

Education as a collective right in the construction of citizenship and dignity of the human person: the reality of an unconstitutional state of things

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ABSTRACT

The Citizen Constitution of 1988 is a historical mark for the construction of the Democratic State of Law and it prioritized fundamental rights and guarantees. Within these, are the so-called social rights from the second generation of human rights. Education integrates social rights and is the basis for building a conscience that values the dignity of the human person and the effective exercise of citizenship, two cornerstones of the Democratic State of Law. Thus, it is necessary to comprehend the concept of citizenship and the dignity of the human person, issues embraced by human rights. After this comprehension, education will be identified as a fundamental social right with its constitutional and infra-constitutional aspects. The fact is that the lack of public appreciation of this fundamental social right causes a generalized unsustainable situation; a true unconstitutional state of things). Therefore, while respecting the autonomy of the Executive and the Legislative Branches, the need for the Judiciary to act in favor of harmony and with the equity it portrays arises, as well as, the need for the Judiciary to evoke Public Authorities to fulfill their

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obligations. In the present paper, this translates as the fundamental social right to education.

KEYWORDS: Citizenship. Dignity of the Human Person. Human Rights. Education. Unconstitutional state of things.

A educação como direito coletivo na construção da cidadania e dignidade da pessoa humana: a realidade de um estado de coisas inconstitucional

RESUMO

A Constituição Cidadã de 1988, além de ser um marco histórico na construção do Estado Democrático de Direito, priorizou os direitos e garantias fundamentais. Entre estes, estão elencados os denominados direitos sociais pertencentes à segunda dimensão de direitos humanos. Integrando os direitos sociais encontra-se a educação como base para a construção de uma consciência que preza pela dignidade da pessoa humana e o efetivo exercício da cidadania, dois fundamentos do Estado Democrático de Direito. Assim, faz-se mister a compreensão dos conceitos de cidadania e de dignidade da pessoa humana, temas abarcados pelos direitos humanos. Após tal compreensão, a educação é apontada como direito social fundamental em seus aspectos constitucionais e infraconstitucionais. Ocorre que, a falta de apreço do Poder Público para com esse direito social fundamental causa uma situação insustentável, generalizada, um verdadeiro estado de coisas inconstitucional. Neste viés, surge a necessidade de o Poder Judiciário, respeitando a autonomia dos Poderes Executivo e Legislativo, agir em prol da harmonia e com a equidade que lhe é exigida, suscitar a concreção daquilo que é dever do Poder Público, o que no presente ensaio é o direito social fundamental à educação. O método de pesquisa é bibliográfico, descritivo e qualitativo, parte-se do confronto entre as bibliografias para se descrever os resultados. Após, a análise infere-se que, embora pouco utilizado no ordenamento pátrio, o país vive na Educação um autêntico Estado de coisas inconstitucional.

PALAVRAS-CHAVE: Cidadania. Dignidade da Pessoa Humana. Direitos Humanos. Educação. Estado de coisas inconstitucional.

La educación como derecho colectivo en la construcción de la ciudadanía y la dignidad de la persona humana: la realidad de un estado de cosas inconstitucional

RESUMEN

La Constitución Ciudadana de 1988, además de ser un hito histórico en la construcción del Estado de Derecho Democrático, priorizó los derechos y garantías fundamentales. Entre estos, se enumeran los llamados derechos sociales que pertenecen a la segunda dimensión de los derechos humanos. La integración de los derechos sociales es la educación como base para construir una conciencia que valore la dignidad de la persona humana y el ejercicio efectivo de la ciudadanía, dos fundamentos del Estado de derecho democrático. Por lo tanto, es esencial comprender los conceptos de ciudadanía y dignidad humana, temas cubiertos por los derechos humanos. Después de tal comprensión, la educación se identifica como un derecho social fundamental en sus aspectos constitucionales e infraconstitucionales. Resulta que la falta de apreciación del Poder Público por este derecho social fundamental provoca una situación insostenible y generalizada, un verdadero estado de cosas inconstitucional. En este sentido, surge la necesidad de que el Poder Judicial, respetando la autonomía de los poderes ejecutivo y legislativo, actúe a favor de la armonía y con la equidad que se le exige, para concretar lo que es el deber del Poder Público, que en este ensayo Es el derecho social fundamental a la educación. El método de investigación es bibliográfico, descriptivo y cualitativo, comenzando por la comparación entre las bibliografías para describir los resultados. Posteriormente, el análisis implica que, aunque poco utilizado en el orden nacional, el país vive en la educación un auténtico estado inconstitucional.

PALABRAS CLAVE: Ciudadanía. Dignidad de la persona humana. Derechos humanos. Educación. Estado de cosas inconstitucional.

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“Ensinar não é transferir conhecimento, mas criar as possibilidades para a sua própria produção ou a sua construção”.
Paulo Freire

Introduction

With the advent of the 1988 Constitution, the so-called Citizen Constitution, education acquired the status of a fundamental social right. The constitutional provision is regulated in article 6 and detailed in Title VIII – Social Order – notably between articles 205 and 214 of the Major Law. In addition to the constitutional provision, in the national ordinance there are laws and plans that regulate the matter. It turns out that, despite the broad legislation, the fundamental social right to education has been disrespected and, consequently, because it is a right that contributes to the formation of a critical mindset in children, young adolescents, adults and the elderly, they are violated, mainly, two foundations of the Democratic Rule of Law: citizenship and human dignity⁴.

The lack of quality education contributes to the formation of uneducated citizens, contributing to a decent life. Education is the constitutional instrument that opens the mind to understanding the true meaning of the Democratic Rule of Law.

It so happens that, in view of the State's omission, it is necessary for the Judiciary Branch to act through the unconstitutional State of Things to implement what is guaranteed by the Major Law and, also, by infra-constitutional laws.

Thus, this essay aims to address about citizenship and human dignity as foundations of the Democratic Rule of Law, the fundamental social right to education and, finally, to discuss the unconstitutional state of affairs.

The research was carried out based on national legislation, doctrine, researchers in the most diverse areas of human science. The deductive method was used, where rationalization and combination of

⁴ BRAZIL. Federal Constitution. Article 1, items II e III.

ideas prevails. The reasoning strives for a logical, inferential and divergent character, since it is based on what is positive; addresses an implicit perspective in the researched authors and in the legislation itself and presents a possible solution, although new in the Brazilian legal system, for the realization of the social right to education.

The work aims to raise a critique of the importance of the fundamental social right to education as a basic premise for the construction of a more dignified and citizen society, even if this requires a more activist action by the Judiciary.

The theme presented here is not an end to the theme, on the contrary, it is just a germ so that the Brazilian people can enjoy their rights and not just be a mere performer of duties.

Citizenship and human dignity: foundations of the democratic rule of law

Democracy as a political model that dates back to ancient times (Greece) and reaches the present day with a new configuration. There is an intrinsic link between democracy and citizenship. Citizenship is the foundation of the Democratic Rule of Law. Thus, the understanding of the term democratic implies, within the Democratic State of Law, the creation of laws by the citizens and for them, respecting the dignity of the human person.⁵

In two of Aristotle's works, namely, "The Ethics to Nicomaches" and "The Politics", there is a vision of the concrete existential situation of the Greek man. In the first one finds the ordering of the acts of the will in view of the supreme good that is happiness (ARISTOTLE, 1979, p 49); the second shows the Greek civil organization.

In "Ethics" the Stagirite demonstrated how man can achieve happiness in this life through virtues. These are habits that each one builds,

⁵ BRAZIL. Understand what the Democratic Rule of Law is. Published: 10/30/2018 15:38. An expert explains the origins of this concept, which defines the Brazilian State and its characteristics. Available in: <http://www2.planalto.gov.br/mandatomicheltemer/acompanhe-planalto/noticias/2018/10/entenda-o-que-e-o-estado-democratico-de-direito>. Accessed on: Sep 27 2020.

but which have the essential characteristic of the so-called “fair measure”. The right measure is the intermediate path between extremes, whether the tendency to excess or lack. Thus, among all the virtues, justice is the most prominent, as it is the foundation of society itself.

In “Politics”, Aristotle addresses the Polis – City State – which, according to his view, precedes the parts, that is, the city is prior to the individuals who are part of it. And it is in the city that individuals acquire the identity of citizens who will meet in the “Ágora” to resolve issues concerning their own politics.

Thus, in Aristotle Ethics and Politics complete each other, the first on a particular level and the second as a state activity. And how does this complementation occur? Through justice. It is through justice, the greatest virtue, that the individual feels the obligation to carry out actions that are loyal to others, whether governors or fellow citizens. In this way, justice is the “good of the other”.

But justice also has a meaning that strictly refers to the city: place of association of equal men; equality being a guiding principle (ARISTOTLE, 1979, p. 121-123) This justice Aristotle calls distributive, as it concerns the right distribution, by the State, to its citizens. And on the other hand, it refers to the imposition of penalties on lawbreakers.

Today, the idea of democracy must work in a practical way and with concrete results. What was theorized by the Greeks, related to the good of all, must complete the entire democratic path with regard to equality, dignity, access of all people to education, etc.

The concept of citizenship was expanded with the thought of sociologist Thomas Humphrey Marshall. According to this author, the idea of citizenship is composed of three normative elements, namely, civil element, political element and social element (MOURA, 2010, p 24).

According to Marshall (MASTRODI, 2017), in Western Europe, in the 18th century, the historical conditions that led to the conquest of civil citizenship arise, where citizens, at least in theory, could fight, at least as a possibility, for their rights in the individual sphere.

Later, in the 19th century, the period of political citizenship appears, where not only the creation of political rights is observed, but the expansion of civil rights of yesteryear. In this element of political citizenship, the sociologist points out “starting from the point where all men were free, in theory, able to enjoy rights, citizenship developed by enriching the set of rights they were able to enjoy” (MARSHALL, 2002 , p. 27). Finally, in the 20th century, social citizenship emerged with minimal recognition of survival, such as the right to health and education. At this point, there is a caveat: although there is an appearance of similarity between the sociologist's theory and the theory of human rights generations, it should be noted that they are different perspectives. Note that Marshall did not comment on the diffuse rights present in what is conventionally called the third dimension of human rights.

However, it is from the universalization of fundamental rights and the expansion of citizenship in the social and economic sphere (social, collective and diffuse rights) that the great advance in the implementation of the Democratic State can be seen.

The Magna Carta, in its preamble, mentions the Democratic Rule of Law with an objective assuring social and individual rights, among others (BRAZIL, 1988).

The reality itself shows citizens that the rights mentioned are not guaranteed. The Constitution itself contemplates the Democratic State of Law project to be pursued and conquered. To do so, it is enough to see that the concept of citizenship is limited, by society in general, to the simple fact of being a voter. It seems that it is only through the vote that the citizen exercises his citizenship.

The Secretariat of Justice, Labor and Human Rights of the State of Paraná, through the Department of Human Rights and Citizenship (DHRC) defines the citizen as a subject who has rights, whether civil, political or social (PARANÁ, 2019). In this way, the concrete expression of exercising democracy takes place in full citizenship and in the exercise of rights

(PARANÁ, 2019). Despite the commendable terms used to define citizenship and the way to exercise it, unfortunately, there is still a long way to go for its realization and its respective exercise.

As a complement, add the notion of deliberative democracy by Jürgen Habermas (2003, p. 354). For the philosopher, the model of deliberative democracy privileges the citizen dimension as a kind of link between the individual dimension and the cultural dimension. Thus, all people are active subjects in the construction of political identity through a constitutional patriotism that is configured in the decision of norms and values for the entire community, which, being plural, is under the aegis of the Constitution. Therefore, Habermas has the idea of citizenship linked to the active condition of the human person in their individual and cultural sphere.

Dignity of human person

The notion of human dignity is not unique. Its variants support different analyses. According to Ramos, “human rights consist of a set of rights considered essential for a human life based on freedom, equality and dignity. Human rights are the essential and indispensable rights for a dignified life” (RAMOS, 2018, p. 28) (emphasis added).

The human person is the subject of human rights. Therefore, it is important to distinguish the concept of person from the concept of individuals. The individual is “that which cannot be divided. (BOÉCIO apud ABBAGNANO, 2007, p. 555). Thus, the concept of individual is more internal and indivisible⁶ than the conception of person. The concept of person turns to the relational sphere, either with the other, with the world, with the beings that surround him. Nowadays, the concept of person prescribes “each human being as a unique person, subject of rights and duties, with an intrinsic dignity and value” (DIEHL, 2018, p. 39). Such a

⁶ In this case, man is understood as a single being, although he can be dismembered, he does not transform into several other beings.

definition is adopted by the 1948 Universal Declaration of Human Rights (UDHR). Thus, the idea of human rights, in general, presupposes that there are rights of human beings and intrinsic to them, due to their particular dignity. Thus, human rights are configured as universal norms or principles that apply to all human beings, regardless of ethnicity, nationality, political conviction, gender or other characteristics.⁷

In its thirty articles, the Universal Declaration of Human Rights summarizes, in a synthetic way, the so-called civil, political, social, economic and cultural rights, all permeated by the idea of dignity already mentioned in article I of the aforementioned document: “all human beings they are born free and equal in dignity and rights. They are endowed with reason and conscience and must act towards one another in a spirit of brotherhood” (emphasis added).

It so happens that, in order to reach such an understanding, human rights underwent a kind of “evolution”, which in the doctrine defined as “dimensions” or “generations”. The majority doctrine has preferred the use of the term “dimensions” instead of “generations” in order not to misinterpret, in which the term “generation” could be interpreted in an exclusive way; as opposed to the term “dimensions” which suggests inclusion, expansion. Despite the terminological controversy, the generations of human rights can be presented as follows: the first generation encompasses civil and political rights, the second, social rights, the third, trans-individual rights, and finally, the rights of peoples (TRINDADE JÚNIOR, 2015, p. 19). In this way, education is part of the second dimension of fundamental rights, being a fundamental social right that aims at the realization of Justice in the social order and requires direct action, that is, action by the Public Power. However, as will be discussed below, the State has been silent in relation to social rights, leaving education in the background, the core of the formation of people with a citizen conscience.

⁷ As expressed in articles 1 and 2 of the UDHR, 1948.

Before entering the theme of education as a fundamental social right, it is necessary to emphasize that fundamental rights, regardless of the dimension they are part of, have characteristics that are inherent to them, namely, historicity, universality, inexhaustibility, essentiality, imprescriptibility, inalienability, non-renunciation, inviolability, effectiveness, limitability, complementarity, competition and prohibition of retrogression (PENTEADO FILHO, 2012, pp. 23-24) (our emphasis). Despite the characteristics are closely related, the effectiveness was highlighted as it is a duty of the Public Administration to create coercive mechanisms capable of making these rights effective. Among these instruments will be presented at the end of this essay the Unconstitutional State of Things (UST), recently adopted by the Supreme Court (STF) in the complaint of non-compliance with fundamental precepts (ADPF) number 347 – Federal District.

Fundamental right to education

The fundamental right to education is a kind of social right and is provided for in article 6 of the Federal Constitution of 1988. As it is a fundamental right, education is of paramount importance for the realization of a Social and Democratic State of Law, an idea already proposed in the constitutional preamble. By valuing education as a social right, in theory, the State plays a helpful role, which imposes on itself the duty to act for the direct and immediate realization of such interest.⁸

According to the Brazilian jurist and writer Fábio Konder, social rights "are carried out through the implementation of public policies, designed to guarantee social protection and protection for the weakest and poorest; that is, those who do not have their own resources to live with dignity" (COPARATO, 2010, p. 77) In this bias, there is a kind of claim right that requires a third party, be it the State or private, a conduct guaranteeing such claim.

⁸ The State's duty to provide services is linked to all social rights, not just education.

"In the scope of this state, which is of a benefit nature, the legal positivization of social values started to serve as a basis not only for the interpretation of the entire Constitution, but for the creation, direction and regulation of concrete situations." (DUARTE, 2007, p. 694)

It is precisely in this sphere of claim-right that education appears regulated in article 208, item I, of the Federal Constitution of 1988. The very proclamation of the Universal Declaration of Human Rights (1948) as an ideal common to all efforts in "through teaching and education, for promoting respect for these rights and freedoms, and for the adoption of progressive measures of a national and international character, for ensuring their recognition of their universal and effective observance [...]". Once again, education is seen as the basis for building a democratic society.

In the Brazilian legal system, in addition to the constitutional provision on the social right to education and the Universal Declaration of Human Rights, there is also the Law of Guidelines and Bases for National Education – Law No. 9,394/96 – (LGBNE); the Child and Adolescent Statute – Law No. 8069/90 – (CAS); the National Education Plan – Law n° 10.172/2001 – (NEP) and the Statute of the Elderly – Law n° 10.741/2003.

When analyzing the LGBNE, it is observed that when establishing guidelines that regulate education, the focus is on the dignity of the human person. Thus, it is extracted from article 1 of the aforementioned document, in verbis: "education encompasses the training processes that develop in family life, in human coexistence at work, in teaching and research institutions, in social movements and the organization of civil society and in cultural manifestations" (BRASIL, 1996).

From this statement, it can be inferred that Education is the very formative process that permeates human (dignity) and social (citizenship) life. Education is the existing method for configuring something, that is, it is the method that encompasses the individual and the person, the latter in the relational sphere, the one in the intimate sphere.

In this sense, Moacir Alves Carneiro, commenting on article 1 of the LGBNE, affirms the existence of an axiological rupture by pointing to education as a collective attribute (CARNEIRO, 2013, p. 38). In this way, the aforementioned author expands the concept of education not restricting it to social educational institutions only, but raises the hypothesis of a value change in education when considering its importance based on human development.

The LGBNE itself states in paragraph 1, article 1, that "this law regulates school education, which is developed predominantly through teaching, in their own institutions, but not exclusively in them" (emphasis added). Continuing, paragraph 2 of the same article establishes that "school education should be linked to the world of work and social practice", that is, education is an intrinsic factor for the realization of citizenship and human dignity.

Article 205 of the Federal Constitution affirms that: "Education, a right of all and a duty of the State and the family, will be promoted and encouraged with the collaboration of society, aiming at the full development of the person⁹, their preparation for the exercise of citizenship and their qualification for work" (emphasis added). In line with this provision, article 1 of the LGBNE prescribes "education, a duty of the family and the State, inspired by the principles of freedom and ideas of human solidarity, aims at the full development of the student, his preparation for the exercise of citizenship and its qualification for work. Commenting on the theme, Carneiro states that the purpose of education is characterized in view of the citizens it intends to train (CARNEIRO, 2013, p.43).

Education has a triple purpose-function, namely, the full development of the student, his preparation for the exercise of citizenship and his qualification for work. In full human development is the contribution to the psychological development of the student in a progressive and harmonious way, at the cognitive level where "people develop learning in a direct relationship with their world and also in the use of vocabulary, as the words they are bearers of meaning" (CARNEIRO,

⁹ In other words: dignity of the human person.

2013, p. 43). In the purpose linked to preparing the exercise of citizenship, the concept of citizen as a subject holder of rights and duties should be recalled. Since education is the first social right listed by the Constitution. Regarding the third purpose, Carneiro teaches the “education-work relationship should be understood as the need to make socially productive work a generator of school dynamics [...] education should be conceived as a process where science and work coincide” (CARNEIRO, 2013, p. 48).

The ECA also establishes the right/duty to education in its Article 4, stressing the duty of everyone, with absolute priority, including with regard to public resources (BRASIL, 1990).

Now, the legislation provides absolute priority to the rights of children and adolescents and, among the listed rights, is education. Reinforcing the argument, the sole paragraph places the preferential need for public policies for children and adolescents, as well as the privileged allocation of resources for the protection of children and adolescents.

Thus, it is important to highlight that there is a latent omission on the part of the State with regard to public policies and allocation of resources for the area of education (FRAGA, 2018).

One could question the reason for the insistence on the educational character, given that there are other fundamental rights provided for. It turns out that education is the basis for the dignity of the human person and for the construction of citizenship itself. Well-educated children, teenagers, young people, adults and elderly people achieve an exact understanding of what it means to be a citizen, a person with rights and obligations.

The state disrespects the law. As stated in Article 5 of the ECA: "No child or adolescent shall be subject to any form of negligence, discrimination, exploitation, violence, cruelty and oppression, and any attack, by action or omission, to their fundamental rights shall be punished under the law" . (our emphasis)

The State must be held responsible for its omission regarding the quality of education it offers (TOKARNIA, 2018). There are thousands of

children who walk kilometers distances (ATHIAS) to access a school and, arriving there, in addition to education below the standards necessary for adequate training, they do not have their fundamental rights of dignity respected. Pay attention to the provision of article 7 of the ECA: "Children and adolescents have the right to protection of life and health, through the implementation of public social policies that allow for healthy and harmonious birth and development, in conditions worthy of existence". (our emphasis)

Where are the decent conditions of existence foreseen for those who are the future of Brazil? They do not exist, as the budget, where the investment priority would be established, suffers the immeasurable damage from the corruption that plagues the Brazilian political class. There is no absolute priority when the state apparatus, the instrument of those who have the duty to ensure the priority of education, is used in the interest of a caste of those elected as representatives of the people and acting for their own benefit.

Such indignation is attested when Law n° 10.172/2001 – National Education Plan – summarizes its objectives in the following terms:

2. OBJECTIVES AND PRIORITIES

In summary, the Plan has the following objectives:

- . the global rise in the population's level of education;
- . improving the quality of education at all levels;
- . the reduction of social and regional inequalities regarding access to and successful permanence in public education and
- . democratization of the management of public education, in official establishments, obeying the principles of participation of education professionals in the elaboration of the school's pedagogical project and the participation of school and local communities in school councils or equivalent.

Considering that financial resources are limited and that the capacity to respond to the challenge of offering education compatible, in scope and quality, to that of developed countries needs to be built constantly and

progressively, priorities are established in this plan, according to the constitutional duty and the social needs. (BRAZIL, 2001) (Emphasis added)

It is not believed that these are limited financial resources, but rather poor management by the Executive Power, with the diversion of funds – including the budget for school meals –; it is the slowness of the Legislature in putting on the agenda issues related to education, after all, the priority has been to increase their own salaries and their privileges.

The Plan also deals with the various types of education, namely, early childhood education, elementary education, high school, youth and adult education, special education, distance education and educational technologies, higher education, indigenous education, etc. Further on, it provides for “the training of teachers and valuing the teaching profession” which, in theory, should be valued with the training of professionals, decent salaries (BRAZIL, 2001).

Reality shows that in addition to the terrible infrastructure of educational establishments; teachers do not receive a decent salary for their profession (BRAZIL, 2003). Because as the plan itself attests, there is great abandonment on the part of teachers due to precarious working conditions and salaries that do not match the profession. Teachers, like any professional, have yearnings and desire to grow in their profession. Education in the globalized world requires the qualification and improvement of professionals at its various levels¹⁰.

It should be noted that the aforementioned Plan, created by Law 10,172, was enacted on January 9, 2001 after 18 years, almost nothing or

¹⁰ “Year after year, a large number of teachers leave teaching because of low salaries and working conditions in schools. Training more and better teaching professionals is only part of the task. It is necessary to create conditions that maintain the initial enthusiasm, dedication and confidence in the results of the pedagogical work. IT’S *need the teachers can envision perspectives for professional growth and continuity of their training*. If, on the one hand, it is necessary to rethink the training itself, in view of the present challenges and new demands in the field of education, which requires increasingly qualified and permanently update professionals, from early childhood education to higher education (and this is not a merely technical issue of offering a greater number of initial training courses and in-service qualification courses) on the other hand, it is essential to keep good teaching professionals in the education network and with prospects for constant improvement. A decent salary and teaching career are essential components here. Performance evaluation is also important in this context.” (Emphasis added).

nothing was done for the realization of the fundamental right to education. And without education there is no human dignity, no citizenship.

No less important, the elderly person's right to education, established by the Elderly Statute, in its article 20. This diploma imposes on the Public Authorities the duty to implement such guarantee, as provided for in article 21: "the Public Authorities shall create opportunities for the elderly to access education, adapting curricula, methodologies and teaching materials to educational programs intended for them" (BRASIL, 2003)

In view of the absence of state provision, due to the inertia of the Executive Branch and the negligence of the Legislative Branch, it is up to the citizen, based on article 5, item XXXV, to provoke the Judiciary Branch to take the necessary measures to ensure the realization of the fundamental right education, as a basis for building citizenship and awareness of human dignity. The claim is based on the idea of an unconstitutional state of affairs, a new position in the Federal Supreme Court, as an instrument of guarantee in the face of serious violation of the fundamental social right to education.

Unconstitutional State of Things (UST)

The so-called unconstitutional state of affairs is a line of argument that emerged in Colombia in the face of a structural and systemic failure of the Executive and Legislative Powers. At the time, it was invoked due to the structural and widespread disrespect of social security rights. Later, it was adopted in view of the chaotic situation in which the Colombian prison system found itself.

The Colombian Court based the unconstitutional state of affairs on the duty of the Judiciary, in particular the "Supreme Court", in harmony with the other Powers, to guarantee the effectiveness of the Constitution in combating what violates it, thus avoiding judicialization. of similar situations. This is how the Colombian Court manifested itself in 1997:

The Constitutional Court has the duty to collaborate harmoniously with the other organs of the State for the accomplishment of its purposes. Likewise, it must communicate to the competent Authority the news relating to the commission of a crime, as notification should not be omitted in the face of a state of affairs that violates the Constitution. The duty of cooperation becomes imperative if it is the adequate administrative remedy to avoid the excessive use of guardianship actions. Resources available for the administration of justice are scarce. If prompting an authority to comply diligently with constitutional obligations helps to reduce the number of constitutional cases that would otherwise inevitably be brought, such action is a legitimate means for the Court to exercise its function as guardian of the integrity of the Constitution, and the effectiveness of its commandments. If the state of affairs, as such, is not consistent with the Constitution, is directly related to the violation of fundamental rights, verified in a process of protection by the Constitutional Court, the notification of existing regularity may be accompanied by a specific requirement or generic directed to the authorities in order to carry out an action or to refrain from doing so. In this case, it must be understood that the notification and the request make up the repertoire of commands that the Court can take, in the context of review, in order to restore the fundamental order that has been transgressed. The fact that the situation not only serves to support the causes of damage to the fundamental right examined, but also refers to similar situations, and the scope of the request made cannot be restricted. (Free translation).^{11 12}

¹¹ Sentencia SU.559/97. Disponível em: <http://www.corteconstitucional.gov.co/relatoria/1997/SU559-97.htm>. Acesso em 26 de set. 2020.

¹²*La Corte Constitucional tiene el deber de colaborar de manera armónica con los restantes órganos del Estado para la realización de sus fines. Del mismo modo que debe comunicarse a la autoridad competente la noticia relativa a la comisión de un delito, no se ve por qué deba omitirse la notificación de que un determinado estado de cosas resulta violatorio de la Constitución Política. El deber de colaboración se torna imperativo si el remedio administrativo oportuno puede evitar la excesiva utilización de la acción de tutela. Los recursos con que cuenta la administración de justicia son escasos. Si instar al cumplimiento diligente de las obligaciones constitucionales que pesan sobre una determinada autoridad contribuye a reducir el número de causas constitucionales, que de otro modo inexorablemente se presentarían, dicha acción se erige también en medio legítimo a través del cual la Corte realiza su función de guardiana de la integridad de la Constitución y de la efectividad de sus mandatos. Si el estado de cosas que como tal no se compadece con la Constitución Política, tiene relación directa con la violación de derechos fundamentales, verificada en un proceso de tutela por parte de la Corte Constitucional, a la notificación de la regularidad existente podrá acompañarse un requerimiento específico o genérico dirigido a las autoridades en el sentido de realizar una acción o de abstenerse de hacerlo. En este evento, cabe entender que la notificación y el requerimiento conforman el repertorio de órdenes que puede librar la Corte, en sede de revisión, con el objeto de restablecer el orden fundamental quebrantado. La circunstancia de que el estado de cosas no solamente sirva de soporte causal de la lesión iusfundamental examinada, sino que, además, lo sea en relación con situaciones semejantes, no puede restringir el alcance del requerimiento que se formule.*

In a similar way, the Colombian Court manifested itself the following year, affirming the figure of the unconstitutional state of affairs as a way of resolving the structural violation of the fundamental rights of the community.^{13 14}

As can be seen from the position of the Colombian Supreme Court, an unconstitutional state of affairs has the objective of overcoming structural situations that violate fundamental rights, notifying whoever is in charge of solving the evident constitutional discrepancy. However, the decree of the ECI, although for some it is judicial activism, must be seen as an exceptional measure adopted in the face of the foolishness and lack of responsibility of the Public Power towards the population.

According to Campos, the declaration of the unconstitutional state of affairs occurs in the face of an extreme situation of violation of fundamental rights, which is why the Supreme Court, as guardian of the constitution, must act as an implementer of public policies to overcome the situation (CAMPOS, 2015). Proof that this is a measure adopted in exceptional gravity is that, for the UST decree, Ramos states that a framework is necessary: “(i) widespread and (ii) long-lived of rights violations, which is immune to changes, thanks to (iii) constant inefficiency (by actions or omissions) of elected political agents (from different parties)” (RAMOS, 2018, p. 810).

It is not the right of a single individual, but the generalized disrespect of rights in the face of the ineffectiveness, insensitivity and omission of those who, in theory, should defend the interests of the people. By recognizing the UST, the Judiciary can adopt measures that

¹³ Sentencia T-153/98. Disponível em: <http://www.corteconstitucional.gov.co/relatoria/1998/T-153-98.htm>. Acesso em 26 de set. de 2020 .

¹⁴ *En las sentencias SU-559 de 1997 y T-068 de 1998 esta Corporación ha hecho uso de la figura del estado de cosas inconstitucional con el fin de buscar remedio a situaciones de vulneración de los derechos fundamentales que tengan un carácter general - en tanto que afectan a multitud de personas -, y cuyas causas sean de naturaleza estructural - es decir que, por lo regular, no se originan de manera exclusiva en la autoridad demandada y, por lo tanto, su solución exige la acción mancomunada de distintas entidades. En estas condiciones, la Corte ha considerado que dado que miles de personas se encuentran en igual situación y que si todas acudieran a la tutela podrían congestionar de manera innecesaria la administración de justicia, lo más indicado es dictar órdenes a las instituciones oficiales competentes con el fin de que pongan en acción sus facultades para eliminar ese estado de cosas inconstitucional.*

make the Public Authorities move towards the realization of rights. Such instrument is not an offense to article 2 of the Federal Constitution that governs the separation of powers. But it is an effective means to provoke the other two Powers that must not and cannot be inert. "This type of conduct by the Judiciary is not intended to satisfy the right of individual victims, but rather to manage the fulfillment of the State's protection duties in relation to all those affected, until the situation is reversed" (RAMOS, 2018, p. 810).

As the institute's name says: it is a state and as such, given the unconstitutional situation that affects it, it must be overcome by another state: that of constitutionality. In Brazil, the UST institute is recent, inserted more precisely in the year 2015 and foreseen, for the first time, in ADPF n°. 347, filed by the PSOL, which pleaded with the STF for recognition of the unconstitutional state of affairs with the country's penitentiary system, in view of the seriousness of the Commission's commissive and omissive conducts that violated the fundamental constitutional precepts.

It is not necessary to go deeply into the aforementioned ADPF issue, as according to data brought by the media and the judgment itself, the crisis in the homeland prison system is one of the biggest in the world, given the overcrowding, structural and degrading condition (CABRAL, 2019) (BRAZIL, 2016).

The recognition of the UST can be a proposal for dialogue not only between the Powers, but also between the people who, through the judiciary, ask for the realization of their rights. With regard to the fundamental social right to education, the decree of the UST would be an instrument for the realization of such right. The fact is that education is the basis of society and citizenship itself. In addition to the constitutional provision, the fundamental right to education has extensive legislation that protects it. As reported by the press, the education situation in the country is in decline.

According to a report by Guilherme Balza (2018) between the years 2015-2018, 9,300 classrooms were closed. Students and teachers protested what the government called school reorganization. Interviewed by Balza, the Arts teacher Pedro Braga says that this ends up exposing the teacher. "You close the classrooms, and increase the number of students per classroom. This is to not hire more employees. Then there is the excessive number of students per classroom, which makes us even more exposed to situations of indiscipline and violence".

The problem becomes even greater when the infrastructure is verified and it appears that most schools do not have a science laboratory, video room, or even a cafeteria. Many schools do not have a reading room or library. And to greater astonishment, according to the aforementioned report, 90% of schools do not have inspection records from firefighters. Besides there are those that are full of infiltrations, floods and holes. At the time, the then president of APEOESP, Fábio Santos de Moraes, told the press that schools are completely outdated (BALZA, 2018).

Another alarming fact is the assertion of teachers who use their own salary to buy materials aimed at teaching. According to Gabriel Freitas, a Geography professor at a state school in the south of São Paulo, he funds for photocopying materials for students (BALZA, 2018).

It seems to us that the problem of cutting funds for education is not of an economic nature but rather structural in the face of Public omission. It is hypocritical to claim that such a cut is due to the economic crisis that is plaguing the country. There is an evident crisis resulting from corruption, diversion and the illicit enrichment of several public agents.

The Department of Education of the State of São Paulo, when responding to the accusations of the aforementioned report (BALZA, 2018), informed that the report of the Court of Auditors covers only 1.7% of schools in the state, in addition to stating that by 2030 the regularization of basic issues, such as the Fire Department Inspection Report, would be in order.

The situation is serious. The State demonstrates the total disregard for the fundamental social right of education. To say that it will take twelve years to solve what is essential for the functioning of an educational establishment is not to care about the safety of students, teachers. As can be seen from the information on the Fire Brigade website¹⁵.

If the lack of infrastructure, the debatable quality of education, the devaluation of teachers who do not receive decent salaries for their profession were not enough, it is necessary to live in the insecurity of not having the minimum conditions established by the State itself.

Thus, it is denoted that with the trivialization of the fundamental social right to education, our Democratic State of Law is outdated, trivialized, degraded, unworthy, undemocratic, unfair and unsustainable in general, constituting in its scope a status of unconstitutional state of affairs. This is due to the inertia and irresponsibility of public authorities. Measures are needed that contribute to the realization and realization of the social right to education, contributing to the formation of educated citizens, informed and aware of their dignity, rights and duties.

Conclusion

The fundamental social right to education is the basis for the construction of citizenship and human dignity, both pillars of the Democratic State of Law.

Being a citizen is much more than being a voter. The citizen is one who actively participates in society. The citizen is the subject called to build the political system in which the country finds itself. Citizenship

¹⁵ Fire Department Inspection Report (F. D. I. R.), is the document issued by the Fire Department of the Military Police of the State of São Paulo (FDMPPSP) certifying that, during the inspection, the building had fire safety conditions (It is a set of structural, technical and organizational measures integrated to ensure the building has an optimal level of protection in the fire and panic safety segment.), provided for by legislation and contained in the process, establishing a period of revalidation. Cf. at: <https://www.firemen.com.br/avcb-clcb>. Accessed on September 27th. of /2020.

is the realization of effective democracy. Without citizenship there is no democracy. Citizenship is the constant “cry” that emanates from the people who cry out for “Diretas Já!”. This is the real meaning of democracy: power that emanates from the people who directly participate in the country's political life. As a citizen, the individual exercises his set of rights and duties. Citizenship must be aware so that the individual and society itself do not have their rights violated.

But who is the citizen; but the person endowed with dignity? Thus, in line with citizenship is the idea of human rights, which presupposes rights inherent to their own condition as a person, emphasizing their particular dignity. In this way, human rights and the dignity of the human person are principles of a universal nature that are not accepted by individuals. The dignity of the human person is the encounter of the human citizen with the other who is similar to him, but it is also the encounter of each human being with himself, who recognizes his value, that is, his own dignity.

It turns out that fundamental rights have their own characteristics, among which effectiveness stood out. For this is a duty that the State imposes on itself and that citizens, endowed with dignity, have a right before the Public Power. On the basis of effectiveness, the lack of effective and dignified education was criticized.

Although education is listed as the first social right in the Magna Carta and serves as the basis for the construction of a democratic society, as it is (education) the formative process that permeates the dignity of the human person and citizenship, there is an omission of the State with regard to public policies and the allocation of resources for them.

The insistence on the educational character, despite the existence of other fundamental rights, is due to understanding education as a basis for the dignity of the human person and for the construction of citizenship itself. Well-educated people contribute, in a unique way, to the realization of other fundamental rights, as they have learned their role in the world.

The obvious omission of the State, compared to what it proposes, causes a pandemic in our country. Without education there is no human dignity, no citizenship. It should be emphasized that it is not the absence of legislation, of foresight, but the reality of a state that is apathetic towards its people. Thus, given the absence of state provision, due to the lack of effectiveness of the Executive and Legislative Powers, it remains for the citizen to provoke the Judiciary Power to take the necessary measures to ensure the realization of the fundamental right to education, as a basis for the construction of citizenship and awareness of human dignity.

Therefore, despite being a new position in the Federal Supreme Court, the unconstitutional state of affairs was addressed as an instrument of guarantee in face of the serious violation of the fundamental social right to education. This is not about an invasion of the Judiciary or even an overlap of this in relation to the other two Powers., but to recognize that in its legal and political functions as guardian of the Constitution, the Supreme Court is responsible for preserving constitutional guarantees.

The reality of the unconstitutional state of affairs regarding the fundamental social right to education is one more fruit of corruption. And it refers to education in a broad sense, as the unconstitutionality lies in the lack of decent structures, in quality, in the negligible remuneration received by teachers, in the absence of access to the most basic technologies. And if the guardian of the Constitution does not demand the realization of fundamental rights, who will be legitimized?

Without a doubt: the people. Despite the great value of Montesquieu's theory of tripartition of powers (functions) in the organization of the state, it does not supplant popular power. It only distributes functions to representatives of power. The misunderstanding of the Brazilian political class is the forgetfulness of who is the real power in a democracy. Democracy is the power that emanates from the

people, that is, power belongs to the people. The Executive, Legislative and Judiciary only carry out the functions of power at the service of this people. However, political representatives in large numbers and in general act as if they were in power, as if the positions they occupy were for personal gain. Now this is not democracy, but the usurpation of power by an increasingly discredited class.

Finally, it is the people, through their own power, who plead for the service of the Judiciary so that, declared an eventual state of affairs unconstitutional, education can take its proper place and, consequently, fulfill the dream of a true State Social Democratic Law. It is not necessary to create more laws, the need is to give them the concreteness expected.

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