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**“THE PRINCIPLE OF AFFECTION IN THE BRAZILIAN
SUPERIOR COURTS”**

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There's no doubt that the last year was *the year of affection* in the Brazilian Courts. Never has it been so updated.

The idea has never been so often applied by our Superior Courts of Law, especially by the Supreme Court of Law (STF).

In our Maximum Court's level, **two judgments** are decisive for these statements, with influence on all Brazilian court levels.

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First trial: in August of the last year (2016), the Brazilian Supreme Court started the trial about unconstitutionality of article 1.790 of the Civil Code, which deals with the succession rights of the companion (Process number 878.694/MG).

Seven Ministers of Court lined up to the Rapporteur's thesis: *“In the constitutional system in force, the distinction between succession regimes among weds and companions is unconstitutional and, in both cases, the regime set forth in article 1.829 of Brazilian Civil Code must be applied”*.

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First trial: Minister Toffoli did not agree with the thesis and the result of the judgment in March of this year (2017) was 7 x 1.

In May the judgment restarted with the vote of Minister Marco Aurelio and the final was 8 x 3, with the disagreement of Minister Lewandowisk.

The Court has held his vote in this judgment, among other propositions, outstanding the importance of affection as a legal value of our system.

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Second trial: Thesis in the judgment of general repercussion about *social affection parenthood*: “the social affection parenthood, either declared or not in registering, does not impede the recognition of equal filiation link, based on biological origin, with proper legal effects” (published in *Notice nr. 840* of the STF).

Three aspects of this last trial must be remarked.

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First aspect:

The recognition by several judges that affection has legal value, being a linking principle to the Brazilian civil order.

This is the opinion shared by great part of the doctrine in Brazil: CALDERON, Ricardo; DIAS, Maria Berenice; GROENINGA, Giselle; SIMÃO, José Fernando; LÔBO, Paulo; PEREIRA, Rodrigo da Cunha.

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Second aspect:

The *social affection parenthood* is as a form of civil kinship as set forth in article 1.593 of the Brazilian Civil Code.

It is in equal situation compared with biological parenthood.

There is no hierarchy between filiation modalities, what represents a reasonable and straight equilibrium.

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Third aspect:

Multiple links of filiation are admitted by the Brazilian Law, even against the biological father's will or the social affection father's will (*multi-parenthood*).

It has been made clear through the decision that recognition of concomitant links is for all effects, including alimony and succession.

The decision of the STF has also generated problems that we have to solve in the future in Brazil.

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Conclusion

The affection principle was the great character of the last year in search of Courts in Family Law in Brazil.

In the next years, this role must continue to be played and even improved by the Brazilian Supreme Court, which should judge, among other topics, the possibility of recognition of wedding links and concomitant relationships, also in search of general repercussion (Process number 656.298).

THE END

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**THANK YOU VERY MUCH! DANK U
WEL! OBRIGADO!**



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