The higher education of law in Brazil: The freedom of chair as an instrument of effectiveness to the fundamental right to education

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ABSTRACT

The general objective of this article was to present Education as a fundamental right, considering the freedom of professorship as an instrument for the effectiveness of this right. Education that leads the individual to the exercise of citizenship and to the development of the human person invokes freedom in teaching and learning. Highlighting legal education in Brazil, this article also presents the various reforms that have impacted to some extent the content and form of education in the country. The theoretical foundation was divided into 3 sections: i) education as a fundamental right in the Brazilian legal system; ii) legal education in Brazil, reforms and curricular guidelines; iii) university autonomy and freedom of professorship. The research problem consisted in identifying whether the freedom of professorship can be conceived as an instrument of the fundamental right to education. Using a hermeneutic method, the hypothesis initially raised is verified, which gives a positive answer to the problem.

Keywords: Fundamental right to education, Normativearches, Principles, Curriculum Guidelines, Freedom of Chair.

1 INTRODUCTION

Education is a fundamental and constitutionally guaranteed right, and it is a subjective right. In the case of the Brazilian legal system, there have been several changes and evolutions until the current model proposed in 1988, indicating and guaranteeing space for free thought and the plurality of ideas and knowledge.

Essential for the development of the human person, education has certain parameters, established milestones, guidelines and curricular bases that point to the paths to be pursued by society and the State.

In the Brazilian case, since 1934, education has gained space in the constitutional text. Curriculum guidelines have undergone true evolutionary processes (not necessarily positive) throughout history. In the case of legal education, it jumps from a small class of privileged people to

an expansion in its access, invoking reflection on the quality of education in the country, highlighting here the aspects related to the teaching of Law.

In 1963, with the establishment of the Statute of the Brazilian Bar Association, through Law No. 4,215, the professional internship and the bar exam began to assume an important role in the search for a better quality in legal education.

Currently, there are about 1,400 legal courses in operation in Brazil. If, on the one hand, the country has democratized access to higher education, especially in an area of knowledge previously so preponderantly occupied by a social elite, the apparent excess of courses, vacancies and diffusion of these authorizations have called for reflection and demanded a series of reforms over the years, to a certain extent seeking to reposition the type of professional and even citizen who is delivered to society after the years in law school.

This article sought to present Education as a fundamental right, but, above all, to position the freedom of professorship as an instrument for the effectiveness of this right to education. The premise is that education that leads the individual to the exercise of citizenship and to the development of the human person invokes freedom in teaching and learning.

After presenting the normative aspects, principles, guidelines, curricular bases and general aspects of the teaching of Law in the country, this scenario is confronted with university autonomy and freedom of professorship. In this meeting, the general objective of this work is to reflect on how the freedom of professorship is demarcated by norms and guidelines, but at the same time enjoys such freedom that it provokes individuals to autonomy and emancipation.

2 EDUCATION AS A FUNDAMENTAL RIGHT IN THE BRAZILIAN LEGAL SYSTEM

In previous constitutions, Brazil treated Education in a somewhat more concise way, compared to the CRFB/88. The first Brazilian constitution dealt with only one article, providing that "Primary education is free to all citizens" (art. 179, § 32). In the Constitution of 1891, few substantial changes were made, stipulating the competence of the National Congress to legislate on higher education (art. 34, XXX), the provision of promotion in the country for "the development of letters, arts and sciences", the creation of institutions of higher and secondary education in the States (art. 35, 2nd and 3rd), and the establishment of secularism in education (art. 72, § 6) (Brazil, 1891).

The first Constitution to address the issue of education was the Magna Carta of 1934, which, like the Constitution of 1988, delegated to the Union the competence to outline the guidelines of national education. It also created the figure of the National Education Plan, fostered private education through the granting of incentives, defined percentages for linking revenues for investment in education, created compulsory primary education, among others (Vieira, 2007).

Regarding the main changes brought about by the 1937 Constitution, also known as the Estado Novo Constitution, Cury (2005, p. 23) summarizes:

> The Constitution of 1937 removed the attachment of taxes to the financing of education, restricted freedom of thought, placed the State as a subsidiary of the family and of the segment proven in the provision of school education. In public schools, the richest should assist the poorest with a *modest and monthly contribution to the school fund*. The relationship between education and dictatorship is paradigmatic here: threats of censorship, restrictions of various kinds, insistence on youth organizations under the guise *of physical training and moral discipline in the fields and workshops* (art. 132), imposition of patriotism and the allocation of professional education *to the less favored classes* (art. 129).

Enacted after the end of the dictatorship, the 1946 Constitution sought to bring the essence of the 1934 Charter. However, it brings some novelties, namely: the reference to official education and the return of religious education, but with optional enrollment (art. 168).

With regard to the 1967 Constitution, conceived during the dictatorial period, most of the guidelines brought by the 1946 Constitution were maintained, but it suppressed the allocation of public funds for education and made free primary education compulsory from 7 to 14 years of age (Cury, 2005, p. 24).

Currently, education is included in the list of Social Rights of the Constitution of the Brazilian Federative Republic[1], alongside rights such as health, housing and security. Social rights are characterized as second-generation (or dimensional) rights, which are rights that concern "positive, real or concrete freedoms" (Moraes, 2020, p. 105), which value the equality of individuals and, for this, conditions are required from the State for their effectiveness.

Education can be understood both from a broad and a narrow conception. In a broad sense, it can be conceptualized as all the acts that can be performed to promote the development of the human being. In this sense, the Law of Guidelines and Bases of National Education (LDB) (Law No. 9,394, of December 20, 1996) establishes in its article 1*, caput*, that "education encompasses the formative processes that take place in family life, in human coexistence, at work, in teaching and research institutions, in social movements and civil society organizations, and in cultural manifestations" (Brasil, 1996).

Article 205 of the 1988 Constitution states that education is the right of all and the duty of the State and the family, emphasizing the collaboration of society, aiming at the full development of the person, preparation for citizenship and qualification for work (Brasil, 1988). Thus, education, when analyzed in its broadest sense, should be guided by the collaboration between the Government, family and society for the best development of the student.

[1] Art. 6 The following are social rights: education, health, work, housing, leisure, security, social security, the protection of maternity and childhood, assistance to the destitute, form of this Constitution.

In the strict sense, education "means instruction, specialization, skill or habit formation" (Vianna, 2007, p. 07), and can therefore be better classified as school teaching. Education, as a state duty, has been elevated to the status of a fundamental subjective right (article 208), so that it is the duty of the state to offer free compulsory education, which, according to item I of article 208 of the 1988 Constitution, is that from 4 (four) to 17 (seventeen) years of age. It is also ensured that it is made available free of charge to those who do not have access to education at the appropriate age.

From its characterization as a fundamental subjective right, the right arises for the individual to demand from the State the provision of education, under penalty of the "non-provision of compulsory education by the Government, or its irregular provision", importing the responsibility of the competent authority (art. 208) (Brasil, 1988).

In fact, the creation of means to combat the State's incompetence with regard to the realization of education as a universal right, as well as the lack of quality of education, is based on the achievement of the objectives set forth in article 214 of the Constitution. To achieve these objectives, the 1988 Constitution lists the guiding principles of education in article 206 (Brasil, 1988).

All federative entities are responsible for the achievement of the above-mentioned objectives, since the Brazilian Magna Carta established concurrent competence for the entities (Union, States and Municipalities) to legislate on education (art. 24), in order to better adapt the offer of education to their regional and budgetary peculiarities, etc. However, if the Union legislates on general norms, the effectiveness of laws enacted by other entities in what is contrary to the law is suspended national. (art. 24, §4) (Brasil, 1988).

The CRFB/88 provided for the enactment by the National Congress of a National Education Plan, which, under the terms of article 214, "caput", has a ten-year duration and aims to "articulate the national education system in a collaborative regime and define guidelines, objectives, goals and implementation strategies to ensure the maintenance and development of education at its various levels, stages and modalities" (Brasil, 1988). These actions should take place through the integrated action of the public authorities of the different federative spheres.

One wonders about the classification of the effectiveness of constitutional norms related to education. They definitely cannot be conceived as mere programmes. On the other hand, it is somewhat naïve to believe that the mere provision of these rights and guarantees in the constitutional text is sufficient for their implementation. In this regard, Pontes de Miranda (1987, p. 348, *apud* Vianna, 2007, p. 76-77), when commenting on the 1967 Constitution, makes the following criticism that remains valid today:

> The naivety or indifference to the content of the statements with which the constituent legislators launch the rule 'Education is everyone's right' reminds us of that Spanish Constitution in which it was decreed that all 'Spaniards would be', from that moment on, 'buenos'. Education can only be a right for all if there are enough schools and if no one is

> excluded from them, therefore if there is a subjective right to education and the State can and must provide the educational provision. Otherwise, it is to deceive with articles of Constitutions or laws. Solving the problem of education is not about making laws, which are still excellent ones; It's opening schools, having teachers and admitting students.

In any case, the CRFB/88 establishes in its article 211 that all entities will organize their education systems in a collaborative regime, with the States and the Federal District being responsible, as a priority, for elementary and secondary education, while the municipalities will also be responsible for elementary education and early childhood education (Brasil, 1988). The Federal Government has, in turn, the competence to organize the federal education system and, under the terms of article 55 of the LDB, to allocate resources to the maintenance and development of the higher education institutions it maintains (Brasil, 1996).

From the above, it is possible to perceive the concern of the 1988 Constituent Assembly in dealing analytically with social rights in its text, especially education. However, previous constitutions did not always have the same commitment to teaching.

Thus, it can be seen that the Magna Carta of 1988, in addition to welcoming in its text the main contributions brought by the other constitutions in favor of education, was the one that was most concerned with teaching, bringing an extensive list of rights, principles and establishing the binding of public revenues for the realization of this right.

3 LEGAL EDUCATION IN BRAZIL, REFORMS AND CURRICULAR GUIDELINES

Legal courses were created in Brazil through the Letter of Law of August 11, 1827, sanctioned by D. Pedro I, which designated the cities of São Paulo and Olinda as its headquarters.[2] Until then, the sons of the Brazilian aristocracy studied in Europe, mainly at the University of Coimbra (Tisott; De Oliveira, 2020). In 1892, the Faculty of Law of Minas Gerais was created and only in 1920 the first University, that of Rio de Janeiro (Silva, 2000).

In recent years, there has been much discussion about the growth in the number of law courses. In this regard, Silva (2000) explains:

> The indiscriminate proliferation of law schools in recent decades has been seen by many critics as a serious problem, arguing that, in many cases, they would be courses created without the slightest care for quality, which would be throwing a large number of unprepared professionals into the professional market.
> If we compare the statistics of the IBGE (1964) and the MEC (1974, 1976, 1985a, 1985b), as well as those of Pastore (1972) and Niskier (1996), we will see that the teaching of Law in Brazil, in the middle of the last century, had only two courses, in São Paulo and Recife, totaling 584 students in 1854.

[2] Article 1 - Two courses in legal and social sciences shall be created, one in the city of São Paulo, and another in Olinda, and in the space of five years, and in nine chairs, the following subjects:

The number of undergraduate law courses increased from 235 in 1995 to 1,203 in 2017, which, according to a study carried out by the OAB in partnership with FGV, represents the availability of more than 7 million vacancies in this period (OAB; FGV, 2020).

In 2013, the Ministry of Education suspended the accreditation of new courses and, at the end of 2014, after the issuance of Normative Ordinance No. 20/2014, imposed new, stricter rules for the accreditation of new undergraduate courses in Law. In addition, it made it a necessary condition for accreditation "to obtain a Preliminary Course Concept (CPC) equal to or greater than 4, with a minimum score of 3 in each item evaluated" (OAB; FGV, 2020, p. 104). However, in 2018 alone, 322 new undergraduate law courses were authorized, totaling 44,700 vacancies. In the first month of 2019 alone, the opening of 5 more courses was authorized, with 570 more vacancies (OAB, 2019).

According to the E-mec portal (MEC, 2020), there are 1,417 legal courses in operation in Brazil, which are territorially distributed as follows: São Paulo – 254 courses; Minas Gerais – 190 courses; Paraná – 101 courses; Bahia – 97 courses; Goiás – 75 courses; Rio Grande do Sul – 70 courses; Pernambuco – 69 courses; Ceará – 56 courses; Rio de Janeiro – 54 courses; Santa Catarina – 50 courses; Mato Grosso – 45 courses; Pará – 43 courses; Espírito Santo – 40 courses; Maranhão – 38 courses; Federal District – 34 courses; Piauí – 27 courses; Alagoas – 26 courses; Rondônia – 24 courses; Paraíba – 23 courses; Rio Grande do Norte – 20 courses; Mato Grosso do Sul – 19 courses; Tocantins – 16 courses; Amazonas – 15 courses; Sergipe – 15 courses; Acre – 6 courses; Amapá – 6 courses; Roraima – 4 courses.

In 2018, the Brazilian Bar Association, together with the Getúlio Vargas Foundation, carried out a quality check of law courses in Brazil, based on the performance in the National Student Performance Exam (ENADE/INEP) and the approval rate in the Bar Exam. Of the 1,212 courses eligible to participate in the research, only 161 received the "OAB recommends seal", "evidencing the deleterious effects of such indiscriminate openness" (OAB, 2018).

The National Education Plan (PNE), approved by Law No. 13,005/2014, which determines guidelines, goals and strategies for educational policy in the period from 2014 to 2024, established twenty goals for all levels of education. For higher education, goals 12, 13 and 14 stand out.

The curricular guidelines are of paramount importance, as they aim to contribute to the formation of critical professionals, that is, reflective and capable of using Law as an instrument of social transformation. Thus, in a nutshell, they aim to improve the quality of legal education in the country with the training of better professionals. A national curriculum guideline indicates the government's concern with quality education and always seeking to improve teaching, because the reflection of the bad professional working in the labor market, without the proper preparation that legal education should provide, ends up putting the citizen himself at risk.

Similar to Brazilians in Europe, who especially studied content related to rational natural law

and national legislation, aiming to meet the interests of the Kingdom of Portugal, the curriculum of the first law courses in Brazil, according to Bissoli Filho (2012), reveals the predominance of natural law, with the objective of training the elite that would come to assume the cadres of the state apparatus of the Empire.

The curriculum created by the law of 1827 was rigid, fixed the subjects to be taught over the years, and [3] the government maintained power and control over legal education (Tisott; De Oliveira, 2020). Gradually, the government adhered to the need for modernization and became more flexible until it reached the current model, undergoing numerous reforms.

Bissoli Filho (2012) clarifies that in the imperial period the first reform would have occurred in 1831, with the approval of the statutes of the Legal and Social Sciences courses of the Empire. In turn, the second reform would have occurred by Decree No. 1,386/1854, when it was established on classes, residences of lenses (professors) and inclusion of the disciplines of Roman and Administrative Law in the curriculum of the course. Finally, the third reform of legal education took place in 1879, by Decree No. 7,247, enabling the emergence of private colleges, freedom of attendance and the non-requirement of partial exams.

It is then in the republished period that the reforms in law courses were most voluminous. One of the factors for the change was due to the fact that after the Proclamation of the Republic, and throughout the so-called Old Republic, the important influence of legal positivism on the conception of Law was glimpsed (Bissoli Filho, 2012). In 1891, the fifth reform took place, through Decree No. 1,232-H, which enabled the decentralization of legal education in federal, state and private areas, with the expansion of legal courses in other locations.

In turn, in 1895, Law n.º 314 instituted the sixth reform of legal education, an opportunity in which a new curriculum was instituted with the introduction of the disciplines of Public International Law, Diplomacy and Military and Penitentiary Law. After the nineteenth century, in 1911 the seventh reform took place, by Decree No. 8,659, in which the Organic Law of Higher and Fundamental Education of the Republic was instituted, which had through Decree No.º 8.662 the regulation of law schools and a new curriculum for legal courses. (Bissoli Filho, 2012).

The eighth reform took place in 1915 (Decree no.º 11.530) and was responsible for imposing a new curricular reform on the Law course. In turn, the ninth reform of 1925 (Decree no.No. 16,782-A) now provides in article 57 that the course would be held in five (5) years and with seventeen (17) chairs, described in article 58 of the aforementioned Decree.

[3] 1st YEAR 1st Chair. Natural Law, Public Law, Analyze of the Constitution of the Empire, Law of people, and diplomacy. 2nd YEAR 1st Chair. Continuation of the material of the preceding year. Second Chair. Ecclesiastical public law. 3RD YEAR 1ST Chair. Civil national law. 2nd Chair. Right with the theory of criminal procedure. 4TH YEAR 1st Chair. Continuation of the right Homeland Civil. 2nd Chair. Commercial and maritime law. 5TH YEAR 1st Chair. Political economy . Second Chair. Theoria is the practice of the process adopted by the laws of the Empire.

In the Vargas Era, a reform took place: the tenth. Established by Decree No.º 19.851/1931, the reform tried to provide for the statute of Brazilian universities. During this period, the profile of the Bachelor of Law began to change. It is worth noting that Bissoli Filho (2012) points out that the swelling of higher legal education can already be seen at this moment. The reform of the Vargas Era lasted until 1961, when the Law of Guidelines and Bases of National Education was created in the period of the New Republic, originating from Law No.No. 4,024, of December 20, 1961, which resulted in a major milestone for national legal education.

Law No.º 4.024/1961 created the Federal Council of Education - CFE, which, in the words of Venâncio Filho, cited by Bissoli Filho (2012), had "the attribution of authorizing the operation of higher education schools that would enable bachelors to exercise technical-scientific professions". Added to this, due to the advent of this law, the eleventh reform of legal education was implemented in the following year, through Opinion No. 215 of the CFE, responsible for establishing the establishment of a minimum curriculum, as a necessary nucleus of subjects for cultural and professional training.

With the establishment of the Statute of the Brazilian Bar Association in 1963, through Law n.º 4.215, the professional internship and the bar exam began to assume an important role in the search for a better quality in legal education, which at the time was at a low standard and with a large number of courses (Bissoli Filho, 2012).

During the military regime, in 1968, the University and High School Reform was implemented, through Law No. 5,540, which culminated in the twelfth reform. In it, the expansion and privatization of law courses was visualized. Still under the military period, in 1972, the thirteenth reform was seen, through Resolution No.º 3 of the Federal Council of Education. Despite the changes, there was little change in qualitative terms in legal education, since the reforms focused on the professionalizing character of law courses, thus still maintaining a rigid curriculum (Bissoli Filho, 2012).

Traditionally, the curriculum was composed of dogmatic subjects, being a conservative and traditional education, since the academic ended up being restricted to the analysis of the validity of the norms. As a result, other issues such as corruption, impunity, human rights and the environment were not even discussed, and therefore it was not a question of training for citizenship (Silveira; Sanches, 2020).

In partnership with the Ministry of Education - MEC, the OAB held some seminars in Brazil in 1993, with the opportunity to participate in the academic and professional legal community. And it was from this process of reflection, research and evaluation that MEC Ordinance No. 1,886/1994 was issued, which established the new curricular guidelines and the minimum content for legal courses throughout Brazil, with mandatory status from 1996 onwards (Silveira; Sanches, 2020).

MEC Ordinance No. 1,886/1994, the fourteenth reform, contributed, in summary, to the

requirement of a minimum duration of 5 years for legal courses; made research and extension activities mandatory; established disciplines considered mandatory; provided for the bibliographic collection of each course; determined the obligation to defend an end-of-course monograph before the examining board and the Legal Practice Internship.

Despite the numerous modifications, "CES/CNE Opinion No. 507/1999 considered MEC Ordinance No.º 1.886/1994 as not received by the LDB of 1996" (Bissoli Filho, 2012, p. 31), causing the conditions that would lead to the fifteenth reform in 2004, which through CNE/CES Resolution No.9/2004, were guided by freedom, pluralism and quality in education (Bissoli Filho, 2012). The CNE/CES Resolution No. 9/2004 had an important impact, as it established the curricular guidelines of the undergraduate course in Law to be observed by the institutions in the pedagogical project.

More recently, Resolution No.No. 5, of December 17, 2018, being the newest to regulate the curriculum guidelines according to the website of the Ministry of Education. Thisresolution stems from CNE/CES Opinion No. 635/2018, approved on October 4, 2018 – Revision of the National Curriculum Guidelines for the undergraduate course in Law. Because of this, Resolution No.No. 5, of December 17, 2018 of the National Council of Education "Establishes the National Curriculum Guidelines for Undergraduate Law", applicable to both public and private educational institutions.

Thus, it is based on article 2 of this Resolution that educational institutions must set up the Pedagogical Project of the Course - PPC, indicating the requirements that must be observed. The Resolution also stipulated that the law course should guarantee the student a solid general, humanistic education, capacity for argumentation, interpretation and appreciation of legal and social phenomena, in addition to consensual forms of conflict settlement.

Other guidelines that indicate the change in the professional profile of the bachelor's degree are translated into the workload of undergraduate courses in 3,700 hours (art. 12), with 20% of the total workload for complementary activities and legal practice (art. 13), the concern with extension (art. 7) and also the initiation to research (art. 2, paragraph 3) (Brazil, 2018a).

Based on the joint reading with the principled and normative basis of the teaching of Law in Brazil, it is understood that curricular guidelines recently in force are in line and, above all, aim to meet the true reform of legal courses that have been widely attacked throughout their history, mainly due to the outdated strictly technical and bureaucratic training.

In view of the above, as can be seen, during the imperial period the creation of law courses had as its objective the training of professionals who could fill the state bureaucratic apparatus and sustain the model then in force. In the Republic, on the other hand, the expansion, decentralization and privatization of law courses was envisioned, causing the swelling of law courses and their low quality, causing the necessary discussion aimed at the improvements to be implemented by the courses.

Taking into account the curricular guidelines, it can be seen that only in the most recent reforms of 1994, 2004 and especially that of 2018, was there a greater concern with the quality of the training of bachelors, because a more critical and less technical training was sought, which helps a percussive analysis to the law operator when dealing with the complexity that his activity demands.

4 UNIVERSITY AUTONOMY AND FREEDOM OF PROFESSORSHIP

In fact, the Constitution explicitly enshrined education as a fundamental right. This is not a mere program, but the duty of everyone, including the State. Throughout our history, education in Brazil has undergone numerous changes in the norms that regulated it.

Paying attention to legal education in Brazil, it is possible to apprehend an initial moment of elitism in access, and a series of reforms and changes that followed, with the most varied purposes, but it is possible to infer that the most recent ones certainly indicate the attempt to seek an improvement in the quality of legal education in the country.

In the midst of so many reforms, alterations and historical moments, as was the case of the military dictatorship regime, this article intends to highlight the importance of the freedom of professorship. There are countless points that have been the object of reforms, in the most diverse historical moments. However, the freedom of professorship is, in fact, a true instrument for the effectiveness and realization of the fundamental right to education. An education that should not only be proposed for formal and professional aspects, but for the development of the human person and the exercise of citizenship.

Article 207 of the CRFB/88 establishes that "Universities shall enjoy didactic-scientific, administrative, and financial and patrimonial management autonomy, and shall obey the principle of inseparability between teaching, research, and extension." Generally speaking, autonomy is understood as the ability to be governed by its own laws. The autonomy of institutions, however, is not absolute, and is bound and legitimized by their specific social functions. This autonomy, therefore, is restricted to the purpose and purpose for which they were constituted, and in this case it is the functions of the University that underlie and define the nature of this constitutional autonomy (Durham, 2005).

Cunha (2005) argues that this almost millennial institution has undergone a series of reformulations and has served different purposes, depending on the time and country in which it is inserted. It is emphasized, however, that there is a common core of university institutions, an aspect present at all times and in all places, namely, the struggle for the diffusion and development of knowledge, without external constraints, in a true struggle for autonomy. The University becomes a normative institution, itself producing rights and obligations (Mancebo, 1998).

The Constitution established a specific regime for Universities. The university autonomy enshrined in the constitutional text is an instrument that aims and finds its limits in meeting the

purposes of these Higher Education Institutions, as well as in the observance of probity in the management of public resources (Schwartzman, 1988). Effective university autonomy invokes that universities should not be confused with other federal administration bodies, so that control over universities cannot mean or imply formalistic controls, routinely and bureaucratically exercised over the public administration of the state (Schwartzman, 1988).

The CRFB/88 sculpted in its text the autonomy of the Universities, in the classification of José Afonso da Silva (1998) as a constitutional norm of full effectiveness and immediate applicability. It should be noted, however, that this self-applicable constitutional prerogative has been exercised in a very limited way (Mancebo, 1998).

What is important to note is that the constitutional design of the Universities was conceived to give them a certain degree of self-management and definition of their programs and actions according to their purposes, which basically links them to teaching, research and extension, and to the activities inherent to the achievement of these deliveries. It is not yet possible to conceive of the possibility of controlling the ideas that circulate and rage within the University, a place of construction and deconstruction of knowledge and dogmas.

If it is true that education is a basic social right, enshrined in article 6 of the CRFB/88, and is also supported by the Universal Declaration of Human Rights of 1948, which states in article 26 that "Every human being has the right to education", it is also true that it is a true duty of the State, as established in article 208 of the Constitution.

In this context, the freedom of professorship is inserted, which enjoys comprehensiveness when inserted in an environment whose didactic-scientific autonomy was guaranteed in the constitutional text. Freedom of professorship understood as a set of rights, sheltered under the mantle of theoretical reflection, critical knowledge and freedom of expression in academia.

Article 5 of the Constitution ensures that "the expression of intellectual, artistic, scientific and communication activity is free, regardless of censorship or license". Article 206 of the same constitutional text stipulates that education shall be provided based on certain principles, such as the freedom to learn, teach, research and disseminate thought, art and knowledge, as well as the pluralism of ideas and pedagogical conceptions.

The Constitution of 1934 established in article 155 that "Freedom of professorship is guaranteed". The 1946 Constitution, in article 168, VII, replicated the provision. Even in 1967 there was in the constitutional text. In 1969 the expression ceased to be provided for in the constitutional text. There was no express provision in the 1988 Constitution, although several passages point to this guarantee.

Freedom of professorship is not only freedom to teach, but above all freedom to learn. The freedom to teach makes it possible for them to freely construct their pedagogical projects once the

general norms of education and the curricular guidelines have been met. The freedom to teach is both an institutional freedom and a teaching freedom, and in both cases it is limited by a set of other constitutional principles and guarantees and by the structure of the educational system (Rodrigues; Marocco, 2014).

These freedoms aim to ensure the pluralism of ideas and pedagogical approaches and the expression of academic points of view. They differentiate between freedom of teaching and freedom of opinion. The freedom to teach has its own contours and serves as an instrument for the right to education (Rodrigues; Marocco, 2014). According to Rodrigues and Oliveira (2019), freedom of professorship is the most traditional denomination given to academic freedom as teaching freedom, especially in teaching activities.

Sarlet and Travincas (2016) point out that the University is the space to nurture the debate, and it is necessary to regulate the relationships established there, since the market of ideas that it promotes is free in terms *of and not* in the absence *of* norms. And they conclude:

> On this point, the conclusion that we venture to enunciate here (knowing that this is a statement to be tested in the adversarial sphere) is that it is the condition of a teacher, and not his or her place of expression, that constitutes the determining factor for the coupling of conduct to the scope protected by the right to academic freedom. conceived as a whole. That being the case, the occurrence of the conduct at the factual level will require, at first sight, the concomitant protection of extramural freedom of expression (and, therefore, of academic freedom) and freedom of expression, given the competitive relationship established between the rights. It so happens that such competition is merely apparent, since it must be resolved in favor of the law with greater specialty, which is extramural freedom of expression (Sarlet; Travincas, 2016, p. 534).

Based on the freedom of the professorship, that is, the absence of ties *to logos* and free thought, it becomes possible to have space for consensus and opposition, inclusion of differences, tolerance of non-standard ideas and consequent exercise of citizenship.

By the way, the meaning and purpose of education as such a fundamental right lies in the search for qualification for work, in the preparation for the exercise of citizenship and in the full development of the person, in the exact terms of article 205 of the CRFB/88. It is, therefore, with the maximization of the freedom of professorship that we have an important instrument for the effectiveness and meaning of the fundamental right to education, in the plurality of ideas and thoughts, beyond the curricular guidelines and the walls of previously established standards, towards the very notion of dignity and full development of the human person.

5 FINAL THOUGHTS

It is unequivocal that education is essential for the development of human beings, so much so that the 1988 Constitution – also known as the Citizen Constitution due to its extensive list of fundamental rights and guarantees – dedicated, within the Title "On the Social Order", a Section to

deal exclusively with the right to education, being more precisely encompassed in articles 205 to 214 (Brasil, 1988).

The 1988 Constitution prominently enshrined aspects related to education. He wrote it as a true duty of the State. He indicated that it is the path to professional training, to the exercise of citizenship and to the development of the human person. Education here was also presented as a subjective right of the individual, hence the right to demand from the State the provision of education, under penalty of importing responsibility from the competent authority.

The curricular bases, guidelines and general norms surround a non-unrestricted or absolute freedom. The freedom to teach, and to a lesser extent the freedom to learn, is limited by the established parameters. It is certainly not to be confused with the limitation to ideas or thought. But, it should be noted, education enjoys a series of precepts that insert it into an activity worthy of planning and establishing directions to be pursued.

In the case of higher education in Law, the present work presented a historical evolution, highlighting the main reforms and changes. In this context, the constitutionally guaranteed university autonomy enables an environment of plurality of ideas, freedom of thought, freedom to teach and to learn. In this scenario, the control of the said, the control of the logos, of the idea that confronts, constructs or destroys preconceptions, becomes inconceivable.

Over the years, the country has had parameters and guidelines that sometimes indicated a more dogmatic teaching, and sometimes, as it was after a diagnosis headed by the OAB, for a teaching lacking critical knowledge and related to interdisciplinarity and human rights.

In this context, with several reforms and norms, the reflection that is launched here is that the teleological role of these normative frameworks. The hypothesis for this question presented is indicated in the constitutional text itself. Education is the right of all and the duty of the State and the family, and it must be promoted and encouraged with the collaboration of society, aiming at the full development of the person, his preparation for the exercise of citizenship and his qualification for work.

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