



APPLICATION OF THE MARIA DA PENHA LAW TO TRANSGENDER WOMEN: APPLICATION OF THE QUALIFIER

Omar Luiz da Costa Junior

SUMMARY

This study aims to analyze the application of the Maria da Penha Law to cases of violence against transgender women. The methodology used in this study was a bibliographic and documentary research, where the basis for carrying out the work will be based on doctrine, laws, as well as official publications. It is worth noting that regarding the nature of the research, it qualifies as qualitative, where the search for information relevant to the proposed theme is analyzed in an expanded and comprehensive manner. Regarding the research within the scope of the national legal system, the presence of the subject in laws, doctrines and case law inherent to the theme was verified. It is also worth noting that a documentary research was carried out with the aim of broadening the scope of the subject, aiming at an optimization for contemplation of the objectives. At the end of the study, it is possible to affirm the possibility of applying the Maria da Penha Law to cases of violence against trans women, taking gender identification as a basis, with the factor of identifying as a woman being sufficient for the application of the qualifier, with an understanding already established by the Superior Court of Justice (STJ) on this possibility of application, however, it is still necessary to include this provision in the letter of the law.

Keywords: Maria da Penha Laws. Domestic Violence. Transgender Women.

ABSTRACT

This study aims to analyze the application of the Maria da Penha Law in cases of violence against transgender women. The methodology used in this study involved bibliographic and documentary research, where the foundation for the work is based on legal doctrine, laws, and official publications. It is noteworthy that the nature of the research qualifies as qualitative, with the search for relevant information on the proposed theme being analyzed in a broad and comprehensive manner. Regarding the research within the scope of national law, the presence of the topic in laws, doctrines, and case law related to the topic was observed. Additionally, documentary research was conducted to expand the reach of the subject, aiming to optimize the achievement of the study's objectives. At the conclusion of the study, it is possible to confirm the applicability of the Maria da Penha Law to cases of violence against transgender women, based on gender identity, with the identification as a woman being sufficient for the application of this legal provision. This understanding has already been established by the Superior Court of Justice (STJ), although the inclusion of this provision in the letter of the law is still necessary.

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INTRODUCTION

It is in the context of standards aimed at protecting women in Brazilian law that the research question is inserted, considering, according to Giddens (2012), that gender and sex (sexual orientation) would be distinct concepts, the first being linked to the cultural, social and psychological differences that exist between men and women, while the second would correspond to the physiological and anatomical differences that define the female and male bodies.

Therefore, according to Giddens (2012), gender would be a conception related to socially constructed notions about an individual's femininity and masculinity, but not a product necessarily related to their biological sex. It is in this context that the concept of gender identity would emerge, this being the personal way in which each individual sees themselves, being directly linked to the external manifestations of their personality.

Considering the legal gap in the country for the protection of trans women against violence, in 2014 Jandira Feghali proposed Bill No. 8,032, which aims to expand the protection provided for in Law 11,340 of August 7, 2006 - Maria da Penha Law - to transsexual and transgender people. However, it is still awaiting the appointment of the Rapporteur in the Commission on Human Rights and Minorities (CDHM), even after seven years of its proposal, which shows the necessary attention to the subject. Despite this, it is clear that the subject has all

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have reached significant dimensions, with different researchers looking into the subject.

This judicial gap is highlighted by Baptista (2020, p. 176) as an “institutional violation of the rights of cis and trans women”. Thus, a problem has been established that requires a reinterpretation of the Maria da Penha Law so that it is possible to guarantee protection for trans women in the event of violence.

Therefore, this study aims to analyze the application of the Maria da Penha Law to cases of violence against transgender women.

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TRANS WOMEN IN THE DISCOURSE OF CURRENT SOCIETY

Transsexuality is a condition in which an individual's gender identity differs from that assigned at birth. These individuals seek to transition to the opposite gender through medical interventions, such as sex reassignment or feminization/masculinization, depending on the gender they wish to transition to. This involves the use of hormones and, in some cases, sex reassignment surgery (Costa-Val and Guerra, 2019).

Transsexuals are born as men or women, but do not identify with the gender they were assigned. They may adopt clothing of the opposite sex, use hormones and eventually opt for sex reassignment surgery (transgenitalization). Their gender identity is not aligned with their biological sex, regardless of their gender (they may be male or female), role (they may have more masculine or feminine characteristics) and sexual orientation (there are heterosexual and homosexual transsexuals). They are people who feel “trapped” in bodies that do not correspond to their gender identity (Costa-Val and Guerra, 2019).

It is important to note that transsexuals are different from transvestites, as the latter, although they share the same desire to dress and use female hormones, maintain their original genitals. Sexual identity begins to form in childhood, when children become aware of the differences between the sexes and tend to pay attention to people of the opposite sex with whom they live.

Upon discovering their transsexuality, the individual begins to deal with conflicting emotions and may face difficulties in accepting their life condition. This occurs because they must adapt to society's norms regarding body construction, sex and sexuality. However, it is important to emphasize that transsexuality is not a disease, but rather an expression of the gender identity chosen by the individual within the cultural context (Borba, 2014).

Transsexuality is considered a form of gender dysphoria, according to the aforementioned author, and requires a multidisciplinary approach, falling within the scope of intersexualities. It is important to understand that the construction of gender identity as a man or a woman goes beyond the biological level and social impositions on how a person should behave, dress and express themselves, according to the binary view of gender (Costa-Val and Guerra, 2019).

In this context, transsexuals often face difficulties in sexual initiation, since they do not accept the transformation of their body, denying their biological sex and becoming confused about their true gender identity. Deep discomfort with biological sex often leads these individuals to seek surgical interventions and hormonal treatments, with the aim of achieving the body desired.

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Boys may feel repulsed by their penis and testicles, while girls may reject the idea of urinating while sitting down, as well as breast development and menstruation. These aspects highlight the intensity of the discomfort that transsexuals experience in relation to their own bodies and the importance they attribute to the congruence between their gender identity and the physical expression of that identity (Costa-Val and Guerra, 2019).

In this sense, it is essential to highlight that, in a humanistic approach, the human being is considered as a being in a constant process of construction. The formation of personality is not limited only to

childhood, as the experiences lived during this phase are decisive, but the process of constructing identity and personality is continuous, subject to changes and transience throughout life (Borba, 2014).

Transsexuality challenges traditional conceptions of gender, emphasizing the importance of respecting individual autonomy and recognizing the diversity of gender identities. Understanding and supporting transsexuals is crucial to ensuring that these individuals can live fully in accordance with their gender identity, overcoming the emotional and social challenges they face (Lara, 2013).

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Lima, Oliveira and Moreira (2020) address the definition of trans women from a cisgender perspective, highlighting the hierarchical positioning that does not recognize equal rights and promotes discrimination. When defining these genders, specific predicates are automatically attributed to them. In the case of women, this includes subordination in relation to men, who are usually white and cisgender, and who fight to maintain their privileges.

In the case of trans women, the gap is even greater, even with the advances that have been achieved, as they are stigmatized as a pathology, a "strange" body that puts them at a disadvantage compared to others. There is an urgent need to discuss how social positioning promotes discrimination against transgender people, treating them as sick and marginalizing them in society, which limits their right to establish affective relationships and directly affects their intimate integrity, instead of recognizing and respecting their gender identity (Lima; Oliveira; Moreira, 2020).

Jesus and Alves (2010) discuss the emergence of a movement that seeks to depathologize and formulate new discursive strategies by trans people and groups. This movement questions the social imaginary that is linked to the idea of a rigid and immutable division between sex and gender (cisgenderism), understanding that this division oppresses trans people, who have bodies that do not conform to the binary norm of man/penis and woman/vagina.

Transfeminism, also known as transgender feminism, seeks to empower transsexual people, transvestites and other people within the trans universe, regardless of their gender, appearance or sexuality. It is recognized that these people are on the margins of social processes, excluded by discourses and practices that are sexist, cissexist and transphobic (Jesus; Alves, 2010).

Transgender feminism goes beyond just participating in the LGBT movement, as it seeks to overcome conceptual and political restrictions that limit its reflections and actions to the demands of the broad collective formed by LGBT, in which LGB people have different centralities and demands related to orientation sexual orientation, which do not always coincide with those of trans people, who are more focused on gender identity.

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The movements of transsexual and transvestite women, which represent an important and historic portion of The trans population's historically visible nature finds in feminist thought a powerful theoretical and practical reference to resist and build their own strengths when confronted, in everyday life, with experiences of oppression imposed by male domination (Jesus; Alves, 2010).

Dieguez (2016) identified several aspects of a trans woman's speech that point to her difficulty in finding her social place. This occurs because in society people are only understood and

recognized when they identify with the male or female gender. There is an assumption that there are only two possible genders, and that they must follow pre-established patterns, which are historically constructed by established relations of domination.

These conceptions end up leading to the marginalization and pathologization of transgender people in scientific discourses, creating countless difficulties for them to be recognized and accepted. Through the case study, it was also possible to discuss the representations of femininity. After the interview, a content analysis was performed, the results of which indicated that the interviewee seeks to find her place in a society that is structured around gender and heteronormativity (Diguez, 2016).

Barbosa (2013) approaches the act of stereotyping as a reductive act that often leads to the marginalization of the stereotyped "other." In the case of trans women, they are often seen as abject due to exclusions that occur in the affirmation of the category and in the construction of the idea of a "real woman." These contingent exclusions reflect multiple moral statements present in the construction of these differences, which become more evident in the exchange of accusations and the use of terms such as "faggot," in the distancing from homosexuality, and in the various moral ambiguities that are expressed through bodily practices and social contours.

Furthermore, the author argues that this "degraded otherness" that is constructed in the affirmation of the transsexual category is not restricted only to conventions of gender and sexuality, but also includes elements related to color/race, social class and generation. These different social conventions produce hierarchies and expectations in relation to the categories of transvestite and transsexual, but it is important to understand that these different statements must be understood in their situational articulation and not as a simple sum of isolated elements (Barbosa, 2013).

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ABSTRACT INTERPRETATION AND APPLICATION OF LAW

The interpretation and abstract application of law are fundamental elements for the understanding and appropriate use of legal norms. These processes involve the analysis of the legal text, its understanding in the normative context and its application in specific cases, in a general way and not specific to a particular situation.

The interpretation of law consists of the search for the meaning and scope of legal norms. It involves the analysis of the legal text, taking into account its historical, social and cultural context, as well as the principles and values that guide the legal system. Interpretation aims to understand the meaning of the words used in the law and the legislator's intention when creating it (Lobo, 2019).

There are different methods and techniques for interpreting law, such as the grammatical method, the historical method, the systematic method, the teleological method, among others. Each of these methods seeks to offer a specific approach to understanding the legal norm, taking into account different aspects, such as the linguistic context, the historical evolution of the law, the internal coherence of the legal system and the purpose of the norm.

The abstract application of law refers to the use of legal norms in concrete situations, but without a direct relationship with a specific case. In this context, the general and generic application of norms occurs, without considering the particular circumstances of each specific case (Deval, 2019).

The abstract application of law occurs, for example, when a judicial body analyzes the constitutionality of a law in theory, without being faced with a specific case. It also occurs when opinions are drawn up on legal matters, when doctrines are produced or when legal theses are established to be applied in several similar situations. This enters the field of interpretation of the law, of hermeneutics.

According to Camargo (2003, p. 10), hermeneutics "refers us to the understanding of the being itself in the world, which encounters issues that it is called to resolve, among them the legal one". In this way, hermeneutics seeks to understand something through its interpretation. In the legal field, hermeneutics is used to interpret texts or other normative elements to solve some problem.

According to Maximiliano (2001), legal hermeneutics consists of a scientific theory that seeks to specify the meaning and scope of legal expressions. Thus, it is not a mere interpretation of normative elements, but rather to verify their meaning and scope, so that it is possible to verify their application.

tion, and it should be highlighted, in this sense, that all legal norms require interpretation, and do not have a pre-existing absolute meaning. On the subject, Beserra (2013, p. 18) states that:

Law was created to regulate human relations in society, this is an undisputed fact, and therefore its rules are not the product of a mere whim of the sovereign (legislative), but to meet the interests of individuals, seeking stability and legal security in relationships. Therefore, interpreting a rule is not simply clarifying its terms in an abstract way, but, above all, revealing the appropriate meaning for real life and capable of leading to a fair application. [...] Interpreting in the Legal System is establishing the true meaning and scope of a legal rule. In turn, hermeneutics is the scientific theory of interpretation.

In view of the above, it is possible to say that legal hermeneutics aims at the correct application of a norm, considering its true meaning and scope. Understanding legal hermeneutics, it is possible to state that constitutional hermeneutics deals with the interpretation of the Federal Constitution, as highlighted by Mascarenhas, its objective is to provide “the basic principles according to which legal operators must understand the meaning of constitutional norms”. In this context, there is the interpretation of constitutional norms and principles, considering their true meaning and scope, in order to provide support to legal operators.

It is important to highlight here that the Federal Constitution is the highest law of a country. It is a superior hierarchical norm, and all other laws must follow it. It should therefore be seen as the basis of the Legal System, and all other laws must follow it. Silva (2003) emphasizes that the Federal Constitution is at the apex of a country's Legal System, legitimizing state powers to the extent that it recognizes them and in the proportion in which they are distributed.

Thus, constitutional hermeneutics is of utmost importance, considering that it involves the basis of the country's legal system. Mello (1999, p. 58) defines constitutional hermeneutics as “the study and systematization of the methods, techniques and rules used to interpret the exact meaning, sense and scope of constitutional norms”. Based on Mello's concept (1999), it is clear that there are methods, techniques and rules for constitutional interpretation.

Coelho (2004) cites methods of constitutional interpretation as consisting of: classical legal or hermeneutic; topical-problematic; hermeneutic-concretizing; scientific-spiritual; and structuring normative.

The classical legal or hermeneutic method, according to Coelho (2004), concerns constitutional interpretation according to the traditional rules of hermeneutics, articulating with philological, logical, historical, teleological and genetic elements. The topical-problematic method is highlighted by the author as the method that does not only consider the legality of the Constitution, considering it as an open system of rules and principles, which allows different interpretations. In this method, preference is given to the discussion of problems rather than privileging the system, transforming constitutional interpretation into an open process of argumentation.

According to Cantarelli (2010), the topic-problematic method was used in the Legal System by Theodor Viehweg, as a means of complementing the scientific method, and was followed by jurists such as Martin Kriele, Peter Häberle, Friedrich Müller and Konrad Hesse. At the core of this method is thinking about the problem in an open way, considering it as open to different interpretations. It is worth noting that Canotilho (2000) disagrees with this method, because, according to him, the interpretative activity should start from the norm to the problem and not follow the opposite path.

In turn, the hermeneutic-concretized method, according to Coelho (2004), is an interpretation through the relationship between text and context, starting from a pre-understanding of the interpreter, considering the historical situation, solving the problem in light of the Federal Constitution and not according to criteria personal justice, with the constitutional text acting as a limit to interpretation.

Cantarelli (2010) states that this method was introduced by Friedriche Müller, basing a material theory of Law, having the same core as the topical-problematic method, however, with several modifications, the main one being the fact that it starts the interpretation from the constitutional norms and takes it to the problem, contextualizing it, different from the aforementioned method that followed the opposite path.

In the scientific-spiritual method, according to Coelho (2004), the Federal Constitution is considered an instrument of integration and conflict regulation, being fundamental for the construction and preservation of social unity, and its interpretation should never lead to disaggregating solutions. In this method, the Constitution becomes more political than legal.

The normative-structuring method, formulated by Heidegger and Gadamer, is highlighted by Coelho (2004) as the method that concretizes the law in each case to carry out its interpretation, based on the premise that there is a necessary implication between the normative program and the normative scope and between the legal precepts and the reality that they intend to regulate.

It should be noted that the abstract interpretation and application of the law are essential for legal certainty, uniformity of understanding and coherence in the legal system. However, it is important to emphasize that the abstract application of the law is not always sufficient to resolve all specific cases, since each situation may present particularities that require a more detailed and contextualized analysis. In such cases, the application of the law in a more concrete and individualized way is necessary, taking into account the peculiarities of the case in question.

POSSIBILITY OF APPLYING THE MARIA DA PENHA LAW TO TRANS-SEXUAL WOMEN

Recently, Brazilian courts have been establishing an understanding of the possibility of extending the application of the Maria da Penha Law to trans people (transgender/transsexual), and this is the objective of this study: to consolidate a scientific study to support the possibility of applying or not the Women's Protection Law to trans people. In this sense, the following is the summary, extracted from the Court of Justice of the Federal District and Territories (recent judgment, from 2018):

CRIMINAL AND CRIMINAL PROCEDURAL. APPEAL BY THE PUBLIC PROSECUTOR'S OFFICE AGAINST A DECISION BY THE DOMESTIC VIOLENCE COURT. DECLINATION OF JURISDICTION TO A ORDINARY CRIMINAL COURT. INADMISSIBLE PROTECTION BY THE MARIA DA PENHA LAW. ASSAULT OF A FEMALE TRANSEXUAL WHO DID NOT UNDERGO SEX REASSIGNMENT SURGERY (CRS). PENDING RESOLUTION OF A CIVIL ACTION FOR RECTIFICATION OF A FIRST NAME IN THE PUBLIC REGISTRY. IRRELEVANCE. EXTENSIVE CONCEPT OF VIOLENCE BASED ON FEMALE-MINIMUM GENDER. REFORMED DECISION.

1. The Public Prosecutor's Office appeals against a first-instance decision that granted urgent protective measures in favor of a transsexual woman who was assaulted by her partner, but declined jurisdiction to the Common Criminal Court, as it considered the Maria da Penha Law to be inapplicable because there was no change in the patronymic recorded in the civil registry.
2. The female gender derives from the freedom of individual self-determination, being socially presented by the name one adopts, by the way one behaves, dresses and identifies oneself as a person. Changing one's identity registration or undergoing transgender surgery are merely options available to enable one to exercise this freedom of choice fully and without constraints. They are not conditions for being considered a woman.
3. There is no analogy *in malam partem* when considering the female transsexual victim as a woman, considering that gender is a primarily social construct and not just a biological one. By identifying and being identified as a woman, the victim begins to carry with her secular stereotypes of submission and vulnerability, which stand out in the relationship with her aggressor and justify the application of the Maria da Penha Law to the case.
4. Appeal granted, ordering the continuation of the case in the Domestic Violence Court.

domestic and family violence against women, with the application of the Maria da Penha Law.

Thus, as can be seen, the understanding that has been gaining ground is that the Maria da Penha Law does not distinguish between the gender identity and sexual orientation of female victims, so that the fact that the victim is a female transsexual would not, in the judge's view, remove legal protection, nor the jurisdiction of the Domestic and Family Violence Court, given that this is the body defined by law.

to, in Brazil, address issues relating to the application of this protective law.

6 In the research carried out by Souza (2019), arguments for and against this application were presented, however, they highlight that the favorable arguments are still not sufficient to justify the application of the Maria da Penha Law in cases of transsexual or transgender victims, considering, mainly, the principle of human dignity as a basis, given the International Treaties and Conventions for the protection of human rights.

Tinoco and Cabral (2019) also confirmed that constitutional principles and human rights are the main arguments for applying the Maria da Penha Law to this public. However, they highlight that the arguments are still vague, requiring important research to provide more concrete support.

to the courts' decisions in protecting these women.

Even though human rights are presented as a concrete argument for the application of the Maria da Penha Law to trans women, its applicability by Brazilian courts is still flawed. According to Montanher, Negreiros and Andrade (2020), jurists from Domestic and Family Violence Courts still have difficulty accepting cases of aggression against trans women, with a tendency to deny requests for protective measures and to reassign the jurisdiction of these cases to other courts, so much so that, only in 2019, the first sentence in which a protective measure was granted to a trans woman was verified, by judge Vanessa Villela De Biassio in the city of Andira - PR.

Thus, in view of the frequent and increasing cases of transgender women being attacked in Brazil, the favorable trend for the application of the qualifier through the Marias da Penha Law has been consolidated, especially after an unprecedented understanding reached by the sixth panel of the Superior Court of Justice (STJ) in August 2022, which extended the protection of the aforementioned law to trans women.

The appeal in question was reported by Justice Rogerio Schietti Cruz, who made the decision to apply the special legislation of the Maria da Penha Law in the case of violence committed by the father against his own trans daughter, justifying his position based on legal doctrine. The justice considered that, even taking into account the biological sex of the victim, the determining factor for the scope of the law is the female gender. He highlighted that gender does not always coincide with biological sex and emphasized that the objective of the Maria da Penha Law is to combat domestic and family violence practiced against women because of their gender, and not because of their sex (STJ, 2022).

This decision demonstrates the minister's interpretation of the application of the law in cases involving transgender people and reinforces the importance of considering the gender aspect in protecting victims of domestic and family violence. The gender-based approach seeks to ensure equality and protection for women, regardless of their biological sex, recognizing that domestic and family violence can affect people of different gender identities. This interpretation is in line with the perspective of expanding legal protection to cover all forms of gender-based violence, promoting a more inclusive society and combating violence against women in a comprehensive manner (STJ, 2022). The STJ decision set a precedent and is now being applied in the country.

However, according to Santos, the issue has been widely debated since 2014, when the Brazilian Bar Association (OAB), through the Special Committee on Sexual Diversity, issued a technical note in which it defended the application of Law No. 11,340/06 to transvestites and transgender women. The OAB's position was based on the understanding that one of the criteria for the application of the law is identification with the female gender, and not biological sex.

Bills on the subject were already being proposed in 2014, but they are still pending. Since that year, Bill 8,032 has been under consideration in the Chamber of Deputies, which seeks to include protection for transsexuals and transgender people in Law 11,340/2006, known as the Maria da Penha Law. The bill is currently being analyzed by the Human Rights and Minorities Committee, awaiting the rapporteur's opinion. At the same time, in 2017, Senate Bill 191 began to be processed in the Senate, with the same objective of ensuring legal protection for all women, regardless of their biological sex. However, this proposal was shelved.

Thus, it was only years after discussions and legislative proposals that a firm understanding came about. Although the Brazilian legal system is inspired by the Romanesque/Germanic (*civil law*), which has the law as its primary source of law, applied by the Judge as its interpreter, there was an approximation with the system from 2015 onwards *common law*, due to the institution of binding precedents, where the norms and rules are not written in advance, using customary law and jurisprudence predominantly.

This approach occurred because the CPC/2015 recognized the usefulness of precedents as one of the fastest and safest procedural means for obtaining any rights by the party, with one of the points positive aspects of helping to reduce the number of cases that the courts receive, due to the uniformity of interpretation and stabilization of jurisprudence.

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The Superior Court of Justice itself considers the judge's mediation in the questions formulated by the parties to be valid. It does not matter what the law provides; the emphasis on judicial powers remains alive in the mentality of *civil law*. As a rule, in criminal proceedings, the inquiry is freely conducted by the judge, who is allowed to ask the questions he deems appropriate to clarify the facts relevant to the case (Tourinho Filho, 2009).

Matida and Herdy (2016) explain that reaching the truth in criminal proceedings is a means to an end, seeking to resolve a conflict of interests. The judge is responsible for making a decision based on the

evidence presented, assuming a risk for its perception whether the accused of a crime was in fact the one who committed it, determining whether the factual proposition offered was proven according to some criterion of sufficiency (evidentiary standard) and in compliance with any evidentiary rules.

Thus, for the authors, it is necessary to realize that the evidence presented may not respond to objective reality. Neri and Lima (2016) verified in their study the possibility of applying mandatory precedents in criminal proceedings, in the same way provided for in the CPC/2015, believing that from its applicability it is possible to provide greater equality in the concrete application of the law.

From this, considering the understanding of the STJ and the theory of precedents, this stance has been adopted in Brazilian courts. In São Paulo, Thesis 551 was published by the Public Prosecutor's Office of São Paulo (MPSP, 2021):

DOMESTIC OR FAMILY VIOLENCE AGAINST WOMEN – URGENT PROTECTIVE MEASURES – TRANSGENDER PERSON – APPLICABILITY. Article 5 of Law No. 11,340/06 provides legal protection to women based on their gender, which is why the application of an urgent protective measure in favor of a transgender person is applicable.

According to this thesis, article 5 of Law 11,340/06, known as the Maria da Penha Law, offers legal protection to women based on their gender identification. Therefore, the application of urgent protective measures in favor of transgender people is admissible based on this legislation.

From the analysis of Brazilian jurisprudence, it can be seen that decisions have been based on identification with the female sex, with no mention of biological sex in the Maria da Penha Law, opening up the possibility of applying the qualifier, as can be seen in Ruling 1671958:

(...) 1 - If the defendant, the partner of a transsexual victim who identifies with the female gender, attacks her with an iron bar and cuts her hair with a knife, in addition to insulting and threatening her, out of jealousy and a feeling of possession, evidencing the subjugation of the female figure and gender-based violence, in the domestic and intimate family context, the jurisdiction to process and judge the criminal action for the alleged crimes committed lies with the specialized women's court.

This decision reinforces the interpretation that the Maria da Penha Law can be applied in cases of domestic and family violence involving transgender people who identify with the female gender, taking into account the perspective of gender violence and its specific protection.

A similar understanding can be seen in Ruling 1663969, which presents the identification of the victim as a woman as sufficient for the application of the Maria da Penha Law in cases of violence:

(...) 1. Gender identity, sexual orientation and biological sex are not to be confused. An individual's sexual orientation refers to how he or she expresses his or her feelings, especially in the sexual aspect, and may be, among others, heterosexual, homosexual, asexual, bisexual, etc. Biological sex differentiates between male and female, taking into account the individual's genitalia, reproductive organs, chromosomes, etc. Gender identity, in turn, is a psychosocial concept, that is, it considers both the person's own identification of himself or herself and the way he or she is perceived in his or her environment. 2. The victim's self-identification as a woman is a sufficient condition for her inclusion in the gender protected by Law No. 11,340/2006, especially because no distinction is made between cisgender women and transgender women, with Article 5 referring only generically to the broader term "woman," as well as purposefully using the term "gender" when clarifying domestic and family violence against women ("domestic and family violence against women is any action or omission based on gender that causes death, injury, physical, sexual or psychological suffering, and moral or patrimonial damage"). 3. There is no need to speak of an analogy "in malan partem" in the application of the Maria da Penha Law to transgender women, since it is not a question of "woman by analogy," but simply of a woman who identifies herself in this way, even though she has male biological characteristics. 4. Since the victim identifies as a woman and, therefore, acts based on social expectations for the female gender, thus being perceived even by her social circle and by the alleged aggressor, the alteration of her civil records represents just another mechanism for the expression and full exercise of the female gender with which she identifies, and cannot be an obstacle to the exercise of rights and guarantees that are legally and constitutionally provided for them. 5. Conflict known to declare the Court raised competent (2nd Special Court of Domestic Violence and

Family Against Women of Ceilândia/DF).

Ruling 1663969 presents an interpretation of case law that recognizes the victim's identification as a woman as a sufficient criterion for the application of the Maria da Penha Law in cases of violence. The understanding is that gender identity should not be confused with sexual orientation or biological sex. The ruling emphasizes that gender identity is a psychosocial concept, taking into account both the person's self-perception and the way they are perceived in the environment in which they live. In this sense, the victim's self-identification as a woman is considered a sufficient condition for her inclusion in the gender protected by the Maria da Penha Law.

The ruling also emphasizes that the Maria da Penha Law does not distinguish between cisgender women and transgender women, using the term "woman" generically and explicitly mentioning domestic and family violence against women based on gender. Furthermore, the ruling states that it is not a question of applying the Maria da Penha Law by analogy or considering the victim as a "woman by analogy", but rather recognizing her condition as a woman, even if she has male biological characteristics. The victim's self-perception and the way she is perceived socially are considered fundamental in the application of the law.

Finally, the ruling highlights that changing the victim's civil registration records to reflect her gender identity should not be an obstacle to the exercise of rights and guarantees provided for by law and the Constitution. In short, the ruling interprets the legislation and highlights the importance of the victim's self-identification as a woman, regardless of her biological sex, for the application of the Maria da Penha Law and legal protection against domestic and family violence.

In view of the above, it is clear that the STJ decision and the application of the Maria da Penha Law to transgender women represent a significant advance in the fight against gender-based violence and in the promotion of equal rights. This legal approach seeks to guarantee the protection of women, regardless of their biological sex, and reflects the search for a more inclusive and fair society. However, it is necessary to continue working to face the challenges and ensure the full protection of the rights of trans women and all people affected by gender-based violence.

CONCLUSION

In view of the issue of transgender women as victims of domestic crimes, the possibility of including them under the protection of the Maria da Penha Law was analyzed, taking into account the doctrinal teachings on sex and gender identity. It was found that several institutions linked to the Judiciary, such as the Public Defender's Offices, the Public Prosecutor's Office, the Brazilian Bar Association and judges, have a favorable and unanimous position on this matter. This stance reinforces the importance of guaranteeing legal support and protection for transgender women who suffer domestic violence, recognizing their vulnerability and seeking to promote equality and justice.

After analyzing the case law, it was found that, in the second instance, the courts have recognized the applicability of the Maria da Penha Law to transgender women who experience situations of domestic violence, regardless of whether they have undergone reassignment surgery or have changed their civil registration. However, it is noted that this issue is still the subject of discussion in the first instance, highlighting the lack of consensus regarding the application of Law No. 11,340/06 to transgender women. This lack of consensus contributes to the marginalization of trans women, making it difficult for them to access the rights provided for in the aforementioned legislation.

At the end of the study, it is possible to affirm the possibility of applying the Maria da Penha Law to cases of violence against trans women, taking gender identification as a basis, with the factor of identifying as a woman being sufficient for the application of the qualifier, with an understanding already established by the Superior Court of Justice (STJ) on this possibility of application, however, it is still necessary to include this provided for in the letter of the law.

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