

The Preparation for Citizenship and Justice as Effectiveness of The Fundamental Right to Education in Brazil

Suzana Mendonça

(University of Lisbon Law School, University of Lisbon, Portugal)

ABSTRACT: *As a fundamental right, education must be guaranteed by the State through a set of positive actions, which purpose is to create mechanisms for the constitutional norms on its content to be effectively converted into practice. One of the factors inserted in constitutional terms and associated with the fundamental right to education is the preparation for the exercise of citizenship, which reveals the importance of understanding about the most varied elements that underpin and compose a legitimate exercise of citizenship. In this perspective, means should be provided at the school level that truly convey the knowledge considered indispensable to a proper preparation for citizenship and justice, as a reflection of the realization of the fundamental right to education.*

KEYWORDS: *Citizenship, Fundamental Right, Fundamental Right to Education, Justice System, Preparation for Citizenship and Justice.*

I. INTRODUCTION

Fundamental rights, as the most essential ones for members of society, constitute real protections for the multiplicity of legal goods. The fixation of its content in national constitutions was a substantial milestone in defending the interests of individuals, in order to demand actions from the State able to make fundamental rights truly effective.

Education, like other legal goods, has its content involved by the seal of fundamental rights, which imposes an active state conduct to ensure it for the members of the community. Inserted in the fundamental right to education contained in the Brazilian Federal Constitution, is the concept of preparation for citizenship, which represents one of the substantial elements for the full exercise of this right.

Preparing children, adolescents and young people to really understand and subsequent practice citizenship establishes its foundation in the need to educate people so they can be actively present in themes that somehow involve the interests of the community. The teachings provided at school, more than the essential regular subjects, can also include content that educates for citizenship and justice.

Initiatives that truly offer the youngest students the opportunity to gain knowledge about the functioning of the most diverse issues related to citizenship and justice must be treated as a school matter not only as a full materialization of the fundamental right to education, but also as an essential factor in formation of future citizens.

II. BRIEF CONSIDERATIONS ON FUNDAMENTAL RIGHTS

Fundamental rights, considered as those that sustain the base of society, are a positive consequence of the troubled moments recorded throughout history. The consolidation of the protection of the legal goods enveloped by this group of rights spanned multiple periods, namely highlighted by transitions.

The development of fundamental rights proceeded gradually, passing through different political regimes, as well as revolutions of all kinds, representing as one of its main features the intense social battles¹ to achieve better conditions. Such social efforts, although arduous, resulted in important effects for society, especially regarding the protection of legal goods.

However, the content of fundamental rights acquired power - and the format close to the current one - from the end of World War II, as a result of the arbitrary transgressions of human dignity that occurred in the period. The consolidation of an extensive and necessary catalog of fundamental rights in the Constitutions resulted from the rupture with the authoritarian and totalitarian regimes at the time, in which the withdrawal of rights predominated.

The recognition of fundamental rights to members of society, therefore, happens by the simple consideration of the humanity² intrinsic to each one. By the way, the establishment of a set of rights for the protection of essential legal goods to individuals expresses a high relevance in order to achieve social well-being.

The gradual consolidation of fundamental rights, moreover, for the purpose of distinguishing the position of the State, as well as of the means indispensable to the exercise of rights, fueled the creation of a classification in blocks of rights. It is important to note that the conception of a set of fundamental rights does not mean the conclusion of the previous one, considering the consecutive increases periodically happening in the extension of fundamental rights³.

The fundamental rights classified as first dimension constitute those of an individual nature, in order to prevent intervening state actions in the private space of people. Therefore, the State is required to provide negative services or abstentions⁴ in order to enable the exercise of rights within this dimension.

Thus, for it to be truly possible, the first dimension rights - or individual rights - demand a simple conduct from the State: to leave the individual alone⁵. The state behavior of non-interference on personal space can be observed in right to life and rights to freedom of expression and locomotion, representing some examples of rights in this category.

Second dimension fundamental rights, on the other hand, reflect a change in the State's position in relation to members of society, since it is possible to identify, from the content expressed by this set of rights, an imposition of active action - or an obligation to act⁶ - by the State in order to guarantee the well-being of the

¹ J. Miranda, *Manual de direito constitucional*, Tomo IV, (Coimbra: Coimbra Editora, 2015).

² J. C. Vieira de Andrade, *Os direitos fundamentais na Constituição Portuguesa de 1976*, (Coimbra: Almedina, 2017).

³ M. A. Mello, *Supremo e políticas públicas: entre direitos fundamentais e democracia* in M. V. Furtado Coêlho (Ed.), *A Constituição entre o direito e a política: o futuro das instituições, estudos em homenagem a José Afonso da Silva*, (Rio de Janeiro: OAB Editora, 2018), 31-60.

⁴ N. Bobbio, *A era dos direitos*, (Rio de Janeiro: Elsevier, 2004).

⁵ F. M. Fonte, *Políticas públicas e direitos fundamentais*, São Paulo: Editora Saraiva, 2015).

⁶ N. Bobbio, *A era dos direitos*, (Rio de Janeiro: Elsevier, 2004).

community. These rights demonstrate that the negative behavior of the State was not sufficient to meet the most varied collective demands, since society called for active state conduct to really ensure social justice⁷.

Thus, it is up to the State to carry out activities not only to preserve the legal goods, but also to promote the necessary conditions for the practical fulfillment of fundamental rights inserted in the second dimension - or social rights, characterized precisely by the dependence on positive state conducts marked by the expenditure of resources⁸, whether financial or human, for their proper implementation. This category features the rights to education, health and work.

Fundamental rights included in third dimension represent those associated with the idea of solidarity, being characterized as a more recent dimension than the previous ones. They also have diffuse and collective ownership⁹. Some examples contained in this group are the rights to an ecologically balanced environment and to the conservation and fruition of historical and cultural heritage.

Thereby, fundamental rights represent real instruments of protection in relation to the State, in order to impose public actions to avoid the exercise of any unfavorable interference to individuals. In addition, it is required from the State certain conducts indispensable to fully guarantee the effectiveness of these rights, whether positive or negative.

III. FUNDAMENTAL RIGHT TO EDUCATION

Education falls into the social rights category, being part of the fundamental rights process that gave the individual a true ownership of his rights¹⁰. Based on the content expressed by the class of social rights, active state behavior is required in order to make the constitutional norms that sustain them effectively practicable, especially those related to the fundamental right to education. This means that it is up to the State to provide indispensable conditions, as well as the essential means to make the full exercise of the right to education actually possible.

Raised to the level of fundamental right as signed in article 6 of the Brazilian Federal Constitution, education is a right of all individuals, which protection and promotion takes place through the action performed by the State. Furthermore, article 205 of the Brazilian Constitution points out that education is not only a right for all, but also a duty of the State, with the aim of ensuring the full development of the person, as well as his preparation for citizenship and his qualification for work.

The constitutional text also includes, in its article 227, the task to the State, alongside the collaboration of the family and society, of guaranteeing with absolute priority, multiple rights for children, adolescents and young people, such as education. Therefore, the constitutional foundation of education, reflected by the set of norms that enfold its content, demonstrates the relevance of its protection, as well as the need for positive state actions in order to truly implement it considering its condition as a fundamental right.

Thus, the position granted to education in constitutional terms exposes the value given to the theme since it directly affects individuals in the full development of their personality. Observing the principle of absolute priority, it is up to the State to secure the appropriate implementation by building the essential means to

⁷I. W. Sarlet, *A eficácia dos direitos fundamentais*, (Porto Alegre: Livraria do Advogado, 2012).

⁸M. P. D. Bucci, *Políticas públicas e direito administrativo*, Revista Informação Legislativa, 34 (133), 1997, 89-98.

⁹I. W. Sarlet, *A eficácia dos direitos fundamentais*, (Porto Alegre: Livraria do Advogado, 2012).

¹⁰J. J. G. Canotilho, *Direito constitucional e teoria da Constituição*, (Coimbra: Almedina, Coimbra, 2003).

offer children adolescents and young people quality formation in all stages of their educational development, whether in early childhood education, elementary and high school or even education college education.

One of the main aspects of the fundamental right to education, moreover, consists on the access to knowledge and to the instruments that ensure the formation¹¹ of students. From the right to education is extracted the proper access to educational provision granted by the State¹², a service that must provide adequate and necessary means so that the fundamental right to education is fulfilled, although the task imposed to the State isn't restricted on granting the mere access to education¹³.

Therefore, multiple tasks are inflicted on the State, from the construction of educational establishments, through the offer of vacancies, to the training and designation of professionals in compatibility with the educational demands raised by each stage of a person's formation. Public policies are delineated and implemented precisely for the implementation of this purpose, in order to guarantee the necessary conditions for quality education.

Although it represents a relatively complex task, since it involves financial and administrative actions based on legislative statements¹⁴, public policies must effectively meet the needs of the population, especially when it comes to education. This means that the activity developed by the State must aim at a satisfactory materialization of the fundamental right to education, in order to actively contribute not only to the full development of the person, but also to the adequate preparation for citizenship, which in a special extent also resonates on democracy.

IV. PREPARATION FOR CITIZENSHIP AND JUSTICE

Dealing with education involves different perspectives and themes, although essential for shaping an educational basis that effectively contributes to the formation of active citizens in the community. The matter of preparing for citizenship is one of those aspects deeply linked with the fundamental right to education, once it reflects the essentiality of forming citizens able to offer their share of contributions to the community.

The provision found in article 205 of the Brazilian Constitution, in addition to the full development of the person, clearly expresses the relevance of education for an adequate formation to the exercise of citizenship. And it is in this context that it reveals substantial an improvement in teaching so the comprehension of citizenship as a basic instrument for society truly grows within people's minds.

Knowledge about the rights and duties of each individual, as well as their importance for the foundation of social pacification and collective harmony, must be inserted in the daily reality of children, adolescents and young people. It is essential to awaken an interest in matters involving citizenship, in order to form people who are completely aware of the social dimension that active participation can play in achieving common well being.

One of the possible measures to stimulate a citizen's conscience is the integration of subjects related to Law in the school regular curriculum. There are several bill projects grounded on the theme processing within the Brazilian Legislative Power - on a Federal level called National Congress -, one with a certain level of

¹¹A. R. Tavares, *Direito Fundamental à Educação*, Revista Eletrônica Anima, 1 (2), 2009, 1-21.

¹²D. R. Basilio, *Direito à Educação: Um Direito Essencial ao Exercício da Cidadania*, masters dissertation, São Paulo Law School, University of São Paulo, São Paulo, SP, 2009.

¹³A. R. Tavares, *Direito Fundamental à Educação*, Revista Eletrônica Anima, 1 (2), 2009, 1-21.

¹⁴C. S. Duarte, *A educação como um direito fundamental de natureza social*, Revista Educação Social, Campinas, 28 (10), 2007, 691-713.

progress (PL n° 403/2015), based on which the schools ought to include Constitutional, Administrative and Consumer Law to the curriculum. On the other hand, some schools across the country have already added Law related subjects to their curriculum.

Providing the possibility - and the great opportunity - for younger students to acquire knowledge not only about the rules that dictate the directions that should be taken by the political structure that composes a nation, but also about the repercussions on a social level, such as rights that are constitutionally guaranteed and the duties that are routinely imposed on them, representing substantial elements for a legitimate preparation for citizenship. Based on this understanding, a sense of social responsibility is produced that impels people to actively participate in community affairs, in order to concretely contribute to social harmony, common well-being and, in a broader perception, to collective development.

Educational formation, moreover, also involves understanding about the functioning of the multiple State institutions and the Justice system. It is important to incorporate into the routine and reality of young students, in compatibility with the school level experienced by each of them, lessons that reflect varied levels of notions about the activity developed by the network associated with Justice, such as knowledge about litigation, of the position of each of the involved parties, methods of consensual conflict resolution, the function of the magistrate, among other issues.

The comprehension about the role played by the Judiciary Power as well as the other State institutions is also considered essential for the complete preparation for citizenship and justice. Such understanding has a direct impact on the future lives of young people, since they will have a knowledge on the rights that are guaranteed to them, as well as how to behave in the eventuality of violations and who to seek to deposit their demands. This is essential in order to build a society truly connected with its reality, once it will be understood the actual issues that permeate people's lives and unlocked the opportunity to create compatible solutions to those issues.

The exercise of citizenship, in this context, it's not just related to the right to vote, but also to social participation, especially in common interests. Cooperation with the community can also be carried out through the Judiciary, in the concrete practice of the fundamental right of access to justice, as is the case of popular action, a defense instrument contained in article 5, LXXIII of the Brazilian Constitution. The foundation for effective collaborations with the community, driven by citizenship, lies precisely in the proper preparation and adequate formation, reflecting the full materialization of the fundamental right to education.

In addition, the lessons about the most varied themes that involve from the role of the Justice system, through the importance of rights and duties, to the attributions of the State, must be taught by professionals qualified to truly incorporate knowledge into the reality of young people. In this context, the appointment of professionals to teach in schools, as well as the supply of school material, are parts of the set of items that are indispensable for the full exercise of the fundamental right to education.

Transferring knowledge to children, adolescents and young people beyond the subjects regularly offered at school - which, although essential, do not have the power to adequately insert a concrete understanding of rights and duties, of the functioning of democratic institutions and of the Justice system -, reflects a substantial element for the realization of the fundamental right to education and, consequently, the preparation for the exercise of citizenship. Thus, it is significant in educational and social terms to transmit to young students the perception that they too play a collaborative role in society, through citizenship.

In this sense, the preparation for citizenship and for justice, as an essential part of a true realization of the fundamental right to education, depends on an appropriate formation to grant students not only educational

and democratic qualifications capable of legitimately adhering to their experience, but also sufficiently robust inputs for the active and conscious exercise of citizenship.

V. INICIATIVES FROM JUDICIAL POWER AND OTHER STATE INSTITUTIONS

It is extremely problematic and unfavorable in terms of democracy and citizenship that the population has not been given the opportunity to truly understand the functioning of the State, not even the role and influence of each of the institutions for the smooth running of society. Social participation in matters of common interest remains greatly impaired when there is an absence or deficiency in understanding about these topics.

The inclusion of Law related subjects to school curriculum constitutes an expressive measure to be taken in order to add to the essential knowledge to citizenship, although it is not the only one. The Judicial Power and other State institutions can also contribute significantly to the development of citizen awareness in children, adolescents and young people.

In this context, knowledge about the role played by the Judicial Power and other institutions must be absorbed early on for the purpose of creating a certain level of habit with the entire Justice net, as well as with the organizational structure of the State. Thus, one begins to have an understanding not only about the attributions of each of the protagonists, but also about the respective assistance provided by them.

The performance of the Judicial Power and other State institutions inserts its value in initiatives capable of collaborating significantly and effectively for the formation of young students to exercise citizenship, in concrete fulfillment of the content expressed by the fundamental right to education. The preparation of new generations for a scenario of participation and social responsibility produces different effects to be felt by all members of the community, considering education as an essential tool for the development of people, specifically, and of the country, in general.

The Judicial Power can directly contribute to the education of these young people through actions that include them in the framework routinely experienced by its members, opening up to the younger groups of society the elements that are part of their daily reality. Bringing lessons to schools that clarify the roles of each one of the Powers, as well as the functions conferred on the Judicial Power, have the capacity not only to offer knowledge to students, but also to build a growing interest in public affairs.

Some State Courts in Brazil carry out activities in schools precisely to present young people the rights and duties attributed to them and the role of the Judicial Power in their protection. The State Court of Justice in Paraná, for example, institutes a program¹⁵ called “Justice is Learned” (*Justiça se Aprende*, in portuguese) with the presence of a magistrate, a prosecutor and a lawyer to properly expose the role of each of the leading figures in the judicial procedure, as well as how to elucidate any doubts regarding citizenship and the Justice System. Such initiative conveys to children, therefore, basic notions of the functioning of the Judicial Power and how the system is structured to attend their demands and protect their rights.

¹⁵ For more details, please access: <https://www.tjpr.jus.br/justica-se-aprende-na-escola/-/asset_publisher/3Rlw/content/justica-se-aprende-na-escola/3000398?redirect=http%3A%2F%2Fwww.tjpr.jus.br%2Fjustica-se-aprende-na-escola%3Fp_p_id%3D101_INSTANCE_3Rlw%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_pos%3D1%26p_p_col_count%3D2>.

The State Court of Justice located in Acre conceived a project¹⁶ called “Citizenship and Justice at School” (*Cidadania e Justiça na Escola*, in portuguese) providing classes and lectures for children in public school. The program also includes opportunities for young students to be part of a simulated jury, with the presence of members of the state Judicial Power.

The Federal Supreme Court, in its turn, produced - with the most popular comics characters in the country - a comic book which copies were distributed in public schools throughout the country, with lessons on the role of the Judicial Power and the Supreme Court relating to children, adolescents and young people. The partnership¹⁷ between the Supreme Court and cartoonist Maurício de Sousa entitled “Monica’s Gang and the Supreme Court” (*Turma da Mônica e o Supremo Tribunal Federal*, in portuguese) dealt with the Brazilian Constitution and the rights included in it.

As for the other State institutions, the “Volunteer Day” (*Dia do Voluntariado*, in portuguese) initiative conceived by the Attorney General's Office stands out¹⁸. The members of the Office took a day to give lectures to children in 23 states of the country, reaching 43 educational institutions, teaching about fundamental rights, children's rights and the Brazilian Constitution.

Thus, the approximation between the Judicial Power and society, especially the school community, verified by the multiple initiatives that already exist and those that are yet to be elaborated, generates good results in social and democratic terms, since it contributes to the formation of future active and aware citizens, particularly when it comes to their rights and duties, as well as their position and role in society. In addition, it encourages young students to embark on the careers that constitute the Justice system in the future, considering the regular need for professionals to provide legal assistance of all kinds.

The integration of the context that surrounds the Justice system to the reality of children, adolescents and young people, in order to establish a distance reduction between the two worlds, must represent a recurring activity, as a form of collaboration to a concrete preparation for citizenship and to a proper implementation of the fundamental right to education. The exchange of experiences between society and the Justice net, through the proximity to the school community, proves to be significantly advantageous for both parties, since the members of the Justice system and the State structure start to transmit knowledge about their professional experiences for young people, while they share their realities with the representatives of the Justice net.

Education for citizenship and justice, thus, proves to be an essential tool for social development, in order to positively reach the heart of society. The concrete realization of the fundamental right to education, the content of which, among other factors, also reflects the preparation for citizenship and justice, must be properly achieved not only as a practical fulfillment of the constitutional norm that sustains it, but also to offer children, adolescents and young people appropriate formation that truly adds to their future as citizens.

VI. CONCLUSION

The fundamental right to education, as part of the catalog of social rights, imposes on the State the performance of positive actions in order to make constitutional norms fully exercisable by individuals. Thus, the provision of means and instruments necessary for the materialization of the fundamental right to education depend on active state conducts.

¹⁶For more details, please access:< <https://www.tjac.jus.br/noticias/mais-de-500-alunos-participaram-de-palestras-do-programa-cidadania-e-justica-na-escola/>>.

¹⁷For more details, please access:< <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=382186>>.

¹⁸For more details, please access:< https://www.agu.gov.br/page/content/detail/id_conteudo/686604>.

Present in several norms of the Brazilian Constitution, education constitutes not only a right for all members of society, but also a duty to the State, in order to aim at both the full development of the person and the preparation for citizenship, as stated in article 205. Therefore, the Constitution establishes the importance of forming people fully prepared for a proper exercise of citizenship.

It is essential to provide children, adolescents and young people opportunities to acquire knowledge about the functioning of the Justice net and the State structure, so that they can understand their rights and know how to proceed if they are violated. In addition, the lessons on the subject effectively contribute to establishing a sense of collective conscience and social responsibility, indispensable to form active and interested citizens in the issues that move the State and society.

The inclusion of Law related subjects in school represent one of the possible measures that would enable an adequate preparation of the person for citizenship and justice, representing an object of several bills pending consideration by the Brazilian National Congress. In addition, an action to be carried out within the scope of the Judicial Power and other State institutions can be extremely relevant in forming younger students for citizenship and justice, which deeply affects the future of those public institutions.

Initiatives that establish proximity between the Judicial Power and other State institutions with society have the power to intensely impact the adequate preparation of children, adolescents and young people for citizenship and justice, in order to clarify their position to students in society, as well as the role that the Justice system and the State structure can play in their lives.

Thus, bringing to the students' reality all the performance developed by the Judicial Power and the other institutions sets a certain level of habit in relation to the work developed by each one of the members of the public structure, which produces an actual understanding of the whole system, essential for the exercise their rights. The Judicial Power and the other institutions, therefore, can contribute to an appropriate preparation of young people for citizenship and justice, in a true realization of the fundamental right to education.

References

- [1.] J. Miranda, *Manual de direito constitucional*, Tomo IV, (Coimbra: Coimbra Editora, 2015).
- [2.] J. C. Vieira de Andrade, *Os direitos fundamentais na Constituição Portuguesa de 1976*, (Coimbra: Almedina, 2017).
- [3.] M. A. Mello, *Supremo e políticas públicas: entre direitos fundamentais e democracia* in M. V. Furtado Coêlho (Ed.), *A Constituição entre o direito e a política: o futuro das instituições, estudos em homenagem a José Afonso da Silva*, (Rio de Janeiro: OAB Editora, 2018), 31-60.
- [4.] N. Bobbio, *A era dos direitos*, (Rio de Janeiro: Elsevier, 2004).
- [5.] F. M. Fonte, *Políticas públicas e direitos fundamentais*, São Paulo: Editora Saraiva, 2015).
- [6.] N. Bobbio, *A era dos direitos*, (Rio de Janeiro: Elsevier, 2004).
- [7.] I. W. Sarlet, *A eficácia dos direitos fundamentais*, (Porto Alegre: Livraria do Advogado, 2012).
- [8.] M. P. D. Bucci, *Políticas públicas e direito administrativo*, *Revista Informação Legislativa*, 34 (133), 1997, 89-98.
- [9.] I. W. Sarlet, *A eficácia dos direitos fundamentais*, (Porto Alegre: Livraria do Advogado, 2012).

- [10.] J. J. G. Canotilho, *Direito constitucional e teoria da Constituição*, (Coimbra: Almedina, Coimbra, 2003).
- [11.] A. R. Tavares, *Direito Fundamental à Educação*, Revista Eletrônica Anima, 1 (2), 2009, 1-21.
- [12.] D. R. Basilio, *Direito à Educação: Um Direito Essencial ao Exercício da Cidadania*, mastersdissertation, São Paulo Law School, University of São Paulo, São Paulo, SP, 2009.
- [13.] A. R. Tavares, *Direito Fundamental à Educação*, Revista Eletrônica Anima, 1 (2), 2009, 1-21.
- [14.] C. S. Duarte, *A educação como um direito fundamental de natureza social*, Revista Educação Social, Campinas, 28 (10), 2007, 691-713.