



New Trends and Issues Proceedings on Humanities and Social Sciences



Issue 0 (2018) 00-00

ISSN 2421-8030

www.prosoc.eu

Selected Paper of 10th World Conference on Educational Sciences (WCES-2018) 01-03 February 2018 Top Hotel Praha
Congress Centre, Prague, Czech Republic

Students in higher education as consumers of services provided by the University

Maria João Mimoso^a *, Portucalense University - UPT, R. Dr. António Bernardino de Almeida 541, 4200-072, Porto, 4200-072, Portugal

Maria do Rosário Anjos^b, Polytechnic Institute of Maia - IPMAIA, Av. Carlos de Oliveira Campos, Maia, 4475-690, Portugal

Carlos Miranda^c, General Inspection of Education and Science - GIES, Rua António Carneiro 140, Porto, 4300 - 025, Portugal

Suggested Citation:

Mimoso, M.J., Anjos, M.R. & Miranda, C. (2018). Students in higher education as consumers of services provided by the University. *New Trends and Issues Proceedings on Humanities and Social Sciences*. [Online]. 00, pp 00-00. Available from: www.prosoc.eu

Selection and peer review under responsibility of Prof. Dr. Jesus Garcia Laborda, University of Alcalá, Spain.

©2018 SciencePark Research, Organization & Counseling. All rights reserved.

Abstract

The purpose of this study is to understand the scope of applicability of the norms foreseen in the Consumer Protection Law to the relations established between the Portuguese higher education institutions, public and private, and the students who attend them. We critically analyze the fact that the jurisprudence considers the relationship of the student with a public higher education institution as a tax relation, because it is based on a synallagmatic scheme of remuneration of a public education service provided, constituting the fee the due pecuniary compensation. A review of the literature will be carried. We will use a deductive and speculative reasoning based on the positions defended by foreign doctrine, law and jurisprudence. The purpose of our reflection is not only to call attention to the precarious system that the law offers to the sub judice problem, but also to the necessary protection of those rights.

Keywords: Higher Education, Educational Services; Services of General Interests; Consumer.

* ADDRESS FOR CORRESPONDENCE: Maria João Mimoso, Portucalense University - UPT, R. Dr. António Bernardino de Almeida 541, 4200-072, Porto, 4200-072, Portugal

E-mail address: mjmarbitragem@gmail.com / Tel.: + 351 91 353 57 77.

1. Introduction

Due to the lack of protective regulation of the interests and rights of the student of Higher Education in several States, it is fundamental to analyze the problem according to the rules existing in the different legal systems, especially the Consumer Protection laws.

The problem requires a specific context and a legal interpretation that enable the assignment of a fair and equal protection. The purpose of this study is to understand the scope of applicability of the norms foreseen in the Consumer Protection Law to the relations established between the Portuguese higher education institutions, public and private, and the students who attend them.

The issue must be framed in a context of influence of multiple factors, where, necessarily, the differences and similarities of public and private institutions must be considered and the fact that the frequency of non-compulsory education degrees is being assessed.

We adopted as methodology a critically analyze the fact that the jurisprudence considers the relationship of the student with a public higher education institution as a tax relation, because it is based on a synallagmatic scheme of remuneration of a public education service provided, constituting the fee the due pecuniary compensation.

A review of the literature will be carried out in order to contextualize the problematic issues that the Portuguese legal system poses, mainly due to the lack of protection of the rights of students of Higher Education. We will use a deductive and speculative reasoning based on the positions defended by foreign doctrine, law and jurisprudence.

The purpose of our reflection is not only to call attention to the precarious system that the law offers to the sub judice problem, but also to the necessary protection of those rights. The provision of educational services by universities should be guided in the wake of consumer protection, especially in the absence of a specific regulation for this level of education.

The students must have at their disposal instruments that protect their rights from the provider of that service. The University, despite being forced to provide for the means, can only be held responsible for the activities it develops and provides to the students' community. We talk about access to knowledge, science, technology and other cultural assets. The quality requirement refers not only to the binomial student's performance / teachers' competence, but to the entire university environment. As Aristoteles says "*The distance between no educated man and one who is not is greater than the distance between man and animal*".

2. The (re)emergence of Education

Through education, based on the deepening of the knowledge of the various elements, man has become the dominant species of the planet, reaching, however, a state of development that many are calling into question, both by the exponential consumption of goods and by the sophistication and danger of managing new technologies and resources.

Although some venture to try to define the context of the last years (information society, post-industrial society, society of the third wave, society of the information highways, among others), it is

Mimoso, M.J., Anjos, M.R.& Miranda, C. (2018). Students in higher education as consumers of services provided by the University. *New Trends and Issues Proceedings on Humanities and Social Sciences*. [Online]. 00, pp 00-00. Available from: www.prosoc.eu

consensual the idea that we live a period of enormous complexity, difficult, if not impossible to define, marked by growing globalization, the impact of new technologies, ecology, awareness of population growth and the consequent scarcity of resources, in particular energy resources. We live in a state of constant vigilance, characterized by permanent threat and insecurity, and by a sort of collective hypochondria that awaits the tragedy, taken for granted.

We believe, therefore, that this fear of existence can only be counteracted (José Gil, 2007), this self-destructive and suicidal tendency, with a strong investment in individual and collective education. After the validity of the time to educate by prohibition, we remain committed to ethics, aesthetics, principles and values, the capacity to live with others, seeking to fulfill the horizontal and vertical responsibilities that we should voluntarily assume with our fellow citizens and future generations, respectively.

3. Education in the Constitution of the Portuguese Republic

Education has been assumed as a structuring element of societies, particularly in the more civilized, understood as a determining component of social and economic progress, which is one of the most prominent civilizational advances. But education is also recognized as an individual right, linked to the personal development and well-being of every citizen. Thus, in this perspective, the state assumes the double duty of guaranteeing to all, and in equal circumstances, education and education, considering the rights of each one and simultaneously the collective interests, guided by values and principles, which defines itself, in the Portuguese case, inherent in the socio-political context emerging from the period of transition to democracy.

In this sense, the Constitution of the Portuguese Republic (CRP) establishes in article 73 (1) that "everyone has the right to education and culture", adding in paragraph 2 that "the State promotes the democratization of education and the other conditions so that education, carried out through the school and other formative means, contributes to equality of opportunity, overcoming economic, social and cultural inequalities, the development of personality and the spirit of tolerance, mutual understanding, solidarity and responsibility, for social progress and for democratic participation in collective life".

As Gomes Canotilho and Vital Moreira (2007, p.889) conclude, "one of the objectives of education is thus to contribute to equal opportunities and to overcome economic, social and cultural disparities", that is, it was suggested that education should be constituted as a social elevator capable of limiting social asymmetries, in the sense of this idea of reducing injustice, defended by Amartya Sen (2010), which, unfortunately, does not seem to have occurred.

In order to guarantee the assumption of the duty that is mutually imposed on the right it prescribes, the CRP, in article 74 (1), states that "everyone has the right to education with a guarantee of the right to equal opportunities for access and school success, "and stated in paragraph 2 of the same article that" in carrying out education policy, the State:

- a) Ensure universal, compulsory and free basic education;
- d) To guarantee to all citizens, according to their abilities, access to the highest levels of education, scientific research and artistic creation.

It follows that the State has a duty to ensure, first and foremost, universal basic education, which is compulsory and free of charge and, consequently, to guarantee the conditions for its implementation, ranging from the creation of the school network to the logistics of schools, and the very definition of the curriculum.

Mimoso, M.J., Anjos, M.R.& Miranda, C. (2018). Students in higher education as consumers of services provided by the University. *New Trends and Issues Proceedings on Humanities and Social Sciences*. [Online]. 00, pp 00-00. Available from: www.prosoc.eu

The fact that the right to education is treated differently from other social rights, under the provisions of article 164 of the CRP, which includes the exclusive competence of the Assembly of the Republic to legislate based on the education system, obviously has significance. In any case, there is a clear differentiation in the constitutional text of the responsibilities that the state must assume in primary and secondary education, on the one hand, and in higher education, on the other. With regard to the latter, it should be noted that the CRP merely imposes that the regime for access to universities and other higher education institutions guarantees "equal opportunities and democratization of the education system, taking into account the needs of qualified personnel and the elevation of the educational, cultural and scientific level of the country "(Article 76 (1)), while stipulating that" universities enjoy, under the law, statutory, scientific autonomy , pedagogical, administrative and financial, without prejudice to an adequate evaluation of the quality of education "(Article 76 (2)).

The differences between these two realities are not only since education is compulsory, at the moment, up to the 12th year, and not compulsory in higher education, since they are well visible in the different commitments that the state assumes in both situations, which is confirmed through the analysis of the Basic Law of the Educational System and other ordinary legislation.

4. Other sources of law

The general principles set forth in Article 2 of the Basic Law of the Educational System (BLES) - Law no. 46/86, of October 14, meet the recommendation for the right to education, enrolled in the CRP, namely the universal access, the democratization of education and the effective equality of opportunities in school access and success.

The LBSE stresses the concern to regulate the way of organizing basic and secondary education, which does not happen with respect to higher education. Although Article 12 (4) prescribes that "the State must create the conditions which guarantee citizens the possibility of attending higher education in order to prevent the discriminatory effects arising from economic and regional inequalities or social disadvantages, "the fact is that the attendance of primary and secondary education is a legal imperative, while entering higher education is a voluntary BLES act of the student and / or their families. In any case, according to the objectives defined in the BLES, all entities of school education (basic, secondary and higher) have the duty to meet the objectives defined by the state for that level of education, taking due account of individual interest of each student. The questions related to motivation and interest gain a greater acuity in the formation of a higher level, considering the maturity of the student, its formative intentionality, related, as a rule, to a certain professional performance, either in the scope of initial formation, or lifelong learning.

From the Legal Regime of Higher Education Institutions (LRHEI), approved by Law no. 62/2007, of September 10, we highlight the provisions in paragraphs 1 and 2 of Article 2, where it is assumed that higher education has as objectives, among other things, to ensure "the high-level qualification of the Portuguese" and "the conditions for all duly qualified citizens to have access to higher education and lifelong learning."

The mission and attributions of higher education institutions operate within a framework of "autonomy, pedagogical, scientific, cultural, administrative, financial, patrimonial and disciplinary vis-à-vis the State" in the case of public institutions, and "pedagogical, scientific autonomy and cultural, in private institutions ", as provided for in article 11 of the LRHEI. According to article 11.5 of the LRHEI, "autonomy of higher education institutions does not preclude government supervision or supervision, whether public or private institutions, nor accreditation and external accordance with the law.

Mimoso, M.J., Anjos, M.R.& Miranda, C. (2018). Students in higher education as consumers of services provided by the University. *New Trends and Issues Proceedings on Humanities and Social Sciences*. [Online]. 00, pp 00-00. Available from: www.prosoc.eu

Strictly speaking, the levels of autonomy of higher education institutions are manifestly high, and there is already a case for the integration of public entities in the autonomous administration of the state. It should be noted in this regard that the powers of the General Inspectorate of Education and Science, directly related to higher education, are exhausted by those provided for in Article 2 (2) (h) of the Organic Law of Inspection Education and Science, approved by Regulatory Decree no. 15/2012, of January 27: "to design, plan and carry out inspections and audits of higher education institutions, respecting their autonomy, social and to the bodies, departments and bodies covered by the Ministry of Education and Culture (MEC) with regard to the organization and administrative, financial and patrimonial management, particularly when benefiting from national or European funding granted by the MEC".

Although bold, we dare to consider that while public institutions of primary and secondary education are institutions of the state, institutions of higher education are institutions in the state, which has important consequences in the relationship they establish with their students.

5. School/Student relationship

In the context of the present reflection, the legal-administrative relationship created between students and their schools during compulsory schooling is not analyzed. We recognize, however, that from preschool to secondary education, the state retains the power of control, monitoring and evaluation, and can determine the actions necessary to guarantee the principles of equality and equity. Many of the activities are the initiative of the various bodies responsible for guardianship, while there is an obligation to respond, in a timely manner, to complaints and complaints from users. Even disciplinary competence is, in most situations, competitive between the hierarchical superior of the worker and the director of a body of the deconcentrated administration.

To ensure the safeguarding of students' interests, the state itself published the Statute of Student and School Ethics (SSSE), approved by Law no. 51/2012, of September 05, which defines as object (Article 1) : to establish "the rights and duties of the pupil of primary and secondary education and the commitment of the parents or guardians and other members of the educational community in their education and training, (...), in the development of the rules of the Basic Law of the Educational System. Article 7 of this diploma lists 20 rights of students, which correspond to other duties that are imposed on the state, the education administration and its professionals.

About the student of higher education, there is a lack of instruments and resources available to oblige the respective institutions to comply with the duties to which they are attached. The problem is assumed by the Federations and Associations Academic and Students, who have worked with the minister of the guardianship the measures conducive to the creation of a statute of the student of the superior education.

6. Student / consumer rights

While it is true that the pupil of primary and secondary education has the right to receive education and quality education, it is equally true that pupils in higher education are also entitled to a high level of qualification the development of your life project. But if the former has a diverse set of means that guarantee them similar learning conditions to the other students of the country, in those levels of education, the latter will conform within the relation established within the institution they attend, which is often manifestly insufficient. The state can and should define the most appropriate orientations to the constant changes of society actually, to the technological ones, in a permanent effort of anticipation of the future. But, equally, it must ensure that everyone can define his course, creating the conditions so that each student seeking higher education, public or private, beyond mere

Mimoso, M.J., Anjos, M.R.& Miranda, C. (2018). Students in higher education as consumers of services provided by the University. *New Trends and Issues Proceedings on Humanities and Social Sciences*. [Online]. 00, pp 00-00. Available from: www.prosoc.eu

certification, can acquire the skills that are indispensable to their purpose. It is, in our modest understanding, evidence that the student of higher education, within his institution, has means to see satisfied all rights that relate to an advisory service, whether in the cafeteria, the stationery, the library, the park parking lot or other. Strangely or not, it is in the exercise of its greatest right - the provision of quality education, which one feels greater obstacles.

These difficulties arise from the clearly unbalanced relationship established between the student and the training entity, with a clear disadvantage for the former, from the difficulty in identifying the contours of the alleged non-compliance and the weakness of the available legal instruments, since, as a result of the autonomy of the higher education institutions, these are defendants and judges of each case. It is, therefore, imperative that we be consistent with the systematic critique of institutions, their perennially, their stability, their normativity and their rejection of change, and that higher education must be seen with the eyes of the competitiveness of the private economy world, public, to the universal and abstractly determined by the old nation-state.

7. Relevance of legal nature of the education's provision

7.1 Duality of concessions within the UE

Within the European Union are distinguished two different concessions on the legal nature of the education's provision. This duality arises from the existence of two different legal systems and legal and philosophical bases well differentiated: the continental European system of Romanesque and the Anglo-Saxon system referred to as "Common Law" system.

The first system is characterized by privileging the legislative act as a source of law, distinguishes the law applicable in legal matters between individuals from the legal issues of public law, in which *ius imperium* is well present. There are all kinds of courts that are settled by recourse to civil and emerging courts of public legal matters which are settled by recourse to administrative courts, existing among other types of courts specializing in different areas of law. Portugal is included in this legal family.

In the "Common Law" system there is no distinction between public and private law, all law is common, so all legal relationships are governed by the same principles and values, being custom and case law fundamental in the resolution of emerging litigation. These are resolved, without distinction, by recourse to the ordinary courts, and may exist within these specialized segments without any distinction according to the public or private nature of the interveners. This is, therefore, a fundamental difference between the two systems.

7.2 The legal nature of the education's provision

In the legal systems of the Romanesque matrix the provision of education is traditionally qualified as a public service provision. It follows that the legal relationship established between student and educational establishment is considered as a legal relationship of an administrative nature (Lopes, 2013), even when it is provided by a private entity. This conception is therefore quite different from that prevailing in the legal systems forming part of the "Common Law" family, for which this legal relationship is equivalent to any other of a commercial nature, designed to satisfy individual and collective needs (Amorim, 2014).

However, our research focuses on the question of the protection of the rights of students of higher education in countries with a Romanesque background, in which, as we have seen, this legal relationship is administrative by nature. In this context, can the student benefit from consumer

Mimoso, M.J., Anjos, M.R. & Miranda, C. (2018). Students in higher education as consumers of services provided by the University. *New Trends and Issues Proceedings on Humanities and Social Sciences*. [Online]. 00, pp 00-00. Available from: www.prosoc.eu

protection? The question is controversial, however, if we consider the essence of the nature of the legal relationship in question, we find that it is based on a teaching benefit, that is, an intangible asset of fundamental importance for the student and for the community by the positive externality generated.

Thus, in the first place, it emphasizes its useful nature: provision of teaching services. Secondly, this provision is onerous (not gratuitous) because it is subject to the payment of a "tip." This fee corresponds to a price when the benefit is provided by a proven institution and a "fee" when provided by a public entity. The legal nature of the fee, in these systems, is characterized by the payment of a value, administratively fixed, lower than the effective cost of production. This option is based on reasons of general interest, collective, of society. This implies that the State finances the difference by means of taxes. That said, there is no doubt that the provision of teaching services, even when provided by public institutions, is an onerous performance for the student user / consumer who pays the respective tuition, and for society, in general, that finances the remaining part with their taxes.

In conclusion, the legal relationship of educational provision has a signatory nature, generates rights and obligations, and its address lacks similar protection to that which is recognized to the consumer in general. The signal nature of the charge of the fee / tip is a sufficient ground for recourse to consumer protection when necessary.

7.3 The contribution of the European Union Law

Can the nature of public service attributed to the provision of education be an obstacle to the protection of the student as a consumer / user?

European Union law makes an important contribution to the answer to this question. In fact, the introduction of the subject of student rights and guarantees was always a controversial topic. In Portugal, the introduction of the Student Statute at the level of primary and secondary education was a recent achievement, a consequence of the need to comply with international conventions that enshrine the human rights of children and young people. Thus, the Student Statute and School Ethics, enshrined in Law 51/2012 of 05-09-2012, which repealed the previous Law no. 30/2002 of 20/12, regulated the universe of rights and duties of the students, only in the universe of legal relationship of non-higher education, taught by public and private entities. This law is fundamentally focused on the internal relationship of the student with the school community and aims to essentially respond to problems of school indiscipline and guarantee student achievement and progress. But at no point does it refer to the question of the quality of the delivery of education delivered.

At the level of higher education, references to student rights are even more fragile. The rights of students are remitted to the internal regulatory power of each institution. Again, the focus of the legal relationship is restricted to the rights of students concerning the evaluation of knowledge, the functioning of curricular units and, more recently, the internal evaluation of the quality of teaching given. The power of the educational institution and the essential nature of the provision for the achievement of the student in all its human dimension, introduce an atypical element in this legal relation.

Moreover, in higher education the competition of the market that operates in the initial moment, when the student chooses the institution where he intends to continue his studies, it fades and is canceled by a set of limitations of the own system. Recognition of these limitations meant that the European Union should develop a set of legislative initiatives to promote students' freedom of movement, the approximation of curricula and degrees of education and the teaching model, with the aim of promoting student mobility.

Mimoso, M.J., Anjos, M.R.& Miranda, C. (2018). Students in higher education as consumers of services provided by the University. *New Trends and Issues Proceedings on Humanities and Social Sciences*. [Online]. 00, pp 00-00. Available from: www.prosoc.eu

It should be noted that this last dimension is introduced in the Portuguese system, fundamentally as an imposition of the Bologna Declaration, on June 19, 1999. It is important to emphasize that the need that led to the Bologna Declaration mirrors well the difficulty of harmonization between the legislations of the Member States of the European Union in the field of higher education, to the detriment of the mobility of young people graduated from different countries of the European Union. The Bologna Declaration, signed by 29 European countries, marks a shift from higher education policies in the countries concerned and has jointly established a European Higher Education Area based on the commitment of the signatory countries to promote reforms of their education systems. But there is still much to be done in defending the rights of European higher education students, at least in some countries, with Portugal being an example.

The Bologna Declaration recognizes the importance of education for the sustainable development of tolerant and democratic societies. Although the Declaration is not a Treaty, the governments of the signatory countries have undertaken to reorganize the higher education systems of their countries in accordance with the principles set out therein.

The contribution of European law has been and to try to implement the harmonization of laws and approximation of the two legal systems existing within the EU. This compatibility is sometimes difficult and slow, but small but important steps have helped to bring systems closer together to improve the living conditions of European citizens in general.

It is true that in Anglo-Saxon countries there is no concept of public service, but we find the concept of public utilities, structural, comprehensive and neutral about the public or private nature of the service provider. It is a concept that brings us to the idea of providing benefits to citizens in education, higher education, health, housing and other areas of general interest for their mission. Citizens as the recipient of any goods or services designated as "public utilities" have a legal protection equivalent to that of the consumer, reinforced by compliance with the general interest.

The result of this different conception, as far as our theme is concerned, is that in the first case the student is seen as a beneficiary / user, in the second case he is viewed as a client, and he has all the rights and guarantees of the consumer in general.

In an effort to find a minimum common denominator among the countries of which it is part, the European Union has advanced the concept of general interest service (SGEI), service of general economic interest (SGEI) and universal service (SU), which allow us to achieve the same ends but without the ideological load inherent in the concept of public service (Anjos, 2015). Provision of education is part of the concept of a service of general interest (SGEI) and benefits from the guarantees which, in strict rigor, are identical to those which the general theory of public service, traditional in the countries of the Romanesque matrix, defends.

Found this common denominator, the approximation of laws in this matter, becomes possible and its evolution much more fluid, overcoming some borders that the national rights resisted in maintaining.

7.4 The provision of teaching as a service of general interest

The concept of the service of general interest has broad scope. It involves services of a social, cultural and intellectual nature, as well as services of a highly economic and commercial nature (Simões & Almeida). In any case, some as well as others, are presented as essential for the realization of the project of individual and collective life of the European citizens.

A service of general interest (GIS) is an activity of a social, cultural or economic nature (commercial or industrial) whose generality of citizens uses and recognizes for itself as a true necessity for the realization of its life in society (Anjos, 2015). In other words, the essence of these GIS lies in the public interest mission, beyond the individual need they carry out.

Services of general economic interest (SGEI) are enshrined in Article 106 of the Treaty on European Union (TFEU), which subject to the principle of competition, irrespective of the public or private nature of the entities or undertakings providing them.

It should be noted that in the light of the TFEU these services are subject to the same rules of competition law as all other companies, whatever the activity developed. Only exceptionally (Article 106 (2) TFEU) may be granted exclusive rights, to avoid exposure to free competition, where the performance of the public interest task assigned to it can be prejudiced. It follows that the application of the rules of competition law, commercial law or consumer law to services of general interest is the rule. Since the provision of education is a service of general interest, it is subject to this rule to that extent, and therefore there is no impediment to the application of the laws protecting the consumer to students as recipients of the service (Frota, 2006).

Finally, it is clear from EU secondary law that such services of general interest benefit, for the social utility of citizens (Laguna de Paz, 2009), from a set of obligations imposed on service providers, namely: equitable provision, high quality of goods and services provided, in conditions of accessibility, continuity and equality to all citizens, with effective guarantees of their rights as citizens of these services.

The following rights are highlighted:

- a) The right of access to services: under conditions of equality and universality;
- (b) the right to an affordable price: price is a key element in ensuring accessibility to services, and SGEIs do not have to be free of charge given their economic nature, but they must be made accessible, particularly the least economically and geographically disadvantaged;
- c) the right to a quality service and the regular maintenance of benefits: it is a question of guaranteeing access to services in conditions of continuity and quality that are acceptable, in conditions that are attractive to the citizen and can serve him well, individually, and to society as a whole;
- d) The right to participate in its management, promoting the improvement of all aspects of lesser satisfaction for the citizen users.
- e) The right of access to procedural mechanisms to defend their rights: the perspective of the citizen as an individual user, imposes the need for legal protection with respect to their individual provision, in terms of guarantee mechanisms for complaints, appeals and appeals decisions eventually unfavorable or non-compliance or defective performance of the contractual obligations involved.

We can say that all the rights listed, in a succinct way, constitute the general framework of rights and guarantees of citizens who use GIS, perfectly aligned with the fundamentals underlying consumer protection.

8. Student guidelines on the notion of consumer

8.1. Status

The problem in analysis is mainly based on the legal relationship which is established between the student and the educational institution that admitted it. As we have seen, the characterization of this legal relationship emerges from the constitutional framework and it is possible from this normative

Mimoso, M.J., Anjos, M.R.& Miranda, C. (2018). Students in higher education as consumers of services provided by the University. *New Trends and Issues Proceedings on Humanities and Social Sciences*. [Online]. 00, pp 00-00. Available from: www.prosoc.eu

complex to assess the profile of higher education. We have verified that the legal texts regulating Higher Education, Public and Private, do not discipline the legal relationship established between the student and the institution, especially when concerning the requirements of teaching quality, procedural information, program content, etc. (Oliveira, 2010)

The service provision agreement that binds the parties does not have, therefore, legal configuration in specific place. Faced with this gap, we should consider the possibility of applying the Consumer Defense Law.

In some foreign doctrine, especially emerging legal systems in Latin America, we are faced with the handling of consumer status, as an instrument capable of protecting the beneficiary / user of higher education - the student. (Arboledo, 2016), (Goron, 2012). We know that in general all consumer laws regulate consumer relations that are established between a professional and a consumer. The last in the position of final purchaser of goods and services.

According to consumer law in force in Portugal, article 2, "A consumer is anyone who has been supplied by a person who professionally exercises an economic activity for profit, with goods, services, or rights destined for non-professional use. This Law applies to all goods, services and rights supplied and transmitted by members of Public Administration, by Public corporations, public capital companies or mostly owned by the State, the Autonomous Regions or local authorities or by concessionary companies providing public services".

It seems clear to us the integration of the student / higher education institution relationship within the scope of this legal text. The student personifies the weaker party, behaving as the recipient of a service that he uses for his own, unprofessional need. Opposes, as counterpart, the Institution of Higher Education in the dress of "professional entity" in the service it provides. This entity should recruit faculty, who must meet criteria established in the Statutes of the teaching staff career, who must have scientific and technical knowledge to speed the transmission of knowledge and enable the student to acquire skills.

Article 70 of the CPR states that "Consumers have a right to the quality of goods and services, to protection of physical health and safety, to access of consumption information, to receive consumption training and education, to the protection of economic interests and to the prevention and repair of property damage or any other type of damage". Articulating this precept with another, article 76 of the CPR, on the university and access to higher education, we will say that education is seen as a fundamental right and, as such, a structuring basis for the complete formation of the individual. It will then be up to the state to promote scientific creation and research, technological innovation, enhancement of competitiveness and networking between scientific institutions and enterprises. In this ideological political context, education plays a social function, assuming itself as a public service, although it can be provided by public and private institutions, the law recognizing the latter as public utility according to certain assumptions. On the other hand, we know that it is the state's responsibility to protect the family by cooperating with parents in the education of their children, Article 67 (2) (c) CPR.

As a result, the state will also become a driving force for the creation of higher education institutions that will be able to contribute to the knowledge, development and well-being of its population. This dynamic will enhance the existence of entities focused on the transmission of knowledge.

8.3 Students rights in consumer protection law

Mimoso, M.J., Anjos, M.R.& Miranda, C. (2018). Students in higher education as consumers of services provided by the University. *New Trends and Issues Proceedings on Humanities and Social Sciences*. [Online]. 00, pp 00-00. Available from: www.prosoc.eu

Article 3 of the Portuguese Consumer Protection Law establishes the rights of the consumer, and we must highlight the right to quality of goods and services, information, protection of economic interests, prevention and injunctive relief and reparation of damages, in virtue of its importance in the relationship between student and institution of higher education.

Right to quality of goods and services

The law states that services intended for consumption must can satisfy the purposes for which they are intended and of producing the effects attributed to them in accordance with the rules laid down by law or, failing that, in a manner appropriate to the legitimate expectations of the consumer. Regarding education and higher education, the state in certifying higher education institutions and the cycles they offer acknowledges that they meet their quality requirements regarding the service they intend to offer. This control and supervision by the state presupposes the quality of the educational services in question. In this regard, note the role played by the Agency for Assessment and Accreditation of Higher Education (A3ES). "The mission of the A3ES is to guarantee the quality of higher education in Portugal through the evaluation and accreditation of higher education institutions and their study cycles, as well as in the performance of the functions inherent to Portugal's inclusion in the European system of guaranteeing quality of higher education ". (Site A3ES)

It should be born in mind that the provider of educational services is responsible for an obligation of means and not of result. However, this does not detract from its obligation to provide quality services. This is certainly more important because of the accreditation of the institutions and their courses by the A3ES (Arboleda, 2016). All this assumes that the student fulfills his academic, disciplinary and financial obligations, which reinforces that obligation of means.

Right to information

It imposes on higher education institutions the obligation to provide adequate information, appropriately documented, demonstrating the characteristics and particularities of the services they offer. Activity that requires some personalization at the moment when the student requests information about the course or training that intends to attend. Only in this way will the student be able to form a clear and informed judgment about the options available and decide where to go.

The service provider must, in accordance with the law, inform both the consumer (student) in a clear, objective and appropriate manner, both at the negotiation stage and at the stage of concluding a contract.

Let us not forget that, usually, higher education establishments report through the mass media and, as such, provide generic, appealing but not informative information about the details of functioning and access conditions, among other required specifications.

Right to the protection of economic interests

The law also prescribes that the consumer has the right to the protection of his economic interests, imposing in the juridical relations the material equality of the actors, loyalty and good faith, in the preliminaries, in the formation and still in force of the contracts.

The service provider is required to not omit information and, when elaborating the documents, especially regarding the student's enrollment and information about the course in question, he is obliged to use a clear and precise wording of the rights and duties of the students. Remarkably, at the time of the conclusion of the contract for educational services, which occurs at the time of enrollment, information about the rights and duties of students is not provided and referred to the regulations of the institution concerned. However, they do not mention the rights of students. Exempt the rights to timely publication of notes, deadlines, and proof review. Rules are usually contained in the pedagogical regulations of their study cycles.

Consequently, the protection of the student as to his or her rights, the right to quality and information emerge from the status of the consumer.

Right to prevention, inhibitory action and repair of damage

The right of injunction is guaranteed to prevent, correct or terminate practices detrimental to the rights of the consumer enshrined in the law. The repair systems are thus enshrined in the law, and the student can use them in case of harmful behavior on the part of the higher education institutions, forcing them to repair the damages occurred.

Conclusions

The State guarantees to all, and in equal circumstances, education, taking in account each and everyone's rights, and, simultaneously, the collective interests, being guided by the set of values and principles it defines. We agree that "one of the purposes of education is to contribute to equal opportunities and to overcome the economic, social and cultural disparities" (Canotilho and Moreira, 2007).

In any case we can tell by the Constitutional text that there is a big difference between the states responsibilities towards elementary school and high school on one hand, and towards higher education on the other. Regarding this last one, it should be noted that the CPR, merely imposes, according to article 76 that the regime governing access to university and other higher education institutions "shall guarantee equal opportunities in the democratization of the education system and must have due regard to the countries needs for qualified staff and to raising it's educational, cultural and scientific level".

There is no doubt that the provision of teaching services, even when provided by public institutions, is an onerous performance for the student user / consumer who pays the respective tuition, and for society in general that finances the remaining part with their taxes.

In conclusion, the legal relationship of educational provision has a signatory nature, generates rights and obligations, and its addressee lacks similar protection to that which is recognized to the consumer in general.

The nature of the signal that motivates the collection of the respective fee / tip, justifies the use of consumer protection when necessary.

From the contribution of EU law, it emerges that the provision of education is characterized as a service of general interest.

It follows that the application of the rules of competition law, commercial law or consumer law to services of general interest is the rule. Since the provision of education is a service of general interest,

Mimoso, M.J., Anjos, M.R. & Miranda, C. (2018). Students in higher education as consumers of services provided by the University. *New Trends and Issues Proceedings on Humanities and Social Sciences*. [Online]. 00, pp 00-00. Available from: www.prosoc.eu

it is subject to this rule to that extent, and therefore there is no impediment to the application of the laws protecting the consumer to students as recipients of the service.

Finally, it is clear from EU secondary law that such services of general interest benefit, for the social utility of citizens, from a set of obligations imposed on service providers, namely: equitable provision, high quality of goods and services provided, in conditions of accessibility, continuity and equality to all citizens, with effective guarantees of their rights as citizens of these services.

We can say that all the rights listed, in a succinct way, constitute the general framework of rights and guarantees of citizens who use GIS, perfectly aligned with the fundamentals underlying consumer protection.

Since legal texts regulating Higher Education, Public and Private, do not discipline the legal relationship established between the student and the institution, we should consider the possibility of applying the Consumer Defense Law. As is known, all consumer laws in general, regulate relations established between a professional and a consumer. This last one usually being the acquirer of goods and services.

The student is considered to be the weakest party, being the recipient of a certain service that he uses for his own and not professional needs.

Article 3 of the Portuguese Consumer Defense Law, establishes the consumers rights, being of utmost importance the reference to the right to the quality of goods and services, to consumption information, to prevention and repair of damage, due to the importance it has in the relationship between the student and the higher education institution.

In essence, the rights of the students that emerge from the service contract that he signed with the educational institution are compiled by the norms regulating the status of the consumer.

References

Amorim, J.P. (2014) *Direito Administrativo da Economia*. Vol. I (Introdução e Constituição Económica) Almedina, Coimbra.

Anjos, M. R. (2015) *Serviços De Interesse Económico Geral, Concorrência e Garantias dos Cidadãos Usuários – Um Estudo à Luz do Direito Comunitário*, PUBLISMAI, Maia.

Arboledo, A.E. (2016). Relations between the educational service and consumer statute. *Revista CES Derecho*, volume 7, número 1, páginas 51-64. Retrieved from <http://www.scielo.org.co/pdf/cesd/v7n1/v7n1a06.pdf>

Canotilho, G. e Moreira, V. (2007). *Constituição da República Portuguesa Anotada*, Vol. I e II. Coimbra: Coimbra Editora.

Frota, M. (2006) *Serviços de interesse geral e o princípio fundamental da protecção dos interesses económicos dos consumidores*, in *Revista Portuguesa de Direito do Consumo (RPDC)*, nº 46, pág. 114 e ss.

Gil, J. (2007). *Portugal, Hoje - O Medo de Existir*. Lisboa: Relógio D'Água Editores.

Goron, L.G. (2012). *Serviços educacionais e direito do consumidor*. *Direito & Justiça*, volume 38, páginas 192-199. Retrieved from <https://pt.scribd.com/document/369012168/Servicos-Educacionais-e-Direito-Do-Consumidor>.

Laguna de Paz, J.C. (2009) *Servicios de Interés Económico General*. Thomson Reuters, Editorial Aranzadi, SA, Pamplona.

Mimoso, M.J., Anjos, M.R.& Miranda, C. (2018). Students in higher education as consumers of services provided by the University. *New Trends and Issues Proceedings on Humanities and Social Sciences*. [Online]. 00, pp 00-00. Available from: www.prosoc.eu

Lopes, M.T. R. B. (2013) *A Relação Jurídica de Ensino Aprendizagem e o Estatuto do Estudante no Ensino Superior Público Português*, Universidade de Coimbra, in <https://estudogeral.sib.uc.pt>

Meilán Gil, J. L. (2006) *Progreso Tecnológico y Servicios Públicos*. Thomson. Civitas. Navarra

Oliveira, M. (2010). *O aluno no papel de cliente das instituições de ensino superior (IES)*, Master's thesis, Universidade Cândido Mendes. Retrieved from <https://slidex.tips/download/o-aluno-no-papel-de-cliente-das-instituioes-de-ensino-superior-ies>

Sen, A. (2010). *A Ideia de Justiça*. Coimbra: Almedina.

Simões, F.D. & Almeida, M. P (2012) *Lei dos Serviços Públicos Essenciais Anotada e Comentada*. Almedina, Coimbra