OF HAMBRES AND FOMES: COMPARING ARGENTINE AND BRAZILIAN LAWS STRUCTURING THE MAIN PUBLIC POLICY ON THE RIGHT TO ADEQUATE FOOD

SOBRE HAMBRES E FOMES: COMPARANDO AS LEIS ARGENTINA E BRASILEIRA ESTRUTURANTES DA PRINCIPAL POLÍTICA PÚBLICA DE DIREITO À ALIMENTAÇÃO ADEQUADA

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ABSTRACT

This article aims to comparatively analyze Argentine Law No. 25,724, of December 27, 2002, which established the National Nutrition and Food Program, and Brazilian Law No. 11,346, of September 15, 2006, which created the National Food and Nutritional Security System – both foundational laws for public policies that implement the right to adequate food (RAF) and combat hunger. Four comparative criteria were established: i) history of the legislative procedure; ii) holders and beneficiaries of measures implementing the RAF provided by the legislation; iii) definition of institutes and concepts related to the RAF provided by law; and iv) models of distribution of responsibilities among federative entities. At the conclusion of the research, it was observed that Argentine law is more protective according to the first criterion, while Brazilian law is more protective according to the second criterion. According to the third and fourth criteria, it was found that a comparison between the two legal rules is not possible, since it is a fundamental decision of a political nature for each of the States.

Keywords: Food; Right; Public Policy.

RESUMO

Este artigo tem como objetivo analisar comparativamente a Lei Argentina nº 25.724, de 27 de dezembro de 2002, que instituiu o Programa Nacional de Nutrição e Alimentação e a Lei Brasileira nº 11.346, de 15 de setembro de 2006, que criou o Sistema Nacional de Segurança Alimentar e Nutricional – ambas leis fundamentais para políticas públicas que implementam o direito à alimentação adequada (DAA) e combatem a fome. Foram estabelecidos quatro critérios comparativos: i) histórico do processo legislativo; ii) titulares e beneficiários de medidas de implementação do DAA previstos na legislação; iii) definição dos institutos e conceitos relativos ao DAA previstos em lei; e iv) modelos de distribuição de responsabilidades entre os entes federativos. Ao final da pesquisa, observou-se que a lei argentina é mais protetiva conforme o primeiro critério, enquanto a lei brasileira é mais protetiva consoante o segundo critério. De acordo com os critérios terceiro e quarto, constatou-se que não é possível uma comparação entre os dois regramentos jurídicos, uma vez que se trata de uma decisão fundamental de natureza política de cada um dos Estados.

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Palavras-chave: Alimentação; Direito; Política Pública.

SUMMARY: Introduction. 1 Historical of legislative procedure. 2 Holders of the raf and beneficiaries of the respective public policy. 3 Definition of institutes and concepts related to the raf. 4 Models of sharing responsibilities in implementing the raf among federated entities. Conclusion. References.

INTRODUCTION

Unlike what occurs in countries that adopt Common Law system, where customs guide jurisprudence, Argentina and Brazil are countries that follow Civil Law model, in which, law is the immediate source of judicial authority and the primary guide for jurisprudence. Law also guides the construction and execution of public policies to be implemented by the State. Public policies, established by law, are instruments of the undeniable action of the Public Power, developed in programs, projects and services of interest to society. It is the State's responsibility to apply available public resources efficiently and effectively, with the guarantee of active population participation. In summary, these are legal hypotheses for intervention in social life, structured on processes of consensus-building and conflict among social actors with diverse interests, arising from their different positions in economic, political, cultural, and social relations (Kauchakje, 2008, p. 68).

In the field of the right to adequate food, both Brazil and Argentina have laws that structure public policies on food and nutritional security and on fight against hunger. Despite this, between 2019 and 2021, Argentina had 16.7 million people facing severe or moderate food and nutrition insecurity. Proportionally, this figure represents 37% of Argentine population. During the same period, Brazil had 61.3 million people in the same conditions, which represents 28.9% of Brazilian population (FAO et al., 2023).

The percentages of people experiencing severe or moderate food and nutrition insecurity in Brazil and Argentina can be considered median when compared to other Latin American and Caribbean countries. In this sample, for instance, countries with the worst scenarios, i.e., the highest proportion of their populations experiencing severe or moderate food and nutrition insecurity are Haiti (82.5%), Guatemala (55.9%), and Peru (50.5%). On the other hand, countries with the best scenarios, meaning the lowest fraction of their populations facing

the same situation are Costa Rica (15.9%), the Bahamas (17.2%), and Chile (17.4%) (FAO et al., 2023).

Moderate food and nutritional insecurity refers to circumstances in which individuals experience uncertainties about their possibilities to obtain food and are sometimes forced to reduce quality or quantity of food consumed. Severe food insecurity, on the other hand, refers to situations where individuals run out of food and experience hunger (FAO et al., 2023).

Unlike other countries, what makes the significant proportion of the population in food and nutrition insecurity problematic in Argentina and Brazil is that both have substantial normative frameworks structuring public policies to combat hunger and implement the right to adequate food, comprising both international human rights treaties and internal legislation related to food issues.

Both countries have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in their own legal systems, with Argentina ratifying it on August 8, 1986, granting it constitutional status (Argentina, 1994) and Brazil on January 24, 1992, giving it supra-legal status, meaning inferior to the Federal Constitution but superior to all other laws in the legal system (Brazil, 1992).

Adopted by the United Nations General Assembly on December 16, 1966, the ICESCR, in its Article 11, enshrines the Right to Adequate Food (RAF) as the right of every person to an adequate standard of living for themselves and their family, requiring the States Parties to take concrete measures to ensure the realization of this right (United Nations, 1966).

This same international document recognizes fundamental right of everyone to be free from hunger, obligating States Parties to adopt, individually and through international cooperation, measures, including specific programs, aimed at improving methods of production, conservation and distribution of foodstuffs (United Nations, 1966).

Besides this International Human Rights Treaty, in the internal frameworks of both countries, the RAF is addressed in various normative documents. In Argentina, for example, the Law No. 25,724, of December 27, 2002, establishing the National Nutrition and Food Program, aims to fulfill the non-delegable duty of the State to guarantee the right to food for all citizens (Argentina, 2002). This is the main infraconstitutional normative document addressing food and nutrition insecurity in that country, but it is not the only one. Years after its enactment, Law No. 27,454, of October 29, 2018, was published, establishing the National Plan for the Reduction of Food Loss and Waste (Argentina, 2018). More recently, Law No. 27,642, of November 12, 2021, was edited mandating front-of-package labeling for packaged foods and

non-alcoholic beverages with nutritional information, promoting healthy eating (Argentina, 2021).

In Brazil, the main infraconstitutional normative document on this subject is Law No. 11,346, of September 15, 2006, which created the National Food and Nutritional Security System (Brazil, 2006), aiming to make effective the RAF. Additionally, in Brazilian legal framework, since the promulgation of Constitutional Amendment No. 64, of February 4, 2010 (Brazil, 2010), food has been recognized as an explicit Fundamental Social Right inscribed in Article 6 of Brazilian Federal Constitution (Brazil, 1988).

In both countries, a situation of incongruence emerges: although the RAF is regulated in legal documents, guiding public policies on food and nutritional security, there is simultaneously a significant illegal violation of the RAF based on the non-implementation or deficient implementation of public policies pertinent to the realization of this fundamental right, especially for the 37% of Argentine population and 28.9% of Brazilian population experiencing severe or moderate food and nutrition insecurity (FAO et. al, 2023).

In light of this, this research aims to comparatively analyze the main legal documents of Argentina and Brazil guiding public policies on food and nutritional security and making effective the RAF, respectively comparing Argentine Law No. 25,724, of December 27, 2002, which established the National Nutrition and Food Program, and Brazilian Law No. 11,346, of September 15, 2006, which created the National Food and Nutritional Security System, according to the following criteria: i) history of the legislative process; ii) recognized right holders and beneficiaries of the RAF measures provided by law; iii) definition of institutes and concepts related to the RAF provided by law; and iv) models of allocation of responsibilities among federative entities provided by law.

For the analysis, a detailed reading of the full texts of the two aforementioned laws was conducted, and a comparative framework was formatted according to the criteria established in the objective, recording positive and negative points identified in each law. This study adopts a methodology that is: i) comparative, as it confronts the main legislative documents of Argentina and Brazil structuring public policies on RAF within each country; ii) descriptive, since the formatting of the comparative framework necessarily involves describing characteristics of the mentioned legislation, using systematic observation as a standardized data collection technique; iii) documentary, as it depends on the examination of laws, i.e., public documents, for the development and support of the objective of this study; and iv) digital, as both laws are available in digital formats found in the legislation databases maintained on the official websites of Argentine and Brazilian federal executive branches.

Furthermore, it should be noted that the research sample — Argentine and Brazilian laws — was comparatively analyzed in a qualitative approach, looking for positives and negatives aspects of each and were materially investigated according to the mentioned criteria.

The main theoretical framework of this study, based on which the sample legislation is scrutinized, is General Comment 12 (United Nations, 1999), a publication of Committee on Economic, Social and Cultural Rights of the United Nations that provides the authentic interpretation of the RAF by that international body. In addition, books and scientific articles are used as references, preferably those published in Argentine and Brazilian scientific journals or authored by Argentine and Brazilian researchers, focusing on analysis of the sample legislation.

The hypothesis guiding the research is that, given the scenario where, between 2019 and 2021, 37% of Argentine population and 28.9% of Brazilian population were experiencing severe or moderate food and nutrition insecurity, the main Brazilian legislative document on the RAF would presents more positive aspects technically compared to the main Argentine legislative document on the same subject.

The article is structured into an introduction, four sections, and a conclusion. Each section addresses one of the comparative criteria established in the research objective. In this context, the first section provides a historical analysis of the legislative process of the sample laws, investigating the legitimacy of the stakeholders involved, the popular participation in the initiative, and the legislative process that culminated in the analyzed normative instrument. The second section compares the recognized RAF holders and the beneficiaries of the RAF measures provided by each law, investigating who the normative instrument is intended for and who it aims to protect. The third section comparatively analyzes the concepts and institutions related to the realization of the public policy on RAF provided by each law. The fourth section examines the model of allocation of responsibilities related to the realization of the RAF among federative entities, aiming to establish whether the legislation favors a model of cooperative or dual federalism.

Finally, it is important to highlight the justification of this research, as comparing laws and examining the positive and negative aspects of normative instruments structuring public policies on protection and effectuation of the RAF and addressing food and nutrition insecurity in Argentina and Brazil from a Comparative Law study perspective can guide legislative improvements on the topic, with possible adaptations in public policies promoting food as a right and, consequently, improving the living conditions of nutritionally vulnerable human groups in both countries.

1 HISTORICAL OF LEGISLATIVE PROCEDURE

As highlighted above, both Argentina and Brazil are States parties of the International Covenant on Economic, Social and Cultural Rights (ICESCR) respectively since 1986 and 1992. Article 11 of this treaty stipulates that the State parties shall recognize the right of every person to an adequate standard of living for themselves and their family, including adequate food, clothing, and housing, as well as continuous improvement in their living conditions (United Nations, 1966).

The same provision further specifies that State parties, recognizing the fundamental right of every person to be protected from hunger, must adopt measures, including concrete programs, necessary to improve methods of production, conservation, and distribution of foodstuffs (United Nations, 1966). It can be said that Argentine and Brazilian Laws above mentioned serve as internal mechanisms for the implementation of the ICESCR, as both recognize food as a right while instituting programmatic systems to address food and nutritional insecurity.

Argentine Law No. 25,724, of December 27, 2002 established the National Nutrition and Food Program during a period of deepening economic, social, and food and nutritional insecurity crises that the country continues to face nowadays. At that time, a state of food emergency was object of the Decree of Necessity and Urgency 108/2002 (Argentina, 2002) and a law addressing the issue of hunger emerged from a popular initiative, circulated within the campaign known as *El Hambre más Urgente* (Sordini, 2022, p. 7).

This campaign aimed to compel the state to ensure food for children under 5 years old and for pregnant or lactating mothers, and was supported by communication companies such as the newspaper *La Nación* and the television channel *América TV*; civil society organizations such as *Fundación Poder Ciudadano, Vox Populi, Grupo Sophía*, and *Red Solidaria*; and public service concessionaires such as *Metrogas* and *Metrovías* (Batch, 2005, p. 9).

Initiated in September 2002, the campaign gathered 1.5% of Argentine electorate, distributed across 17 provinces, totaling 1.2 million citizen signatures, collected even in soccer stadiums of major teams like *Boca Juniors* and *River Plate*, and was submitted to parliamentary treatment as a popular initiative bill, in accordance with Article 39 of Argentine Constitution (Sordini, 2022, p. 7).

In contrast to Argentine law, Brazilian Law No. 11,346, of September 15, 2006 established the National Food and Nutritional Security System through an initiative of the federal Executive Branch. The draft of that Organic Law on Food and Nutritional Security was presented on October 17, 2005, to the Chamber of Deputies by then Minister of State for Social Development and Fight Against Hunger, Patrus Ananias, who, in turn, served as Executive Secretary of the National Food and Nutritional Security Council from 2004 to 2007 (Costa; Bógus, 2012, p. 106).

Both projects went through the respective legislative processes and were enacted as laws. In the case of Argentina, law was sanctioned by the Chamber of Deputies and the Senate of the Nation, convened in Congress on December 27, 2002, and promulgated on January 16, 2003, at which time the country was under presidency of Eduardo Duhalde (Argentina, 2002). In the case of Brazil, law was promulgated on September 15, 2006, during Luís Inácio Lula da Silva's first term as President (Brazil, 2006).

Comparatively, the procedures for creating Argentine and Brazilian laws had different origins. While the former arose from a popular initiative, with the collection of signatures from Argentine citizens and subsequent presentation to the Legislative Branch, the latter have been originated from an initiative of the Executive Branch, whose president was elected by Brazilian citizens, with subsequent submission to the Legislative Branch. Once enacted into law, both propositions bound the entire society and, primarily, the State, which is primarily responsible for implementing food and nutritional security public policies.

In other words, it can be said that while Brazilian law was constituted within an indirect democracy system, that is, with representatives of the people initiating the formal procedure for drafting a law, Argentine law was established through a mechanism typical of semi-direct democracy named by popular initiative.

Alongside referendum and plebiscite, popular initiative is an interesting instrument of semi-direct democracy, enshrined in the right of the electorate to propose bills to the Legislative Branch, thus initiating the legislative process (Garcia, 2005, p. 12). Among the instruments of semi-direct democracy, the popular initiative is the one that most meets popular demands for positive participation in legislative acts, as it shapes a democratic model that provides citizens with greater conditions for participation in legislative production (Bonavides, 2003, p. 374).

Legislative process can be defined as the succession of acts or phases necessary for the production of a legislative act (Canotilho, 1998, p. 322). A law, in this sense, is the final act of the process, whose phases are – qualitatively and functionally heterogeneous and

autonomous – performed by various subjects. In this context, there are three procedural phases: i) initiative phase; ii) constitutive phase; and iii) activation or effectiveness integration phase (Canotilho, 1998, p. 323). Corroborating this, it cannot be said that a law constituted through a semi-direct democracy model is more or less legitimate than another created through an indirect democracy model. Similarly, it cannot be said that a law of popular initiative is more or less democratic than one initiated by the Executive Branch, whose head was elected democratically.

In summary, although differing in initiative, both projects resulted in equally legitimate and democratic laws, as the legitimacy and democratic nature of any normative instrument are not determined solely by the phase of initiative, but by the legislative process considered in its entirety, with the constitutive phase prevailing, which includes the acts of forming the will of the people, with the respective discussion and voting of the project submitted for consideration by their democratically and legitimately elected representatives.

While in terms of legitimacy and democratic character, there is a draw between Argentine and Brazilian normative regulations of right to adequate food public policies, there is one aspect of the legislative process where Law No. 25,724, of December 27, 2002 prevails over Law No. 11,346, of September 15, 2006, namely, the completion of the legislative process and the commencement of legal validity.

In other words, while Brazilian law concluded its legislative process and came into effect only in 2006, Argentine law began its effectiveness approximately 4 years earlier, in 2002, with concrete actions – such as the creation of the National Food Security Plan; formation of a national single beneficiary registry; funds transfer to provinces and training of provincial technical teams – observed from July 7, 2003 (Argentina, 2022), which makes Argentine regulation, temporally, more protective than Brazilian law in this regard.

2 HOLDERS OF THE RAF AND BENEFICIARIES OF THE RESPECTIVE PUBLIC POLICY

Article 11 of the ICESCR (United Nations, 1966) creates a favorable confusion between who are the holders of the right to adequate food and who should be the beneficiaries of measures to make effective this right. In this treaty, both are considered to be all human people, as it is a right inherent to human condition and, therefore, of universal entitlement. Public policies related to the materialization of this right should be extended to everyone, in a generic manner.

General Comment No. 12 (United Nations, 1999), the main source of authentic interpretation regarding the right to adequate food, proposes a series of guiding principles for the conception of this right, among which two are particularly noteworthy: the principle of physical accessibility to food and the principle of universal availability of food. The principle of physical accessibility to food states that adequate food must be accessible to all, including individuals who are physically vulnerable. In turn, the principle of universal availability of food indicates that food supply must be provided in sufficient quantities and quality to meet the dietary needs of all human beings, ensuring the general possibility of obtaining food either directly from productive land or other natural resources or through efficient systems of food distribution, processing, and sales.

Departing from the universalization of the right to adequate food as envisaged both in the international treaty and in its main interpretative instrument, Argentine food and nutritional security law – although explicitly recognizing in Article 1 that food is a right of all citizens, that is, all Argentine citizens are holders of the right to adequate food – highlights in Article 2 that the concrete measures provided in the regulation are limited to a specific sector within the group of holders, considered more vulnerable (Marichal; Bonet, 2022, p. 26).

In other words, Argentine law recognizes the right to adequate food for its nationals, but – in an emergency regime – limits the beneficiaries of the material measures addressing food and nutritional insecurity outlined in that regulation to a group consisting of children up to 14 years old, pregnant women, people with disabilities, and elderly individuals from 70 years old, living in poverty. Within this group, pregnant women and children up to 5 years old will have priority in the National Nutrition and Food Program (Argentina, 2002).

Other Argentine citizens – although acknowledged as holders of the right to adequate food – will not be covered as beneficiaries of the measures to realize this right as provided by Law No. 25,724, of December 27, 2002. This can be interpreted as an internal legislative policy of exclusion that clashes with the universal notion of the right to adequate food established in the ICESCR, an international human rights treaty ratified by that country with constitutional status (Marichal; Bonet, 2022, p 23).

Article 2 of Brazilian Law No. 11,346, of September 15, 2006 states that adequate food is a fundamental human right, inherent to human dignity and indispensable for the realization of rights enshrined in Federal Constitution, requiring the public authorities to adopt the necessary policies and actions to promote and ensure food and nutritional security for the population (Brazil, 2006).

Furthermore, Article 3 of Brazilian law establishes that food and nutritional security consists in the realization of the right of all to regular and permanent access to quality food, in sufficient quantity, without compromising access to other essential needs, based on health-promoting food practices that respect cultural diversity and are environmentally, culturally, economically, and socially sustainable (Brazil, 2006).

Brazilian food and nutritional security law expressly recognizes in Article 3 that food is a universal right, that is, a right of all human people. However, in Article 2, the term "population" in the phrase "requiring the public authorities to adopt the necessary policies and actions to promote and ensure food and nutritional security for the population" (Brazil, 2006) limits the beneficiaries of the measures to make effective this right in the country to its nationals, stateless persons, and foreigners with permanent residence in Brazil, that is, to the members of Brazilian population. Thus, stateless persons and foreigners without permanent residence or Brazilians not within the national territory – non-members of the national population – would be excluded from benefiting from the measures to realize the right to adequate food as provided in Brazilian Law No. 11,346, of September 15, 2006.

Comparing the two regulations, it is observed that both recognize the universal entitlement to the right to adequate food, according to the provisions of the right established in the ICESCR (United Nations, 1966) and interpreted in General Comment 12 (United Nations, 1999). However, departing from the international treaty, the condition for being a beneficiary of the public policies on this right is limited in both cases. In Argentine case, the beneficiaries under Law No. 25,724, of December 27, 2002 include only children up to 14 years old, pregnant women, people with disabilities, and elderly individuals from 70 years old, living in poverty. Furthermore, all must be nationals (i.e., Argentine citizens) located within the borders of Argentina. This is a very specific group considering the famine crisis affecting at least 16.7 million people, equivalent to 37% of Argentine population. In Brazilian case, although still partially exclusionary, there are no legal inferences regarding such a limited list, and the category of beneficiaries should include the entire Brazilian population, encompassing nationals, stateless persons, and foreigners with permanent residence in Brazil, all located within the borders of the respective territory.

In summary, despite the conception of a universal right in the ICESCR, a material limitation is observed in both regulations. However, Brazilian legislation demonstrates itself more protective than Argentine law, whose text is more restrictive regarding the beneficiaries of the urgent public policy on right to adequate food.

3 DEFINITION OF INSTITUTES AND CONCEPTS RELATED TO THE RAF

Argentine law establishing the National Nutrition and Food Program has not explicitly mentioned legal concepts of the Right to Adequate Food (RAF) or food security. However, this legislation sets up several entities responsible for coordinating and executing the public policy on this theme. These include: i) Executing Authority, that will be jointly exercised by the Ministry of Health and the Ministry of Social Development of Argentine Nation; ii) National Nutrition and Food Commission; iii) Provincial Nutrition and Food Commissions; iv) Municipal and/or Community Nutrition and Food Commissions; and v) National Special Fund for Nutrition and Food (Argentina, 2002).

While the direction of the National Nutrition and Food Program will be the responsibility of the National Nutrition and Food Commission (composed of representatives from various ministries such as Health; Social Development and the Environment; Education; and Economy, among others), the execution will be managed by the Provincial and the Municipal and/or Community Commissions (composed by members of provincial and municipal departments with related attribution to that of the National Commission) (Argentina, 2002).

The principal functions of the National Nutrition and Food Commission include: i) designing strategies for implementing the National Nutrition and Food Program; ii) establishing criteria for program access and conditions to continued eligibility; iii) ensuring equity in food benefits and health care; iv) establishing control mechanisms for ongoing evaluation of the progress and results of the public policy, as well as beneficiary compliance with program requirements; v) widely disseminating program information, especially necessary access information in a simple and direct manner; vi) implementing a nutrition education program as an essential tool for promoting the development of lasting behaviors that enable the population to choose healthy eating practices of production, selection, purchase, handling, and biological use of food; vii) establishing a Permanent System for Evaluating the Nutritional Status of the Population, coordinating with governmental agencies responsible for food and nutrition matters and Argentine National Institute of Statistics and Censuses, developing a food risk situation map; viii) incorporating all necessary control mechanisms to ensure that resources reach beneficiaries, which requires the implementation of a single registry; ix) promoting exclusive breastfeeding up to 6 months of age, including nutritional support for mothers up to 12 months of their children's age if necessary; x) ensuring early stimulation activities for vulnerable children up to 5 years of age of at-risk families; xi) guaranteeing social assistance and guidance

to families regarding child care and pregnancy care; xii) signing management agreements with different levels of government to establish goals and objectives, and in the event of non-compliance, the possibility of termination. Finally, it should be noted that the National Nutrition and Food Commission will be assisted by scientific, university, social, and ecclesiastical entities with significant participation in the control and implementation of the referenced law (Argentina, 2002).

Provincial Nutrition and Food Commissions are the executing bodies of the National Nutrition and Food Program with, among other functions: i) implementing and coordinating actions with the National Commission to ensure program compliance in the provinces; ii) developing a list of foods that meet the basic nutritional needs of beneficiaries, considering age, regional dietary characteristics, and a list of corresponding nutritional supplements, vitamins, trace elements, and minerals provided by the Ministry of Health of Argentina; iii) reporting to the National Nutrition and Food Commission all provincial program activities; iv) stimulating the development of regional food production to supply local food assistance programs, respecting and valuing cultural identity and local consumption strategies; v) promoting the development of local food supply policies to ensure accessibility to the entire population, especially groups such as children up to 14 years, pregnant women, people with disabilities, and elderly individuals from 70 years of age in poverty, and promoting the creation of regional food supply and purchasing centers; and vi) promoting the organization of social networks to enable dynamic exchange among members and with other social groups, valuing the resources they possess (Argentina, 2002).

Municipalities may have a Municipal and/or a Community Nutrition and Food Commission, responsible for: i) registering beneficiaries in a single registry for access to national programs; ii) centrally managing resources through the contracting of necessary suppliers and services; iii) implementing a distribution network, promoting family feeding whenever possible, or through community kitchens where this service is provided, in a network consisting of educational and health institutions, ecclesiastical entities, Armed Forces and Security Forces, duly accredited civil society entities, qualified volunteers, and selected beneficiaries; iv) implementing health and nutritional control mechanisms for beneficiaries; v) training families in nutrition, breastfeeding, child development, and economic matters (Argentina, 2002).

National Special Fund for Nutrition and Food, public policy financial hand responsible for the implementation of the National Nutrition and Food Program will be composed of: i) budget allocations assigned annually in the respective national budget law, and

if insufficient to meet program objectives, the Chief of Cabinet of Ministers will have the authority to reallocate necessary funds; and ii) specific contributions or financing obtained by the nation from international organizations, institutions, or other states. At this scenario, the program will be audited monthly by national control bodies established by law (Argentina, 2002).

In contrast, Brazilian food and nutrition security law explicitly establishes the concepts of the Right to Adequate Food (RAF) and food security, both of which were covered in the previous section and align with the provisions of the ICESCR (United Nations, 1966) and General Comment 12 (United Nations, 1999). Additionally, this legislation incorporates structuring concepts of the following bodies responsible for implementing public policy on the RAF in Brazil: i) National Food and Nutrition Security System; ii); National Food and Nutrition Security Conference; iii) National Food and Nutrition Security Council and iv) Inter ministerial Chamber for Food and Nutrition Security (Brazil, 2006).

Brazilian National Food and Nutrition Security System is the institute through which the government, with the participation of organized civil society, will formulate and implement policies, plans, programs, and actions aimed at ensuring the RAF. It is composed of a set of federal, state, municipal, and private entities, with or without profit, related in food and nutrition security and interested in joining the System (Brazil, 2006).

This system will be guided by the following principles: i) universality and equity in access to adequate food, without any form of discrimination; ii) preservation of autonomy and respect for human dignity; iii) social participation in the formulation, execution, monitoring, and control of food and nutrition security policies and plans at all levels of government, with transparency in programs, actions, public and private resources, and criteria for their allocation (Brazil, 2006).

National Food and Nutrition Security System guidelines include: i) promotion of inter sectorial policies, programs, and actions; ii) decentralization of actions and collaboration between levels of government; iii) monitoring of food and nutrition status to support policy management across different government levels; iv) combination of direct and immediate measures to guarantee access to adequate food with actions that enhance the population's capacity for autonomous subsistence; v) coordination between budget and management, and encouragement of research and human resources development. Finally, the National Food and Nutrition Security System aims to: i) formulate and implement food and nutrition security policies and plans; ii) stimulate integration between government and civil society efforts; and

iii) promote monitoring, assessment, and evaluation of food and nutrition security in Brazil (2006).

National Food and Nutrition Security Conference is the event responsible for setting the guidelines and priorities of the National Food Security Policy and Plan, as well as evaluating National Food and Nutrition Security System and must be preceded by state, district, and municipal conferences, which are to be convened and organized by equivalent agencies and entities in the states, the federal district, and municipalities, where delegates to the National Conference will be elected (Brazil, 2006).

National Food and Nutrition Security Council is the immediate advisory body to the President of the Republic, responsible for: i) convening the National Food and Nutrition Security Conference, with a frequency not exceeding 4 years, and defining its composition, organization, and functioning parameters through its own regulation; ii) proposing to the federal Executive Branch, based on the National Food and Nutrition Security Conference's resolutions, the guidelines and priorities for the National Food and Nutrition Security Policy and Plan, including budgetary requirements for its achievement; iii) coordinating, monitoring, and overseeing the implementation and convergence of actions related to the Policy and Plan; iv) defining, in collaboration with the Inter ministerial Chamber for Food and Nutrition Security, the criteria and procedures for joining National Food and Nutrition Security System; v) establishing permanent mechanisms for articulation with equivalent food and nutrition security bodies in the states, the federal district, and municipalities to promote dialogue and convergence of actions within National Food and Nutrition Security System; and vi) mobilizing and supporting civil society entities in discussing and implementing public food and nutrition security actions (Brazil, 2006).

The composition of the National Food and Nutrition Security Council includes: i) one-third of government representatives, consisting of State Ministers and Special Secretaries responsible for food and nutrition security; ii) two-thirds of representatives of civil society chosen based on criteria approved at the National Food and Nutrition Security Conference; and iii) observers, including representatives of international organizations. This council will be chaired by a representative from civil society, appointed by the plenary of the council according to regulation, and designated by the President of the Republic (Brazil, 2006).

Finally, the Inter ministerial Chamber for Food and Nutrition Security will be composed of State Ministers and Special Secretaries responsible for food and nutrition security, with the following commitment: i) developing, based on National Food and Nutrition Security Council guidelines, the National Food and Nutrition Security Policy and Plan, indicating

guidelines, goals, resource sources, and monitoring and evaluation instruments for implementation; ii) coordinating the execution of the Policy and Plan; and iii) coordinating the policies and plans of state and federal district equivalents (Brazil, 2006).

Comparing laws, it is possible to say that Argentine legislation provides more pragmatic guidelines and actions related to food and nutrition insecurity, which is typical of emergency situations but does not ensure long-term development of a public policy to combat massive violations of RAF among vulnerable human groups. In contrast, Brazilian law demonstrate be more focused on not just addressing an emergency situation but on establishing a long-term public policy with strong popular participation, which lends a democratic character to the fundamental political decision of the state regarding hunger and the guarantee of food and nutrition security for the population.

Despite this observation, it cannot be ignored that each state has its own reality and the legislative options to take care of an urgent demand (as Argentine case) or to focus on building a long-term public policy (as Brazilian case) are both equally legitimate. As analyzed in the second section of this article, the legitimacy of the choice derives from popular will, that is, citizens who democratically elected their representatives who debated, voted, and enacted the law with the respective political option. Thus, whether with an emergency appeal or a future-oriented approach, both options are legitimate.

That said, it should be noted that both Argentine and Brazilian regulations similarly incorporate well-defined institutes related to the materialization of the RAF, based on public policies. For this reason, in this specific topic, it cannot be asserted that Argentine law is better or worse than Brazilian law. What can be said with certainty is that they are different, as they are based on different institutes and strategies for addressing food and nutrition insecurity relative to their own populations.

4 MODELS OF SHARING RESPONSIBILITIES IN IMPLEMENTING THE RAF AMONG FEDERATED ENTITIES

As mentioned in the previous section, Argentine Law No. 25,724, of December 27, 2002 and Brazilian Law No. 11,346, of September 15, 2006 feature their own institutes aimed at defining guidelines and responsibilities, as well as implementing measures for make effective the Right to Adequate Food (RAF). Analyzing both normative documents, the key difference is that Argentine law focuses on emergency actions, while Brazilian law targets the development of a long-term public policy for combat food and nutrition insecurity. Furthermore,

based on the strategies outlined in the regulations, it is clear that Brazilian legislation favors a model of cooperative federalism, whereas Argentine law opts for a dual federalism model.

Dual federalism is characterized by a strict division of powers and competencies between the federal and the federated states governments. A classic example of dual federalism was the United States of America system until the 1920s. After the 1929 crisis and the Franklin Roosevelt's New Deal, the American dual model was replaced by a cooperative model, marked by federal intervention in the economic domain to ensure a welfare state standard through free cooperation between the federal government and federated entities (Ribeiro, 2018, p. 355).

In summary, the main difference between these two models is based on the rigidity typical of dual federalism compared to the flexibility of cooperative federalism, particularly in terms of the separation of responsibilities and competencies between the federal and other federated entities (Tavares, 2016, p. 114).

Argentina is indeed structured according to a dual federalism model, where only the federal government and the provinces are considered federative entities (Barrientos, 2009, p. 189). The country's Constitution clearly differentiates the powers assigned to the federative entities, with federal government responsibilities outlined between Articles 44 and 120, and provincial and Autonomous City of Buenos Aires responsibilities outlined between Articles 121 and 129 (Argentina, 1994).

For example, Argentine Constitution assigns 28 areas of exclusive responsibility of the federal government, including international affairs, defense, customs trade, finance, banking, currency issuance, citizenship, interprovincial boundaries and national public services. Similarly, Argentine Constitution confers to the federal government powers over areas such as higher education, economic planning and the enactment of criminal, civil, commercial, mining, labor and social security codes (Argentina, 1994). Provincial governments are responsible for residual powers, such as legislating on public education and health, provincial justice, police, infrastructure and social welfare (Barrientos, 2009, p. 144).

In contrast, with the 1988 Constitution, Brazil is structured according to a cooperative federalism model, where Federal Government, Federated States, Federal District and Municipalities are all federative entities (Araújo, 2018, p. 908). Although the Constitution specifies certain powers for the Federal Government (Articles 22 and 23), Brazilian cooperative federalism is characterized by the interconnection of government levels through common and concurrent competencies (Brazil, 1988).

Public policies to implement the right to adequate food, aligned with the notion of defending health and eradicating food and nutritional insecurity, are practical manifestations of

common competencies, which have administrative nature and are relate to all federative entities, including municipalities. These responsibilities include: the environment; health; public assets; culture, education, science and poverty eradication (Brazil, 1988). In a cooperative federalism pact, joint action aims to reach uniform results, without centralizing competencies, but rather a relationship of complementarity with the definition of the responsibilities of the federative entities, based on macro-planning for matters of common interest (Araújo, 2018, p. 908).

Thus, it is evident that Argentina adopts a dual model both in its Constitution and in Law No. 25,724, of December 27, 2002, with well-defined and segmented responsibilities for addressing food and nutrition insecurity between federal and provincial/municipal responsibilities. Analyzing the mechanisms established in Argentine law, it is clear that while the federal government takes on directing responsibilities, such as defining strategies for the National Nutrition and Food Program, the provinces and municipalities are responsible for executing tasks, such as creating the single registry of beneficiaries and lists of foods that meet the basic nutritional needs of the program's population.

On the other hand, Brazil adopts a cooperative model in both its Constitution and Law No. 11,346, of September 15, 2006, through a structure of cooperation materialized in the National Food and Nutrition Security System, which federative entities may join freely, in accordance with the principles and guidelines established by the law and criteria set by the National Food and Nutrition Security Council and the Interministerial Chamber for Food and Nutrition Security (Brazil, 2006).

Unlike Argentine law, Brazilian regulation does not impose compulsory responsibilities and expenses on already burdened federative entities. Instead, through Brazilian National Food and Nutrition Security Council, linked to the federal government, it fosters coordination, monitoring, and collaborative implementation among federative entities (Federal District, States, and Municipalities, which may or may not choose to join the National Food and Nutritional Security System based on their own criteria of convenience and opportunity) and even private institutions, materializing in cooperation and convergence of actions related to the National Food and Nutrition Security Policy and Plan (Brazil, 2006).

Again, comparing the two regulations, both reflect different models of distributing responsibilities for realizing the RAF among their federative entities, with Argentina opting for a dual model and Brazil opting for a cooperative model. In either case, the state's adoption of the respective model is equally legitimate, as each state has its own reality, and the legislative choice of one model or another results from popular will, meaning the citizens who democratically elected their representatives, who debated, voted, and enacted the respective law.

Therefore, it cannot be said that Argentine model is better or worse than Brazilian model. What can be stated with certainty is that they are different.

CONCLUSION

Based on the information presented throughout this article, it is evident that the objectives proposed at the beginning of the research have been achieved. Specifically, the main legislative instruments from Argentina and Brazil concerning the regulation of the Right to Adequate Food (RAF) within each state were analyzed and compared.

In comparing Argentine Law No. 25,724 of December 27, 2002, which established the National Nutrition and Food Program, with Brazilian Law No. 11,346 of September 15, 2006, which created the National Food and Nutrition Security System, the following conclusions were reached based on the proposed criteria.

Regarding the legislative procedure's history, it was found that Argentine law resulted from a popular initiative, while Brazilian law originated from an Executive Branch initiative. Although differing in their origins, both projects led to equally legitimate and democratic laws, as the legitimacy and democratic nature of any normative instrument are not determined solely by the initiative but by the legislative process as a whole. This process includes the formation of the people's will, with the respective discussions and votes on the project by democratically and legitimately elected representatives. However, in this regard, Argentine law has an advantage over Brazilian law regarding the commencement of its validity. While Brazilian law completed its legislative process and came into effect only in 2006, Argentine law began its validity approximately four years earlier, in 2002, with concrete actions against hunger starting from July 7, 2003.

In the section regarding the holders of the RAF and the beneficiaries of the measures to implement the RAF as outlined in the law, it was observed that both regulations recognize the universal entitlement to RAF, as per the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and General Comment 12. However, deviating from the international treaty, the eligibility for beneficiaries of the measures in both cases is limited. In Argentina, Law No. 25,724, of December 27, 2002 targets only children up to 14 years old, pregnant women, persons with disabilities, and elderly individuals from 70 years old, all in poverty. Moreover, all beneficiaries must be nationals (i.e., Argentine citizens) within the national territory. In Brazil, only members of Brazilian population within the national borders can benefit from measures implementing the RAF, which includes not only nationals but also

stateless individuals and foreigners with permanent residence in Brazil. Therefore, despite the universal entitlement and the subjective limitation of beneficiaries in both regulations, Brazilian legislation appears more beneficial compared to Argentine law, as it is more inclusive and encompasses a larger number of categories, whereas Argentine law is more restrictive, granting eligibility solely to a specific group of nationals.

In the section concerning the definition of institutes and concepts related to the RAF as provided by the law, both regulations have their own densely defined institutes. While it can be said that Argentine law adopts more pragmatic and emergency-oriented guidelines and practices for addressing food and nutritional insecurity, Brazilian law focuses on solidifying a long-term public policy with intensely participatory institutes. It cannot be definitively stated that one regulation is better or worse than the other; what can be said with certainty is that they are different, as they are based on different institutes and strategies for addressing food and nutritional insecurity in their respective populations.

A similar result is observed in the section on the model of allocation of responsibilities for implementing the RAF among federated entities, with Argentina opting for a dual model and Brazil adopting a cooperative model for the distribution of responsibilities. Considering that each state has its own reality and the legislative choice for one model or another is based on popular legitimacy, it cannot be conclusively stated that Argentine model is better or worse than Brazilian model. What can be stated with certainty is that they are different.

In light of the entire discussion, the hypothesis proposed at the beginning of this research was rejected. The original hypothesis suggested that, due to Argentina having a higher proportion of its population in conditions of severe or moderate food and nutritional insecurity compared to Brazil, Brazilian Law No. 11,346 of September 15, 2006 would present more positive aspects compared to Argentine Law No. 25,724 of December 27, 2002.

In evaluating the comparative results based on the four comparison parameters, Argentine regulation is deemed more favorable according to criterion i) historical legislative procedure, while Brazilian regulation is considered more favorable according to criterion ii) recognized holders of the RAF and beneficiaries of the measures implementing the RAF provided by the law. According to criteria iii) definition of institutes and concepts related to the RAF provided by the law and iv) models of allocation of responsibilities for implementing the RAF among federated entities, an objective comparison proved unfeasible, considering that each regulation proposes its own structures, institutes, strategies, and models of responsibility distribution, based on legitimate and democratic legislations. Therefore, according to this last

two criteria described above, it is not possible to objectively determine which normative regulation is better or worse.

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