THE STRUCTURAL PROCEDURE AND THE RIGHT TO EDUCATION IN MINORITY LANGUAGES: COMPARED ANALYSIS OF THE DOUCET-BOUDREAU V. NOVA SCOTIA (MINISTER OF EDUCATION) CASE IN CANADA AND THE HUNSRIK IN BRAZIL

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ABSTRACT: The present research intends to develop a certain understanding of the theme structural procedures regarding their objectivation, that is, the objective of using structural means to solve a certain situation arising in a concrete case. To this end, this study begins analyzing the structural procedures in Brazil and looks at the Canadian understanding of the same procedural path. In order to give a more practical focus, it analyzes the structural feature present in the case of Doucet-Boudreau v. Nova Scotia (Minister of Education) of the Supreme Court of Canada, which deals with the fundamental right to education in minority languages. It concludes with a comparison between French-language education in Canada and the project of teaching in Hunsrik in Brazil, and the understanding that the structural procedure route could be used for educational reform in both countries.

Keywords: structural procedure; fundamental right to education; minority languages; French; Hunsrik;

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RÉSUMÉ: La présente recherche vise à développer une compréhension de la thématique des processus structurels concernant leur objectivation, c'est-à-dire, le but d'utiliser la voie structurelle pour résoudre une situation donnée qui se présente dans le cas concret. Pour cela, l'étude part de cette analyse des processus structurels au Brésil et fait un panorama avec la compréhension canadienne sur la même voie procédurale. Afin de donner un ton plus pratique, il analyse le possible trait structurel présent dans l'affaire Doucet-Boudreau c. Nouvelle-Écosse (ministre de l'Éducation) de la Cour suprême du Canada qui traite du droit fondamental à l'éducation dans les langues minoritaires. Il conclut par la comparaison entre l'enseignement de la langue française sur le territoire canadien et le projet d'enseignement hunsriqueen sur le territoire brésilien et la compréhension que la voie du processus structurel pourrait être utilisée pour la réforme de l'éducation que les deux pays devront faire face.

MOTS CLÉS: processus structurel; droit fondamental à l'éducation; langues minoritaires; Langue française; Hunsrückisch.

INTRODUCTION

The comprehension of the structural procedure theme has increasingly taken more space in academia. The amount of works and papers published prove this affirmation to be true, and the more curious assumptions concerning this procedural path arise, the more debates are promoted/fostered on different objects that may be seen through the structural path.

In this paper, in a first moment, the intent is to justify the relevance of studying structural procedures in a manner to enable the visualization of what is possible to define as its objectivation.

In a second moment, the case Doucet-Boudreau v. Nova Scotia (Minister of Education) of the Canadian Supreme Court is approached, which refers to the right to education on minority languages. For this, the peculiarities of the case are observed and the manner in which the case reached the Supreme Court is highlighted, the goal being to analyze the reasoning of the case and to verify its eventual structural nature[1].

Finally, the present study makes a new comparative analysis between the right to access education in minority languages in Canada and in Brazil. When considering that the case approached as a paradigm demands the existence of secondary teaching programs for children who speak French or Acadian as a first language in the Nova Scotia region, an overview is made with the current scenario of Hunsrik teaching in

[1] Structural Nature has been an adequate expression to design the existence of litigation or structural problem, and it is found in Court decisions, specifically in the Supreme Court in ADO 60 concerning climate litigation or Climate Fund. It is cosigned in the decision made by Justice Luís Roberto Barroso: "The picture depicted in the initial petition, if confirmed, reveals the existence of a unconstitutional state of things concerning environmental issues, demanding actions of structural nature. To reiterate: environmental protection does not imply in a political option, but rather in a constitutional duty." In Direct Action of Unconstitutionality by Omission. Rapporteur Justice Luís Roberto Barroso.

regions of the Rio Grande do Sul, Santa Catarina and Espírito Santo states on Brazilian soil, which also characterizes Hunsrik as a minority language in a country where the predominant language is Brazilian Portuguese.

STRUCTURAL PROCEDURE: STRUCTURAL CLAIMS AND THEIR OBJECTIVATION

To conceptualize structural procedures is a rather challenging and intriguing exercise. At the same time as this procedural path breaks the barriers of linearity and bilaterality of the traditional process (CÔRTES, 2019), also different scholars seek, in several countries, to grasp its limitations and scopes[2].

Due to the complexity (ARENHART; OSNA, 2022, p. 280) that the structural procedure encompasses and the necessary care that must be taken when facing this theme (MARÇAL, 2022), it is necessary to highlight that in the present study it was chosen a very specific scenario, aiming to understand, beyond a brief conceptualization, only the objectivation of the structural procedure.

In other terms, on this first item, it was sought to elucidate the goal of using structural procedure when intending to achieve a better understanding of certain given rights depending on the logic of each concrete case unfolded by the structural path.

When looking upon the Brazilian Judiciary activity on recent years, it is possible to notice a change in a certain way in the jurisdictional activity being studied, through behavioral science[3].

The jurisdictional activity in a society constantly changing and not being satisfied with the Law being the primary source of rights[4] – often outdated when compared to the social and cultural changes (CHASE, 2005, p. 125-126) – is now identified with an inherent characteristic of creativity (MUNHOZ, 2020). Therefore, it can be considered that Judiciary enacting is a creative activity of magistrates that, beyond the letter of the Law, need to verify procedural paths and more suitable proceedings to resolve latent litigation, as it is also necessary to be alert to verify the case as a whole (OSNA; MAZZOLA, 2022) – not just the case in question, but also the possible reflexes that may arise from that decision.

When considering structuring claims, the reflexes go beyond Judiciary consequences, and seek to solve the problem presented in the form of prevention, aiming to assure it will not happen again[5].

This reoccurrence prevention is already identified in the doctrine, as indicated by its own name, in the reform, therefore, structural (JOBIM, 2022, p. 214-216) of a given organization or institution that is not acting according to the wishes and longings of that society (GAIO JR., 2021), in a way that through structural procedure, attempts to

[2] An example is the fact that, limiting to the Global South, it is already possible to develop a compilation with specialized papers that discuss how this theme is faced on different countries, CASIMIRO; CUNHA, 2022.

[3] Such examples can be found in: ABREU, 2020.; AGUIAR, 2014.; AGUIAR; CHINELATO, 2014.

[4] In this sense: JOBIM; OLIVEIRA, 2022.

[5] For in-depth understanding, it is recommended: VITORELLI, 2021.; VITORELLI, 2018.

accomplish fundamental rights, to realize public policies or even to implement complex litigations resolution that concern multiple and various social interests.

In other terms, it is possible to affirm that when identifying a state of nonconformity (DIDIER JR.; ZANETI JR., 2020), it is necessary to have a suitable procedural path for this state to be restructured so it may again benefit or at least no longer harm (RAWLS, 1999, p. 23) the society being affected by it. With another vision, it is possible to state that the structural path proposes to be an able mechanism to overcome this possible unconstitutional state of things[6], in which restructuring is essential (OSNA, 2020) when facing a situation of breach and non-observance of constitutionally guaranteed values (JOBIM, 2022, P. 93-97).

This way, it is understood that structural proceedings/processes do not infer a linear resolution of litigations (PEREIRA; GÓES, 2022), for it has broader objectives and affects than *inter partes* (OSNA, 2020). Appreciating the democratic legitimacy and assurance of fundamental rights, the Judiciary fills the role of acting in cases and in conflicts resolution in an active and affirmative manner (MUNHOZ, 2020).

It must be comprehended, however, that the structural procedure does not possess a closed concept in which some boxes are checked and then affirm that the process is indeed structural (ARENHART; OSNA, 2022, p. 280), where the initial identification is recommendable for its development, which is mirrored by the first recommendation on the structural theme done by the FPPC. The unstopping search for conceptualizing cannot be limiting, that is, it cannot inhibit the creative activity aforementioned of the judicial practice, as well as the concept cannot be limited, meaning that it is not a matter of verifying the restrictive situations that must be present in the cases[7].

Considering all the content prior mentioned, the next item displays a more practical analysis. To understand the objective of a potential solution of the social problem through the structural procedure path.

For that, it was selected a Canadian Supreme Court case about the fundamental right to education in minority languages[8].

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[6] For more in-depth information about the Unconstitutional State of Things, it is recommended: OSNA, 2020.; CAMPOS, 2022.; VAN DER BROOCKE, 2021.

[7] In this sense: "In our understanding, however, it is necessary to establish an important goal: as much as different notions connected to these concepts may be outlined, they should not limit the jurisdictional creativity usage that gives this matter relevance; in other terms, the conceptualizing may not inhibit the moderate practicality that is essential to this field. To elucidate this aspect, it was sought to demonstrate that, by "structural" our doctrine has sought to design circumstances on which the judge acts creatively to compositions that differ from the all of nothing approach; of providing or not providing. With special importance, it was mentioned that, in this kind of hypothesis, the segmentation between the recognition of a right and the enforcement for its protection is a striking feature: even if endorsed by the Judiciary the first vector, it may refrain from attempting to impose an autonomous and vertical command for its guardianship." Acc. to OSNA, 2020.

[8] "The quantitative definition of a minority language more directly would be: a language spoken by less than 50% of the population of a given region, a state or country (GRENOBLE; ROTH SINGERMAN, 2016). The authors present the definition from the European Charter of regional or minority languages (CONSELHO DA EUROPA, 2000), according to which these languages would be spoken by a number inferior than the number of inhabitants of a given State and would not always hold the *status* of an official language in the country. Altenhofen (2013, p.94) defines minority language as a counterpoint of all that is majority, "general" and "common" and apart of a majority language. However, the aforementioned authors emphasize that the definition is quite troublesome, because the *status* is both dynamic and variable." Acc. to LIMBERGER, 2018, p. 38.

COMMENTS ON THE DOUCET-BOUDREAU V. NOVA SCOTIA (MINISTER OF EDUCATION) CASE: RIGHT TO EDUCATION IN MINORITY LANGUAGES

The Doucet-Boudreau v. Nova Scotia (Minister of Education) case (CANADA, 2003) began with the dissatisfaction from parents of children in schooling age in the province of Nova Scotia, Canada, when facing the impossibility of their children to have access to education in minority languages in their schools, that is, French, in the territory in question.

Nova Scotia corresponds to the geographic sector of the Eastern Canadian Maritime Provinces, bordered by the Atlantic Ocean. Historically, the region suffered from the government inertia when refraining from providing the means for children to be educated in secondary school instruction – in addition to existing programs for primary school – in the minority language, an incentive granted in the Canadian Charter of Rights since 1982, added by section 23, which provides in its content (CANADA, 2021):

> Minority Language Educational Rights
>
> Language of instruction
>
> 23 (1) Citizens of Canada
>
> (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
> (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.
>
> Continuity of language instruction
>
> (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.
>
> Application where numbers warrant
>
> (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction

> in the language of the English or French linguistic minority population of a province
>
> (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
>
> (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Section 23 upholds, as noted, the right to freedom of education for French speakers in their own language, and Nova Scotia is a region encompassed by this constitutional provision. On this basis, countless families filed a request for new buildings and programs to be developed in the area so that their sons and daughters could have access to education in their native languages. The province government decided that arrangements should be made so this differentiated kind of teaching could be provided.

Considering once again, the inertia of compliance with this decision, in 1998 the linguistic community went to the Canadian Judiciary Power and reached the Supreme Court seeking to reiterate the request for the government to grant what was constitutionally predicted and in hopes that the Court could enforce the obligation already previously confirmed.

Although the parents expected that the case would not need to be heard in Ottawa, the state omission caused the need to demand a Court pronouncement. It was unknown then, however, that this decision would be the one which possibly had more disagreement between the nine members of the Court, occasioning a decision of five votes to four (ROULEAU; SHERMAN, 2009) and long debates on the Judiciary actions in cases such as the Doucet-Boudreau v. Nova Scotia (Minister of Education) case.

COURT REASONING ON THE DOUCET-BOUDREAU V. NOVA SCOTIA (MINISTER OF EDUCATION) CASE

The case was heard in Court in 1999, under the presidency of judge LeBlanc. The decision was that not only should Section 23 be enforced, but the delay in enforcing it constituted a real constitutional violation[9]. The French speakers were being weakened

[9] "Section 23 of the *Charter* is designed to correct past injustices not only by halting the progressive erosion of minority official language cultures across Canada, but also by actively promoting their flourishing. While the rights are granted to individuals, they apply only if the "numbers warrant." For every school year that governments do not meet their obligations under s. 23, there is an increased likelihood of assimilation which carries the risk that numbers might cease to "warrant". If delay is tolerated, governments could potentially avoid the duties imposed upon them by s. 23. The affirmative promise contained in s. 23 and the critical need for timely compliance will sometimes require courts to order affirmative remedies to guarantee that language rights are meaningfully, and therefore necessarily promptly, protected. Under s. 24(1) of the *Charter*, a superior court may craft any remedy that it considers appropriate and just in the circumstances. In doing so, it must exercise a discretion based on its careful perception of the nature of the right and of the infringement, the facts of the case, and the application of the relevant legal principles. The court must also be sensitive to its role as judicial arbiter and not fashion remedies which usurp the role of the other branches of governance. The boundaries of the courts' proper role will vary according to the right at issue and the context of each case." Acc. to CANADA, 1990.

by the English-speaking community in Nova Scotia, for the lack of access to education in minority languages not only influenced how the community communicates, but also hindered their own cultural development[10], causing difficulties in maintaining it throughout the years as new generations were disconnected from their linguistic origin[11].

The Court reasoning even demonstrates that the cultural issue provided by language is so important and dear to the Court that, the decision here announced as a paradigm quotes other moments when the Court pronounced itself on the subject, amongst which it is worth mentioning the understanding established in the *Mahe* case, when judge Dickson C. pronounced himself in this sense:

> "… any broad guarantee of language rights, especially in the context of education, cannot be separated from a concern for the culture associated with the language. Language is more than a mere means of communication; it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them."

Judge LeBlanc, in reliance on Section 24(1) of the Constitution, upheld the obligation of Section 23 and, thereafter, set the deadlines for the construction of buildings to initiate and for the new programs to take form, and also requested the government to report back to him as the plan and the requested reforms evolved. Judge LeBlanc considered these reports to be essential to assure that the provincial government and the French language council would comply with the decision content order (ROULEAU; SHERMAN, 2009).

Although it is no longer questioned the right in Nova Scotia to access the right provided in Section 23, the Nova Scotia Court of Appeal denied the possibility of requiring these reports requested by judge LeBlanc considering the principle that derives from *functus officio*, which grants the judge the right to decide, but from the decision to forward the judge loses authority.

The argument presented by the Court of Appeal was in a sense that, demanding the provincial government reported back to the judge as his decisions were being implemented, would disrupt the fluid autonomy of the branches, and disturb the relationship between the Canadian Judiciary and the Executive Branch, for a mandatory reporting would remove the principle of dialogue and mutual respect between the branches[12].

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[10] "The purpose of s. 23 of the *Charter i*s "to preserve and promote the two official languages of Canada, and their respective cultures, by ensuring that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population" (*Mahe v. Alberta*, [1990] 1 S.C.R. 342, at p. 362). Minority language education rights are the means by which the goals of linguistic and cultural preservation are achieved (see *Reference re Public Schools Act (Man.), s. 79(3), (4) and (7)*, [1993] 1 S.C.R. 839, at p. 849-50 ("*Schools Reference*")). This Court has, on a number of occasions, observed the close link between language and culture." Acc. CANADA, 2003.

[11] "Writing also has as means to disseminate speakers' culture, being able to provide an ethnic rescuing of the speakers, thus valuing their identity as speakers of a language that has history." Acc. VON MÜHLEN; KERSCH, 2021.

[12] "The Nova Scotia Court of Appeal held that the trial judge, having finally determined the parties' rights and granted a remedy, was functus officio and lacked authority to extend his jurisdiction to enforce compliance

However, there are claims that, in fact, these reports would cause the opposite effect of the argument used by the Court of Appeal. As opposing to a possible decision only imposing a given order, the flexibility suggested by judge LeBlanc would further foster the dialog between the Judiciary and the Executive and would guarantee a democratic process by enabling both powers to agree on the necessary measures to be taken by the Executive while implementing the judicial decision[13]. Such fact is evidenced in the judgements of the African Court in what has become known worldwide as meaningful engagement [14].

This was the majority positioning adopted by the Supreme Court. The majority vote expressed that in the circumstance of the Doucet-Boudreau case it was appropriated to implement this category of measure in which the plan of action of the Executive is detailed for the best realization of the claimed right.

This way, the majority vote encompassed five premises that the judges must have as basis when assessing the adequacy and fairness of a judicial measure for its proper reasoning, in a way that legitimizes the provision for implementing the decisions of Section 24 of the Constitution (CANADA, 2003).

Paul S. Rouleau and Linsey E. Sherman (2009) point them out as follows:

> 1. An appropriate and just remedy meaningfully vindicates the rights and freedoms of the claimants. **A remedy that is "smothered in procedural delays and difficulties" does not meaningfully vindicate the right**
> 2. An appropriate and just remedy must use means that are legitimate within the framework of a constitutional democracy. **The functions of each branch are not separated by a bright line in all cases**, although the court must not "depart unduly or unnecessarily" from its role as an adjudicator of disputes
> 3. An appropriate and just remedy is a judicial remedy, which vindicates the *Charter* right while invoking the powers and function of a court. The powers and function of a court may be partially inferred from the tasks with which a court is normally charged and for which procedures and precedent have been developed
> 4. An appropriate and just remedy is also fair to the party against whom it is made and "should not impose substantial hardships that are unrelated to securing the right."
> 5. **The judicial approach to a remedy under s. 24(1) should be flexible and responsive to the needs of any given case**, keeping in mind "that s. 24 is part of a constitutional scheme for the vindication of fundamental rights and freedoms enshrined in the *Charter*." (our emphasis)

with the remedy granted – The court's continuous post-trial intervention into the area of the administrative branch of government was unnecessary and unwarranted." Acc. CANADA, 2021.

[13] "In contrast to a detailed mandatory order enforceable through contempt proceedings, flexible orders like the one in *Doucet-Boudreau* ensure compliance with constitutional obligations while leaving detailed choices regarding implementation to the executive. Further, looking to the experiences in other common law jurisdictions, it may be argued that there is a relationship between the need for supervisory orders and the health of the democratic process and its institutions." Acc. ROULEAU; SHERMAN, 2009.

[14] Regarding these cases, we recommend: SERAFIM, 2021.

In this sense, requiring reports reflects an attempt to guarantee the very access to justice for parents who have waited for so many years for the implementation of a new school program to happen. In other terms, the Supreme Court held that in the decision made by Judge LeBlanc a more pragmatic approach was unfolded to obtain results faster, not to affront separation of powers[15], but rather an observance to the constitutional democracy itself[16].

From this summarized analysis of the Court's arguments, it is necessary to understand what is meant by the possible structural characteristic of the Doucet-Boudreau case considering that the decision is not enough in its content, but it is essential that several measures are structured and developed by the provincial government in conjunction with the French-speaking council of the Nova Scotia region, so that the decision content achieves the intended effectiveness many years before the case reaches the Supreme Court.

THE PROBABLE STRUCTURAL CHARACTERISTIC ON THE DOUCET-BOUDREAU V. NOVA SCOTIA (MINISTER OF EDUCATION) CASE: REFLEXES FROM THIS DECISION

From content analysis of the Doucet-Boudreau v. Nova Scotia (Minister of Education) case[17], it is possible to notice the seriousness and importance that Canadian Court treated the reasoning of its decision – just as it has been ruling for many years in the same direction, given the repeated state failure to enforce the constitutional provisioning of the right to education in minority languages still in 1982 (DANTAS, 2017).

It is essential to observe that it is not only a mere access to education, but rather an assurance of the right to freedom of education in minority languages. It is an attempt to aid future generations not to lose the cultural link with the past generations, so they can continue to understand customs, stories and different ways to see the world.

The right to freedom comes, in this sense, as a foundation that the parents who live in French-speaking areas of Canada and were educated in the language considered a minority language in those regions, also have the freedom to choose in having access to elementary and secondary education for their children in the language they consider to be their language of origin.

Thus, the structural characteristic of the case would be in this restructuring of the educational system facing the unconstitutional stated caused by the state omission in

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[15] Fostering a debating system and solution builder amongst actors of public life. On this theme, consult: ABBOUD, 2021. p. 1492. Writes: "On the other hand, the *Notwithstanding clause* has not been use in its full potential by the Canadian Parliament. However, its presence created a differentiated system of *judicial review (weak judicial review)*, where the Parliament dialogs more frequently with the Judiciary to define the reach and the unconstitutionality of any given laws. Furthermore, the *legislative override* imposes debates on parliament coalitions and majority political definitions by the Constitutional Court."

[16] "In their view, the trial judge had identified the optimal solution for vindicating the parents' s. 23 rights, having particular regard to the "serious rates of assimilation and a history of delay in the provision of French-language education" in the five regions in question. Further, the majority noted that the trial judge's reporting order reflected access to justice considerations, which may impact whether a remedy can be said to effectively vindicate the right at issue." Acc. ROULEAU; SHERMAN, 2009.

[17] Highlights on this decision were already made in Brazil by DANTAS, 2017.; JOBIM, 2022.

enforcing the fundamental right to have access to education in minority languages in the Nova Scotia region. It was the society's right to have an equivalence in structure of the francophone teaching system in comparison to the already existing English-based system (DANTAS, 2017).

The questioning raised by the case does not revolve around rights being protected or not by the legislation, but rather this state omission that caused a case to reach the Court once again.

When considering that in 1996 the Nova Scotia government had already created a school board to begin implementing this new teaching program and the construction of new schools, and in 1998 nothing had yet been done, the attempt of judge LeBlanc, in 1999, was that, through his decision, the powers could cooperate with each other to enforce the constitutionally provided right.

Therefore, the character given to structural actions in Canada is identified as one in which an attempt is made to overcome constitutional violations through measures that, endowed with complexity, compose a continuous and cooperative process – a fact that applies to cases regarding the implementing of new programs for teaching in minority languages[18].

In other terms, the attempt was that procedural and extra-procedural actors, both public and private, including the Judiciary and the Executive, could "establish the goals to be achieved, negotiate measures to be implemented, monitor their fulfillment, and reevaluate, along with all the parties involved, the obtained results (DANTAS, 2017), and from each result evaluation, a possible reevaluation to enforce the common goal. That is, in this case, the development of a new educational system that embraces bilingual learning.

COMPARED ANALYSIS OF EDUCATION IN MINORITY LANGUAGES IN CANADA AND IN BRAZIL: BETWEEN FRENCH AND HUNSRIK

In order to glance some materiality to the theme in Brazilian territory, aside from the discussion of education in minority languages in Canada for the right to access education ministered in the French language, this research turns now to the analysis of a project created in Brazil to implement programs for education in the minority language of Hunsrik in the territories of Rio Grande do Sul, Santa Catarina and Espírito Santo states.

[18] "Although in the broader context of language rights writ large, the Northwest Territories Court of Appeal recently considered a mandatory structural injunction ordered against the territory in *Fédération Franco-Ténoise v. Canada (Attorney General)*. In that case, the Fédération Franco-Ténoise commenced an action against the government of the Northwest Territories for failure to implement the minority language rights provided in the *Official Languages Act* (the "OLA"). They also claimed against the government of the Northwest Territories and the federal government for breaching the minority language rights provided in sections 16 to 20 of the *Charter*. The evidence indicated that the Northwest Territories had been largely unable to provide French language services to its residents, contrary to its constitutional and statutory obligations. Acc. ROULEAU; SHERMAN, 2009.

Hunsrik is a language with Germanic origin deriving from a dialect that bears the same name. It is a language also known by the name of Hunsrischish, Hunsrücker Platt, Hunsrik, amongst other names (VON MÜHLEN; KERSCH, 2021). In 2012, the language was granted the title of historical and cultural heritage of the State of Rio Grande do Sul[19], and since 2016 is intangible cultural heritage of the State of Santa Catarina[20]. It is considered the official language of Antonio Carlos (SC), Santa Maria do Herval (RS) and São José do Oeste (SC), being co-official in Barão (RS), Ipumirim (SC) and Ouro (SC) [21].

Due to the German immigration in Brazil in the XIX century, starting in 1824, it is known that although they were coming from many different regions in Germany, many immigrants possibly came from the *Hunsrück* region, located in the state of *Rheinland-Pfalz* where the spoken language would be Hunsrik, in western Germany, geographically bordering Luxembourg. Apart from the fact that most immigrants came from this region, Hunsrik is also characterized for presenting many intermediate features resembling different German dialects, what could have helped establishing it as the official dialect to be used in German colonies in Brazil (VON MÜHLEN; KERSCH, 2021).

Whilst Germany maintained its linguistic development to unify the German language spoken today, the old dialect was maintained by their emigrants in Brazilian territory, who developed and added new vocabulary to the Hunsrik language as new needs arose to complement the language[22].

Not only that, Hunsrik is also very similar to the official Luxembourger language, what made the dialect stronger by the linguistic coincidence between Hunsrik and Luxembourger, bringing together descendants of both countries who immigrated to Brazil. It is still significant the population of descendants and Luxembourger citizens in the states of Rio Grande do Sul, Santa Catarina, Espírito Santo, Paraná, São Paulo and Minas Gerais. A Luxembourger law aided and encouraged Brazilians to seek their rightful citizenships by facilitating, in a way, the access to requests from 2008 to 2018, either from the paternal or maternal side, whether by recovery or acquisition (LËTZEBUERG, 2017).

According to UNESCO reports, a language's vitality is due to its possibility to expand to new realms and means of circulation. This way, while it is not recognized and not preserved a given minority language in its grammar structure and written form, it is very hard to assure its survival in the medium and long term.

Notes from UNESCO:

> A language is *endangered* when it is on a path toward extinction. Without adequate documentation, a language that is extinct can never be revived.

[19] "Art. 1st The "Hunsrik Language" of common use amongst the descendants of Germanic immigrants who arrived almost two centuries ago from Germany to the State of Rio Grande do Sul, is declared part of the historical and cultural heritage of the State". Acc. to RIO GRANDE DO SUL, 2012.

[20] "Art. 1st The Hunsrückisch immigration language, originated from German descendants, is declared part of the intangible cultural heritage of the State of Santa Catarina." Acc. to SANTA CATARINA, 2016.

[21] "There are, currently, according to the studies of Altenhofen et al. (2018), about 1.200.000 speakers of Hunsrik in our country. This language is mainly present in the states of Rio Grande do Sul (RS), Santa Catarina (SC) and Espírito Santo (ES)." Acc. to VON MÜHLEN; KERSCH, 2021.

[22] For a more in-depth understanding: LIMBERGER, 2018.

> A language is in danger when its speakers cease to use it, use it in an increasingly reduced number of communicative domains, and cease to pass it on from one generation to the next. That is, there are no new speakers, adults or children. [...]
>
> Language endangerment may be the result of *external* forces such as military, economic, religious, cultural, or educational subjugation, or it may be caused by *internal* forces, such as a community's negative attitude towards its own language. Internal pressures often have their source in external ones, and both halt the intergenerational transmission of linguistic and cultural traditions.

Thus, the maintenance of Hunsrik started with the encouragement of individuals speaking the variety from the interior of the State of Rio Grande do Sul, maintaining the frequency of newspaper and book printing in the mother tongue. In great part, the books tell the story of the community, the first moments of the immigrants in Brazil, some poems and anecdotes. The orality of Hunsrik was kept by intermarriage among people from the same region and origin, passing on to the next generation the linguistic aspects of the Hunsrik language (VON MÜHLEN; KERSCH, 2021).

This made Hunsrik to take space in learning environments, and the teachers came to have in class bilingual speakers of Portuguese-Hunsrik. Not only that, but it is also necessary to note that there are children that often have their first contact with Portuguese in the first school years, because all their early childhood was set in the linguistic and cultural Hunsrik environment[23].

Then, as it was in the case in Canada previously studied, it was essential to develop teaching programs in minority languages in the Brazilian regions previously mentioned, and it was also necessary to implement a written Hunsrik.

Solange Hamester Johann is an educator in Santa Maria do Herval and is also the coordinator of the Hunsrik Platt Taytx Project since 2008 for the adoption of the dialect in kindergartens and elementary school, according to UNESCO's own recommendations. This Project was created in 2004 by the International Linguistics Society with the goal of creating a Written Code to be used in large scale by German descendants.

The coordinator points out that the risk of extinction was very intense due to the prohibition of speaking it in the years of World War II. Even after the war, families were afraid to pass on their cultural heritage, and schools and daycare were not able to teach the language, thus reducing considerably the number of speakers. To revive the language, programs of teaching it in schools are encouraged by the Project that is being put to practice, making the contact with new generations to give back the identitarian characteristic the language bears (VALLEJOS, 2021).

Therefore, it is noted that Hunsrik has been experienced for almost two centuries by immigrant families who seek to preserve part of their cultural heritage by preserving this minority language – fact that is also sought in the Doucet-Boudreau case that reached the Canadian Supreme Court. This because growing up in a given linguistic environment alters the way individuals develop also their personality rights.

[23] A very detailed study on learning written Hunsrik can be found in: VON MÜHLEN, 2019.

FINAL CONSIDERATIONS

This study identified structural procedures in a way that enables understanding the reason why this is a suited procedural path and applicable in territories either Brazilian or foreign ones to solve complex cases that demand a certain differentiated jurisdictional treatment.

The objective of the structural procedure is to ensure that, through dialog and cooperation, a state of possible unconstitutionality is overcome, and that what is hindering fluidity of the constitutional guarantee may be structured – or restructured – so a social situation of conformity to the Constitution may be reestablished.

In the Doucet-Boudreau v. Nova Scotia (Minister of Education) case it was possible to identify the potential of resolving the unconstitutional situation by means of structural procedure even though this measure was not applied. The quest for implementing teaching programs in French-language secondary schools was a right foreseen in the Canadian Constitution since 1982, and due to repeated state omission, it was necessary for the Supreme Court to rule more than once on the same subject.

It is well known and palpable the understanding that learning in minority languages is a fundamental right provided for in the Constitutional Charter of Canada, the difficulty lies in implementing the court decision that provides for the construction of new schools and implementation of new programs for children descendant of French speaking families.

Thus, comparing the situation with Brazil, teaching in a minority language is also a right and considered as a desirable situation by part of the German descendant immigrant population, who built their homes in Brazilian regions, but did not leave behind their historical, cultural, and linguistic roots, and wish to pass on to the new generations the teaching of Hunsrik.

To this end, it was demonstrated in this research the Project created in compliance with UNESCO's own guidelines for preserving languages at risk of extinction, and the implementing of teaching Hunsrik also in writing in schools in regions mentioned in this paper.

It is understood that linguistic preserving also enables the maintenance of culture and customs, allowing generations to keep communication flowing instead of drifting apart due to the language barrier. Therefore, bilingual teaching is important to develop the fundamental right to both collective and individual personality and to create a cultural identity to be preserved since its origin.

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