

Teachers Rights: International Perspectives

Brazil

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Introduction

In Brazil, over the last 100 years, five Constitutions and at least six educational reforms have faced education challenges in the fields of equity, finance, access and quality, which affected teachers rights directly and indirectly. In a broad sense, this legislation is characterized by the absence of educational policies and planning, by the adoption of measures in response to immediate conditions, and by normative over-detailing. As a result, the more the State legislates, the less internally coherent the legislation is, creating a gap between the legal country and the real country. All this can be clearly seen in many aspects of education , including teachers rights.

Indeed, teachers' rights are provided for and guaranteed by the Federal Constitution, by the National Education Law – NEL (Lei de Diretrizes e Bases da Educação), by labor laws and by specific laws pertaining to each education system (federal, state and municipal), since Brazil is a federal republic. Within this legal context, teachers rights can be seen from different perspectives: (a) the civil and political rights all Brazilians are entitled to; (b) the rights all workers are entitled to; (c) the rights they are entitled to as teachers, specifically, and which can be referred to as academic rights; (d) the rights they are

entitled to as teachers in the private education system; (e) the rights they are entitled to as public school teachers, differing in some aspects according to the education system.

Some of these rights overlap, especially between civil rights and academic rights, as a result of a very complex legal network characteristic of the Brazilian culture and its patchy democratic experience. Since the Portuguese colonization in the 16th Century, and except for some unsuccessful attempts, citizens never claimed their rights, until recently. Civil and political rights were provided for by the government; labor and social rights were conceded, during the Vargas dictatorship in the 1930's, very often, as a political instrument to co-opt certain groups. As a result, people are not used to fighting for their rights, and labor rights were seen as a privilege for certain categories, especially in the civil service. Teachers rights are no exception, which explains the numerous and specific legislation ruling their activity and which has been changing since the NEL was issued, in the late 1990's, in an attempt to eliminate discrepancies and privileges by establishing a national standard to enter and progress inside the teaching profession.

The NEL is innovative and modernizing. In breaking off with many of the rigid provisions of the prior education legislation, it allowed a revision of the State's position in relation to recurring issues in Brazilian education. Among them, decentralizing the governments control, financing public education, opening new career opportunities for teachers and increasing a more active participation in organizing education. It is expected that all these measures, combined with a new fund for financing public basic education (FUNDEB), which obliges the government to allocate 60% of these resources on better salaries for teachers, will provoke a significant improvement in the education system.¹ So

far, however, there are no conclusive studies or researches in the field of Law describing the impact of these measures on the education system.

Furthermore, and in spite of NEL, it's important to point out that there remains a significant difference between the rights of the teachers in private and public schools, which lies in the legal employment regime: in the private sector they come under the common labor laws, and in the public sector they come under specific statutory public laws, which still maintain privileges established in the past and difficult to abolish, because of the unions.

The purpose of this paper is to present and comment on some aspects of the complex legal structure of teachers rights.

Employment Rights of the Teachers

Civil, Political and Social Rights

As Brazilian citizens, teachers are entitled to all the liberal civil and political rights, such as freedom of speech, freedom of belief, the right to participate in unions and political parties, intellectual property rights, etc (these rights are still guaranteed in other articles of the Constitution and the NEL, as we will see). They are also entitled to the guarantees of due process, such as full defense and access to the Judicial Power. Furthermore, the Brazilian Constitution broadly stipulates punishment for any act of discrimination which may attempt against fundamental rights and liberties, and for the practice of racism, which is a non-bailable crime (Article 5).

Having mentioned freedom of belief, the NEL allows the existence of private schools of any religion or creed, maintained by religious entities; in this case, teachers are submitted

to the school's religious orientation. In public schools, religious education is not a decision taken by teachers but usually a demand on the part of the students or their parents. This applies even to a demand for multireligious education. Since the State is secular, religious education has to be offered with no extra cost to the public system, but during the normal school period, and teachers have to be prepared by churches or religious entities. In conclusion, in this area, students' rights prevail over the right of the teachers. This is not new; equivalent guarantees had already been provided for by former Brazilian Constitutions (1934, 1937 and 1946); however, in the Constitutions of 1967 and 1988, the free choice of religious education by the students was suppressed, but reinstated by the NEL. In fact, today it is possible to identify a certain consensus to accept that religious teaching must, first of all, be based on the principles of citizenship; religious education should not be used to convert people or impose dogmas, rites or prayers, but more as an education tool to understand religions and human societies. The concept of religious teaching as an area of knowledge was established in Resolution nº 02/98 of the Chamber of Basic Education/National Education Council, which points to the necessity of having a qualified professional for the teaching of religion in primary and secondary education, and not a volunteer person or someone representing a religious denomination, as it was in the past.

In the field of social rights, teachers in private and public sectors are entitled to the employment rights guaranteed by Article 7 of the Constitution. The extension of these rights to the public school teachers is recent, as a result of a broader reform of the civil servants statutory regime carried out in 1998. To both sectors, these rights include: a nationally unified minimum wage; a year-end one-salary bonus; pensions; payrate for

night-shift work; family benefits in some circumstances, normal working hours not exceeding eight hours a day and forty-four hours a week, paid weekly leave, preferably on Sundays; annual vacations, with remuneration at least one third higher than the normal salary; maternity leave without loss of job and of salary, for a period of one hundred and twenty days; paternity leave, protection of the labour market for women through specific incentives, prohibition of any discrimination with respect to wages and hiring criteria of handicapped workers. As mentioned before, many of these rights were given by the law and not as a result of any specific demands or movements on the teachers' part.

In the education private sector, teachers must receive notice of dismissal in proportion to the length of service of at least thirty days, as provided by law (Article 7 of the Constitution); in the public sector dismissal requires a judicial sentence for the tenured teachers and an administrative process for the ones who still aren't tenured. This issue will be taken up again further on.

Rights Teachers are Entitled to as Teachers.

In Brazil, freedom of teaching has always been an education principle except during the military dictatorship, when the Constitution of 1969 imposed restrictions on the practice of teaching by a very detailed and rigid education legislation (Law 4.024/62 and Law 5.540/68, which were revoked by the NEL in 1996).

In the actual Constitution, and with regards to the influence which governments and the private school boards exercise over the activity of teaching, Article 206 establishes some education principles to protect and assure teachers a certain autonomy in their activities like the "freedom to teach, research and express thought, art and knowledge; pluralism of pedagogic ideas and conceptions and coexistence of public and private teaching

institutions”. Obviously these rights are practiced within the legal framework of the National Education Plan (Law 10.172/01) and the NEL, as also foreseen in the Constitution, which establishes the objectives and guidelines of this activity.

The NEL, itself, imposes a minimum standard to be upheld all over the country, which includes not only a national basis for syllabus, at each level of education (primary, intermediate and secondary), but also for teacher education, since the Constitution demands a “guarantee of standards of quality”. Teacher education also varies according to the level of education: for lower education, a higher education degree is required; for higher education a post-graduate degree is necessary. A B.A. or post-graduate degree in Pedagogy is required for the administration, planning, inspection, supervision and pedagogical counselling for primary education. Among the innovations introduced by the NEL Education Colleges (called *institutos superiores de educação*) were created to prepare teachers for primary and secondary education, only (art. 63). More specifically, the Brazilian legislation accepts the following degrees in the exercise of teaching: degrees in Religious Science; Pedagogy; History, Philosophy, Social Sciences, and Psychology; diploma in Education, issued by the *institutos superiores de educação*.²

The problem is that it is very difficult to implement these teachers requirements in the interior and poorer regions of the country, specially at the primary levels of education, and guarantee, at the same time, quality of education. The NEL tried to enforce these measures in the so called “Decade of Education” (1997/2007), the purpose of which was to only admit teachers with higher education or with supervised teacher training (Article 87). This last requirement can substitute, in extraordinary circumstances and taking into

consideration the enormous disparities that exist in a huge country like Brazil, the requirement of higher education for teaching in primary schools, as long as the teacher has had teacher education at secondary school level (“Curso Normal”, cf. Article 62).

It must be observed that although these requirements aimed at improving and standardizing teaching and education, as far as possible, it also led to a race for postgraduate degrees from any institution as a means of improving careers without necessarily improving skills or qualifications. The fact that there is a lack of government control over the quality of these institutions and the specialization courses they offer, has created a perverse phenomenon: although the law is observed, the result is the a higher number of unqualified teachers.

In terms of rights, at all levels of teaching, the NEL guarantees the teachers the right to participate in the elaboration of the pedagogic plan of the school, but demands a commitment to the implementation of the plan and results, which includes full dedication to planning, assessment and continuous professional development, as well as participation in the PTA’s (parents and teachers associations).

In addition, Article 206 of the Constitution also highlights the “appreciation of the value of teaching professionals, guaranteeing, in accordance with the law, career plans for public school teachers, with a professional minimum salary and admittance exclusively by means of public entrance examinations consisting of tests and presentation of academic and or professional credentials. “

Rights Tachers are entitled to in the Private Education System.

Besides all the rights already mentioned before, teachers in the private schools are also protected against arbitrary dismissal without just cause, and are entitled to unemployment benefits in the event of involuntary unemployment, to a severance-pay fund, to a minimum basic salary, to the maintenance of salaries when not under negotiations, to receive notice of dismissal at least thirty days in advance. Although labor laws establish that the national minimum wage can be paid proportionally to the number of hours worked, teachers have a special working day which comprises four consecutive hours or six alternate hours (Article 318 of the Labor Law), thus private schools are not allowed to pay teachers proportionally to their working hours: they have to receive the integral minimum wage.³

They are also entitled to a retirement pension, after 25 years of contribution to a government pension fund for women teachers and 30 years for men teachers, at the ages of 60 and 65 respectively. They are given to an occupational accident insurance paid by the employer, without excluding the employer's liability for indemnity in the event of malice or fault, to child benefits up to six years of age, to be a member of teachers' unions and to receive the benefits agreed on with the unions. Handicapped workers are protected against discrimination with respect to wages and hiring criteria; equal rights are also guaranteed for both tenured and non-tenured teachers.

It must be mentioned, however, that the private education sector has grown stronger in comparison to the public education sector, in terms of organization, infrastructure and quality. From 1930 until 1988, it could be said that the State did not give education priority, as a public service. On the contrary, the State acted in favor of the private sector,

even transferring public resources, to the detriment of the public sector (with some exceptions in the public primary and secondary schools, and higher education, as in the State of São Paulo). This was a corollary of a public policy, adopted by the government in the 30's, when the State assumed the role of the main actor in the promotion of economic development; by encouraging the proliferation of private schools it could invest public resources in areas other than education. The military government maintained this policy into the late 60's and 70's.

The Constitution of 1988 changed the picture considerably, especially in the public sector. By sharing responsibilities in public education, through the allocation of specific incumbencies to each level of government, and by creating new ways of funding education the State reassumed its responsibilities. In fact, since the Constitutional Amendment no. 14 of 1996, all three government levels (federal, state and municipal) are obliged to allocate 60% of the resources of two temporary funds (Fund for the Maintenance and Development of Fundamental Education – FUNDEF, and the recent Fund for the Maintenance and Development of Basic Education – FUNDEB, which extinguished the first; cf. Law 11.274/07), in better salaries for public teachers.

The Constitution also abolished part of the former civil servant privileges, in 1988 and later on in 1998 and in 2003 (Constitutional Amendments 19 and 41). However, transferring public resources to private schools continued, under certain conditions and only for non-profitable religious and philanthropic schools (Article 213). The Constitution reaffirmed that teaching is open to private enterprise, provided that the following conditions are met: compliance with the general rules of national education; authorization and evaluation of quality by the Government (Article 209).

Rights Teachers are entitled to in the Public School System.

Public school teachers come under the civil servants constitutional regime in terms of employment rights, with certain specificities. This means that, as a general rule, careers, salaries, professional statutes and benefits are established by law, and not by contract. As a consequence, this makes changes much slower and the whole system less flexible when compared to the private legal regime for teachers. On the other hand, benefits tend to be more ample, despite the administrative reforms of the Constitution of 1988, and the employment laws very complex, especially where salaries are concerned due to constant amendments because of union pressure rather than long term career planning. As a result, public school teachers are only admitted through qualifying exams (a rule stipulated by all former Constitutions, with no exceptions), which entitle them to tenured positions after three years of teaching, during which dismissal was an administrative decision, observing due process; once tenured, they can only be dismissed by a judicial decision (before the 1988 Constitution, teachers held life-long tenures and permanence in their positions, making dismissal very difficult).

In terms of retirement, differently from the private teaching sector, primary and secondary school teachers can retire earlier at 55 and 60 years of age, for women and men respectively, and after 20 years of contribution to a government pension fund for women teachers and 25 years for men teachers (five years less than in the private sector). This benefit is extended to teachers in administrative position or in pedagogic activities, such as supervision and coordination.

Exceptionally, teachers in the public system are also allowed a remunerated accumulation of two teaching offices or one teaching office with another technical or

scientific office (the accumulation of public offices is forbidden by the Constitution as a general rule, Article 37, XVI). In this respect, the jurisprudence of Brazilian Courts prevails today allowing for this exception, as long as there is a compatibility of working hours between the two jobs.^{4 5}

Another aspect of the NEL which deserves some comments is the decentralization of the administration of public schools. This is an innovation in the Brazilian Administrative Law, especially in the public school system, since before the NEL administration was very centralized in the hands of government entities like state and municipal Secretaries of Education, a heritage of the legislation issued during the military dictatorship. Nowadays, primary and secondary schools practice a certain degree of autonomy in academic and administrative decisions (Article 15). Together with this decentralization, the NEL demands that teachers participate in the elaboration of the pedagogic directives of the school (Article 14). Both measures – administrative decentralization and increased pedagogic participation of the teachers - have expanded their rights.

Conclusion

According to the Brazilian Institute of Statistics (IBGE) and to the Ministry of Education (MEC), the Brazilian population was 188 million in 2006. Out of that number, 25% were students enrolled in basic education, which signifies an average of 42 million students between the ages of 7 to 15 in fundamental education, and 9.8 million students between the ages of 15 to 18 in secondary education. In higher education, the average is 3% of the population enrolled in undergraduate and postgraduate programs. In 40 years,

the Brazilian population is expected to top 268 million. The role of the State and of the teachers is crucial in this scenario.

As can be seen, the legislation concerning teachers rights in the public sector is much more complex than that of the private sector; this, however, is no guarantee of better quality in teaching, for many reasons: lack of infrastructure, violence in the outskirts of big cities, holding more than one teaching job, mental and emotional stress and a lack of dedication to their schools. As a result, years in service are seen merely as a means to retirement and not as a fulfilling working experience. In spite of all the advances achieved by the Constitution of 1988 and the NEL, it is clearly necessary to face the difficult task of revising the public teachers career plans and structures, working schedules, promotions and benefits, in an attempt to de-bureaucratize and rationalize the system, so full of inherited legal details and privileges and which no longer serve a purpose. Some measures in this direction, suggested by public school administrators, are a combination of years of service, academic qualifications and assessments based on learning results, as criteria for benefits and promotions to reduce teachers absenteeism (one of the biggest problems in public schools), increase dedication and motivation among teachers. The general panorama of public education in Brazil is characterized by the lack of policies in human resources, with some exceptions; some states have already taken steps towards drastic reforms in the public teaching careers, like the states of Rio Grande do Sul, Tocantins and the capital Brasilia. Broadly speaking, the lack of administrative policies is due to negotiations between the government and the strongest teachers unions, in which a lot of interests are at play; usually the government reacts to the pressures, increasing privileges just to maintain this public service without a clear reform plan in mind. Recently the

federal government announced a new education plan, trying to enforce some of the measures mentioned above, although such serious structural problems cannot be solved with a wave of a magic wand. Continuity of government policies in the field of education, once they have been set into motion, is fundamental.

These are part of the major problems being faced in the rapidly expanding Brazilian educational system. If these problems are not addressed, then further problems in equity, finance, access will only multiply. This is not a phenomenon limited only to the area of education; it is just one of the outcomes of the developmental conditions of the Brazilian State.

Notes

¹In Brazil, the term basic education refers to both pre-school (age six) and primary education (age seven to fourteen). Primary education, also called fundamental education, is compulsory and free to all and must be accessible to all, at any age. Secondary education must be available and accessible to all, by all suitable means.

² A question that had been target of controversy makes reference to the innovation caused by 1998 Brazilian Constitution, concerning to teachers' graduation to attend native communities, once had been established that "the regular fundamental teaching shall be practiced in Portuguese language, still ensuring to the native communities the use of their maternal native language and to their proper learning processes" (Article 210). The bilingual education, appropriated to the cultural peculiarities of different groups, is better attended through Indian teachers. In this point of view, the National Education Plan predicts the creation of specific programs in order to attend native schools, as well as the creation of financing lines looking for the increasing of education

programs in native areas. One of the goals to be reached in this performance circle is to professionalize and to recognize publicly the native teaching, promoting the creation of the native teachers' category (preferring those coming from the proper community) as a specific teaching career, and by the increasing of continuous programs for the systematic graduation of the native teacher staffⁱ. The proposal of a native school holding quality, differentiated, represents a great novelty in the country educational system. However, it requires from the responsible organ and institutions, to define about new dynamic actions, conceptions and mechanisms, not only in order to incorporate these schools, in fact, to the official teaching system, as much shall make them respected in their peculiarities.

3 Brazilian Superior Labor Court (2007). *Tribunal Superior do Trabalho, Recurso 1438/2005-026-07-00.2*, Judge Barros Levenhagen. Published in the Official Journal of Justice in 08.06.2007.

3 Brazilian Superior Court of Justice (2007). Writ of Mandamus no. 11.566/DF, Judge Arnaldo Esteves Lima. Published in the Official Journal of Justice in 16.04.2007; p:165.

4 Brazilian Superior Court of Justice (2007). Case No.461.008/PB, Judge Felix Fischer. Published in the Official Journal of Justice in 16.04.2007; p:269.

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ⁱ SIFUENTES, Mônica. *O acesso ao ensino fundamental no Brasil – um direito ao desenvolvimento.* Rio de Janeiro: América Jurídica, 2000, p. 72.