assigned at birth. It allows people to request the rectification of their official documents, such as identity cards, passports and birth certificates, to reflect their self-perceived gender identity.

The law establishes that the request for rectification of documents does not require judicial authorization or a medical diagnosis. It recognizes self-perception as a sufficient criterion for a person to be able to modify their personal data. Although the law has simplified the process of rectifying documents, some people still encounter difficulties in practice in obtaining the update of their documents. This may be due to bureaucratic obstacles, lack of clear information or resistance from local authorities.

The normative regulation of the name in an autonomous source was provided for in Law 18248. This law covered all aspects related to the number of names and surnames that a person could have, in addition to establishing who had the right to choose people's names, among other matters. A particularity of this law was that it consisted only of material norms, with no conflict norms (Biocca, 2004).

According to article 2 of Law 18248, the baptismal name was acquired through registration at birth, with the choice of this name being left to the parents. Regarding the choice of the baptismal name, baptism itself, articles 3 and 3 bis stated the following:

> Art. 3. The right to choose one's baptismal name shall be exercised freely, with the exception of the following:
>
> There are cases in which registration is not permitted:
>
> 1. Extravagant, ridiculous names, names that are contrary to local customs, that express or suggest political or ideological tendencies, or that may cause confusion regarding the sex of the person to whom it is attributed.
>
> 2. Foreign names, except when they are already adapted for use in the national language or when they refer to the names of the parents of the registered person, provided that they are

easy to pronounce and do not have a translation into the national language. This prohibition does not apply to names given to children of foreign employees or staff of diplomatic or consular representations in the country, nor to members of public or private missions who have temporary residence in the territory of the Republic.

3. Surnames used as baptismal names.
4. First names identical to those of living siblings.
5. More than three baptismal names. Negative decisions of the Civil Registry may be challenged before the Court of Appeals in civil matters within a period of fifteen working days after notification. Art. 3 bis. It is permitted to register aboriginal names or names derived from autochthonous aboriginal and Latin American words, provided that they do not contravene the provisions of article 3, fifth paragraph, final part.

Articles 4 to 7 of the law dealt with cases related to the surnames of marital children, extramarital children, unrecognized minors and foreign children. Article 4 established that children born of wedlock would adopt their father's first surname. In specific cases, they could be registered with their father's compound surname or with their father's first surname followed by their mother's first surname. If a child registered with only their father's first surname wished to add their father's compound surname or their mother's surname, they could apply to the civil registry for this change after turning eighteen.

The law we are analyzing was modified by Law 26618, known as the Equal Marriage Law, which also addressed the issue of surnames for children of same-sex couples. For Armella (2014), the legislative recognition of gender identity is strongly related to the regulation of same-sex marriage.

Article 3 of Law 26,743 establishes that any person may request the rectification of their sex registration and the change of their name when it does not correspond to their self-perceived gender identity. Likewise, Article 69 of the Civil and Commercial Code (CCyC) establishes, in its third paragraph, that all cases in which gender identity is affected are considered just causes for requesting a change of first name, without the need for judicial intervention.

This gender change has a direct impact on the practice of notary publics, since the notary must ensure legal security in transactions. When a person's name changes, notaries must correct problems arising from the identification of the transgender person, since there may be registration acts performed with the previous name (Armella, 2014).

According to Armella (2014), the aforementioned norm regulates, based on non-discrimination and the freedom of sexual orientation of each person, the right of transgender minorities through which the individual who "self-assesses" himself as belonging to the opposite gender to the one assigned to him at birth can validly change it. This procedure is merely administrative and is based on two fundamental pillars. One of them is the rectification of the original birth certificate (which remains immobilized) by the Civil Registry and Persons' Capacity. The other is obtaining a new national identity document. Both public documents must not indicate that they are subject to the gender identity law.

Transgender people establish different types of relationships with people and things. In this sense, it is important that the ownership of registrable assets is duly disclosed to avoid inaccuracies in the records. Therefore, it is necessary to rectify property titles, as well as records, to consolidate the static or structural and dynamic legal security of business traffic (Armella, 2014).

The Gender Identity Law expressly provides for confidentiality and dignified treatment of transgender people. In view of these general principles of the law, Argentine notaries must adapt their practice professional to avoid undesirable effects (Armella, 2014). Just as an example, Armella (2014) men- highlights some difficulties related to notarial Private International Law that may arise when exercising the notarial function.

A problem may arise when spousal consent is required, as referred to in Articles gos 444 and 456 of the CCyC, after the divorce of the spouses, when one of them rectified their marriage registration and there are discrepancies with the original property title.

Neither Law 26743 nor its Regulatory Decree 1007/2012 contain rules of Private International Law and do not regulate the situation of foreigners residing in the Argentine Republic. Another difficulty may arise in relation to foreigners who have rectified their original birth certificate while in their country of residence.

The modification of this document is not permitted, either by judicial, administrative or any other means. Furthermore, it should be taken into account that not all foreign laws that regulate gender identity do so in the same way. Some allow the change of identity and others do not.

Armella (2014) mentions the examples of Spain, Chile and Bolivia. In the first case, a change of identity and the registration of a new name are permitted, which would allow the person to obtain a new national identity document with the new name in our country. In the second case, since it is not possible to rectify the birth certificate in one's country of origin, this will make it difficult to exercise the right to change one's name in our country, since this right will subsequently not be recognized in one's country of origin, with the legal consequences that this entails.

Since confidentiality and fair treatment are two fundamental principles of the law under analysis, and in the situation where a person has requested the rectification of his/her birth certificate abroad, how should the notary act in order not to violate these principles? This question arises because foreign laws that allow the rectification of birth certificates do not always impose the principle of confidentiality. This situation leads to the question of whether the regulation established by national legislation is of international public order or not, since the answer to this question will determine how the notary should act. Armella (2014) states that domestic regulation does not constitute a norm of international public order in Private International Law.

From Armella's (2014) point of view, the Argentine notary would not be obliged to respect the confidentiality established in Argentine law, since there is no legal obligation to guarantee greater or better treatment than that established in foreign law based on which the foreigner obtained the rectification of his/her birth certificate. In other words, in the hypothetical case in which a foreigner presents to the Argentine notary a rectified birth certificate in which the person's original name appears, the notary may record this circumstance in the instrument to be drawn up.

CONCLUSION

The conclusion of this comparative study on the right to gender identity and the use of social names in Brazil and Argentina highlights significant advances, especially in Argentine legislation, which has proven to be more progressive and inclusive. The Argentine Gender Identity Law, approved in 2012, represents a milestone in guaranteeing rights for trans people, allowing the change of name and gender on official documents without the need for judicial authorization or medical diagnoses, ensuring greater autonomy and dignity for individuals.

In Brazil, although the use of social names has advanced, especially with Resolution No. 270 of the CNJ and the decision of the STF in 2018 that recognized the right to rectify name and gender without the need for surgery, there are still challenges. The absence of specific and comprehensive legislation, such as that in Argentina, generates legal uncertainty and inequality in access to the right. In addition, cultural and social barriers persist, making it difficult to fully accept and respect social names and gender identity in everyday life.

Therefore, the comparison between the two countries highlights the need for clearer and more inclusive legislation in Brazil, following the Argentine example, to guarantee the full exercise of the right to gender identity. Respect for the social name, as a personality right, is essential to ensure the dignity and inclusion of trans people in society.

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