ADI 2,965

Constitutionality of state education norms for private schools

Rapporteur
Justice Luiz Fux

Voting
By Majority

Majority Opinion
Justice Luiz Fux

Competent Court
Full Court

Decision Date
April 2, 2025

Format of the Session
In person

Facts

A constitutional action (Direct Action of Unconstitutionality) on the validity of norms of Complementary Law 26/1998 of the State of Goiás, which: (i) establishes rules for the operation and supervision of schools (article 4, item II, article 14, items VI and VII, and article 34, subitems a to d); (ii) allows the State Board of Education create norms on the drafting of internal school regulations and the democratic governance of schools (articles 14, items V and XV); (iii) establishes guidelines for the improvement of teachers' working conditions (article 14, sole paragraph, subitem d, and articles 91, 92, 93, and 94); (iv) creates minimum education requirements for teachers according to each educational stage (articles 83 and 84, item I and sole paragraph).

The National Confederation of Educational Institutions, which filed the action, believes that the application of the contested rules to private schools violates the constitutional provisions that lay down: (i) the freedom of enterprise for educational institutions (article 209); (ii) the Federal Government's competent jurisdiction to create general norms on education (article 22, item XXIV, and article 24, item IX, paragraphs 1 and 2); and (ii) the Federal Government's competent jurisdiction to enact laws on labor rights (article 22, item I).

Legal Issues

1. Can state legislation establish specific rules for the operation and supervision of private schools?

2. Can state legislation assign the State Board of Education the function of creating rules on the drafting of private schools' internal regulations and on the democratic governance of schools?

3. Can state legislation establish specific rules regarding teachers' work arrangements?

4. Can state legislation establish minimum education requirements for teachers according to each educational stage?

Legal Reasoning

1. In matters of education and teaching, the enactment of laws with general rules is reserved for the Federal Government, but the states may supplement them with specific laws in order to address regional peculiarities (article 24, item IX, paragraphs 1 and 2). For this reason, the provisions of Complementary Law 26/1998 of the State of Goiás do not violate the guarantee of private education. They set forth: (i) the supervision of schools by the state government and approval of the school calendar for primary and secondary education by the State Board of Education (article 4, item II, and article 14, items VI and VII); and (ii) a maximum number of students per classroom (article 34, subitems a to d).

2. The Constitution stipulates that "no one shall be compelled to do or refrain from doing something except by reason of law" (article 5, item II). Thus, the obligations applicable to private schools must be established in laws passed by the Legislative Branch, and not in regulations issued by administrative authorities. Therefore, the provisions of Complementary Law 26/1998 of the State of Goiás—which assign to the State Board of Education the function of creating rules on the drafting of private school's internal regulations and the democratic governance of schools (articles 14, items V and XV)—are invalid.

3. According to the Constitution, it is incumbent upon the Federal Government to create laws on the directives and bases of education (article 22, items XXIV). Law 9,394/1996 establishes specific measures for the improvement of teacher's working conditions, which apply only to those working in public education (article 67). As there is already a federal norm in place, state laws cannot innovate in this area. Hence, some provisions of Complementary Law 26/1998 of the State of Goiás are unconstitutional, as they grant private school teachers: (i) the reservation of one-third of their working hours for educational activities outside the classroom (article 14, sole paragraph, subitem d, and article 91); (ii) a salary floor (article 92, head paragraph); (iii) a maximum duration of class hours (article 92, sole paragraph); and (iv) a compensation based on qualifications rather than performance (article 93). For the same reason, the guarantees of "career plan, admission exclusively through civil-service examination, salary floor, education, and training" for other education workers (article 94) are invalid.

4. It is incumbent upon the Federal Government to establish minimum requirements for teachers' education at each educational stage (article 22, item XXIV). The Law of Directives and Bases of National Education (Law 9,394/1996) states that elementary and secondary education teachers must have "higher education, in a full teaching degree program, whereas the minimum requirement for teaching in early childhood education and elementary school is having regular secondary education" (Article 62, as amended by Law 13,415/2017). As states cannot establish requirements that differ from those established by the Federal Government, articles 83 and 84 of Complementary Law 26/1998 of the State of Goiás are invalid insofar as they contradict the Law of Directives and Bases of National Education.

Voting and Decision

Decision by Majority

Majority Opinion: **Justice Luiz Fux** (Rapporteur)

Dissenting Opinion(s): **Luiz Fux, Cristiano Zanin, Alexandre de Moraes, André Mendonça, Flavio Dino, Edson Fachin, and Dias Toffoli** (dissenting in part)**.**

Decision of the Court

The Federal Supreme Court declared valid the portions of Complementary Law 26/1998 that determine private schools must have an authorization to operate and establish rules for oversight by public authorities, including with regard to democratic school governance.

The Court also deemed constitutional provisions that allocate one-third of teachers' working hours to activities performed out of the classroom environment (such as studying, planning, and evaluating); set a maximum number of students per class; stipulate that the salary floor cannot be lower than the national salary floor; and establish that class hours cannot exceed 50 minutes.

The majority of Justices considered invalid, however, the state law provision requiring a teaching degree in education as the minimum qualification for teaching in early childhood education. However, the requirement remains in place for elementary and secondary education.

The Court also excluded from article 92 of the law the section stating that a teacher's salary floor should be calculated based on a 30-hour work week, on the grounds that it encroaches on the Federal Government's exclusive competent jurisdiction to legislate on labor law.

The prevailing understanding was that articles 93 and 94, which deal respectively with compensation parameters and career plans for teachers, are restricted to the public education system.

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