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ANTI-DISCRIMINATION LAW IN THE LIGHT OF THE 1988 FEDERAL CONSTITUTION AND THE RIGHT TO NON- DISCRIMINATION BASED ON SEXUAL ORIENTATION

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Abstract: The aim of this article is to analyze anti-discrimination law in the light of the 1988 Federal Constitution to ensure non-discrimination based on sexual orientation. The methodology used was bibliographical research, using the doctrine of Adilson José Moreira, advisory opinion OC-24/17 of the Inter-American Court of Human Rights and decisions of the Federal Supreme Court. The results indicate that, despite progress, discrimination based on sexual orientation remains a problem. Therefore, the application of anti-discrimination law depends on a combination of specific legislation, accessible redress mechanisms, inclusive public policies and a continuous effort by social movements to promote awareness and acceptance of sexual diversity.

Keywords: Anti-discrimination law. Human Dignity. Sexual Orientation.

INTRODUCTION

The 1988 Federal Constitution represents a historic milestone in the protection of fundamental rights in Brazil, laying a solid foundation for the promotion of dignity, freedom and equality for all citizens. Within this context, anti-discrimination law stands out as a set of rules and principles designed to combat discrimination in its various forms, including discrimination based on sexual orientation.

The advance of discussions on LGBTQIAPN+ rights has been remarkable in recent decades, reflecting a growing awareness of the importance of protecting all forms of human diversity. Anti-discrimination legislation, supported by progressive court rulings and opinions from international bodies such as the Inter-American Court of Human Rights, has contributed significantly to building a fairer and more inclusive environment.

Advisory Opinion OC-24/17 of the Inter-American Court of Human Rights highlights the importance of robust legal recognition and inclusive public policies to protect the rights of these communities. This opinion ad-

dresses relevant issues such as the change of name according to gender identity and economic rights arising from same-sex unions, emphasizing the responsibility of states to adopt positive measures to eliminate discrimination.

However, despite legislative and judicial progress, discrimination based on sexual orientation remains a persistent problem in Brazilian society. Marginalization and violence against LGBTQIAPN+ individuals are still worrying realities, which highlight the need for more effective implementation of anti-discrimination rules. Therefore, the following problem arises: How can anti-discrimination law under the 1988 Federal Constitution be effectively applied to guarantee non-discrimination based on sexual orientation?

The hypothesis established for this problem is that the effective application of anti-discrimination law, in line with the 1988 Federal Constitution, depends on a combination of specific legislation, accessible redress mechanisms, inclusive public policies and a continuous effort by social movements to promote awareness and acceptance of sexual diversity.

Therefore, the general objective of this article was to analyze anti-discrimination law in the light of the 1988 Federal Constitution in order to guarantee non-discrimination based on sexual orientation. The specific objectives were: to explain anti-discrimination law and its philosophical, anthropological, political and legal foundations; to differentiate between sex, gender, sexual orientation and gender identity; to evaluate non-discrimination based on sexual orientation; and, finally, to analyze the impact of Advisory Opinion OC-24/17 of the Inter-American Court of Human Rights.

To this end, bibliographical research was carried out, based on books, articles and scientific journals published in the last ten years on the subject. It is worth highlighting the use of Adilson José Moreira's doctrine on anti-discrimination law; consultation of advisory opinion OC-24/17 of the Inter-American

Court of Human Rights, as well as consultation of some decisions of the Federal Supreme Court recognizing the right to non-discrimination based on sexual orientation.

Finally, the article justifies its relevance by the urgent need to understand and improve the application of anti-discrimination law in Brazil, especially in relation to sexual orientation. Discrimination against LGBT-QIAPN+ individuals is a human rights issue that requires effective responses from the legal system and public policies. By exploring the theoretical and practical foundations of anti-discrimination law and assessing the impact of international decisions, this study aims to contribute to the development of strategies that promote equality and dignity for all citizens, regardless of their sexual orientation.

ANTI-DISCRIMINATION LAW

Initially, for a better understanding, it is necessary to make some considerations about the definition of anti-discrimination law. According to Souza and Stolz (2023), the systematization of this branch of law in Brazil has been established by the author Adilson José Moreira.

DEFINITION OF ANTI-DISCRIMINATION LAW

Anti-discrimination law can be considered a branch of constitutional law and human rights academically researched by those who understand that the promotion of social justice depends on how judicial provision is made to minority groups and vulnerable people.

Marked by its insurgent nature, anti-discrimination law is born out of non-conformity with traditional theorizations of the principle of equality and its guidelines “aim to reduce or eliminate significant disparities between groups, one of the central objectives of the constitutional texts of democratic societies” (MOREIRA, 2020, p. 50).

For Souza and Stolz (2023, p. 145):

Anti-discrimination law, as described by Adilson José Moreira, is marked by its insurgent nature, which means that it develops from a critical and non-conformist stance towards traditional theories of the principle of equality. This insurgency is a response to the realization that traditional approaches are not enough to address and correct the profound inequalities that exist between different social groups.

The insurgency of anti-discrimination law is manifested in its refusal to accept conventional interpretations of equality, which are often limited to formal equality. Formal equality is primarily concerned with ensuring that everyone is treated the same before the law, without taking into account the real inequalities of conditions between individuals. In contrast, anti-discrimination law seeks substantial equality, which recognizes and addresses the structural and historical inequalities that affect certain groups (MOREIRA; ALMEIDA; CORBO, 2022).

According to Moreira (2020, p. 50):

[...] the guidelines of anti-discrimination law aim to reduce or eliminate significant disparities between groups. These disparities can be seen in the economic, social, political and cultural spheres, where certain groups - such as racial minorities, women, people with disabilities, among others - are often disadvantaged. The central aim is therefore to promote genuine equality of opportunity and outcome, in line with the principles fundamental to the constitutional texts of democratic societies.

In order to achieve this reduction in disparities, anti-discrimination law focuses on making the system of rights protection more effective. This means ensuring that anti-discrimination laws are not just symbolic, but have a real and concrete impact on people's lives. The effectiveness of the rights protection system is crucial to ensuring that anti-discrimination legal norms are implemented

effectively and that victims of discrimination have access to redress and justice mechanisms (MOREIRA; ALMEIDA; CORBO, 2022).

Lucas, Santos and Ghisleni (2023, p. 422) point out that:

In liberal democracies, the concept of equality plays a prominent role in the context of modern constitutionalism. This is because the protection and promotion of equality is fundamental to the functioning of constitutional democracies, political systems that seek to guarantee equal treatment for all citizens before the law, recognizing the same moral value for all members of a democratic community. However, it is undeniable that even in democratic societies, there are arbitrary power dynamics that result in the exclusion of certain social groups, hindering or preventing their access to the legal rights, social acceptance and material security enjoyed by the majority of privileged groups

According to Severi (2016, p. 576):

[...] the notions of equality that have historically served as the basis for judicial decisions in Brazilian courts are anchored, in most circumstances, in the paradigm of the methodological neutrality of law, according to which it is enough to ensure that people receive the same treatment under the rules and to guarantee identical treatment in order to obtain a fair result. Through this model, legal practices have served as a kind of formal instance of homologation of a social reality marked by the persistence of multiple forms of gender inequality.

In this respect, Souza and Stolzi (2023, p. 144) say that: “The notions of formal and material equality appear, from the perspective of anti-discrimination law, to be insufficient for the legal treatment of the rights of vulnerable groups.”

Moreira (2019) follows this same line of reasoning, highlighting that the notions of formal equality, material equality, as well as the principles of reasonableness and proportionality for interpreting equality have influenced the maintenance of Brazil’s racial structure.

The insurgency of anti-discrimination law also means that it seeks to transform the legal system itself to make it more inclusive and fair. This involves revising existing laws, creating new norms and promoting public policies that directly tackle structural inequalities. Furthermore, this transformation requires an ongoing commitment to educating and sensitizing society about the importance of equality and non-discrimination (MOREIRA; ALMEIDA; CORBO, 2022).

Thus, the insurgent nature of anti-discrimination law reflects its ambition to go beyond traditional interpretations of the principle of equality to address significant inequalities between groups. By focusing on the effectiveness of the rights protection system, it seeks to ensure that anti-discrimination rules have a real impact on people’s lives, promoting a fairer and more equal society. This insurgent approach is fundamental to transforming the legal order and ensuring that all individuals can fully enjoy their rights and freedoms.

FOUNDATIONS OF ANTI-DISCRIMINATION LAW

With regard to the objectives of anti-discrimination law, it goes beyond the legal, political and philosophical aims of equality between individuals, distancing itself from an individualistic understanding of equality. Instead, it adopts a substantive understanding that aims to promote the equality of social groups, and not just individuals in isolation (OLIVEIRA; PAZELLO, 2022).

The traditional approach to equality often focuses on ensuring that all individuals are treated equally before the law, without taking into account the structural and historical inequalities that affect certain social groups. This formal vision of equality can fail to address the profound disparities that exist in our society, as it does not consider the unequal starting conditions and different needs of vulnerable groups (JUBILUT et al., 2023).

Moreira (2024) explains that anti-discrimination law recognizes that true equality requires a deeper analysis of the social dynamics and power structures that perpetuate discrimination and marginalization. It proposes substantive equality, which aims not only at formal equality of treatment, but also equality of outcomes and opportunities. This means that policies and practices should be designed to redress the specific disadvantages faced by marginalized groups, promoting social justice that takes into account different realities and needs.

For Leal and Oliveira (2020), by focusing on the promotion of social groups, anti-discrimination law seeks to create an environment where all members of society can participate fully and on an equal footing. This involves the implementation of affirmative action and public policies that aim to compensate for historical and structural inequalities, ensuring that historically discriminated groups have access to equivalent opportunities.

According to Cortina (2020), anti-discrimination law is not satisfied with simply protecting individual rights in isolation, but seeks to ensure that these rights are exercised fully and effectively by all members of society, regardless of their origin, race, gender, sexual orientation, religion, disability or any other characteristic.

Therefore, the objectives of anti-discrimination law go beyond mere individualistic equality, promoting substantive equality aimed at social justice for entire groups. By adopting this perspective, it seeks to transform the social and economic structures that perpetuate inequality, creating a fairer and more inclusive society for all.

Philosophical Foundations of Anti-Discrimination Law: Justice, Freedom, Dignity

As Moreira (2020) explains, the philosophical foundations of anti-discrimination law are justice, freedom and dignity. Justice is a fundamental objective that anti-discrimination law seeks to achieve, establishing a set of

material and procedural rights that legitimize and justify democracies. These rights must be guaranteed equally to all individuals. As such, it is an alert to the illegality and illegitimacy of practices, decisions and norms that are at odds with the legal-political model of justice.

Freedom, in turn, is a right that allows all people to lead their lives with autonomy and authenticity, without external situations restricting their ability to act. All individuals are free to develop their life projects, to self-determine and to be a project in themselves. This means that each person must have the freedom to make their own decisions and follow their own paths, without being hindered by discrimination or unfair restrictions (LUCAS; SANTOS; GHISLENI, 2023).

Finally, human dignity is, especially since Modernity, an essential attribute of people universally considered, being a moral condition intrinsic to humanity itself. In this respect, Costa (2023, p. 17) states that:

Each individual has an intrinsic dignity, as they are an end in themselves, capable of autonomy and authenticity in leading their own lives, making their own choices freely. In order to preserve this dignity, it is crucial that rights are guaranteed that provide material and formal conditions so that everyone can live with equal opportunities and freedom. This means that no one should be treated as an instrument or be subject to existential subordination, but should be guaranteed the essential conditions to live in a dignified and independent manner.

The philosophical foundations of anti-discrimination law, based on justice, freedom and dignity, aim to create an environment where everyone can fully exercise their rights, guaranteeing a fairer, more equal society that respects the humanity of each individual.

Anthropological foundations

The anthropological foundations of anti-discrimination law emphasize that human beings are much more than biological and organic bodies that need to be well nourished. This is because man is constituted historically, socially and politically, building bonds and itineraries that give meaning to his existence in the world (MOREIRA, 2020).

Protecting the anthropological experiences of individuals is essential because these experiences are the foundations of both individuality and the various social institutions. Each individual, by interacting with others and participating in social institutions, contributes to building a richer and more diverse society. These interactions and contributions are fundamental to personal and collective fulfillment, and their protection is an imperative for anti-discrimination law (LUCAS; SANTOS; GHISLENI, 2023).

Anti-discrimination law needs to guarantee that all anthropological experiences are protected on equal terms. This means that all ways of being and being in the world, all cultural and social expressions, must be respected and valued. Equal conditions imply that no one should be discriminated against or marginalized because of their cultural, social, religious or any other characteristic that makes up their identity (MOREIRA, 2020).

Identity protection involves ensuring that each individual can express and live according to their beliefs and values without fear of repression or discrimination. Protecting work involves ensuring fair and equal conditions for everyone, regardless of their personal characteristics. The protection of forms of communication involves ensuring that everyone can express themselves freely and that their voices are heard and respected. Religious freedom must be guaranteed so that everyone can practice their faith without hindrance or persecution (LUCAS; SANTOS; GHISLENI, 2023).

Therefore, anti-discrimination law has the crucial role of ensuring that all anthropological experiences, which are fundamental to individuality and the construction of social institutions, are protected. By guaranteeing this protection, anti-discrimination law contributes to building a society that is fairer, more equitable and more respectful of human differences, promoting inclusion and dignity for all.

Political foundations

Anti-discrimination law is based on political foundations, reflecting the values of a democratic culture that values the moral equality of all human beings. Through its rules, it seeks to promote equal treatment, recognize disparities and social segregation, and suggest measures to correct existing forms of discrimination (MOREIRA, 2020).

These norms set standards for interactions between individuals and between individuals and institutions in a democratic society. They play a crucial role in ensuring that equality is not just an abstract principle, but a concrete and effective practice. In a truly democratic society, it is vital to recognize and protect minority identities, giving them visibility and a voice. This means giving vulnerable groups the ability to fight for better living conditions and a dignified existence (OLIVEIRA; PAZELLO, 2022).

Ensuring that everyone is treated equally, regardless of their differences, is one of the central objectives of anti-discrimination law. This principle seeks to ensure that characteristics that can impose discrimination and various vulnerabilities, such as race, gender, sexual orientation, religion, disability, among others, are not grounds for unequal treatment. Instead, equality must be promoted in a way that recognizes and respects these differences, ensuring that each individual can fully exercise their rights and freedoms (MOREIRA, 2020).

A democratic society must therefore implement public policies and affirmative action to combat discrimination and promote inclusion. This involves creating legal and institutional mechanisms that protect the rights of minorities and guarantee their active participation in public life. It also involves educating society to respect diversity and the importance of equal opportunities (OLIVEIRA; PAZELLO, 2022).

Anti-discrimination rules play a crucial role in building a fairer and more equitable society. They not only set legal standards for equal treatment, but also promote a culture of respect and recognition of differences. By protecting the rights of minorities and guaranteeing a level playing field, anti-discrimination law contributes to strengthening democracy and building a social environment where everyone can live with dignity and respect (MOREIRA, 2020).

Therefore, the political foundations of anti-discrimination law are essential for promoting a democratic culture that values equality and inclusion. Its rules aim to correct inequalities and discrimination, ensuring that everyone, regardless of their differences, can live in a fair and equal society. In doing so, anti-discrimination law strengthens democratic principles and contributes to building a more equitable future for all.

Legal foundations

Finally, the legal foundations of anti-discrimination law refer to the fact that laws enable individuals to go to court to protect themselves from discriminatory situations. Recognition as a subject of law ensures that people subject to discrimination have the right and access to judicial systems to preserve their equality and freedom. These laws, due to their relevance, form part of the constitutional normative set that underpins the legal system as a whole (MOREIRA, 2020).

The ability to sue in court is a crucial aspect of anti-discrimination law, as it provides individuals with an effective tool to combat discriminatory practices. When a person faces discrimination, they have the right to seek redress and justice through the courts. This not only allows victims of discrimination to obtain immediate relief, but also serves as a deterrent against discriminatory behavior, promoting a culture of respect and equality (DANTAS; DA SILVA NETTO, 2022).

The protective system embodied in anti-discrimination rules expresses the values that mark the objective order of fundamental rights present in a constitutional system. This means that anti-discrimination rules are not just isolated laws, but are deeply rooted in the fundamental principles that underpin a country's legal order. They reflect the values of equality, dignity and respect for human rights that are essential to any democratic society (MOREIRA, 2020).

In addition, these standards play a vital role in building and maintaining an accessible and effective justice system. They ensure that all individuals, regardless of their personal characteristics, have equal access to justice and can defend their rights effectively. By guaranteeing that all citizens can take legal action against discrimination, anti-discrimination law strengthens confidence in the legal system and promotes social cohesion (DANTAS; DA SILVA NETTO, 2022).

Anti-discrimination regulations also have a significant impact on the way public and private institutions operate. They establish clear standards of behaviour and require organizations to adopt inclusive and non-discriminatory practices. This contributes to the creation of work environments, schools and communities where all individuals are treated with respect and dignity (MOREIRA, 2020).

Therefore, the legal foundations of anti-discrimination law are essential to ensure that individuals can protect their equality

and autonomy through the justice system. Anti-discrimination norms, integrated into the constitutional apparatus, express the fundamental values of a democratic society and ensure that all people have equal access to justice. In doing so, they play a crucial role in promoting equality and combating discrimination, contributing to the construction of a fairer and more inclusive society.

RIGHT TO NON-DISCRIMINATION BASED ON SEXUAL ORIENTATION

Before delving specifically into the subject of non-discrimination on the grounds of sexual orientation, it is necessary to clarify our understanding of the terms sex, gender, sexual orientation and gender identity. This is because these terms are often used incorrectly.

DIFFERENCE BETWEEN SEX, GENDER, SEXUAL ORIENTATION AND GENDER IDENTITY

For a better understanding of the subject, it is essential to differentiate between the words gender and sexuality, as these are sometimes used and understood in the wrong way. In this regard:

Since ancient times, the distinction between individuals on the basis of sexuality, associating social roles and conduct appropriate to gender, has created rigid binary patterns, such as “man x woman” and “heterosexual x homosexual”, which still prevail today. The Judeo-Christian tradition, with its patriarchal model of male domination, was crucial in establishing heterosexuality as the norm of sexual conduct in Western societies, making anything outside this standard abnormal and marginalized (COSTA; CUNHA, 2020, p. 210).

Broadening our understanding of human diversity, we can see that there are various conceptions of sexuality that challenge the binary view and the heteronormative standard.

Thus, we can analyze sexuality through four distinct and non-exclusive perspectives: sex, gender, sexual orientation and gender identity (COSTA; CUNHA, 2020).

The first element, sex, according to OC 24/17, refers to the biological differences between men and women, including genetic, hormonal, anatomical and physiological characteristics that classify a person as male or female at birth (IACHR, 2017).

The concept of gender, on the other hand, does not only encompass issues linked to an individual's sex, because sex is linked to biology, i.e. hormones, genes, the nervous system and morphology; while gender is directly linked to cultural, psychological and sociological issues (LEAL et al., 2017).

The Inter-American Court of Human Rights (IACHR) has defined gender as the socially constructed identities, functions and attributes of women and men and the social and cultural significance of these biological differences (IACHR, 2017).

For Noro et al. (2022, p. 6):

To talk about gender is to talk about a particular way of being in the world, based, on the one hand, on the biological character of the being itself, and on the other, on the cultural character of history, society, ideology and religion. As such, gender has an analytical function similar to that of social class, since these categories cross historical societies, bringing conflicts to the surface.

In the same vein, for Leal et al. (2017) the term sex is biological, and the term gender is social, being constituted by different cultures. Gender goes far beyond sex, i.e. in defining what it is to be a man or a woman, it is not chromosomes or genital conformation, but self-perception and the way an individual expresses themselves to society.

For Gonçalves and Gonçalves (2021), talking about the determinations and constructions of gender represents what has been constituted at a given moment in a society

about the definitions of this concept, which brings out what are the impositions that make up each individual from the moment of their birth, and what will be the expectations that will be thrown at this individual for their suitability to society. Therefore, the concept of gender is based on cultural issues, habits and teachings.

Sexual orientation can be understood as the emotional, affective and sexual attraction that an individual feels, as well as their intimate and personal relationships. Therefore, individuals can be heterosexual (attracted to the opposite sex), homosexual (attracted to the same sex), bisexual (attracted to both sexes) and asexual (without sexual attraction) (CORTE IDH, 2017).

Another important issue revolves around the concept of gender identity. Gonçalves and Gonçalves (2021) explain that gender identity can be understood as the possibility that an individual has of recognizing themselves or not, of a certain gender or of possessing or not feminine or masculine characteristics, without ceasing to belong to what constitutes a man or a woman.

For Hall (2014), identity can be understood as a mobile celebration, which is constantly constructed and transformed in relation to the ways in which an individual is represented or interpellated by the cultural system in which they live.

Gender identity is related to the individual's perception of belonging in relation to their gender, including cisgender (gender compatible with birth sex) and transgender (gender different from birth sex) (CUNHA, 2019, p. 49).

Therefore, at the current stage of human evolution, all expressions of sexuality must be recognized by society as legitimate ways of constructing meaning for individual lives, without these people being invisibilized or excluded for not adopting a standard of normality preconceived by a majority

NON-DISCRIMINATION BASED ON SEXUAL ORIENTATION

The principle of non-discrimination based on sexual orientation is a fundamental element of anti-discrimination law, essential to ensure the equality and dignity of all individuals, regardless of their sexual identity. Discrimination based on sexual orientation is a serious violation of human rights and perpetuates the exclusion and marginalization of minority groups, creating significant barriers to the full exercise of civil, political, social and economic rights.

For Alexy (2018, p. 345):

The fundamental right to freedom of choice and self-determination is a corollary of human dignity and equality. In this context, it is important to highlight the objection that a general right to freedom would be empty of content and without substance, without a clear parameter for deciding on the admissibility of restrictions on freedom.

According to Costa and Pinto (2021, p. 101):

The right to the free development of personality is one of the main forms of externalization of private autonomy. It gives the individual the ability to self-determine, to choose how to exercise the rights provided for in the law, including the possibility of refraining from exercising them. This guarantees the individual the ability to decide, by themselves and freely, on the exercise of the right, as long as it does not contradict the rights of third parties or public order. This faculty allows individuals to act according to their particular way of being, putting their personal differences into practice.

The individual must therefore be guaranteed the possibility of being the master of their own life plan, or even the possibility of not having a life plan and changing it as often as they wish. This guarantees the freedom needed to develop their personality and realize themselves as a unique and intangible being. A systematic and extensive interpretation of the principle of human dignity, based on the rational

parameters of a discursive hermeneutic, seeks to preserve the greatest number of individual freedoms without harming others. In this way, the equal exercise of fundamental rights is safeguarded for all individuals, so that they can exercise their freedoms without interference from the state.

Gimenez and Coelho (2021, p. 199) add that:

In addition to the principle of human dignity, other principles that repudiate discrimination and structural prejudice against sexual orientation and gender identity are the principle of non-discrimination and the principle of equality. The principle of non-discrimination is a corollary of the principle of equality and determines that the full exercise of fundamental rights and freedoms belongs to all people, and that there must be equal treatment for every human being, regardless of race, nationality, language, ethnicity, color, sex, religion or social condition.

At a national level, the Brazilian Federal Constitution of 1988, in its article 5, item XLI, states that “the law shall punish any discrimination against fundamental rights and freedoms” (BRASIL, 1988). Although the Constitution does not explicitly mention sexual orientation, the progressive interpretation of fundamental rights has led to the inclusion of this category under the aegis of non-discrimination.

In addition, the Federal Supreme Court (STF) has repeatedly recognized the protection against discrimination based on sexual orientation in its decisions. In this sense:

The ministers of the Federal Supreme Court (STF), when judging the Direct Action of Unconstitutionality (ADI) 4277 and the Argument for Non-Compliance with a Fundamental Precept (ADPF) 132, recognized stable unions for same-sex couples. The actions were filed with the Court, respectively, by the Attorney General's Office and the governor of Rio de Janeiro, Sérgio Cabral (STF, 2011).

Nevertheless, there is the judgment of Direct Action of Unconstitutionality by Omission (ADO) 26, reported by Minister Celso de Mello, and Mandado de Injunção (MI) 4733, reported by Minister Edson Fachin:

The Court recognized the delay by Congress in criminalizing acts that violate the fundamental rights of members of the LGBT community. Justices Celso de Mello, Edson Fachin, Alexandre de Moraes, Luís Roberto Barroso, Rosa Weber, Luiz Fux, Cármen Lúcia and Gilmar Mendes voted to classify homophobia and transphobia as criminal offenses under the Racism Law (Law 7.716/1989) until Congress passes a law on the matter. On this point, Justices Ricardo Lewandowski and Dias Toffoli were defeated, as they understood that the conduct can only be punished by a law approved by the legislature. Justice Marco Aurélio did not recognize the delay (STF, 2019).

The STF also approved the ADO proposal on three points:

The first provides that, until the National Congress issues a specific law, homophobic and transphobic conduct, real or alleged, falls under the crimes provided for in Law 7.716/2018 and, in the case of intentional homicide, constitutes a qualifying circumstance, as it constitutes a grave motive. On the second point, the thesis states that criminal repression of the practice of homotransphobia does not reach or restrict the exercise of religious freedom, as long as such manifestations do not constitute hate speech. Finally, the thesis establishes that the concept of racism goes beyond strictly biological or phenotypical aspects and encompasses the denial of the dignity and humanity of vulnerable groups (STF, 2019).

The political subjects of the LGBTQIAPN movement+ have a diversity of issues involved, predominantly related to gender and sexuality. Over the course of history, individuals with these differences from the dominant majority have been rejected and their basic human rights curtailed or mitigated. To this day, these

individuals face difficulties in exercising their fundamental right to the free development of their personality. Unfortunately, the pursuit of human dignity has not always been allowed to these groups (COSTA; CUNHA, 2020)

In this sense, human rights violations affecting people because of their actual or perceived sexual orientation or gender identity constitute a global and consolidated pattern, causing serious concern. These violations include extrajudicial executions, torture, ill-treatment, sexual assault, invasion of privacy, arbitrary detention, denial of employment and education opportunities, as well as serious discrimination in the enjoyment of other human rights (COSTA; PINTO, 2021).

These violations are often aggravated by other forms of violence, hatred, discrimination and exclusion, such as those based on race, age, religion, disability or economic and social status (FURLIN, 2023).

The prejudice that segregates this minority group is structural. The ways in which modern societies are structured around religious issues, coupled with a lack of knowledge on the subject, mean that the socially acceptable parameters are essentially prejudiced, legitimizing discourses contrary to sexual diversity. Social movements in favor of the LGBTQI+ community in the Western world are seen as a left-wing political issue, typical of more liberal parties (GIMENEZ; COELHO, 2021, p. 199).

To combat the various forms of discrimination, it is essential to adopt various legal measures and public policies. Firstly, it is necessary to implement specific legislation that clearly prohibits discrimination based on sexual orientation in all areas, including employment, education, health and public and private services. This legislation must be comprehensive and ensure that all individuals are protected against unfair treatment (GONZAGA; AGUIAR; DE ARAÚJO, 2024).

In addition, it is important to establish effective complaint and redress mechanisms. This includes providing access to appropriate channels for reporting discrimination and seeking redress, through human rights bodies and courts. These mechanisms are essential to ensure that victims of discrimination can obtain adequate justice and compensation (RAMOS FILHO, 2023).

Education and awareness also play a vital role in the fight against discrimination. It is necessary to implement educational programs that promote understanding and acceptance of sexual diversity. These programs should train employers, educators and public officials on their anti-discrimination obligations, fostering an environment of respect and inclusion (FURLIN, 2023).

Furthermore, the adoption of inclusive policies is fundamental. Affirmative policies that promote the inclusion of LGBTQIAPN+ people in all sectors of society are essential to guarantee equal opportunities and treatment. These policies should seek to eliminate barriers and create an environment where everyone can thrive regardless of their sexual orientation (RAMOS FILHO, 2023).

Social movements, especially those defending LGBTQIAPN rights+, play an important role in promoting the principle of non-discrimination. They act by lobbying for legislative changes, offering support to victims of discrimination and educating the public about the importance of equal rights. The activism of these organizations has been vital to significant advances in legal protection and public awareness of sexual orientation issues (FURLIN, 2023).

However, it is important to note that, among the minorities that currently suffer the most from hate speech, sexual minorities stand out, subjected to this form of violence all over the world, to a lesser or greater degree. Politicians and religious leaders often

state that LGBTQIAPN+ rights should not be recognized and respected, using arguments that socially segregate such individuals. These speeches exert a strong influence on public opinion, putting obstacles in the way of sexual minorities' struggle to assert their rights (FURLIN, 2023).

Non-discrimination based on sexual orientation is therefore an essential component of anti-discrimination law and a requirement for the full realization of human rights. While important progress has been made, significant challenges remain in the effective implementation of this principle. The combination of robust legislation, redress mechanisms, inclusive policies and the continued action of social movements is key to ensuring that all people can live with dignity, respect and equality, regardless of their sexual orientation.

ADVISORY OPINION OC - 24/17

In December 2017, the IA Court issued advisory opinion no. 24, addressing issues such as gender identity, equality and non-discrimination against same-sex couples (IA Court, 2017). Costa and Cunha (2020) explain that this initiative was motivated by a request from the Costa Rican government in 2016, which, using the advisory authority of the IA Court, sought clarification on the guarantees established by the American Convention on Human Rights (ACHR). Specifically, Costa Rica requested guidance on the recognition of name changes according to an individual's gender identity and on economic rights arising from same-sex unions.

Costa Rica's request had three main objectives: 1) to determine the protection based on Articles 11.2 (protection of honor and dignity), 18 (right to a name) and 24 (equality before the law) in relation to Article 1 of the ACHR; 2) to verify the conformity of Article 54 of the Costa Rican Civil Code with the interests of people who wish to change their name

in accordance with their gender identity; and 3) to ensure the protection of property rights arising from same-sex relationships, in accordance with Articles 11.2 and 24 in relation to Article 1 of the ACHR (ALVARADO, 2020).

Advisory opinion no. 24 had significant participation from organizations and society, amounting to ninety-one written contributions, as well as a public hearing in San José, Costa Rica. At the beginning of the opinion, the IA Court presented a glossary with concepts related to gender identity and sexual orientation, taken from various recognized international sources (COPETTI GHISLENI; CESAR LUCAS, 2021).

Regarding the principle of equality, the IA-CHR has stated that it is directly related to the dignity of the human person. States have an obligation to avoid creating discriminatory situations both in fact (Article 1 of the ACHR) and in law (Article 24 of the ACHR), implying the need for positive measures to mitigate discrimination against certain groups in society. In addition, the Court explained that the concepts of "sexual orientation", "gender identity" and "gender expression" are covered by Article 1 of the ACHR, prohibiting discriminatory practices based on these concepts (IA Court, 2017).

With regard to gender identity and name change procedures, the Court has emphasized that the right to gender identity is related to the principles of freedom and self-determination, allowing the individual to freely choose the circumstances that define their existence. Gender identity is considered a fundamental right, essential for the exercise of other rights, such as human dignity, life, autonomy and freedom of expression (IA Court, 2017).

The change of name, image and the rectification of sex or gender in registers and identity documents are protected by Articles 18 (right to a name), 13 (right to recognition of legal personality), 7.1 (right to liberty) and 11.2 (right to

privacy) of the ACHR. Therefore, it is up to states to recognize, regulate and establish processes for these purposes, ensuring that the procedures are appropriate to the self-perceived gender identity, based on the free and informed consent of the applicant, without requirements for unnecessary medical or psychological certifications. Such procedures must be confidential, quick and, as far as possible, free of charge, without requiring surgery or hormonal treatments (COURT, 2017).

For children and adolescents, the same standards must be maintained, in accordance with the special protection measures established in Article 19 (Rights of the Child) of the ACHR. The IA Court has recognized the flexibility of states in their choice of procedures, but has stressed that administrative procedures are the most appropriate (COSTA; CUNHA, 2021).

The IA Court also made observations on the procedures in Costa Rica, with a view to more effective implementation of the human rights of trans people. It is important to note that the Brazilian legal system still needs to improve in protecting the fundamental rights of trans people (COPETTI GHISLENI; CESAR LUCAS, 2021).

In addition, the IA Court has addressed the international protection of same-sex relationships, highlighting that the ACHR protects these family relationships, regardless of the sexual orientation of the individuals involved. The definition of family is not limited to traditional marriage and can include different forms of family relationships. Therefore, states must protect all rights arising from these relationships, without discrimination (IA Court, 2017).

For Ghislene and Cesar Lucas (2022), the opinion represents a significant contribution to the advancement of human rights and the promotion of equality, especially with regard to the LGBTQIAPN+ community. By addressing fundamental issues, such as name chan-

ges according to gender identity and economic rights arising from same-sex unions, the opinion provides clear and targeted guidance to states on how to guarantee the protection and full recognition of the rights of these communities. Its relevance also lies in the fact that it serves as an international legal instrument that strengthens the legal framework for non-discrimination based on sexual orientation throughout the Americas.

Nevertheless, opinion OC-24/17 plays an important role in raising awareness and education on issues related to sexual and gender diversity. By establishing clear principles and guidelines for protecting the rights of LGBTQIAPN+ people, it contributes to changing mentalities and attitudes, promoting a culture of respect and acceptance of diversity. Its importance transcends the legal sphere, influencing public policies, judicial decisions and social actions in favor of equality and dignity for all individuals, regardless of their sexual orientation or gender identity (TASQUES; FACHIN, 2023).

Therefore, Advisory Opinion No. 24 of the IA Court reinforced the importance of guaranteeing equality and respect for individuals of all sexual orientations and gender identities, as established by the ACHR. Changing one's name and civil registration according to one's self-perceived gender identity is a protected right, as is the recognition and protection of family ties between individuals of the same sex.

FINAL CONSIDERATIONS

The 1988 Federal Constitution, the cornerstone of the Brazilian legal system, establishes principles and rights that guarantee dignity, freedom and equality for all citizens. Within this framework, anti-discrimination law has emerged as a key element in promoting a fair and equal society, and is relevant in protecting individuals from any form of discrimination, including those based on sexual orientation.

Anti-discrimination law is a set of rules and principles designed to prevent and remedy acts of discrimination. This legal field is based on philosophical, anthropological, political and legal values that highlight the importance of justice, freedom and human dignity.

In turn, non-discrimination on the grounds of sexual orientation is a specific manifestation of the anti-discrimination right, and stands out for its relevance in a context of growing recognition of LGBTQIAPN+ rights. The distinction between sex, gender, sexual orientation and gender identity is fundamental to understanding and applying this right.

Advisory opinion OC-24/17 of the Inter-American Court of Human Rights, requested by the government of Costa Rica, represents a milestone in the protection of LGBTQIAPN+ rights in Latin America. This opinion addressed fundamental issues such as changing one's name according to gender identity and economic rights arising from same-sex unions. The IA Court stated that equality and the

dignity of the human person require states to adopt positive measures to eliminate discrimination, including discrimination based on sexual orientation and gender identity. This opinion reinforces the need for inclusive policies and a legal system that recognizes and protects sexual and gender diversity.

Therefore, protection against discrimination based on sexual orientation is not only a legal imperative, but also a moral and ethical requirement, based on the dignity, freedom and equality of all human beings. Although significant progress has been made, challenges remain, requiring the continuous evolution of laws, public policies and social practices to ensure that everyone can live with respect and dignity, regardless of their sexual orientation. Integrating the principles of anti-discrimination law into legal and social structures is essential for promoting an inclusive and equal environment where diversity is valued and protected.

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