THE RIGHT TO SOCIAL SECURITY OF TRANS PEOPLE FROM THE PERSPECTIVE OF ACCESS TO JUSTICE

O DIREITO À PREVIDÊNCIA SOCIAL DAS PESSOAS TRANS SOB A LÓGICA DO ACESSO À JUSTIÇA

DOI: 10.19135/revista.consinter.00020.15
Recebido/Received 04/06/2024–Aprovado/Approved 14/08/2024

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Resumo: *O presente trabalho visa a discutir sobre a efetivação do direito à previdência social das pessoas trans, especialmente, se a judicialização do tema consiste em instrumento de efetivação deste direito. Isso porque, o direito à previdência social, assim como outros direitos fundamentais, não tem alcançado a população trans, seja porque não há regulamentação legal sobre o tema, seja em razão da situação de marginalização enfrentada por esta parcela da população. Neste contexto, adotando-se como procedimento metodológico a pesquisa bibliográfica, mediante método dedutivo e pesquisa qualitativa e descritiva, foram abordados aspectos gerais sobre a previdência social, incluindo o sistema binário de gênero adotado no Brasil. Posteriormente, verificou-se que há completa omissão legislativa sobre o tema, fazendo com que as pessoas precisem recorrer ao Poder Judiciário para obter o reconhecimento de seus direitos. Entretanto, constatou-se que a dificuldade de acesso das pessoas trans à previdência social se dá também em razão do contexto de marginalização em que estão inseridas, podendo ser chamado de "sociedade civil incivil", na qual não há acesso à justiça. Assim, embora o Poder Judiciário seja usado como instrumento de efetivação de direitos, percebeu-se que se socorrer a ele não tem sido suficiente, inclusive porque o próprio Judiciário vem apresentando dificuldades com o tema. Por fim, discutiu-se possíveis maneiras de amenização do problema, evidenciando que a concretização do direito à previdência social na população trans não está pautada em apenas um dos poderes da República, mas sim, demanda esforços multidisciplinares e mútuos, com adoção de políticas públicas de inclusão.*

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Palavras-chave: *Direito à previdência social; Pessoas trans; Omissão legislativa; Acesso à justiça; Poder Judiciário.*

Abstract: *This paper aims to discuss the realization of the right to social security for trans people, particularly whether the judicialization of this issue constitutes an effective means to secure that right. This discussion is justified because the right to social security, like other fundamental rights, has not yet been effectively guaranteed to the trans population either because of the absence of legal regulation on the matter or because of the marginalization faced by this segment of the population. Against this background, by adopting bibliographic research as a methodological approach, using the deductive method and qualitative and descriptive research, the paper first examines general aspects of social security, including the binary gender system adopted in Brazil. Thereafter, it was found that there is complete legislative omission on the matter, thereby forcing individuals to resort to the Judiciary to obtain recognition of their rights. However, it was concluded that the difficulty trans people face in accessing social security also stems from the context of marginalization to which they are subjected — what has been described as an "uncivil civil society," in which there is no access to justice. Thus, although the Judiciary serves as a mechanism for enforcing rights, resorting to it has proved insufficient, not least because the Judiciary itself has encountered difficulties in dealing with the issue. Finally, the paper discusses possible solutions to the problem, arguing that the realization of the right to social security for the trans population does not depend on a single branch of government, but rather demands multidisciplinary and collaborative efforts and the adoption of inclusive public policies.*

Keywords: *Right to social security; Trans people; Legislative omission; Access to justice; Judiciary.*

Summary: *1. Introduction; 2. Social Security and Gender Binarism; 2.1 On Social Security; 2.2 Social Security as a Social and Universal Right; 2.3 The Binary Gender System; 3. Transgender Identity in Social Security Law; 3.1 Concept and General Aspects of Transgender Identity; 3.2 Social Security: Legislative Omission and the Need for Intervention by the Judiciary; 4. The Judiciary and the (In)Effectiveness of the Rights of Trans People; 4.1 The Role of the Judiciary in the Trans Cause; 4.2 Marginalization of Trans People and Difficulty of Access to the Judiciary; 5. Transgender Identity and Access to Justice in the View of Boaventura de Souza Santos; 5.1 Emancipatory Law: Transgender People Constitute a Non-Emancipated Minority; 5.2 The Setbacks of the Judiciary; 5.3 Is Access to Justice a Solution or a Utopia?; 6. Final Considerations; 7. References.*

1 INTRODUCTION

This article aims to investigate the realization of the right to social security for the trans population, with a particular focus on access to justice, and considers whether the Judiciary really constitutes an instrument for giving effect to this right.

Social security, being a social right, should be guaranteed to everyone on equal terms, so as to protect human dignity. In practice, however, this does not always occur, especially regarding the most vulnerable population groups, including trans people.

Social security in Brazil is based on a binary system, which establishes different eligibility requirements for men and women for entitlement to social security benefits (especially retirement pensions), raising questions regarding

eligibility for benefits, since there are no specific legislative provisions on this matter.

This legislative omission leads people to resort to the Judiciary to seek their rights. Yet the right of access to justice likewise tends not to reach trans people, since they live stigmatized, at the margins of society, in what Boaventura de Souza Santos terms an "uncivil civil society".

Indeed, the prevalence and reaffirmation of cisheteronormativity keep the trans population excluded from the protection of basic rights, for example, hindering their access to the labor market and, consequently, to social security protection itself, given the absence of contributions to social security.

Moreover, even when access to the Judiciary is obtained, the judicial system also presents structural problems and barriers to accessing justice that may render it ineffective. There is no consolidated case law on the subject, which generates enormous legal uncertainty, so that resorting to this branch of government does not, in itself, amount to a ready solution to the issue.

Faced with this problem, the present work aims to discuss ways of giving effect to and ensuring access to social security protection to trans people. To that end, by choosing bibliographic research as its methodological approach, using the deductive method and qualitative and descriptive research, it is necessary to analyze the characteristics of social security in Brazil, to clarify the reality experienced by the trans population, and to debate the Judiciary and access to justice as a means of advancing a solution to this issue — and not as the only option for addressing the problem, since merely resorting to the Judiciary is not sufficient to give effect to the social right under discussion.

Finally, it is found that giving effect to the right to social security of the trans population presupposes multidisciplinary and mutual efforts on the part of all branches of government and of society, as well as the adoption of public policies aimed at including this group with due regard for its characteristics.

2 SOCIAL SECURITY AND GENDER BINARISM

2.1 On Social Security

Social security (*previdência social* — the contributory social-insurance branch of the broader Brazilian social security system, *seguridade social*) is closely tied to social protection and constitutes an indispensable foundation of the Democratic Rule-of-Law State, playing a fundamental role in society in guaranteeing human dignity. However, social security has undergone a long process of development before reaching its current concept and structure.

In Brazil, the first social protection rules were also of an assistance-based and charitable nature; until the twentieth century, provisions in the field of social security were isolated and dealt only with forms of protection against social contingencies.

The first legal milestone of social security in the country was the Eloy Chaves Act (Decree No. 4,682/1923), responsible for the creation of Retirement and Pension Funds (*Caixas de Aposentadorias e Pensões* — CAP) for railway workers. Subsequently, in the 1930s, trade unionism grew stronger and the management of social security started to be organized by professional category, with the emergence of the Retirement and Pension Institutes (*Institutos de Aposentadoria e Pensão* — IAP).

From then on, social security received constitutional provisions, albeit modest ones. The 1934 Constitution, for instance, introduced for the first time the tripartite funding system among workers, employers, and the Government. The 1937 Constitution, in turn, was the first to employ the expression "social insurance" (*seguro social*). The expression "social security" (*previdência social*) was used for the first time in the 1946 Constitution, which required employers to provide their employees with insurance in cases of occupational accidents.

Parallel to and subsequent to the constitutional provisions, other social security regulations were created, most notably: Law No. 3,807/1960 — the Organic Law of Social Security (*Lei Orgânica da Previdência Social* — LOPS); Constitutional Amendment No. 11 of 1965, which introduced the principle of the precedence of the funding source; and Complementary Law No. 11/1971, which secured social security protection for rural workers with the creation of the Rural Worker Assistance Fund (FUNRURAL).

Structural changes also took place, developing a genuine administrative reorganization of social security, such as the emergence of the National Social Security Institute (*Instituto Nacional de Previdência Social* — INPS) in 1967, which unified the IAPs; and the later creation of the National System of Social Security and Social Assistance (*Sistema Nacional de Previdência e Assistência Social* — SINPAS), which came to encompass several autarchies, including the INPS itself.

These many changes ended up generating uncertainties in the concepts of social security (*previdência*), social assistance, and health, as well as fiscal difficulty in funding the benefits. The Federal Constitution promulgated in 1988 was important in distinguishing these concepts, by subdividing social security in the broad sense (*seguridade social*) into health, social assistance, and social security in the strict sense (*previdência social*) — as provided in Article 194 of the Constitution.[4]

Thus, at present, social security (*previdência social*) is one of the pillars of the social security system (*seguridade social*), the manager of the General Social Security Regime being the federal autarchy, the National Social Security Institute (*Instituto Nacional do Seguro Social* — INSS), created in 1991 out of the split between the National Social Security Institute (INPS) and the Institute for the Administration of Social Security and Social Assistance (IAPAS).

[4] BRASIL, *Constituição da República Federativa do Brasil*, Brasília, Senado Federal, 1988, Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm. Accessed: 20 Mar. 2024.

According to Miguel Horvath Júnior,[5] the aim of social security is "to ensure to each member of the universe of protected persons the essential minimum for life." Pursuant to Article 201, social security is characterized as being contributory in nature and of mandatory affiliation, thereby distinguishing itself from health and social assistance.

But not only that: as a pillar of the social security system, and through its characteristics (contributory nature and mandatory affiliation), social security currently constitutes a social right, a reflection of human dignity, which is the guiding principle of the Democratic Rule-of-Law State.

2.2 Social Security as a Social and Universal Right

Article 6, *caput* of the Federal Constitution, expressly lists social security as a social right.[6]

It is well established that social rights must be secured as a means of confronting and combating social inequalities; that is, such rights aim to guarantee social equality, forming a minimum core content essential to human dignity. In the words of José Afonso da Silva,[7] dignity is an intrinsic attribute of the human person and merges with the very nature of the human being, and it has been elevated by the Federal Constitution to a supreme value of the legal order, being dignity the foundation of all national life.

Hence, in general terms, social security is a means to protect human dignity, whose specific purpose is to offer coverage and protection against social risks and contingencies. Indeed, Article 194, sole paragraph, item I, of the Federal Constitution establishes, as a goal of the social security system, the universality of coverage and assistance, regarded as the "driving principle of the system."[8]

The principle of universality of coverage and assistance involves two aspects: coverage, which seeks to define the risks and contingencies requiring protection; and assistance, which guarantees social protection to all holders of the right.[9]

Furthermore, social security is grounded in social solidarity: everyone has a mandatory role in financing social security, including those who, for the time being, do not yet need protection, since they are responsible for financing the benefits of those who currently do. This is what is known as the pay-as-you-go (PAYG) scheme (*regime de repartição simples*).

In this context, it is also important to highlight the principle of equity in the financing of social security, set forth in Article 194, sole paragraph, item V, of the

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5 HORVATH JÚNIOR, Miguel, *Direito Previdenciário*, 13th ed., São Paulo, Rideel, 2022, p. 156.

6 BRASIL, *Constituição da República Federativa do Brasil*, Brasília, Senado Federal, 1988, Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm. Accessed: 20 Mar. 2024.

7 SILVA, José Afonso da, "A dignidade da pessoa humana com valor supremo da democracia", *Revista de Direito Administrativo*, vol. 212, 1998, p. 91.

8 BALERA, Wagner, *Sistema de seguridade social*, 8th ed., São Paulo, LTr, 2016, p. 32.

9 BALERA, Wagner, *Sistema de seguridade social*, 8th ed., São Paulo, LTr, 2016, p. 33.

Federal Constitution, closely related to the principle of ability to pay set out in Article 145, § 1, of the Constitution, from which the following reasoning is drawn: the greater the taxpayer's economic capacity, the more they must contribute.

In this way, social security functions as an income redistribution policy whose purpose is to reduce social inequality and give effect to social justice, by requiring higher contributions from those with greater economic capacity and granting income to those with low incomes.

Therefore, social security, under the General Social Security Regime, is responsible for the social protection of beneficiaries (mandatory insured persons — workers — and optional insured persons — non-workers), as well as of their dependents, affiliation being compulsory for mandatory insured persons.

In practice, this protection is afforded through the granting of social security provisions, composed of benefits and services: "benefits are amounts paid in cash to insured persons and their dependents. Services are provisions of assistance and support afforded by Social Security to beneficiaries in general."[10]

2.3 The Binary Gender System

The rules for access to social security benefits, especially retirement pensions, are set out in Article 201, §§ 7 and 8, of the Federal Constitution.[11] Under this legal provision, the age requirement for retirement pensions differs between men and women, with a reduction in the age for women. This differentiation was maintained by the Social Security Reform with respect to the contribution period as well.

This situation occurs because, in Brazil, the General Social Security Regime adopts a binary criterion for granting benefits (in particular, retirement pensions), which distinguishes between man and woman (male and female genders).

The adoption of the binary gender system in the social security field has historical reasons. Gender binarism is a cultural human construct, based on an eminently patriarchal social and family structure.[12] Initially, sex and gender were regarded as concepts derived from biology — that is, they were inherited and unmodifiable — so that masculine and feminine formed a hierarchized dichotomy, maintaining the relationship of power in favor of men.

Thus, traditionally, domestic work was related to women, leading to the belated recognition of many of their rights.

This way of thinking persisted until the end of the nineteenth century and the mid-1950s. Subsequently, between 1960 and 1990, biological determinism started to

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10 HORVATH JÚNIOR, Miguel, *Direito Previdenciário*, 13th ed., São Paulo, Rideel, 2022, p. 154.

11 BRASIL, *Constituição da República Federativa do Brasil*, Brasília, Senado Federal, 1988, Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm. Accessed: 20 Mar. 2024.

12 SERAU JUNIOR, Marco Aurélio, "Direitos previdenciários das pessoas transgênero na perspectiva dos direitos fundamentais", in MAUSS, Adriano; MOTTA, Marianna (eds.), *Direito previdenciário e a população LGBTI*, Curitiba, Juruá Editora, 2018, pp. 17–36.

be criticized, and the concept of gender began to be refined and to be viewed from a social standpoint, without biological justifications.

From 1990 onward, in the context of information society and neoliberalism, gender was reconceptualized as a fluid and unlimited concept (as proposed by Judith Butler, for example). The man–woman binary has been questioned in the face of the emergence of new gender identities.[13]

However, even in the face of the changes in the interpretation of the concept of gender and of the greater breadth of discussion of this agenda today, the effects of structural sexism remain perpetuated in society: to this day, women still do not occupy the same position as men in the labor market, and, according to a research conducted by the Brazilian Institute of Geography and Statistics (IBGE), in 2019 men earned approximately 30% more than women.[14]

Moreover, there is still the double shift performed by women, composed of paid employment proper and of household chores and child-rearing, unlike what happens with the great majority of men. According to data likewise released by IBGE, women spend about 21.3 hours per week performing domestic activities, whereas men spend approximately 10.9 hours performing such activities.[15]

Taking these data into account, which reflect the historical position of women in society, the legislature chose to reduce the minimum age and the contribution period of women for retirement purposes, on the basis of the principle of isonomy (in its substantive-equality dimension), in an attempt to equalize and balance the relationship between men and women — even though women have a life expectancy, on average, seven years longer than that of men (according to 2022 IBGE data).[16]

It is evident that, in the attempt to combat the subordination of women in the labor market and in the family, the relaxation of retirement rules for women gave rise to another incongruity, given women's longer life expectancy compared with that of men.

In any event, critics of the binary social security system are well known, for it no longer accommodates the transformations of society, which is no longer limited to the binary gender pattern (man and woman).

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13 PIMENTEL, Silvia, "Direito e gênero", in PIMENTEL, Silvia (coord.); PEREIRA, Beatriz; MELO, Monica de (eds.), *Direito, discriminação de gênero e igualdade*, Rio de Janeiro, Lumen Juris, 2017, p. 10.

14 BARROS, Alerrandre, "Homens ganharam quase 30% a mais que as mulheres em 2019", *Agência IBGE Notícias*, Editoria de Estatísticas Sociais, 2020, Available at: https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/27598-homens-ganharam-quase-30-a-mais-que-as-mulheres-em-2019. Accessed: 26 May 2024.

15 NETO, João, "Mulheres dedicam quase o dobro do tempo dos homens em tarefas domésticas", *Agência IBGE Notícias*, Editoria de Estatísticas Sociais, 2019, Available at: https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/24267-mulheres-dedicam-quase-o-dobro-do-tempo-dos-homens-em-tarefas-domesticas. Accessed: 24 May 2024.

16 MOUTINHO, Cristiane dos Santos, "Apresentação – Tábuas Completas de Mortalidade 2022", *Agência IBGE Notícias*, Editoria de Estatísticas Sociais, 2022, Available at: https://agenciadenoticias.ibge.gov.br/media/com_mediaibge/arquivos/d1328b48a4e5ad0e550379cc27b6884a.pdf. Accessed: 24 May 2024.

And beyond the discussion of the distinction in retirement criteria between men and women — grounded in the growth of women's participation in the labor market and in men's greater awareness of the double (physical and emotional) burden borne by women — there is a minority group heavily affected by this debate: trans people.

Although the aforementioned data demonstrate that there is still an enormous discrepancy between men and women, which justifies the differentiation determined by social security legislation, some scholars tend to criticize the binary gender system for also failing to protect transgender people.

But before addressing the benefit criteria applicable to trans people, it is worth to understand who they are and what is the reality of these people.

3 TRANSGENDER IDENTITY IN SOCIAL SECURITY LAW

3.1 Concept and General Aspects of Transgender Identity

First, it is important to clarify the difference between cisgender and transgender: a cisgender person is one who identifies with the sex assigned at birth, following the pattern culturally established by society. A transgender or transsexual — or non-cisgender — person, by contrast, is one who does not identify with the sex designation given at birth.

In other words, it may be stated that a transgender person is one who has an incompatibility between the biological and the psychological sex, holding the conviction and an irreversible desire to adapt to the sex opposite to the one assigned at birth.[17]

At this point, one can see the difference between the transsexual and the *travesti*: the *travesti* is one who experiences characteristics of the opposite gender (generally feminine), such as, for example, clothing, but there is not necessarily any need to live in accordance with the gender with which one identifies.

Scholars point out that the first reported cases of transgender identity arose in the nineteenth century. However, there are not many studies or historical data on trans people, because throughout historical evolution this group lived stigmatized, being the target of persecution owing to cultural and religious factors.

The marginalization of trans people persists to this day and produces immeasurable effects on the realization of their rights, rendering unfeasible the realization of basic rights, such as the right to social security.

[17] BUNCHAFT, Maria Eugenia, "A efetivação dos direitos de transsexuais na jurisprudência do STJ: uma reflexão sobre os desafios da despatologização à luz do diálogo Honneth-Fraser", in STRECK, Lênio Luiz; ROCHA, Leonel Severo; ENGELMANN, Wilson (eds.), *Constituição, Sistemas Sociais e Hermenêutica*, Porto Alegre, Livraria do Advogado, 2014, p. 228.

3.2 Social Security: Legislative Omission and the Need for Intervention by the Judiciary

As already stated, the right to social security is a social right located in the realm of the social security system, which is governed by the principle of universality of coverage and service. This is a programmatic, guiding principle, composed of two dimensions: subjective and objective dimensions.

The objective dimension corresponds to the universality of coverage of social risks and contingencies: a social risk is a future and uncertain event, independent of human action or will, capable of producing harmful consequences; a social contingency, in its turn, is an event capable of producing a reduction or loss of resources, or an increase in expenses, for the beneficiary.[18]

The subjective dimension of this principle, in turn, corresponds to the universality of service, and "expresses the possibility for all members of Brazilian society, having met the legal requirements, to affiliate themselves with the social security system. In this respect, it develops the principle of isonomy within the social security field."[19]

It can be observed that, under the principle of universality of coverage and service, social security must be made available to everyone (whether on a mandatory or optional basis), on equal terms. However, this is not what can be observed when it comes to certain minority groups, in particular trans people.

This is because, owing to discrimination and marginalization, many transgender people never gain access to the labor market and, consequently, do not contribute to social security. That is, they are rarely covered by the social security system.

For those transgender people who are able to overcome this barrier and contribute to the social security system long enough to qualify for a retirement pension, when they apply for it, they encounter a lack of preparedness on the part of social security authorities, owing to a social security legislation that is silent regarding transsexual insured persons.

The doubt concerning the retirement of trans people is related to which rule should be applied to the insured person: should it be the rule corresponding to the biological sex, or the rule corresponding to the gender with which the person identifies?

There is a multiplicity of possible criteria to be adopted:[20] one of them would be to apply the retirement rule corresponding to the gender with which the transgender person identifies with and presents themselves to society. Another

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18 HORVATH JÚNIOR, Miguel, *Direito Previdenciário*, 13th ed., São Paulo, Rideel, 2022, pp. 74–75.

19 HORVATH JÚNIOR, Miguel, *Direito Previdenciário*, 13th ed., São Paulo, Rideel, 2022, p. 75.

20 MELO NETO, Euvaldo Leal de; SOUZA, Mariana Dias Barreto de; HORVATH JÚNIOR, Miguel, "Direitos previdenciários do RGPS para os transgêneros e transexuais: uma análise da ausência de legislação previdenciária específica frente à mudança de gênero", *Revista Brasileira de Direito Social*, vol. 5, n. 2, Belo Horizonte, Editora IEPREV, 2018, pp. 27–28.

possibility would be to adopt distinct rules, considering the time lived in accordance with the biological gender and the period lived in accordance with the gender with which the person identifies. This is what is developed, for example, by Fernando Machado, in his work *Aposentadoria da pessoa transexual: aposentadoria por tempo de contribuição e por idade nos casos de mudança de sexo*.[21]

This second criterion, however, encounters some obstacles, such as the difficulty of determining a date for determining when a person became legally recognized as transgender, given that sex-reassignment surgery is not required for the legal recognition of transgender status, as the Federal Supreme Court (STF) has already decided in the judgment of ADI 4275.[22] Moreover, the definition of gender is an extensive process of a subjective nature, making it difficult to identify a single date.

In any event, the reality is that this situation has harmed not only the right to social security of trans people, but also their personality rights and the very principle of human dignity.

It is worth mentioning the case of a trans public servant who filled an application for retirement with the São Paulo Previdência (SPPREV) in 2019. Under the internal rules of the servant's own social security regime, three months after applying for retirement the servant was entitled to await the decision at home; however, SPPREV temporarily denied the retirement application because it was unable to determine which retirement rules should apply in this case — that of men or that of women — thereby requiring the servant to return to work.[23]

In this respect, legislative omission ends up becoming a major obstacle to giving effect to the right, since the INSS — and even other social security autarchies of the Union, the States, or the Municipalities — form part of the Public Administration, which may act only as determined and authorized by law (the principle of legality set out in Article 37 of the Federal Constitution). Moreover, legality is a cultural feature of Brazil, which grew on the foundations of positivism and attaches extreme importance to what is enacted.

At present, regarding this issue, the INSS has only an ordinance ensuring the right to choose one's nominal treatment, with the adoption of the social name (Ordinance MPS No. 1,945 of 30 May 2023).[24] However, such regulation contains

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21 MACHADO, Fernando, *Aposentadoria da pessoa transexual: aposentadoria por tempo de contribuição e por idade nos casos de mudança de sexo*, Curitiba, Juruá, 2019.

22 BRASIL, Supremo Tribunal Federal, Full Bench, "Ação Direta de Inconstitucionalidade n. 4275/DF", Reporting Justice: Marco Aurélio, decided 1 Mar. 2018, Available at: https://portal.stf.jus.br/processos/detalhe.asp?incidente=2691371. Accessed: 20 Mar. 2024.

23 REIS, Vivian, "São Paulo suspende 1º pedido de aposentadoria de pessoa trans no estado por 'dúvidas jurídicas'", *G1 São Paulo*, 2020, Available at: https://g1.globo.com/sp/sao-paulo/noticia/2020/01/29/sao-paulo-suspende-1o-pedido-de-aposentadoria-de-pessoa-trans-no-estado-por-duvidas-juridicas.ghtml. Accessed: 20 Mar. 2024.

24 BRASIL, *Portaria MPS nº 1.945, de 30 de maio de 2023*, Brasília, Ministério da Previdência Social, 2023, Available at: https://www.in.gov.br/web/dou/-/portaria-mps-n-1.945-de-30-de-maio-de-2023-487207477. Accessed: 5 Aug. 2024.

no provisions on the question of benefits themselves, nor on the procedures for applying and implementing the changes regarding the social name.

The absence of specific legislation on the subject means that trans insured persons need to resort to the Judiciary in order to have their claims met. Yet the Judiciary itself has no settled position on the matter. Case law is scarce, what causes even greater legal uncertainty.

4 THE JUDICIARY AND THE (IN)EFFECTIVENESS OF THE RIGHTS OF TRANS PEOPLE

4.1 The Role of The Judiciary in the Trans Cause

In recent years, the Judiciary has come to the defense of the LGBTQIAP+ population, with important decisions worth highlighting, such as those handed down in Direct Action of Unconstitutionality (ADI) 4277 and Claim of Non-Compliance with a Fundamental Precept (ADPF) 132,[25] which recognized same-sex stable union and, consequently, the right to a survivor's pension (*pensão por morte*) arising from such union.

These decisions brought about a genuine paradigm shift, since they equated the same-sex stable union with the different-sex one, establishing that both deserve the same legal protection.

The understanding thus settled recognized the right to privacy and to sexual freedom as unamendable constitutional clauses (*cláusulas pétreas*), with the right to the pursuit of happiness and the prohibition of prejudice prevailing. In addition, it was clarified that the concept of family cannot be interpreted in a reductionist manner, and is not limited to heterosexual couples.

Also worthy of note is Resolution No. 175 of 14 May 2013 of the National Council of Justice (CNJ),[26] which prohibited authorities from refusing the marriage-licensing procedure, the celebration of civil marriage, or the conversion of a stable union into marriage between people of the same sex.

As regards transgender identity itself, it is worth mentioning the STF's judgment of ADI 4275/DF and of Theme 761, leading case RE 670,422, which enabled a trans person to alter the gender on the civil-registry record without the need for sex-reassignment surgery.[27]

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[25] BRASIL, Supremo Tribunal Federal, "Arguição de Descumprimento de Preceito Fundamental n. 132", Full Bench, Reporting Justice: Ayres Britto, decided 5 May 2011, Available at: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=628633. Accessed: 20 Mar. 2024.

[26] BRASIL, *Resolução 175, de 14 de maio de 2013*, "Dispõe sobre a habilitação, celebração de casamento civil, ou de conversão de união estável em casamento, entre pessoas de mesmo sexo", Available at: https://atos.cnj.jus.br/atos/detalhar/1754. Accessed: 20 Mar. 2024.

[27] BRASIL, Supremo Tribunal Federal, "Recurso Extraordinário n. 670422", Full Bench, Reporting Justice: Dias Toffoli, decided 15 Aug. 2018, Available at: https://portal.stf.jus.br/processos/detalhe.asp?incidente=4192182. Accessed: 20 Mar. 2024.

This decision represents an enormous advance and an achievement for the rights of the transsexual population, since before the question was decided it was necessary for trans people to resort to the Judiciary in order to be able to alter the civil-registry record, which would lead to a slow and bureaucratic judicial battle.

Subsequently, in 2019, the STF adjudicated the Direct Action of Unconstitutionality by Omission (ADO) 26,[28] on which occasion homophobia and transphobia were criminalized and equated with the crime of racism (with application of Law No. 7,716/1989). The STF's decision sought to give effect to the prevention and repression of sexual and gender-based violence, which until then lacked legal protection owing to the unjustifiable inaction of the Public Authorities.

Thus, until a law comes into force punishing homophobic and transphobic conduct — of hateful aversion to sexual orientation or gender identity — such acts will be equated with, and punished as, expressions of racism.

The STF also ruled in favor of trans people by allowing transgender women and *travesti* inmates to choose to serve their sentences in a women's or a men's prison.[29]

Finally, it is important to mention the decision of the 6th Panel of the Superior Court of Justice (STJ),[30] which applied the Maria da Penha Law to a trans woman, granting her the protective measures provided for in Article 22 of Law No. 11,340/2006, on the basis of Recommendation No. 128 of the CNJ.[31]

The protection of the rights of trans people by the Judiciary has become increasingly prominent, in view of the legislative omission existing in the country on these issues. The cited jurisprudential advances, the result of a countermajoritarian role played by the Judiciary, are of considerable relevance considering the conservative stance adopted by the National Congress.

The situation is not different in the social security field: at present, in view of the legislative omission on the subject, it depends on the Judiciary to resolve questions relating to the social security rights of trans people.

As an example, it is worth mentioning the judgment of the 11th Appellate Panel of São Paulo, of the Federal Regional Court (TRF) of the 3rd Region

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[28] BRASIL, Supremo Tribunal Federal, Full Bench, "Ação Direta de Inconstitucionalidade por Omissão n. 26", Reporting Justice: Celso de Mello, decided 13 Jun. 2019, Available at: https://jurisprudencia.stf.jus.br/pages/search?classeNumeroIncidente=%22ADO%2026%22&base=acordaos&sinonimo=true&plural=true&page=1&pageSize=10&sort=_score&sortBy=desc&isAdvanced=true. Accessed: 20 Mar. 2024.

[29] BRASIL, Supremo Tribunal Federal, "Arguição de Descumprimento de Preceito Fundamental n. 527", Full Bench, Reporting Justice: Luís Roberto Barroso, judgment suspended 15 Sep. 2021, Available at: https://portal.stf.jus.br/processos/detalhe.asp?incidente=5496473. Accessed: 25 May 2024.

[30] SECRETARIA DE COMUNICAÇÃO SOCIAL, "Sexta Turma estendeu a proteção da Lei Maria da Penha para mulheres trans", *Superior Tribunal de Justiça*, 29 Jan. 2023, Available at: https://www.stj.jus.br/sites/portalp/Paginas/Comunicacao/Noticias/2023/29012023-Sexta-Turma-estendeu-protecao-da-Lei-Maria-da-Penha-para-mulheres-trans.aspx. Accessed: 20 Mar. 2024.

[31] CONSELHO NACIONAL DE JUSTIÇA (CNJ), *Recomendação nº 128, de 15 de fevereiro de 2022*, "Protocolo para Julgamento com Perspectiva de Gênero", Available at: https://atos.cnj.jus.br/files/original1806372022021 7620e8ead8fae2.pdf. Accessed: 20 Mar. 2024.

(Innominate Appeal No. 0004068-27.2017.4.03.6321), which applied to a trans woman the retirement rule for women, respecting her gender identity.[32]

That judgment had no binding effect, since it is not yet a repetitive precedent, nor was it decided by a Superior Court. Nevertheless, although it is an isolated case, it is of particular importance in the face of the legislative omission on the subject and considering that there are not many specific judicial decisions on the right of trans people to social security especially concerning the exercise of their right to retirement benefits.

The absence of large-scale litigation on the subject arises not only because trans people constitute a minority, or because this is a recent discussion, which has generated little litigation, but also because trans people, having often performed informal activities, face obstacles to enter social security and, indeed, to the very exercise of their right of access to justice.

4.2 Marginalization of Trans People and Difficulty of Access to the Judiciary

The problem of giving effect to the rights of trans people has deep roots. This is evidenced by the fact that, in today's postmodern society, transgender people continue to be denied their dignity, the treatment afforded by social security law to this segment of the population being null, despite the numerous legislative proposals and reforms.[33]

Even after the rise of the subject in society and the important judicial decisions already cited, the trans population finds itself invisible in the eyes of society, so that the legislative gaps, combined with high discrimination, generate innumerable social barriers.

Brazil presents alarming data on transphobia: this violence usually begins within the family environment. According to the Notifiable Diseases Information System (SINAN), a component of the Ministry of Health, between 2014 and 2017, 49% of the aggressions against trans women and *travestis* occurred at the victims' residence.[34]

According to data from TGEU (Transgender Europe),[35] Brazil leads the world ranking of murders of trans people. Although there was a decline in 2022, the

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[32] SÃO PAULO, Tribunal Regional Federal da 3ª Região, 11ª Turma Recursal, "Recurso Inominado n. 00040682720174036321", Reporting Judge: Federal Judge Paulo Cezar Neves Junior, decided 26 Mar. 2020, Available at: https://trf-3.jusbrasil.com.br/jurisprudencia/827732394/recurso-inominado-ri-40682720174036321-sp/inteiro-teor-827732651. Accessed: 6 Apr. 2024.

[33] FOLMANN, Melissa, "Prefácio", in MAUSS, Adriano; MOTTA, Marianna (eds.), *Direito previdenciário e a população LGBTI*, Curitiba, Juruá Editora, 2018, p. 10.

[34] BOUERI, Aline Gatto, "Maioria das agressões contra mulheres trans e travestis se dá em casa", *Carta Capital*, Diversidade, 2019, Available at: https://www.cartacapital.com.br/diversidade/maioria-das-agressoes-contra-mulheres-trans-e-travestis-se-da-em-casa/. Accessed: 6 Apr. 2024.

[35] BENEVIDES, Bruna G., *Dossiê assassinatos e violências contra travestis e transexuais brasileiras em 2022*, Brasília, ANTRA (Associação Nacional de Travestis e Transexuais), 2023, pp. 27–28.

number of murders was 126% higher than that recorded in 2008, at the start of the surveys.

According to the *Dossiê: assassinatos e violências contra travestis e transexuais brasileiras em 2022* (Dossier: Murders and Violence against Brazilian *Travestis* and Transsexuals in 2022),[36] homicides have been growing among young people, including minors. "Among the trans people murdered in 2022, 89% were between 15 and 39 years old. The average age of the victims was 29.2 years."

In light of these data, the life expectancy of trans people stands at 35 years.[37]

Thus, the reality faced by trans people reveals a life of violence, discrimination, lack of opportunities, and intense social inequality, making impossible the realization of social rights by any means. The majority of transgender people lack access even to the minimum conditions necessary for a dignified existence, so that neither social security protection nor access to justice extends to them.

5 TRANSGENDER IDENTITY AND ACCESS TO JUSTICE IN THE VIEW OF BOAVENTURA DE SOUZA SANTOS

5.1 Emancipatory Law: Transgender People Constitute a Non-Emancipated Minority

In the face of the alarming statistics that expose the panorama of trans people in Brazil, it is possible to associate this reality with the theory of Boaventura de Souza Santos, set out in the article "Poderá o direito ser emancipatório?" ("Can Law Be Emancipatory?").[38]

For the professor, we currently live in what he calls "social fascism." This is not the political regime experienced during the Second World War, but rather a social regime capable of trivializing democracy in favor of capitalism. In the author's words:

> *(...) social fascism is a regime characterized by social relations and life experiences lived under extremely unequal relations of power and exchange, which lead to particularly severe and potentially irreversible forms of exclusion. The forms of exclusion referred to exist both within national societies (the internal South) and in the relations between countries (the global South). The quality of the forms of sociability that societies allow their members to experience depends on the relative weight of social fascism in the constellation of the different social regimes present within them, the same being true of the relations between countries.*[39]

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[36] BENEVIDES, Bruna G., *Dossiê assassinatos e violências contra travestis e transexuais brasileiras em 2022*, Brasília, ANTRA (Associação Nacional de Travestis e Transexuais), 2023, p. 34.

[37] BENEVIDES, Bruna G., *Dossiê assassinatos e violências contra travestis e transexuais brasileiras em 2022*, Brasília, ANTRA (Associação Nacional de Travestis e Transexuais), 2023, p. 34.

[38] SANTOS, Boaventura de Souza, "Poderá o direito ser emancipatório?", *Revista Crítica de Ciências Sociais*, v. 65, 2003.

[39] SANTOS, Boaventura de Souza, "Poderá o direito ser emancipatório?", *Revista Crítica de Ciências Sociais*, v. 65, 2003, p. 24.

According to Boaventura, the exclusion caused by social fascism gives rise to three types of civil society: the intimate, the strange, and the uncivil. Intimate civil society is the dominant community with access to state or public resources; it encompasses individuals and social groups that enjoy hyper-inclusion in society, including all rights — politico-civil, socioeconomic, and cultural. Strange civil society, in turn, is the intermediate group, in which there is a mixture of social inclusion and exclusion — that is, there is low or moderate social inclusion, and an exclusion attenuated by certain, non-irreversible, safety nets. Uncivil civil society, by contrast, corresponds to the wholly excluded group, composed of people regarded as invisible, who have neither stable expectations nor any right in practice.[40]

At this point, one can discern an exponential growth of the "uncivil civil society," since "the politico-legal discourses and practices permitted by neoliberal globalization prove incapable of confronting social fascism."[41]

This is precisely what happens with trans people in Brazil: transgender people are part of what Boaventura de Souza Santos calls "uncivil civil society" — an invisibilized group that lives at the margins of society, a non-emancipated minority, without autonomy and consequently without rights.

Hate speech, violence, and marginalization of the trans population can also be understood through the ideas of Achille Mbembe, by way of what he calls necropolitics, "contemporary forms that subjugate life to the power of death."[42]

Mbembe understands that, in necropolitics, the State itself, by virtue of its sovereignty, renders the death of a particular group possible, insofar as it fails to afford adequate protection to such groups, thereby allowing violence and discrimination against that minority to persist.

Now, if basic rights such as those to health, education, and housing cannot be effectively realized for the trans population, still less can the right to social security, whose system is based on compulsory contributions arising primarily from participation in the labor market.

In the absence of state protection for trans people, and with their being confined to an "uncivil civil society," the possibility of giving effect to their rights becomes extremely limited — including through the Judiciary — not only because of the lack of access and knowledge but also because of structural and specific problems of this branch of government. For this reason, in the face of the legislative omission, the Judiciary must establish how, and with the adoption of which requirements, a trans person is to exercise their right to retirement.

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40 SANTOS, Boaventura de Souza, "Poderá o direito ser emancipatório?", *Revista Crítica de Ciências Sociais*, v. 65, 2003, p. 25.

41 SANTOS, Boaventura de Souza, "Poderá o direito ser emancipatório?", *Revista Crítica de Ciências Sociais*, v. 65, 2003, p. 26.

42 MBEMBE, Achille, *Necropolítica: biopoder, soberania, estado de exceção, política da morte*, Trans. Renata Santini, São Paulo, N-1 edições, 2021, p. 71.

5.2 The Obstacles of the Judiciary

In the face of the scenario of marginalization of the trans population and of the complete absence of social protection at the legislative level, the transgender person has no alternative other than to resort to the Judiciary to guarantee his or her rights. At this moment, another battle begins, insofar as the Judiciary also has its imperfections — whether because of the length of judicial proceedings or the uncertainty caused by the risk of obtaining conflicting decisions.

Although the Federal Constitution enshrines the principles of access to justice and of the unobstructed access to the courts (*inafastabilidade da jurisdição*), one observes in the Judiciary a rivalry in use, closely tied to the limitation of financial resources. On the subject, Luiz Fux asserts:

> *(...) the question of rivalry in use is intimately linked to the financial limitation of the Judiciary, which has finite resources that do not permit it to expand its installed capacity in proportion to the increase in the demand for litigation. This means that the filling of each new case reduces the processing and adjudication capacity of the judicial bodies — both new and old cases — in observance of the constitutional principle of reasonable duration, thus causing a gradual loss of efficiency in the delivery of judicial services, verifiable through the increase in the congestion rate, a semiannual index created by the CNJ to measure the effectiveness of a court over the period.*[43]

According to the statistics of "Justiça em Números 2023" ("Justice in Numbers 2023"), presented by the CNJ,[44] the "Judiciary ended the year 2022 with 81.4 million cases pending, awaiting some definitive resolution." Of these, more than half (52.3%) were at the enforcement stage.

As regards access to justice, for every thousand inhabitants, 127 filed a lawsuit in the year 2022, resulting in an increase of 7.4% when compared with 2021.[45]

The data demonstrate a high rate of congestion of the Judiciary and consequently a high degree of slowness — a factor that compromises the effectiveness and quality of the delivery of judicial services.

This is a problem of supply and demand. The litigiousness and slowness that plague the Judiciary have a regressive effect on access to justice, since fewer people will be able to afford the costs of lengthy judicial proceedings, what benefits litigants interested in delaying judicial decisions, and discouraging those who genuinely need judicial intervention to resolve legitimate conflicts.[46]

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43 FUX, Luiz, "Uma visão otimista da Justiça brasileira, sob a perspectiva econômica", in SADEK, Maria Tereza; BOTTINI, Pierpaolo; KHICHFY, Raquel; RENAULT, Sergio (eds.), *O Judiciário do nosso tempo: grandes nomes escrevem sobre o desafio de fazer justiça no Brasil*, 1st ed., Rio de Janeiro, Globo Livros, 2021, p. 223.

44 CONSELHO NACIONAL DE JUSTIÇA (CNJ), *Justiça em Números 2023*, Brasília, CNJ, 2023, pp. 92–143.

45 CONSELHO NACIONAL DE JUSTIÇA (CNJ), *Justiça em Números 2023*, Brasília, CNJ, 2023, p. 102.

46 LISBOA, Marcos; YEUNG, Luciana; AZEVEDO, Paulo Furquim de, "Entre intenção e consequência: os efeitos econômicos do Judiciário no Brasil", in SADEK, Maria Tereza; BOTTINI, Pierpaolo; KHICHFY, Raquel;

The very judicial independence in decision-making of judges may hinder the consolidation of case law and bring about an excessive reliance on the Judiciary, causing even greater legal uncertainty.[47]

Thus, although the Judiciary currently constitutes an indispensable tool for resolving conflicts involving the rights of trans people (especially those relating to social security), its problems of slowness and legal uncertainty demonstrate that this branch of government does not make up for the need for legal regulation of the subject, being insufficient for the resolution of the issue.

5.3 Is Access to Justice a Solution or a Utopia?

In the light of the current scenario, there is a debate as to whether there are tangible solutions to this problem: how can basic social rights and, above all, the right to social security be extended to minority groups, such as the trans population?

The legislative omission — the result of the Legislature's ineffectiveness — leads one to believe that the most tangible solution is to resort to the Judiciary. It is undeniable that the Judiciary constitutes an important means for giving effect to rights, having already acted in this way in favor of trans people, and being able, therefore, to be used to secure to these people the right to social security.

However, the Judiciary's data presented annually demonstrate that resorting to it is in itself insufficient. Access to justice is not an infallible right; on the contrary, justice has become intricate and excessively slow, to the point where the rights sought become ineffective.

First and foremost, there is an undeniable need to invest in public policies focused on the trans population, aimed at combating transphobia and inserting this group of people into the formal labor market, so that they may enter the General Social Security Regime.

For state actions to be effective, it is essential to deepen knowledge about transsexuality, by means of research on life expectancy, literacy rates, employability, and so forth.

Such measures would be reflected not only in the right of trans people to social security, but also in their very right of access to justice: the reduction of violence against transgender people, as well as the creation and implementation of public policies with the aim of bringing them dignity — through acceptance, education, and insertion into the labor market — would lead to greater inclusion of these people in society and, consequently, to knowledge of their own rights and to the fostering of access to justice.

RENAULT, Sergio (eds.), *O Judiciário do nosso tempo: grandes nomes escrevem sobre o desafio de fazer justiça no Brasil*, 1st ed., Rio de Janeiro, Globo Livros, 2021, pp. 269–271.

47 FUX, Luiz, "Uma visão otimista da Justiça brasileira, sob a perspectiva econômica", in SADEK, Maria Tereza; BOTTINI, Pierpaolo; KHICHFY, Raquel; RENAULT, Sergio (eds.), *O Judiciário do nosso tempo: grandes nomes escrevem sobre o desafio de fazer justiça no Brasil*, 1st ed., Rio de Janeiro, Globo Livros, 2021, p. 227.

As Boaventura de Souza Santos states, combating social exclusion must be the primary goal of the State. To achieve it, the author draws on the Zapatista movement and develops his theory in defense of policies of counter-hegemonic globalization and subaltern cosmopolitanism, for the promotion of social inclusion.

In this regard, Boaventura de Souza Santos advocates political mobilization, demands, and even the path of rebellion to achieve social inclusion.

But beyond this, it is also necessary to resort to the Judiciary with a more comprehensive outlook. The Judiciary itself must recognize that the law is founded on a rationality and a sovereign power that determine which lives are considered worthy of being lived and which are not, as argued by Achille Mbembe.[48]

Now, the Judiciary has attained great prominence in recent years, and being one of the pillars of democracy, its analysis is of interest to the whole society, deserving an interdisciplinary and comprehensive approach.

As a means of reducing litigiousness and slowness, some measures have already been adopted, such as the development of alternative dispute resolution mechanisms. The publication of the Judiciary's data and statistics, together with the administrative and disciplinary oversight of the courts exercised by the National Council of Justice, have aided in the improvement and fostering of the Judiciary.

Moreover, "greater transparency in the drafting and presentation of the budget to society, and better control over its execution, could impose on the Judiciary a greater degree of self-restraint."[49]

Accordingly, however important the role currently played by the Judiciary may be, it must not be forgotten that the implementation of these and other measures is essential for its growth and for the guarantee of access to justice — including for trans people, who likewise do not dispense with the need for state action and for the implementation of affirmative inclusion measures, which would foster not only the right of access to justice but, above all, the right to social security itself.

Furthermore, legal regulation of the subject is indispensable, especially since legislative omission causes a breakdown of trust on the part of insured persons, favoring informality and compromising the system as a whole. It is urgent that social security legislation provides concrete provisions — from the rectification of the trans person's registration in government systems to the rules for granting benefits — recognizing that the transgender person exercises his or her rights in accordance with the rules applicable to the gender with which he or she identifies.

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48 CRUZ, Adriana, "Desafios para um Judiciário inclusivo", in SADEK, Maria Tereza; BOTTINI, Pierpaolo; KHICHFY, Raquel; RENAULT, Sergio (eds.), *O Judiciário do nosso tempo: grandes nomes escrevem sobre o desafio de fazer justiça no Brasil*, 1st ed., Rio de Janeiro, Globo Livros, 2021, p. 174.

49 BARROSO, Luís Roberto, "A judicialização da vida no Brasil: nem tudo pode ser resolvido nos Tribunais", in SADEK, Maria Tereza; BOTTINI, Pierpaolo; KHICHFY, Raquel; RENAULT, Sergio (eds.), *O Judiciário do nosso tempo: grandes nomes escrevem sobre o desafio de fazer justiça no Brasil*, 1st ed., Rio de Janeiro, Globo Livros, 2021, p. 236.

6 FINAL CONSIDERATIONS

In the course of the present study, it was shown that social security is a social and universal right whose scope is to guarantee human dignity by means of social security benefits.

However, it is found that the social security schemes existing in the country neither encompass nor are adequately equipped to serve and protect transgender people, since there is no specific legal regulation of the subject.

Ordinance MPS No. 1,945 of 30 May 2023 merely ensures to transgender people the right to choose their nominal treatment, allowing them to make the modification of their registration before public officials, but without details as to how the rectification of the registration will take place. Nor are there any provisions on benefits and their respective requirements, forcing trans people to seek the Judiciary for the recognition of their rights.

However, the Judiciary — although it constitutes a means for giving effect to rights — is not an infallible solution to the issue, since this branch of government also faces problems that obstruct access to justice and consequently the realization of fundamental rights.

At present, access to justice has been compromised in the face of exacerbated litigiousness, making judicial claims even slower. In addition, although there exist mechanisms for the standardization of judgments, there remains the risk of conflicting decisions and legal uncertainty, especially for matters that have not yet notably reverberated in the Superior Courts — such as the subject at hand, for which social security legislation offers no support whatsoever.

But there are still questions that precede the discussions involving the Legislative and Judicial branches: discrimination and transphobia cause transgender people to live, in the words of Boaventura de Souza Santos, in an “uncivil civil society.” The marginalization of trans people ends up distancing them from the labor market and from social security protection, since a large portion of them remain unemployed or in informality, what hinders access to the General Social Security Regime, which is contributory.

Moreover, many transgender people do not even meet the requirements for the granting of benefits, such as the minimum retirement age, due to their lower life expectancy.

Thus, giving effect to the right to social security and to other fundamental rights for trans people is a complex task. To reduce the problem, the proactivity of the Legislature in regulating the subject is not enough on its own for, given the situation in which trans people are inserted, joint action with the Executive is indispensable for the implementation of effective public actions.

Such actions involve combating transphobia in a firmer manner, coupled with inclusion programs — for example, policies to encourage companies to hire trans people, and the establishment of institutional partnerships — in fulfillment of Sustainable Development Goal 17 and, consequently, Sustainable Development Goal 10 (reduction of inequalities), both of the United Nations (UN).

In parallel with this, a more attentive look at the Judiciary is necessary, in view of the obstacles to giving effect to access to justice that need to be overcome.

Therefore, giving effect to access to justice and to the basic social rights of trans people will be the result of a long process, whose success will depend on the persistent and joint action of the three branches of government — the Executive, the Legislative, and the Judiciary.

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