

LAW, CULTURE AND ADOPTIVE TRADITION IN CONTEMPORARY BRAZIL

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Abstract

In this text we discuss questions linked to the right of family cohabitation and its relationship to the different forms of adoption that are carried out in Brazil. It is necessary to remember that the Brazilian Law makes it clear that the place that a child has is in his/her community, in the bosom of his/her family. Only in exceptional cases the minor will be placed in a substitute family (ECA, Art. 101, Sole Paragraph). It is interesting here to present different interpretations of this principle by the Brazilian society. In this sense, we are going to centre particularly on the way in which Brazilian families perceive the place of the minors and, above all, the use they make of adoption. We will develop four aspects. I From the interest of the couple to the interest of the child; II. The circulation of minors; III Adoption á la Brazil; IV The quick adoption.

I. From the interest of the couple to the interest of the child.

The present Brazilian legislation seeks to guarantee the "interest of the child", which amongst other things passes via family cohabitation. We remember that it was not always like that. Since 1916, when the formal right of adoption was instigated in the Civil Code (Arts 368 to 378) until 1979 (the year the Code for Minors came into force), the legislation in Brazil treated adoption within the sphere of private relationships. When someone wanted to adopt a Brazilian child, it was enough to go to the Notary to register the adoption. A mother could take her child to a notary and declare that the minor was going to be adopted by a third party. During the validity of the Civil Code, the principal beneficiary was not the minor but rather the family, the couple. In 1990 the ECA came into force, and the "interest of the minor predominated. The perspective changes. The main motive is the realisation of the personality of the adopted child, and his/her protection (ECA, Art. 43 – "The adoption will be attended when real advantages are present for the adopted child and fused in legitimate motives).

II. The circulation of minors

This concept refers to the informal practice of "Placing minors temporarily or permanently in houses that are not their progenitors'" (Fonseca, 1995). The main part of these transferences are orientated towards grandparents and uncles and aunts. When these relations are not available to receive the child, the mother may look among other people for someone who can keep her child. The transfer does not impede the biological mother's expectations of an eventual restitution of the child if her situation improves (the expectation can be expressed in the idea that "there is only one mother"). Expectations not always shared by the new mother (who tends to enter into the logic of "mother is who brings up"). This form of "adoption" is very

common in Brazil, completely outside the law, but totally integrated into our customs – especially in the poorer classes. This proves completely the understanding that part of our population has about the role of the biological parents in the maintenance of their children: on the one hand, they are responsible for their placement in substituted homes, and on the other, they ignore the services of the State as intermediaries in these strategies of survival.

III. Adoption á la Brazil

In Brazil, a large part of the adoptions were carried out (and are still) without the use of the Law by the adopter. In general, these adoptions are carried out as if they had happened naturally: the couple goes to the notary and registers the minor as a birth child. Although no document exists from the hospital, it is valid to take two testimonies. Among international jurists this practice is known as “adoption á la Brazil”. That circulation is done in a vertical way, from down up in the hierarchy of classes. They are always poor women who cede their children to richer women (or, at least with less problems of survival). Some parents collect the baby from the hospital and from there they go to the notary where the child is adopted as if it were the couple’s natural child. We are far from the law and justice. The implicated are going to tell, in a recurrent way that “they will save a child”, or even that “they will help a mother” (and this statement can be used both to designate the biological mother and the adoptive mother). The couples interviewed do not always tell the truth about this question since obviously to adopt like that is illegal and subject to possible punishment. An added complication is that, for all the effects there was no adoption. The child was the couple’s biological child! Therefore, it is not known how many children are adopted annually in Brazil using this kind of dossier. For some judges, the proportion varies between 90% and 80% of the total adoptions carried out. It seems obvious, therefore that an illegal practice is not told easily.

IV. The quick adoption

Another adoption door, this time legalised, is to be found in the Article 166 of ECA which gives the parents the possibility of abdicating to the Parental rights in favour of another. In this practice the candidate for adoption arrives at the Courts with a minor and says that “he was abandoned” , that on opening his door he found a “child in a gift box”, etc. Our investigations (Abreu, 2002) suggest that a large part of the adoptions by Brazilians are carried out this way. The testimony of a technician at the Courts gives an idea on the way the adoptions occur. “I could say that a great majority of adoptions here in the Courts are quick adoptions. A small number of candidates to be adoptive parents arrive here without a child.”. An adoptive mother relates how the adoption of her child took place: “I received this child from Mrs. Soandso. I did not manage to register him at the notary as a biological child. Mi brother in law who is a lawyer, one day came and brought a birth certificate in an envelope with the name of my son and my name. There is even a blank space for me to write in the name of the father if one day I get married.” The lawyer had carried out all the red tape so that she could assume the legal status as the mother.

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