

INCLUSIVE EDUCATION AT HIGHER EDUCATION IN LAW

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Abstract

The enrollment of students with special educational needs (SEN) in higher education has been increasing and is a reality of the 21st century. This increase is visible in all areas of higher education, including the teaching of law. This new reality is a challenge and an imperative of human rights. However, the realization of this fundamental right makes it necessary to deepen the reflection on inclusive education. This article aims to discuss the challenges of inclusive education in higher education in general and mainly in the teaching of Law. We do a legal approach around the constitutional guarantee of inclusive education in Portugal, complemented by the analysis of the main problems and limitations of the necessary resources. Therefore, we look at the specific problems of inclusive education in the teaching of law, which require special attention from the public authorities involved and the educational institutions. As we see it, the most important problems to be solved are: defining the objectives to be achieved; eligibility of students with special educational needs; need for specific pedagogical training of higher education teachers for inclusive education and the implementation of educational support for these students. We conclude with the need to respond to the problems stated in order to get a truly inclusive teaching, in which all can participate in the definition of strategies for the overcoming of differences and difficulties.

Keywords: inclusive higher education; Special educational needs; Disability; Inclusive education in Law.

1 INTRODUCTION

In the most dramatic moments, when the instinct for survival prevailed, the children, the weak and the handicapped were left behind. Those who disturbed, consumed more than they produced, the dispensable.

As a result of humanism and economic and social development, combined with the exercise of citizenship, there has emerged a heightened awareness of the value of the individual, regardless of physical, social, economic, ethnic or religious conditions.

Today, the respect for differences and the capacity of integration and inclusion are distinguishing marks of the civilizational advancement of peoples.

The issue of inclusion has assumed different treatments in the various social areas, with particular emphasis on education, taking into account its strategic function and its structuring role in building a more supportive, equitable and fair society.

Globalization, resulting from technological changes and the consequent approximation of peoples, contributed decisively to the emergence of educational policies that foster inclusion. Nowadays, it is possible for all those with disabilities to have access to teaching and education. It is necessary to implement measures capable of providing respect, self-esteem and the stimulus for the development of personality.

It is intended that education can facilitate individual difficulties and that the education system is able to respond to the difficulties. Inclusion requires the adoption of policies and measures appropriated to diversity, calling for new methods.

It should be noted that the success of the inclusion will depend on the pedagogical and qualified work of the teachers in face of the differentiated needs of the students.

When entering in the education system, people with disabilities have certain rights, which are roughly translated into the appropriateness of classes and the adaptation of the existing resources (Atique, M.; Zaher, H. n.d).

People with cognitive limitations have, over time, been stigmatized and considered incapable of performing activities that require a greater degree of complexity. We are referring, in particular, to higher education. This conflicts, certainly, with the demands and requirements imposed on the student who intends to access higher education.

This study focuses on the possible inclusion of students with cognitive disabilities in higher education.

We understand that the inclusion of all those who have non-limiting cognition disabilities have, over the past two decades, been given special attention by both international organizations and national governments.

We believe, on the one hand, to be peaceful the inclusion of all those who intellectually start from a similar level of knowledge / learning and that only certain specific features are lacking in the adequacy of physical spaces, equipment and, perhaps, the extension of working times and performance (Veltrone, A. et al. 2007).

We note, on the other hand, that it is extremely difficult to enroll a person with intellectual disabilities in higher education. Higher education has requirements aimed at acquiring abstract knowledge that, certainly, people trained only for so-called primary activities will not be able to understand, much less learn.

The person with intellectual disability needs other means to achieve some progress in the area of learning and development (Manica, V. et al. 2012)..

This student with intellectual disability has characteristics that demand a greater and specialized support in the classroom. Due to his limitations, the student with intellectual disability will not be able to follow the normal rhythm of the classes and the contents of the curricular units drawn up for a given academic period (Pereira, P. et al. n.d.).

The admission of a student with these needs requires a temporal extension of the degree, the curricular adaptation to his level of learning, namely the frequency of few units per school year and the existence of medical reports that clarify his limitations.

The pedagogical regulations of higher education institutions should be able to densify a flexible standard, easily adaptable to the different situations that may occur.

However, the defense of a differentiated education, which favors inclusion rather than selection, has not only been left to the discretion of the entities that provide this public service, but is also a concern of the national and, even, international legislator, who intends to impose certain behaviors by creating a set of legal rules that safeguards the protection of the most vulnerable and their families.

2 METHODOLOGY

In this study we take advantage of the dialectical method. The authors cover the trajectory in the search for knowledge and the perception of the problem of the inclusion of students with cognitive disabilities in higher education. The dialectical exercise allows, on the one hand, to understand man as a socially inserted historical being and, on the other hand, establishes denial relations with the world and with himself, creating contradictions and generating conflicts in the relationships that become the basis of his social life's organization. The dialectical method makes it possible to understand and explain the problems and contradictions involved in social phenomena, in particular the difficult inclusion of the cognitively disabled.

According to the chosen object of analysis, we developed our study based on the observation of the reality that exists in our universities, in order to carry out the list of needs and systematize the most pressing ones, proceeding to a previous summary framework of the matter in question. We also used, as a starting point, the results of the survey developed by the National Education Council (NEC) on the problem under analysis.

3 RESULTS

3.1 Legal Regime

The Constitution of the Portuguese Republic, the Basic Law of the Educational System and the Anti-Discrimination Act are in line with the objectives of the Salamanca Declaration and the International

Convention on the Rights of People with Disabilities, ratified in 2006 by the Portuguese State, ensuring objective conditions for access and attendance of all children and young people to education on an equal footing.

In Portugal, the education of disabled children began in the nineteenth century, particularly in the areas of deafness and blindness, consubstantiated in an institutionalization that has perpetuated itself and, in many situations, still persists. Let us bear in mind that the very concept of "inclusion" was born in the United States only in 1986, following a movement in Denmark in 1959 to end segregation and institutionalization in special schools.

Over the last few decades, we have seen the creation of legislative on special education, for pre-school, basic and secondary education.

Decree-Law no. 3/2008, of January 7, now in a process of profound change, has had, in the last 10 years, a decisive importance in the national educational context with regard to inclusion, equity and guarantee to equality in education.

Without going into a profound analysis, we will only say that the educational measures envisaged in that diploma range from adapting the teaching and learning process to the individual specific curriculum, the later assuming significant changes in the common curriculum, which can translate into the introduction, substitution and or elimination of goals and contents, depending on the level of functionality of the child or young person.

With some advances and retreats, the state has managed to organize itself and create mechanisms capable of guaranteeing all young people access to education during compulsory schooling, usually coinciding with the age of majority.

But, from here on, many and complex are the issues that arise for these young people. Most are left to their families, others become residents of the institutions with responsibilities in the process of transition to active life, because employment opportunities are absolutely residual, and only a very small percentage are able to enter higher education institutions.

Those who wish to access this level of education carry out, annually, the national secondary education examinations, under the conditions determined by the National Jury of Examinations, in the document *Guide to Application of Special Conditions in Examination Testing*, for students covered by Decree-Law no. 3/2008. These conditions can be tests or adapted exams, adaptation of space / material or accompaniment by a teacher, among others.

It should be noted that higher education includes a special contingent for students with physical or sensory disabilities, composed of 2% of the vacancies set for the first phase or for two vacancies per course. Taking into account the number of places available in higher education at the beginning of each school year - over 50 thousand - there are around 1000 places in each year available for students with disabilities. However, the occupancy rate stands at 14%.

With the Convention on the Rights of People with Disabilities, it was intended to ensure respect for the integrity, dignity and individual freedom of people with disabilities and to strengthen the prohibition of discrimination against such people through laws, policies and programs that specifically meet their characteristics and promote their participation in society.

Thus, with regard to education, Article 24 prescribes:

1. (...) *"States Parties shall ensure a system of inclusive education at all levels and a lifelong learning.*

2. For the purpose of exercising this right, States Parties shall ensure that:

(a) *People with disabilities are not excluded from the general system of education on the grounds of disability (...)*

(d) *People with disabilities receive the necessary support, within the general education system, to facilitate their effective education;*

5. States Parties ensure that people with disabilities may have access to general higher education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure reasonable adaptation for people with disabilities. "Reasonable adaptation" means any necessary and appropriate modification and adjustment which does not impose a disproportionate or undue burden, whenever necessary in a particular case, to

ensure that people with disabilities enjoy or exercise, on an equal basis with others, all human rights and fundamental freedoms;

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Already before, in the World Declaration on Higher Education in the 21st Century: Vision and Action - 1998, which resulted from the UNESCO World Conference on Higher Education, held in Paris, on October 9, 1998, on article 3 - Equal access, it was argued that: "a) According to Article 26, §1: of the Universal Declaration of Human Rights, the admission to higher education must be based on the merit, capacity, efforts, perseverance and determination shown by those who seek access to education (...). As a consequence, access to higher education will not allow any discrimination based on race, sex, language, religion or economic, cultural and social considerations, nor on physical disabilities.

However, in addition to all these programmatic orientations, the instruments of defense of students with special educational needs (SEN) are in the areas of specialized support, adaptations in the teaching / learning process, technical aids, use of different assessment instruments, accessibility and mobility and social support, provided for in the statutes of the student with special needs, as specific regulations of some of our institutions of higher education.

It is a fact that the number of students with SEN in Higher Education has increased over the last two decades due to the implementation of political and social measures of access and democratization that promote educational inclusion at this level of education (Faria, 2012). We understand, however, that the existing legislation is manifestly insufficient to guarantee a quality educational response for all, in accordance with international norms and guidelines and with respect for the principle of equal opportunities.

We agree with Rodrigues (2003) when he argues that inclusion comes to school when it is assumed that respect and equality for differences must be addressed upstream, but the State is responsible for ensuring social regulation that guarantees better conditions of access and attendance of higher education.

The issue is particularly acute nowadays, and there are those who defend, among other measures, that the compliance of the strategic plans of the institutions for the inclusion of students with special needs should be integrated into the parameters of the evaluation and accreditation process of the courses by the Evaluation and Accreditation of Higher Education Agency (A3ES).

3.2 Inclusive Education Public Policies: the fight for equal opportunities

According to data released by the National Education Council (NEC), the results of the National Survey on the support granted to students with special educational needs in higher education (Pires, Pinheiro & Oliveira, 2014; Pires, 2015), carried out by the Work Group for the Support to Students with Disabilities in Higher Education, show that in 2013/2014 there were 1318 students with special educational needs (SEN) attending higher education, of which 61% attended higher education in public universities. The total number of students with SEN in higher education is distributed as follows: motor deficiency 256, visual deficiency 235, dyslexia 169, hearing deficiency 160, chronic diseases 159, psychiatric diseases 147, diseases or neurological problems 90, autism spectrum 45, multideficiency 28 and others 29.

By area of study, it should be noted that 24% of students with SEN are attending courses in Law, Social Sciences and Services, 17% in Technologies and 14% in Economics, Management, Accounting. The data also show an increase of 502 students with SEN at higher education, compared to 2006/2007. (Pires, L. 2015)

The problem of the lack of means in the University Institutions to respond to students with cognitive difficulties is of central importance in the fight for an inclusive Higher Education, once conditions have been created for the inclusion of students with motor, visual and hearing impairments. (Pires, L. et al., 2014)

As can be seen, data from the studies and survey carried out show that the highest percentage of pupils with special educational needs are enrolled in **Faculties of Law**. The question that we are analyzing in the present study is whether these Faculties of Law are equipped with the necessary conditions to provide an adequate inclusion of these students in the university life, in an inclusive way and oriented to the school success and its future inclusion in the working life.

3.3 Inclusive education in the study of Law: more pressing needs

Focusing the problem analysis on law education (as we have seen, it is one of the areas most preferred by students with special educational needs), it is important to analyze how higher education institutions organize themselves to support these students.

The results of the survey carried out by the CNE indicate that 94 institutions (out of 172 which answered) have a service or a contact person responsible for the reception and follow-up of these students and 90 institutions (of the 169 which answered) have special regulations for students with special educational needs.

There is also a reference to curricular adaptations made by the institutions, in particular deadlines, alternatives to evaluation tools and evaluation tools themselves.

In the case of tests in an adapted format, have mainly been pointed out the tests in computerized format, extended tests, audio recordings, Braille proofs in Portuguese sign language. In regard to adaptations in access, about 50% of the institutions indicated that they had adaptations in access to all toilets, laboratories, car parks, classrooms and study rooms and about 70% in the access to all libraries and car parks.

The truth is that almost nothing refers to measures adjusted to students with special educational needs of a cognitive nature. In fact, several studies in Portugal point to the existence of several barriers to the attendance and completion of higher education by students with SEN, beyond physical or architectural barriers, already overcome in most cases through adaptations thought for students with motor or sight difficulties. (Rodrigues, F. 2015)

As for students with special educational needs of cognitive nature, very little has been done so far.

Referring to the study of Law, the present study has detected a set of pressing needs to overcome, for an effective inclusion of these students with special needs, namely:

- a) limitations in the pedagogical material, in order to allow these students to reach an understanding of the contents;
- b) different forms of discrimination, due to the difficulty and accessibility to the recommended bibliography, which is not adjusted to this type of students, constituting an insuperable difficulty in their learning;
- c) the absence of specific regulations for higher education and the lack of continuity of support provided to students in secondary education (Rodrigues, 2015);
- d) limitations in the teaching / learning process resulting from the lack of teacher training in this area;
- e) the use of non-flexible teaching methods, which result in the exclusion (or great difficulty) of the access of students with special educational needs to the understanding of the syllabus;
- f) lack of methods to compensate for disabilities, due to the financial limitations that do not allow the introduction of more hours of work dedicated to these students;
- g) little investment in distance education and training;
- h) and, finally, the lack of human and financial resources to support students.

With regard to standard-setting instruments, it should be noted that Portugal adopted and ratified (1), in 2009, the Convention of the Rights of People with Disabilities (CRPD) adopted at the United Nations Headquarters on 30th March 2007. The Convention reaffirms the universal principles of dignity, completeness, equality, diversity and non-discrimination, and defines the general obligations of the Governments to integrate the various dimensions of disability into their policies.

The European Council's report Access to social rights for people with disabilities in Europe (Maudinet, 2003) presents some of the main obstacles for these students, such as limitations in accessibility to particular areas of institutions, lack of teacher training in this area or the use of less flexible teaching

methods, the lack of methods for compensating for disabilities, low investment in distance education and training, and a lack of human and financial resources to support students. It is therefore concluded that the needs are generally known.

Adequate solutions to overcome the special needs of these students are lacking.

3.4 Measures to adopt

An inclusive higher education is essential for compliance of the constitutional principles of the universality of fundamental rights and duties and equality provided for in articles 12 and 13 of the Constitution of the Portuguese Republic (CPR), as well as the norms of its article 71º, which guarantees citizens with disabilities the full enjoyment of their rights and their subjection to the duties consigned in the Constitution, with the exception of the exercise or fulfillment of those for which they are incapacitated.

The CPR also emphasizes, in what matters, the rule of article 43º, freedom to learn and teach; of Article 74º, which guarantees the right to education with a guarantee of the right to equal opportunities for school access and success, and it is incumbent upon the State to guarantee to all citizens, according to their abilities, access to the highest levels of education, scientific research and artistic creation, to promote and support the access of citizens with disabilities to education and to support special education, where necessary, and to protect and enhance Portuguese sign language as a cultural expression and instrument of access to education and equal opportunities; and of article 76º, which provides for university and access to higher education.

Also Law No. 46/86, of October 14, which approved the Basic Education System Law, establishes that special education is organized preferably according to different models of integration into regular educational establishments, taking into account the needs of specific care, and may also be processed in specific institutions when proven to be required by the type and degree of the student's disability.

It is the role of the State to promote the democratization of education, guaranteeing the right to a fair and effective equality of opportunities in school access and success, and establishes, in matters of higher education, that the access and entrance systems in higher education obey, in particular, to the principles of democracy, equity and equal opportunities.

As a result of our reflection on the topic, we present as conclusions a set of measures that we believe are indispensable, urgent and adequate to guarantee minimum conditions for the effective inclusion of students with special educational needs, of a cognitive nature, in Higher Education. Although our sphere of analysis relates to higher education of Law, we believe that the proposed measures also fit other scientific areas.

4 CONCLUSIONS

As a result of our study, we got to a set of measures that seem essential to us to promote the effective inclusion of students with special educational needs in Higher Education, in particular, in Law Education.

In part, and in line with the guidance of the CNE (2017, CNE Opinion), we believe that it is indispensable to introduce legislation on the subject, regulating the practical and concrete aspects of the type of Education adjusted to the alleged inclusion of these students. Legislation that must be realistic, effective and endow teaching institutions with adequate conditions to achieve the intended purpose.

Therefore, we set out a set of aspects that should merit special attention in the elaboration of legislation for the implementation of effective inclusion policies in higher education, namely:

- a) introduction of new legislation on the needs and conditions to be guaranteed by universities (public and private) to students with special educational needs, not only motor, sight or hearing, but specifically of a cognitive nature;
- b) that the legislation to be approved be clear in terms of concepts and purposes, allowing a precise definition of its scope of application, without unrealistic and impossible goals;

- c) if none of the students with special educational needs are to be left out of higher education, it is also important that it is not the legislation itself that creates a discriminatory or stigmatizing effect on those concerned;
- d) adoption of individual support measures adjusted to each specific case, promoting an effective inclusion of these students in higher education, whenever possible, without creating false expectations;
- e) provision of adequate financial resources to ensure individual monitoring of each specific case, adjusting the teaching / learning process to the special educational needs of each student;
- f) realistically assume a prior process of personal and formative orientation of these students, so that their choice is achievable, allowing the completion of their studies in time (deadlines) and in the most appropriate context;
- g) to guarantee some mechanisms to support their future insertion in the working life, introducing special benefits for the companies that welcome these future professionals.

It is essential to take into account that the adoption of legislative measures in this area requires rigorous prior studies, taking into account the reality of the universities in operation, allowing adequate strategies to support students, without neglecting the resulting financial impact.

There is sometimes a tendency to create ambitious, generic legislation appealing to the highest humanist principles, but without the means to achieve it. We are often confronted with purely symbolic laws that arise to meet specific public demands and with rapidly forgotten political frameworks.

We believe that the subject under analysis is too serious and important to allow the legislator to create false expectations for people who, because of the special situation they are suffering, already suffer daily with so many difficulties. Creating unrealizable expectations in this matter is the worst and cruelest form of discrimination.

We therefore believe that the legislation to be adopted in this area must be effective and must be based on realistic and achievable means to enable these students to pursue a fuller and happier life.

For this to happen, it is crucial to overcome the barrier of financial constraints and to assume that it is necessary and must be guaranteed to each student a concrete curriculum, with longer times and deadlines, without limitations in the innovation of appropriate teaching methodologies, without the rigidity of the programs, deadlines and evaluation regulations taking place in our universities, traditionally designed for mass education.

In this regard, there is no doubt that there should be a serious link between the entities responsible for secondary education (ministries, associations and others) and those responsible for higher education. Without this articulation, the expectations created in secondary education can be totally frustrated by the access to a Higher Education that should be inclusive but that was not and is not being thought to be able to receive these students with special educational needs. Once arrived here, we must assume the financial costs necessary for these students to have an effective truly inclusive access to higher education.

It is necessary, therefore, to equip the universities with the human and technological resources necessary and appropriate to this type of education. It is obvious that, in this matter, almost everything remains undone. At most, we have advanced something in overcoming physical, architectural barriers and in the adoption of some means of language suitable for students with motor, visual or auditive deficiency. As far as students with cognitive difficulties are concerned, very little progress has been made, apart from the consecration of legislative principles with no implementation.

It should be said that it is not only the access to courses that is in question, but mainly the adaptation to the appropriate teaching, training and research models for these students.

Finally, we conclude that university institutions, in general, are not prepared to design and implement programs created specifically for this type of students, requiring specialized human resources to ensure the introduction of appropriate teaching methodologies.

Without achieving this fundamental minimum there will be no true higher education for these students with special educational needs of a cognitive nature.

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