

THE ROLE OF SOCIAL RIGHTS IN PROTECTING CITIZENS The Role of Social Rights in Protecting Citizens.

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SUMMARY

The topic of social rights, which are considered second-dimensional rights, is of great importance in the Brazilian legal system. These rights require the State to assume a helpful role in reducing inequalities, becoming a fundamental right. To fulfill this obligation, it is necessary for the State to intervene in social life, implementing fundamental rights and creating inclusion and social development policies through laws and incentives. The implementation, application and realization of social rights require State action, but it is necessary to understand the concept of these rights and the dimension in which they fit, as well as their effectiveness, mainly in the Federal Constitution. To achieve the realization of social rights, which are those that require positive action from the State, it is necessary to analyze the principle of efficiency, public policies and affirmative actions. Furthermore, this article will demonstrate the following objective: to present the role of social rights in protecting citizens. This article addresses qualitative research with bibliographic data collection. Based on a theoretical review, the study will demonstrate that social rights are fundamental for the protection of citizens.

Key words: Social rights. Citizens. Protection.

ABSTRACT

The issue of social rights, which are considered second-dimensional rights, is of great importance in the Brazilian legal system. These rights require the State to assume a provisional role in reducing inequalities, becoming a fundamental right. To fulfill this obligation, it is necessary for the State to intervene in social life, implementing fundamental rights and creating policies for inclusion and social development through laws and incentives. The effectiveness, application and realization of social rights require action by the State, but it is necessary to understand the concept of the rights and the dimension in which they fit, as well as their effectiveness, mainly in the Federal Constitution. In order to achieve the realization of social rights, which are those that require positive action from the State, it is necessary to analyze the principle of efficiency, public policies and affirmative actions. In addition, this article will demonstrate the following objective: to present the role of social rights in protecting citizens. This article approaches a qualitative research with bibliographical data collection. Based on a theoretical review, the study will demonstrate that social rights are fundamental for the protection of citizens.

Keywords: Social Rights. Citizens. Protection.

¹Declaration.



1 INTRODUCTION

This research aims to explore the role of social rights in protecting citizens. To achieve this objective, a bibliographic review will be carried out, which will include the collection, analysis and interpretation of relevant information present in books, articles, dissertations and theses.

Social rights are essential for the protection of all citizens. It is widely recognized that respecting these rights is one of the main ways to promote change and improve people's living conditions.

Thus, the general objective of this research is to highlight social rights as a basis for protecting citizens. The aim is to promote human development through instruments aimed at protecting citizens.

The literature review will be the main method used to collect information and build a solid theoretical argument for this research. Books, articles, dissertations and theses that address the mathematics of social rights as a basis for protecting people will be analyzed, in order to provide a complete and well-founded view of the subject.

two DEVELOPMENT

To fully understand the concept of social rights, it is first necessary to conceptualize fundamental rights, which are considered essential for human dignity. In this conceptualization, it is important to distinguish between fundamental rights and human rights.

The term "fundamental rights" refers to human rights that are recognized and established within the scope of the constitutional law of a given State. For this reason, they have a national character. It is important to highlight that fundamental rights and human rights are not synonymous, although they are often confused.

Human rights, on the other hand, are the rights recognized to human beings through international treaties established by International Law. They aim to achieve universal validity for all people and at all times, regardless of their status in a specific constitutional order. For this reason, they have a supranational character.

2.1 THE ROLE OF SOCIAL RIGHTS IN PROTECTING CITIZENS

The principles of fundamental rights are considered commandments of optimization that follow the maxim of proportionality, which includes three sub-principles: adequacy, necessity and proportionality in the strict sense. These rights are fundamental in nature and must be protected in order to guarantee balance between them and other constitutional values. Therefore, the application of these principles must be done carefully, aiming to guarantee the maximum effectiveness of rights without harming other relevant constitutional interests. (SILVA, 2002).

Human rights represent a set of faculties and institutions that, at different historical moments, aim to meet the demands of dignity, freedom and equality of human beings. It is essential that these rights are positively recognized by legal systems at both national and international levels. (PEREZLUÑO, 1999)

Furthermore, the value of the right derives from its origin as a human creation, therefore, it depends on the person who conceived it. This premise reveals that the intrinsic dignity of the human person is the essential foundation of law, and all individual or collective distinctions are secondary in relation to this basis. (COMPARATO, 1997)

The dignity of the human person is a fundamental concept that permeates all social and serves as a universal paradigm to guide all societies. It represents the central value that must guide respect for human rights in all nations, and it is indisputable that its protection is essential to guarantee justice and equality throughout the world. (SARLET, 2001) In this sense, the international community has a duty to protect the dignity of the human person and denounce any violation of this value. This involves monitoring governments, organizations and individuals that threaten human dignity, and applying sanctions and corrective measures when necessary. (SARLET, 2001)

Respect for human dignity is an issue directly related to social rights, but



it is also a moral and ethical requirement for any fair and equal society. In total, it is the responsibility of all individuals and institutions to work together to promote and protect the dignity of the human person in all its forms. (SILVA,2002)

Another point to highlight is that the dignity of the human person is considered the central value of human rights and should serve as a universal paradigm that guides all societies. There is no doubt that human dignity is the fundamental standard that must guide respect for human rights in all nations, regardless of their culture or political system. Furthermore, the international community has the right and responsibility to demand respect for human dignity and to protest when this value is violated anywhere in the world. (SIQUEIRA, 2009, p. 252) Furthermore, the importance of proclaiming fundamental rights in our country can be easily perceived by reading the Preamble of the current Constitution. It states that the main objective of the Constituent Assembly was to establish a Democratic State that guaranteed freedom, security and the exercise of social and individual rights. Therefore, it is essential to address the ethnic issues that fundamental rights raise for a complete interpretation of the Constitution. Still within this context, the importance of fraternal treatment that must be granted between individuals, in an environment of solidarity, stands out in order to implement the idea of equality and belonging. Any behavior that offends or disrespects another person's physical or moral integrity, placing them in a position of inferiority, violates human dignity (MENDES; BRANCO, 2014, p.135).

The dignity of the human person is the central value that underlies human rights and seeks to be a basic principle for all nations and peoples. The conception behind human rights is the idea that all people have a responsibility to respect the basic rights of their citizens and that the international community has the right to protest when human dignity is violated. The Universal Declaration of Human Rights, created in 1948, established that all people are born free and equal in dignity and rights, aiming to prevent future atrocities against humanity. It is crucial that there is fraternal and supportive treatment between people to achieve equality and belonging. The dignity of the human person is essential when freedom, autonomy, equality and fundamental rights are not recognized and guaranteed, as the lack of these conditions can transform people into mere objects of arbitrariness and injustice, thus harming their dignity. (SARLET, 2001, p.59).

It is also worth highlighting that in the current model of society in which the predominant values are based on liberal ideologies, individualism, freedom and the belief in the market's capacity for self-sufficiency, social protection is only provided to those who are in a situation of poverty or indigence, that is, those who have not been successful in the market and are seen as objects of private or public charity, which leads to an inversion in the status of citizenship. (BOSCHETTI, 2000, p.47) With regard to the role of social rights in protecting citizens, it is important to highlight that the right to a dignified existence encompasses several conditions necessary to live in accordance with one's own values and objectives, without being disturbed by public or private actions. Furthermore, this right includes the freedom to choose life options that allow the person to be fully fulfilled, whether through personal decisions or those made by legal representatives. Currently, society recognizes and guarantees not only the right to life, but also to a dignified life. However, there are still serious questions and challenges related to this fundamental principle of human rights (ROCHA, 2004, p.26).

Another point to highlight is that in the context of the role of social rights in protecting citizens, it is essential to remember that the Constitution establishes the dignity of the human person as the basis for state activity. This means that man is the center, the subject, the object, the foundation and the end of all public activities. To comply with the democratic principle of power, state activity

3

it must focus on the totality of the dignity and citizenship of the human person. It is important to highlight that the axiological interpretation, which considers the values protected by legal norms, emphasizes that the dignity of the human person is the most important value established by the Constitution (SLAIBI, 2006, p.128).

With regard to the role of social rights in protecting citizens, it is important to highlight that, in recent times, the principle of human dignity has been incorporated into positive constitutional systems in a comprehensive way, going beyond individuality and extending to the human species. as a whole. This is based on the integrity, intangibility and inviolability of the



human person, considered in its highest dimension, beyond mere physical contingencies. This approach is a reaction to the unacceptable excesses of Nazi ideology, which created differentiated categories of human beings with absolutely different rights and conditions, often relegating them to ghettos, walls in late nights and the fear of an unworthy end at any moment (ROCHA, 2004, p.35).

Furthermore, regarding the role of social rights in protecting citizens, it is important to highlight that human rights are universal, immutable and derive from human nature itself, constituting the basic core of these rights. Its understanding and designation are the result of the combination of jusnaturalism and culturalism, having as its main basis the dignity of the human person. Human dignity is a supreme value that encompasses all human rights and is the essential foundation of these rights, including social rights. Each individual has an intrinsic and absolute value that makes up their dignity, which is expressed through human rights, which must be protected and promoted by States and society as a whole (SIQUEIRA, 2009, p.258). Another point to be highlighted is the violation of the dignity of citizens in various situations. Unfortunately, social rights are often neglected, which leads to a series of negative consequences for people. The lack of access to health, education, work and other fundamental rights affects the lives of individuals, harming their physical, emotional and social well-being. (OLIVEIRA, 2007, p.01)

It should not be accepted that a lack of dignity is an inherent factor in any citizen, regardless of their social condition, ethnicity, religion or other aspects that differentiate them from others. Human dignity is an inherent attribute of all human beings and must be respected in all circumstances. (SARLET,2001)

To guarantee the protection of citizens' social rights, it is necessary to implement public policies that promote equality, justice and solidarity. This includes access to health services, education, work and other opportunities that contribute to improving the living conditions of individuals and building a more just and inclusive society. (SARLET, 2001)

Still in this context, it is important to highlight that social rights are often neglected and selectively applied in our society. Although citizens must be guaranteed acts, regardless of their origin or social position, social rights are often aimed mainly at the most privileged layers of society. (BUCCI, 2006)

The legal system and public policies must work to ensure that social rights are applied equally to all citizens, regardless of their social position or financial condition. Unfortunately, the reality is often different, and less privileged people are those who suffer most from the lack of access to essential services, such as health, education, employment and decent housing. (COSTANETO, 2010)

Furthermore, dignity is an inherent attribute of every human being regardless of any additional criteria. Therefore, it is essential that this dignity is respected and protected in all circumstances, since the human condition is the only necessary requirement for the ownership of rights. This aspect is fundamental, since dignity cannot be conditioned or dependent on factors other than each individual's own humanity (PIOVESAN, 2003, p.70). Still within this context, for effective protection of human rights, it is necessary to strengthen the comprehensive perspective that encompasses social rights as a vital and inalienable dimension. It is necessary to improve the protection and justiciability mechanisms of these rights to dignify the emancipatory rationality of social rights, which are guaranteed both nationally and internationally as human rights. (PIOVESAN,2003,p.135).

4

One of the main objectives of the Constitution is to promote fundamental rights. For To achieve this goal in a systematic and comprehensive way, it is necessary to use public policies, which involve spending public money. However, it is important to highlight that public resources are limited, which makes choices necessary. Despite being a topic that involves political deliberation, the definition of spending and public policies is not completely reserved for politicians alone. (BARCELLOS, 2005, p. 105)

Furthermore, it is essential that we begin to consider today what would be a “fundamental core” of social, economic and cultural rights, expanding the understanding of human rights as a whole. The Inter-American Commission on Human Rights suggests that such a nucleus would be composed of

rights to work, health and education. In recent international meetings of experts, so-called “subsistence rights” were also mentioned as possible components of this core. (TRINDADE, 1997, p. 493)

The 1988 Federal Constitution established several mechanisms to regulate social rights in Brazil, with the aim of guaranteeing protection and respect for the dignity of individuals. Furthermore, article 6 of the Constitution determines a series of social rights that must be guaranteed by the State, even when exercising its punitive power. It is necessary for the State to act in a coherent and effective manner in the protection of social rights, to ensure the promotion of social justice and the full citizenship of individuals. (LIMA JUNIOR, 2001)

Indeed, the scarcer the available resources, the more essential a democratic deliberation becomes on how to allocate them so that all fundamental rights and social justice are satisfactorily met. To the same extent, the importance of those who have the difficult mission of ensuring compliance with the Constitution increases, with an increasingly greater sensitivity to recognize subjective social rights and specific provisions. The principle of proportionality plays a crucial role in the necessary process of weighing assets when deciding whether or not to grant an individual subjective right, or even in declaring the unconstitutionality of a measure that restricts social rights. (SARLET, 2001)

3CONCLUSION

Social rights are essential to protect citizens and guarantee their dignity. These rights are not mere declarations of programmatic will, but have normative force that ensures their effective implementation through state actions and public policies. However, factual, legal, social, economic and budgetary realities often prevent the full realization of these rights by public authorities.

Given this scenario, the judicial protection of social rights becomes a necessary demand. The judicialization of fundamental rights is a consequence of this sociopolitical context, in which relevant social and political issues are decided, ultimately, by the Judiciary.

It is important to remember that social rights are essential to guarantee social justice and equal opportunities. Access to education, health, housing, work and security are fundamental rights that must be guaranteed by the State, through effective public policies. When these rights are denied or violated, the population has the right to appeal to the Judiciary to guarantee their protection.

Therefore, it is essential that public authorities fulfill their role in implementing social rights and that society exercises its role in monitoring and claiming these rights. Only in this way can we guarantee a more just and egalitarian society, in which everyone has access to the minimum conditions for a dignified life.

It is important to remember that social rights are essential to guarantee the protection and dignity of citizens. Although the three powers of the State have defined limits of action, it is important to emphasize that the judiciary cannot be prevented from acting in accordance with the Constitution and other laws.

In times when the principle of human dignity must prevail, the omissions of political powers, such as the Executive and Legislative, cannot be tolerated. In this sense, the judiciary acquires legitimacy to guarantee the effectiveness of constitutional norms and achieve social justice through its jurisdictional activity, always respecting the limits imposed by the reasonableness of the application of resources from budgets.

5

It is necessary to emphasize that the role of the judiciary in protecting social rights is fundamental to guarantee social justice and equal opportunities. When political powers fail in their obligations to implement effective public policies to guarantee access to education, health, housing, work and security, for example, it is the duty of the judiciary to act to ensure that these rights are respected.

Thus, although the limits of the State's powers must be respected, it cannot be tolerated that the omission of political powers harms the protection of social rights. The judiciary must act legitimately to guarantee the effectiveness of constitutional norms and social justice, always considering the reasonableness of the application of available resources. Only



This way we can guarantee a more just and egalitarian society, in which everyone has access to the minimum conditions for a dignified life.

REFERENCES

BARCELLOS, Ana Paula de. Neoconstitutionalism, Fundamental Rights and Control of Public Policies. Administrative Law Magazine: FGV Repository of Periodicals and Magazines, Rio de Janeiro, v.240,2005, p. 102.

BOSCHETTI, Ivanete. Social Security Policies: Social Assistance. In: ABEPSS/CFESS/CEAD-UnB. (Org.). Social Policy. 1ed. Brasília: ABEPSS/CFESS/UnB-CEAD, 2000, v. 3, p.138-152.

BRAZIL. Federal Constitution of 1988. http://www.planalto.gov.br/ccivil_03/constituicao/constituicao%3%A7ao.html Accessed on May 19, 2023.

BUCCI, Maria Paula Dallari. Administrative Law and public policies.1.ed. São Paulo: Saraiva, 2006.

COMPARATO, Fábio Konder. Foundation of human rights. 1997. Available at: <http://www.dhnet.org.br/direitos/militantes/comparato/comparato_fundamentos_dos_dh.pdf>. Accessed on: 02Jul. 2023.

COSTANETO, Antônio Cavalcanteda. Leisure, Human Rights and Citizenship. Curitiba: pretext, 2010.

LIMAJUNIOR, Jayme Benvenuto. Economic, social and cultural Human Rights. RiodeJaneiro: Renovar, 2001.

LUÑO, Antonio Enrique Pérez Luño. Human Rights, State of Law and Constitution. 6 ed. Madrid: Tecnos, 1999.

MENDES, Gilmar Ferreira; BRANCO, Paulo GustavoGonet.CursodeDireitoConstitucional. 9th ed. current rev.e. São Paulo: Saraiva, 2014.

OLIVEIRA, Hilderline Chamber. The Bankruptcy of Brazilian Prison Policy. Scientific article. 3rd International Public Policy Conference, SãoLuiz-MA, 2007.

PIOVESAN, Flávia. Human rights and the principle of human dignity. Revista do Advogado, v.23, n.70, jul. 2003.

ROCHA, Cármen Lúcia Antunes (Coord.). The right to a dignified life. Belo Horizonte: Forum, 2004.

SARLET. Ingo Wolfgang. Dignity of the human person and fundamental rights in the Federal Constitution of 1988. Porto Alegre: Livraria do Advogado, 2001.

SILVA, Luís Virgílio Afonso da. Proportional and reasonable. Revista dos Tribunais, nº 798, 2002, p. 23-50.

6

SIQUEIRA Jr., Paulo Hamilton. The dignity of the human person in the context of postmodernity: the law in MIRANDA, Jorge; SILVA, Marco Antonio Marques da (coordination). Luso-Brazilian Treaty on the Dignity of the Human Person. São Paulo: Quartier Latin, 2009.

SLAIBIFILHO, Nagib. Constitutional right. 2nd ed. Rio de Janeiro: Forense, 2006.

TRINDADE, Antônio Augusto Cançado. Treatise on International Human Rights Law, v I. Porto Alegre: Sergio Antonio Fabris Editor, 1997, p.493.