

The Intersection between Constitutional Law and Music Education: An Analysis of Legal Principles and Governmental Structure for the Promotion of Music Teaching

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Abstract

This essay analyzes the intersection between Constitutional Law and Music Education, highlighting the importance of ensuring the right to music education in Brazilian schools. It examines the role of the Executive, Legislative, and Judiciary powers in the formulation, implementation, and oversight of public policies aimed at music education. Through a comparative analysis of different constitutional systems, it identifies effective practices and challenges in promoting music teaching, considering aspects such as financing, teacher training, curricula, and infrastructure. The essay emphasizes the need for an interdisciplinary and intergovernmental approach to overcome obstacles in realizing this right, proposing guidelines to improve educational policies in the field of music. It concludes that music education should not be seen in isolation, but as an integral part of human, cultural, and social development, requiring a commitment to the principles of equity, quality, and democratic governance.

Keywords

Educational Public Policies, Democratic Governance, Fundamental Rights, Access to Education, Legal Principles

1. Introduction

The intersection between Constitutional Law and Music Education represents a fundamental field of study to understand how legal and governmental structures can promote access to music learning, considered essential for the integral development of the individual. This essay aims to explore this intersection, hig-

highlighting the importance of constitutional principles and the role of the Executive, Legislative, and Judiciary branches in the formulation, implementation, and oversight of public policies focused on music education. Through a comparative analysis of different constitutional systems, the essay seeks to identify effective practices and challenges faced in guaranteeing the right to music education, taking into account aspects such as funding, teacher training, curricula, and infrastructure.

Education, recognized as a fundamental right in various legal systems and international declarations, is essential for the full development of the human personality and the exercise of citizenship. In this context, music education emerges not only as a curricular component but as a right that must be guaranteed, promoting access to culture, art, and individual expression. This essay argues that the realization of this right necessarily involves the articulation between the branches of the State and the mobilization of civil society, in a joint effort to overcome the historical and structural obstacles that limit access to quality music education.

The challenges for implementing music education in schools are diverse and range from the lack of adequate infrastructure and financial resources to the need for specific training for music teachers. Moreover, constitutional disputes and the interpretation of laws can also represent barriers to the universalization and quality of music education. This essay proposes a reflection on how the Executive, Legislative, and Judiciary branches can act in a coordinated manner to overcome these challenges, ensuring compliance with the legal principles that underpin music education as a right.

The comparative analysis of national and international experiences reveals that, despite the challenges, there are good practices that can be adopted to promote music education. Such practices include specific funding policies, continuing education programs for teachers, development of inclusive curricula adapted to the local reality, and the construction of adequate infrastructure. Therefore, the importance of learning from these experiences, adapting them to the Brazilian context, and proposing a set of guidelines for the improvement of music education policies in the country is highlighted.

The realization of the right to music learning requires the commitment and coordinated action of the branches of the State, in dialogue with civil society. This essay concludes that only through democratic governance, which values social participation in the formulation, implementation, and evaluation of educational policies, will it be possible to guarantee all citizens access to comprehensive and meaningful music education. Such an approach will not only contribute to the personal and cultural development of individuals but also to the construction of a more just, equitable, and culturally diverse society.

2. Constitutional Right to Education and Its Application to Music Education

The constitutional right to education is a fundamental principle enshrined in

many constitutions around the world. Education is recognized as a basic human right and an essential instrument for individual and social development (UNESCO, 2020). In the context of music education, the application of this right assumes particular relevance, given the role of music in cultural formation, cognitive development, and artistic expression of individuals (Winner et al., 2013).

The realization of the constitutional right to music education requires the coordinated action of the three branches of the State: Executive, Legislative, and Judiciary. It is up to the Legislative branch to draft laws that guarantee the inclusion of music education in school curricula and establish parameters for its provision (Sobreira, 2008). The Executive branch, in turn, is responsible for formulating and implementing public policies that enable the teaching of music in schools, through the allocation of resources, teacher training, and the creation of adequate infrastructure (Penna, 2004).

The Judiciary plays a crucial role in overseeing and controlling the realization of the right to music learning. It is up to the courts to interpret constitutional norms and ensure that public policies are aligned with the principles of equity and educational quality (Ranieri, 2009). Furthermore, the Judiciary can be called upon to ensure compliance with state obligations related to the provision of music education, especially in cases of omission or inadequacy of implemented policies (Cury, 2002).

A comparative analysis of different constitutional systems reveals that the express provision of the right to music learning is a growing trend, although it is not yet a universal reality. Countries such as Brazil, Finland, and South Korea have made progress in incorporating music education into their legal systems, recognizing its importance for the integral formation of citizens (Fonterrada, 2008; Choi, 2007). However, the realization of this right still faces challenges, such as the scarcity of financial resources, the lack of specialized teachers, and the need to adapt curricula.

To improve educational policies in the area of music, in light of constitutional principles and democratic governance, a set of guidelines and recommendations is proposed. Firstly, it is essential that music be recognized as a mandatory curricular component, with adequate workload and specific content (Penna, 2001). In addition, it is necessary to invest in the initial and continuing education of music teachers, ensuring their qualification and professional valorization (Figueiredo, Soares, & Schambeck, 2014).

Another crucial aspect is the allocation of sufficient financial resources for the implementation of public policies aimed at music education, including the construction and maintenance of adequate spaces, the acquisition of instruments and teaching materials, and the promotion of innovative projects and initiatives. It is essential to promote the participation of civil society in the formulation, execution, and inspection of educational policies, strengthening the mechanisms of social control and democratic governance (Cury, 2010).

The realization of the constitutional right to music education requires a joint

effort by the branches of the State, aligned with the principles of equity, quality, and democratic participation. Only then will it be possible to ensure that all citizens have access to comprehensive and meaningful music education, capable of contributing to their personal development and the construction of a more just and culturally diverse society.

3. Legal Principles That Underpin the Promotion of Music Education

The legal principles that underpin the promotion of music education are rooted in various normative instruments, both at the national and international levels. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, establishes in its Article 26 that everyone has the right to education, aiming at the full development of the human personality (United Nations, 1948). This fundamental principle is reinforced by the International Covenant on Economic, Social and Cultural Rights, which recognizes the right of everyone to education and participation in cultural life (United Nations, 1966).

In the Brazilian context, the Federal Constitution of 1988 enshrines education as a fundamental social right, stating in its Article 205 that education aims at the full development of the individual and their preparation for the exercise of citizenship. Furthermore, Article 206 establishes guiding principles for education, such as equal conditions for access to and permanence in school and the guarantee of quality standards. These constitutional provisions provide the legal basis for the promotion of music education as an integral part of the formation of individuals (Brazil, 1988).

The National Education Guidelines and Framework Law No. 9,394 of December 20, 1996 reinforces the role of education in the full development of the student and provides for the mandatory teaching of art, especially in its regional expressions, as a curricular component of basic education. This legal provision paves the way for the inclusion of music in school curricula, recognizing its importance for the cultural and artistic formation of students (Brazil, 1996).

In addition to Law No. 9,394/1996, other legal instruments have contributed to the promotion of music education in Brazil. Law No. 11,769/2008 amended Law No. 9,394 to provide for the mandatory teaching of music in Basic Education (Brazil, 2008). Although later modified by Law No. 13,278/2016, which expanded the mandatory teaching of art to other artistic languages, Law No. 11,769/2008 represented an important milestone in recognizing music as an essential curricular component (Brazil, 2016).

More recently, the Common National Curriculum Base (BNCC), approved in 2017, defined the essential learning to be developed by students throughout basic education. The BNCC includes music as one of the thematic units of the Art curricular component, highlighting its relevance for the development of creative expression, aesthetic sensitivity, and critical reflection (Brazil, 2018).

These legal principles, anchored in international and national regulations, demonstrate the recognition of music learning as a fundamental right and an essential dimension of the integral formation of individuals. It is up to public authorities, in articulation with civil society, to promote policies and actions that guarantee the realization of this right, expanding access to and quality of music education in Brazilian schools.

4. The Role of the Executive, Legislative, and Judiciary Branches in Realizing the Right to Music Education

The realization of the right to music learning requires the coordinated and complementary action of the three branches of the State: Executive, Legislative, and Judiciary. Each of these branches plays a specific role in the formulation, implementation, and oversight of public policies aimed at promoting the teaching of music in schools.

The Legislative branch has the primary function of drafting laws that ensure the inclusion of Music as a mandatory curricular component in Basic Education. It is up to legislators to establish legal guidelines and parameters that guide the provision of music education, ensuring its quality and equity (Brazil, 1988, 1996). Furthermore, the Legislative branch is responsible for approving the public budget, allocating adequate financial resources for the implementation of educational policies in the area of Music (Pinto, 2018).

The Executive branch, in turn, is tasked with formulating and executing public policies that realize the right to music education. This involves the creation of specific programs and actions, such as the development of curricula that include music, the training and qualification of specialized teachers, the construction and maintenance of adequate infrastructure in schools, and the acquisition of instruments and teaching materials (Brazil, 1988). The Ministry of Education and the Secretariats of Education of the states and municipalities are the main bodies of the Executive branch responsible for these actions.

Finally, the Judiciary branch has the role of ensuring the effectiveness of the right to music education, acting as the guardian of the Constitution and laws. It is up to the Judiciary to oversee compliance with educational norms by the other branches, ensuring that public policies are aligned with constitutional and legal principles. In case of omission or violation of the right to music education, the Judiciary can be called upon to determine the implementation of corrective measures and the accountability of public agents (Silveira, 2006).

In addition to acting independently, the three branches must work in synergy and constant dialogue for the realization of the right to music education. The Legislative branch establishes the legal framework, the Executive branch implements public policies, and the Judiciary branch oversees and ensures compliance with the norms (Ranieri, 2009). This articulation between the branches is essential to overcome the challenges and obstacles that hinder the universalization and quality of music education in Brazilian schools.

In this sense, it is essential that public authorities be attentive to the demands and contributions of civil society, especially music education professionals, students, and their families. Social participation in the formulation, implementation, and evaluation of educational policies is a principle of democratic governance and a factor of legitimacy and effectiveness of state actions (Gohn, 2019).

The realization of the right to music education requires the commitment and coordinated action of the Executive, Legislative, and Judiciary branches, in dialogue with civil society. Only then will it be possible to overcome the historical and structural challenges that still hinder universal and quality access to music education in Brazilian schools, ensuring the realization of this fundamental right for all children and youth in the country.

5. Comparative Analysis of Different Constitutional Systems and Public Policies for Music Education

A comparative analysis of different constitutional systems and public policies for music education reveals a diversity of approaches and experiences in realizing the right to music education. Although most countries recognize the importance of music education for the integral formation of individuals, constitutional arrangements and public policies vary significantly among nations.

In the European context, Germany stands out for its long tradition of valuing music education. The Basic Law of Germany (Grundgesetz) guarantees artistic and scientific freedom, providing a constitutional basis for the promotion of music education (Alemanha, 2022). In addition, the country's federative structure gives the states, called *Länder*¹, responsibility for education, resulting in a diversity of policies and programs for music education (Jank, 2021). This decentralization allows for greater adaptation to local realities but also creates challenges for coordination and equity among states.

Finland, internationally recognized for the excellence of its educational system, has music education as a mandatory curricular component from the early years of Basic Education (Vahtivuori-Hänninen et al., 2014). The Finnish Constitution ensures the right to free basic education and guarantees the autonomy of educational institutions (Finlândia, 1999). Public policies for music education in Finland are characterized by a strong investment in the training of specialized teachers, school infrastructure, and the valorization of students' creativity and artistic expression (Korpela et al., 2010).

In Asia, Japan has a centralized approach to music education, with a national curriculum that includes Music as a compulsory subject (Ogawa, 2004). The Japanese Constitution guarantees the right to education and establishes the State's responsibility to promote the integral development of personality (Japan, 1947). Public policies for music education in Japan emphasize the preservation

¹"Länder" is the German term that refers to the federated states of Germany. The Federal Republic of Germany is a federation currently composed of 16 *Länder* (singular: Land). Each Land has its own constitution, government, parliament, and legislative competencies in specific areas, such as education, police, and cultural affairs, allowing them considerable political and administrative autonomy.

of traditional cultural heritage while incorporating influences from Western music. There is a strong investment in didactic and technological resources for teaching music in schools (Ogawa, 2004).

In Latin America, Brazil presents a constitutional framework that recognizes education as a fundamental social right and provides for the mandatory teaching of art in basic education (Brazil, 1988). However, the realization of the right to music education faces challenges, such as the lack of specialized teachers, inadequate school infrastructure, and the discontinuity of public policies. Initiatives such as Law No. 11,769/2008, which provided for the mandatory teaching of music in basic education, represented advances, but their implementation has been marked by difficulties and resistance.

These examples illustrate the diversity of constitutional arrangements and public policies for music education around the world. While some countries adopt more centralized and prescriptive approaches, others favor decentralization and local autonomy. There are also differences in curricular focuses, teacher training, and investments in infrastructure and didactic resources.

Despite this diversity, some common challenges can be identified, such as the need to value music education in the political agenda, ensure adequate funding, train qualified teachers, and promote equity in access to music education. Overcoming these challenges requires the commitment of public authorities, the mobilization of civil society, and the construction of long-term intersectoral public policies.

In this sense, the comparative analysis of different national experiences can contribute to the identification of good practices and the exchange of knowledge and innovative solutions. From this analysis, it is possible to extract guidelines and recommendations for the improvement of music education policies, taking into account constitutional principles and the specificities of each context.

6. Challenges and Constitutional Disputes Related to the Implementation of Music Education

The implementation of music education as a fundamental right faces several challenges and constitutional disputes. Although most modern constitutions recognize education as a social right, the realization of this right, especially regarding music education, encounters political, economic, and cultural obstacles.

One of the main challenges is the dispute over public resources and the prioritization of music education in educational policies. In a context of budgetary limitations and competition between different areas and social demands, the allocation of resources for music education is often relegated to a secondary level (Pinto, 2018). This dispute is reflected in the legislative debates surrounding the approval of laws that guarantee the mandatory nature and adequate funding of music education.

Another challenge is overcoming cultural and ideological resistance that still persists in relation to music education. Despite the growing recognition of the

importance of music for the integral formation of individuals, there are still sectors of society that consider music education a luxury or a secondary activity (Sobreira, 2008). These conceptions are reflected in the disputes over school curricula and the workload allocated to music in schools (Penna, 2018).

The training and valorization of music teachers also constitute a central challenge for the realization of the right to music education. The lack of specialized teachers, low salaries, and precarious working conditions make it difficult to attract and retain qualified professionals in the area. This situation generates disputes over teacher training policies and professional valorization, as well as debates about the need for specific public examinations for music teachers.

Moreover, the realization of the right to music education faces challenges related to the infrastructure and material resources necessary for teaching music. The lack of adequate spaces, musical instruments, teaching materials, and technological resources in schools compromises the quality and equity of music education (Santos, 2005). This situation generates disputes over funding policies and the distribution of resources for music education.

Finally, the realization of the right to music education involves federative and competency disputes between the entities of the federation. In the case of Brazil, for example, the Federal Constitution establishes concurrent competence between the Union, States, and Municipalities to legislate on education (Brazil, 1988). This division of competencies creates challenges for coordination and cooperation between federative entities in the formulation and implementation of music education policies (Abrucio, 2010).

Given these challenges and constitutional disputes, the engagement and mobilization of civil society in defense of the right to music education become fundamental. The actions of professional associations, non-governmental organizations, social movements, and school communities are essential to pressure public authorities and demand the realization of this right. Furthermore, greater dialogue and articulation between the different actors involved in music education, such as universities, schools, education departments, and cultural institutions, are necessary.

In this sense, addressing the challenges and constitutional disputes related to the implementation of music education requires an intersectoral and systemic approach that involves not only public authorities but also civil society and the various actors in the educational and cultural fields. Only with a joint and coordinated effort will it be possible to overcome obstacles and ensure the realization of the right to music education for all citizens.

7. Guidelines and Recommendations for the Improvement of Educational Policies in the Field of Music, Based on Constitutional Principles and Democratic Governance

Based on constitutional principles and democratic governance, it is possible to establish a set of guidelines and recommendations for the improvement of edu-

cational policies in the field of music. These guidelines aim to ensure the realization of the right to music education, promote equity and quality of education, and strengthen society's participation in the formulation and implementation of these policies.

A fundamental guideline is the recognition of music education as a fundamental right and an essential component of basic education. In this sense, it is necessary for constitutions and educational laws to make the teaching of music in schools mandatory, ensuring its provision at all stages and modalities of basic education. This legal provision must be accompanied by adequate funding mechanisms and systems for monitoring and evaluating the quality of music education.

Another important guideline is the valorization and training of music teachers. It is essential that educational policies ensure the hiring of specialized teachers through public examinations and provide adequate working conditions, such as decent salaries, career plans, and continuing education. In addition, it is necessary to strengthen music teaching degrees and promote the articulation between higher education institutions and basic education networks, aiming at improving the initial and continuing training of teachers (Pereira, 2013).

The promotion of equity in access to music education should also be a central guideline of educational policies. This implies the adoption of measures that guarantee the provision of quality music education in all schools, regardless of their geographic location or the socioeconomic profile of students (Santos, 2005). To this end, it is necessary to establish minimum standards of infrastructure, equipment, and teaching materials for music education, as well as support and assistance programs for students in situations of social vulnerability (Penna, 2018).

Moreover, it is fundamental that educational policies in the field of music be guided by democratic governance and societal participation. This means creating spaces and mechanisms for dialogue and collaboration between the different actors involved in music education, such as teachers, students, families, school administrators, universities, civil society organizations, and cultural institutions. Social participation in the formulation, implementation, and evaluation of educational policies contributes to their legitimacy, effectiveness, and sustainability (Abrucio, 2010).

It is important that educational policies in the field of music are articulated with other public policies, such as cultural, social, and economic development policies. Music education cannot be seen in isolation, but rather as part of a broader project of citizen education, democratization of access to culture, and promotion of human and social development. In this sense, it is necessary to establish mechanisms for intersectoriality and cooperation between different government agencies and spheres (Penna, 2018).

The improvement of educational policies in the field of music requires a commitment to the constitutional principles of education as a fundamental

right, equity, and quality of education. It also requires the adoption of a democratic governance perspective that values societal participation and the intersectoriality of public policies. Only then will it be possible to guarantee the realization of the right to music education for all citizens, contributing to the integral formation of individuals and the social and cultural development of the country.

8. Conclusion

The detailed analysis of the intersection between Constitutional Law and Music Education, as explored in this essay, highlights the complexity and importance of guaranteeing the right to music education in schools. It has become evident that the realization of this fundamental right is not only a matter of legislation but also of effective implementation and oversight by the Executive, Legislative, and Judiciary powers. The collaboration between these powers, aligned with the principles of equity, quality, and democratic participation, is essential to overcome the historical and structural challenges that limit access to quality music education. This essay reinforces the need for an integrated and long-term approach that considers local specificities and promotes cultural inclusion and diversity.

The national and international experiences analyzed offer valuable insights into how effective public policies can be developed and implemented to promote music education. From these analyses, it becomes clear that adequate funding, qualified teacher training, adaptable curricula, and appropriate infrastructure are key elements for the success of these policies. Therefore, it is imperative that Brazil seeks to adapt these best practices to its context, overcoming existing barriers and exploring new opportunities to enrich music education in schools.

This essay also underlines the importance of social participation in the formulation, implementation, and evaluation of music education policies. The mobilization of civil society, including music education professionals, students, and their families, is fundamental to ensure that educational policies meet the real needs of the population and promote inclusive and quality music education. Democratic governance and social control mechanisms emerge, thus, as crucial aspects for the legitimacy and effectiveness of state actions in this area.

Given the above, it is evident that promoting music education in Brazilian schools is a complex task that requires joint and coordinated efforts. The guidelines and recommendations proposed in this essay aim to contribute to the improvement of public policies for music education, emphasizing the need for a holistic approach that encompasses legal, pedagogical, and cultural aspects. It is crucial that the Brazilian State recognizes music education not only as a curricular component but as an essential right for human and cultural development.

In conclusion, guaranteeing the right to music education is an indicative of the democratic maturity of a society and its ability to promote the integral development of its citizens. This essay shows that, despite the challenges, it is possible to advance in the realization of this right in Brazil through the implementation of effective public policies, the active participation of civil society, and the committed

action of the State powers. Thus, music education can finally occupy its rightful place in the Brazilian educational scenario, significantly contributing to the formation of more complete, creative, and culturally conscious individuals.

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Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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