

THE RIGHT TO SCHOOL EDUCATION AS A DIMENSION OF CITIZENSHIP IN MERCOSUR

O DIREITO À EDUCAÇÃO ESCOLAR COMO DIMENSÃO DA CIDADANIA NO MERCOSUL

EL DERECHO A LA EDUCACIÓN ESCOLAR COMO DIMENSIÓN DE LA CIUDADANÍA EN EL MERCOSUR

Kellcia Rezende SOUZA¹
Maria Teresa Miceli KERBAUY²
Rosalina Dantas da SILVA³

RESUMO: A educação escolar é um direito humano e uma dimensão fundante da cidadania, uma vez que permite o usufruto de outros direitos, tais como: os sociais, civis e políticos. Trata-se, pois, de um componente básico dos direitos do homem. Assim sendo, investigar a proteção normativa do direito educacional constitui tarefa crucial para compreender, também, o estatuto de cidadania de um determinado país. Nesse sentido, o estudo objetiva analisar o ordenamento constitucional dos países membros (Argentina, Brasil, Paraguai, Uruguai e Venezuela) do Mercado Comum do Sul (Mercosul) considerando a garantia do direito à educação. Para tanto, foi realizada uma pesquisa bibliográfica e documental com enfoque qualitativo. A fonte documental foi constituída pelas constituições vigentes dos países. Notamos que a carência de instrumentos jurídico-normativos existentes nas constituições podem minar avanços na efetividade do direito educacional e, principalmente, na consecução da cidadania como instrumento de integração regional.

PALAVRAS-CHAVE: Cidadania. Direito à educação. Internacionalização educacional. Mercosul.

RESUMEN: *La educación escolar es un derecho humano y una dimensión fundamental de la ciudadanía, ya que permite el disfrute de otros derechos, tales como: social, civil y político. Es, por lo tanto, un componente básico de los derechos humanos. Por lo tanto, investigar la protección normativa del derecho educativo es una tarea crucial para comprender, también, el estado de ciudadanía de un país determinado. En este sentido, el estudio tiene como objetivo analizar el orden constitucional de los países miembros (Argentina, Brasil, Paraguay, Uruguay y Venezuela) del Mercado Común del Sur (Mercosur) considerando la garantía del derecho a la educación. Para ello, se realizó una investigación bibliográfica y documental con un enfoque cualitativo. La fuente documental estuvo constituida por las*

¹ Federal University of Grande Dourados (UFGD), Dourados - MS - Brazil. Adjunct Professor at the Faculty of Education. Doctorate in School Education (UNESP). ORCID: <https://orcid.org/0000-0002-8663-4615>. E-mail: kellcia@hotmail.com

² State University of São Paulo (UNESP), Araraquara - SP - Brazil. Professor at the Faculty of Sciences and Languages. Post-Doctorate in Political Science (ICI). ORCID: <https://orcid.org/0000-0002-0622-1512>. E-mail: teresa.kerbauy@gmail.com

³ Federal University of Grande Dourados (UFGD), Dourados - MS - Brazil. Doctoral Student of the Education Postgraduate Program. ORCID: <https://orcid.org/0000-0002-2866-6854>. E-mail: RosalinaSilva@ufgd.edu.br

constituciones actuales de los países. Observamos que la falta de instrumentos legales y normativos existentes en las constituciones puede socavar los avances en la efectividad del derecho educativo y, principalmente, en el logro de la ciudadanía como instrumento de integración regional.

PALABRAS CLAVE: *Ciudadanía. Derecho a la educación. Internacionalización educativa. Mercosur.*

ABSTRACT: *School education is a human right and a fundamental dimension of citizenship, since it allows the enjoyment of other rights, such as: social, civil and political. It is, therefore, a basic component of human rights. Therefore, investigating the normative protection of educational law is a crucial task to understand, also, the citizenship status of a given country. In this sense, the study aims to analyze the constitutional order of the member countries (Argentina, Brazil, Paraguay, Uruguay and Venezuela) of the Southern Common Market (Mercosur) considering the guarantee of the right to education. For this, a bibliographic and documentary research was carried out with a qualitative approach. The documentary source was made up of the current constitutions of the countries. We note that the lack of existing legal and regulatory instruments in the constitutions may undermine progress in the effectiveness of educational law and, mainly, in achieving citizenship as an instrument of regional integration.*

KEYWORDS: *Citizenship. Education rights. Educational internationalization. Mercosur.*

Introduction

The world context, in recent years, has been characterized by economic, social and political changes. This dynamic, resulting from the globalization process, has imposed a reconfiguration on the relations established between the countries, thus stimulating the creation of regional blocks to ensure the strengthening of the geopolitical and economic insertion of the new world order.

The Southern Common Market (Mercosur), a regional bloc made up of Argentina, Brazil, Paraguay, Uruguay and Venezuela, was created in 1991 based on this reality. It is an initiative that sought to respond to the demands derived from the new international order. In this sense, the integration process of said bloc will depend on the degree of development of public policies that guarantee a system of protection of social rights, including the educational system, since, historically, these countries are vulnerable to changes in the sub and supranational (SOUZA, 2017).

Although Mercosur originated mainly to serve the interests of the economic and commercial sector, from the beginning it has incorporated other sectors that have a strict relationship with the political, economic, and social development of the states that comprise

it, including the education. It is evident, therefore, that the inclusion of education in the bloc's agenda demonstrates an attempt to ensure economic development with social justice among countries.

In this sense, the present work aims to analyze the right to education as an instrument of citizenship in the Mercosur countries (Argentina, Brazil, Paraguay, Uruguay and Venezuela). To facilitate the achievement of the proposed objective, a bibliographic and documentary investigation was carried out with a qualitative approach. The documentary source was made up of the current Constitutions of the respective countries.

Education as a human right is associated with the concept of equality and dignity, which, in turn, are citizenship statutes. For Cury (2002), education is a fundamental dimension of citizenship, an indispensable condition for policies that aim to guarantee social justice.

Human right to education

In the opinion of Benevides (2007), the recognition of education as a human right demonstrates its importance as a fundamental aspect for the promotion of human dignity, in particular, due to its essential character for the exercise of citizenship. The dignity of the human person is a crucial value for the nature and progressivity of human rights. Therefore, their recognition must be guaranteed by the rights capable of promoting them.

The definition of education as a fundamental human right according to Cury (2007) understands that its protection has a dimension that goes beyond the consideration of merely individual interests. Although education represents a means of insertion in the world and, consequently, an individual good for the society in which it develops, its characterization represents a common good, since it guarantees the continuity of a way of life.

Recognition of the right to school education legitimizes the concept that systematic knowledge is more than an important cultural heritage. Access to this asset promotes the individual's ability to take advantage of cognitive and training standards, which will be decisive in expanding the possibilities of participating in the destinies of their society and collaborating with their transformation (CURY, 2007).

The author affirms that basic education is an irreplaceable human right and must be guaranteed free of charge, as a way of allowing access to all. For this reason, the right to school education is within the broader perspective of human rights.

Since the characterization of human rights permeates universality, indivisibility and interdependence, by certifying the right of all people to education, it also guarantees the basis for the implementation of the entire set of human rights.

The right to education, legally, is recognized on the international scene, having as its main landmark, in the contemporary context, the Universal Declaration of Human Rights, which, in its thirty articles, registers the rights considered human, among them, the educational. The document proclaims education as an instrument that promotes progressive achievements common to all peoples and nations and, therefore, must be protected by the order of national and international scope (SOUZA, 2017).

The author affirms that basic education is an irreplaceable human right and must be guaranteed free of charge, as a way of allowing access to all. For this reason, the right to school education is within the broader perspective of human rights.

Since the characterization of human rights permeates universality, indivisibility and interdependence, by certifying the right of all people to education, it also guarantees the basis for the implementation of the entire set of human rights.

The right to education, recognized in the Universal Declaration of Human Rights, was reaffirmed in 1959 in the Universal Declaration of the Rights of the Child. In this document, ten principles were established that point to the development of childhood. The Declaration of the Rights of the Child specifies, at the normative level, that the child is a subject with rights. The document aimed, from the definition of principles, to guide the action of States, parents and society to achieve a better childhood. The text highlights the purpose of education in this process. Indeed, the aforementioned Declaration does not have the binding force typical of international treaties, and serves as a guide for State action (BABINSKI, 2010).

Unlike the 1959 Declaration, which was a recommendation, the 1989 Convention on the Rights of the Child reaffirms the protection of the rights of the child and has the guarantees of an international treaty, since it has the attribute of providing compulsory conduct for the signatory states and their responsibility for the agreed rights. The 1989 Convention innovates by recognizing children all the rights and freedoms enshrined in the Declaration of Human Rights (SOUZA, 2017).

After the standardization of these documents at the international level, the World Conferences on Education for All, promoted by Unesco (United Nations Educational, Scientific and Cultural Organization), a specialized agency of the United Nations (Organization of the United Nations). These conferences began to be held regularly and the

deliberations initiated in this debate space resulted in three World Declarations of Education for All, that of Jomtien (1990), Dakar (2000) and Incheon (2015).

These documents are configured as historical milestones of international regulation and indicate an attempt by the signatory countries to commit themselves to reversing the panorama of the universal non-realization of the right to education. The standardization of public international law, based on the signing of protocols of intent, declarations, pacts, agreements signed at the international level and the creation of specialized agencies in monitoring the effective guarantee of the right to education, records an important advance in the perspective of reinforcing the announcement of the human person's rights to education (STOCO, 2013).

The large number of international documents demonstrates the effort to settle the inherent rights of man, among which, education, which characterizes his aspiration to universality, allowing the recognition of his fundamental character. For Cury (2002), it is a process of internationalization of rights in which there is a positive affirmation of the right to education worldwide. Meanwhile, the guarantee of this right has taken a historical path, the result of the struggles of innumerable social subjects.

Its positivization is related to the objective of guaranteeing human dignity, through the full development of man in the social, political and cultural context. Therefore, education is not only a right, but also a good and a social responsibility as a whole. Furthermore, it is essential for the consolidation of the process of affirmation of human rights under the integral, indivisible and interdependent characteristic (SOUZA, 2017).

Internationally standardized documents advocate a spirit of appreciation of the concept of education as an inalienable, indivisible, interrelated and interdependent human right. The propositions of the texts refer to a line of "educational [...] principles that are constitutive of a social vision of education that is intended to be shared as an ideal of the human condition" (STOCO, 2013).

Right to education in the Mercosur countries

Our objective is to highlight the right to education in the Constituents of the member countries of Mercosur, since it is the fundamental and supreme law of a State that, in addition to standardizing its structure, the formation of public powers and forms of government, distributes powers, Rights and duties. of citizens. In this sense, we seek to focus on analysis,

safeguarding the obligation and the tip in the respective Constitutions, since they consist of pillars that guarantee the right to education.

The National Constitution of Argentina was sanctioned in 1853, however, successive reforms were carried out in the years 1860, 1866, 1898, 1957 and 1994. The component deals with the right to education in article n. 14, in the field of civil rights, granting all inhabitants the right to teach and learn (ARGENTINA, 1994).

Although it does not guarantee compulsory and free education, the delegates of the Argentine Magna Carta in article n. 75, to the country's legislature, the responsibility for the organization of education, in accordance with local peculiarities, in order to guarantee freedom and impartiality, without considering the obligation.

The Paraguayan Constitution, promulgated in 1992, addresses the right to education in its chapter VII, entitled *De La Educación y De La Cultura*, article 73 states that education should be considered as a process of cultural training, which will develop throughout the life of the individual. Article 74 establishes the right to learn and the freedom to teach. *Se garantizan el derecho de aprender y la igualdad de oportunidades al acceso a los beneficios de la cultura humanística, de la ciencia y de la tecnología, sin discriminación alguna* (PARAGUAI, 1992).

In the article no. 75, the constitutional text emphasizes that the exercise of the right to education is the responsibility of society and falls in particular on the family, the municipalities and the State. Regarding the compulsory and free nature of education, the Magna Carta establishes in article 76 - *De las obligaciones del Estado: La educación escolar básica es obligatoria. En las escuelas públicas tendrá carácter gratuito. El Estado fomentará la enseñanza media, técnica, agropecuaria, industrial y la superior o universitaria, así como la investigación científica y tecnológica* (PARAGUAI, 1992).

The Paraguayan Magna Carta establishes compulsory basic school education, which public institutions must offer free of charge. The Uruguayan Constitution is dated 1967 and addresses the right to education in its chapter II, article n. 68 freedom of education is guaranteed - *Todo padre o tutor tiene derecho a elegir, para la enseñanza de sus hijos o pupilos, los maestros e instituciones que desee*. The article n. 70 points to the obligation: *Son obligatorias la enseñanza primaria y la enseñanza media, agraria o industrial. El Estado propenderá al desarrollo de la investigación científica y de la enseñanza técnica. La ley proveerá lo necesario para la efectividad de estas disposiciones* (URUGUAI, 1967).

It is observed that, unlike the other constitutions, the Uruguayan Constitution considerably expands the nucleus of compulsory education, establishing, in its article n. 70, compulsory primary, secondary, agricultural or industrial education.

Regarding the tip, the article does not. 71 determines how *utilidad social la gratuidad de la enseñanza oficial primaria, media, superior, industrial y artística y de la educación física; la creación de becas de perfeccionamiento y especialización cultural, científica y obrera, y el establecimiento de bibliotecas populares* (URUGUAI, 1967).

Souza (2017) considers that the Magna Carta of Uruguay, as well as that of Argentina, establishes general provisions on the guarantee of the right to education, based on the issuance of specific laws on the protection of this right.

The Constitution of the Bolivarian Republic of Venezuela dates from 1999 and guarantees in its preamble that the rule of law must guarantee, for present and future generations, the social right to life, work, culture, education, social justice and equality.

Article No. 102 establishes the right to education as a human right and a fundamental and democratic social duty, being free and obligatory. The State must assume it as an irrevocable function of greatest interest at all levels and modalities, and as an instrument to serve the scientific, technological and humanistic society. Education, according to the Venezuelan Magna Carta, consists of a public service.

In the article no. 103 highlights the right to a comprehensive, quality, permanent and equal education, as well as the obligation of education at all levels of education. *Toda persona tiene derecho a una educación integral, de calidad, permanente, en igualdad de condiciones y oportunidades, sin más limitaciones que las derivadas de sus aptitudes, vocación y aspiraciones. La educación es obligatoria en todos sus niveles, desde el maternal hasta el nivel medio diversificado* (VENEZUELA, 1999).

Venezuela defines education as a social right, in addition, the constituent clearly presents the requirements of free and compulsory as essential to guarantee this right. In Brazil, the Federal Constitution of 1988 assured, in its article no. 6, education as a social right. Specifically in this right, nine articles were included, in which a series of aspects that involve their implementation are explicit. Article 205 establishes that education is a right of everyone and a duty of the State and the family.

Article 206 establishes the principles underlying the provision of education in the country, namely: I - equal conditions of access and stay in school; II - Freedom to learn, teach, research and spread thought, art and knowledge IV - Free [...] public education in official establishments. Article 208 specifically presents the right to education, which will be

carried out through the guarantee of: I - free and compulsory basic education from 4 (four) to 17 (seventeen) years, guaranteed even for those who did not have access her at her age (BRAZIL, 1988).

Paragraphs 1, 2 and 3 of article 208 also define that access to free and compulsory education is a subjective public right; The lack of compulsory education by the Government, or its irregular offer, is the responsibility of the competent authority. Education, in the Federal Constitution of 1988, was conceived as compulsory and free and, when it was offered by the public authorities, it became a subjective public right, through which the individual has an inviolable sphere of action, in which the Public power cannot penetrate. .

The compulsory and free nature of education in Brazil has undergone several changes in the last twenty years, through revisions to the constitutional text, among them: the expansion of compulsory schooling. While the original text provided for free, compulsory education for primary school, which included children between the ages of seven and fourteen, the Constitutional Amendment did not. 59/2009 established the age of four to seventeen years (SOUZA, 2017).

We have identified that, with the exception of Argentina, all the other Mercosur countries guarantee in the constitutional text that basic education is compulsory and free as a right. Although, although the Argentine Constitution does not provide references on free and compulsory education, according to Babinski (2010), these elements are guaranteed in the infra-constitutional legislation of that country.

Regarding this reality, the author warns that although the infra-constitutional rule is effective in fulfilling the "intention to protect these rights, the fact that they are not expressly included in a constitutional list weakens the legal protection provided" (BABINSKI, 2010, p. 65 - our translation).

Final thoughts

Mercosur, created with the objective of strengthening the regional economy of the countries that constitute it, institutionalizing the Educational Sector of Mercosur, to define strategies and propose objectives to the educational systems of the countries that comprise it, clearly expresses its understanding of conceiving the education as a crucial area in promoting regional integration. However, its effectiveness is limited, among them: the guarantee of the right to education among the countries that make up the bloc.

When analyzing the constitutions of the countries, we identify that Brazilians, Paraguayans and Venezuelans treat the right to education in a more specific way, in contrast to those of Uruguay and Argentina. Guaranteeing in Magna Carta a broader place for the right to education represents a significant advance in its legal protection.

The Brazilian constitution is the only one that recognizes the right to education differently from other constituents of Mercosuria, with characteristics of personality rights, when it is guaranteed as public and subjective, endowed with civil protection, however, it is a social right. Without a doubt, it is the great innovation of the Brazilian constitutional model in relation to the right to education.

Although the constituents of the Mercosur member countries have points in common, they also have asymmetries that reflect the guarantee of the right to education in these countries. Among the dissonant points, it is appropriate to point out the difference in relation to the use of the constituent's legal order. Although Brazil has a high index of the constitutional amendment mechanism, the other countries of the Bloc have promoted very few revisions in the constitutional wording. Uruguay, for example, used plebiscites for this purpose.

We have shown that the limitations existing in the constitutional texts, in terms of guaranteeing the right to education in some Mercosur countries, can undermine progress in the direction of the effectiveness of educational law, as well as in achieving the enjoyment of citizenship.

The present study sought to contribute to the strengthening of a field of research, even in a timid process of consolidation, on Mercosur's educational actions, in which analyzes of the implementation of educational policies of international proportions are inserted, with the aim of guaranteeing the education rights. as an instrument of citizenship. It is mainly about bringing public education policies within the continent, especially in South America, to the center of the educational debate scene as an instrument for inclusive development in the countries of the region.

REFERENCES

ARGENTINA. **Constitución Nacional da Argentina**. Buenos Aires: Senado de La Nación Argentina, 1994.

BABINSKI, D. B. de O. **O direito à educação básica no âmbito do Mercosul: proteção normativa nos planos constitucional, internacional e regional**. 2010. 182 f. Dissertação (Mestrado em Direito) - Universidade de São Paulo, São Paulo, 2010.

BENEVIDES, M. V. Direitos humanos: desafios para o século XXI. *In*: SILVEIRA, R. M. G. *et al. Educação em Direitos Humanos: fundamentos teórico-metodológicos*. João Pessoa: Editora Universitária, 2007. p. 335-350.

BRASIL. **Constituição da República Federativa do Brasil de 1988**. Constituição da República Federativa do Brasil. Brasília: Senado, 1988.

CURY, C. R. J. A gestão democrática na escola e o direito à educação. **Revista Brasileira de Política e Administração da Educação**, Recife, v. 23, n. 3, p. 483-495, 2007.

PARAGUAI. **Constitución de la República de Paraguay**. Assunción, 1992.

SOUZA, K. R. **Direito à educação nos países membros do Mercosul: um estudo comparado**. 2017. 346f. Tese (Doutorado em Educação Escolar) – Universidade Estadual Paulista, Araraquara, SP, 2017.

STOCO, S. Educação como direito de todos: construindo um sistema nacional de indicadores em direitos humanos. *In*: REUNIÃO NACIONAL DA ASSOCIAÇÃO NACIONAL DE PÓS GRADUAÇÃO E PESQUISA EM EDUCAÇÃO, 36., 2013, Goiânia. **Anais [...]**. Goiânia, 2013.

URUGUAI. **Constitucion de La Republica com las modificaciones plebiscitadas el 26 de noviembre de 1989**, el 26 de noviembre de 1994 y el 8 de diciembre de 1996. Montividéu, 1967.

VENEZUELA. **Constitución de la República Bolivariana de Venezuela**. Caracas, 1999.

Como referenciar este artigo

SOUZA, K. R.; KERBAUY, M. T. M.; SILVA, R. D. da. The right to school education as a dimension of citizenship in Mercosur. **Revista on line de Política e Gestão Educacional**, Araraquara, v. 24, n. esp. 1, p. 737-746, ago. 2020. e-ISSN:1519-9029. DOI: <https://doi.org/10.22633/rpge.v24iesp1.13782>

Submitted on: 20/02/2020

Required reviews: 30/04/2020

Approved: 28/06/2020

Published on: 01/08/2020