



THE RECOGNITION OF DEGREES AND TITLES: AN ANALYSIS OF PORTUGUESE LEGISLATION BASED ON THE EMPLOYABILITY OF IMMIGRANTS IN SPECIFIC CASES

O Reconhecimento de Graus e Títulos:
Uma Análise da Legislação Portuguesa
Baseada na Empregabilidade de
Imigrantes em Casos Específicos

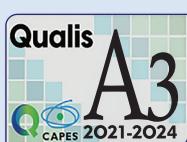
*El Reconocimiento de Grados y
Títulos: Un Análisis de la Legislación
Portuguesa Basado en la Empleabilidad
de Inmigrantes en Casos Específicos*

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Submetido em: 9 de outubro 2025

ACEITO em: 26 de dezembro 2025

e-ISSN: 2319-0884

How to cite this article: VELA HUGO, M. A.; FRAGA DE MESQUITA, F. M. The recognition of degrees and titles: an analysis of Portuguese legislation based on the employability of immigrants in specific cases. *Revista do CEJUR/TJSC: Prestação Jurisdicional*, Florianópolis (SC), v. 13, n. -TJSC-, p. e0486, 2025. DOI: 10.37497/revistacejur.v13i-TJSC-486. Disponível em: <https://revistadocejur.tjsc.jus.br/cejur/article/view/486>.

ABSTRACT | Objective: To analyze the legal implications of the administrative interpretation of Decree-Law No. 80-A/2023 by the Directorate-General for School Administration in Portugal, focusing on its impacts on the employability of foreign teachers, particularly Brazilians, and on the compatibility of such interpretation with constitutional principles and international commitments. **Method:** This study adopts a qualitative approach based on documentary analysis of Portuguese legislation and administrative acts, complemented by a case study and comparative analysis with the Treaty of Friendship, Cooperation and Consultation between Brazil and Portugal. Legal norms, administrative documents, and theoretical references in administrative law and human rights were examined. **Results:** The findings reveal a discrepancy between the normative framework and its administrative application. The requirement of



non-existent documents, the creation of infralegal requirements, and the undue expansion of administrative discretion constitute barriers to foreign teachers' access to the labor market. These practices violate the principles of legality, equality, and proportionality and undermine fundamental rights such as the right to work and education. Additionally, such barriers exacerbate the shortage of teachers in the Portuguese educational system and weaken bilateral cooperation objectives. **Conclusion:** It is concluded that the restrictive administrative interpretation adopted in Portugal demonstrates legal and institutional inadequacy, requiring the revision of professional recognition procedures and the implementation of supervisory and normative standardization mechanisms to ensure legal certainty, the effectiveness of fundamental rights, and coherence with international commitments.

Keywords | Recognition of Qualifications. Right to Work. Equality. Immigration. Legality.

RESUMO | Objetivo: Analisar as implicações jurídicas da interpretação administrativa do Decreto-Lei n.º 80-A/2023 pela Direção-Geral da Administração Escolar em Portugal, com foco nos impactos sobre a empregabilidade de educadores estrangeiros, especialmente brasileiros, e na compatibilidade dessa interpretação com princípios constitucionais e compromissos internacionais. **Metodologia:** A pesquisa adota abordagem qualitativa, baseada em análise documental da legislação portuguesa e de atos administrativos, complementada por estudo de caso e análise comparativa com o Tratado de Amizade, Cooperação e Consulta entre Brasil e Portugal. Foram examinados diplomas legais, notas informativas, documentos administrativos e referenciais teóricos do direito administrativo e dos direitos humanos. **Resultados:** Os resultados evidenciam uma discrepância entre o quadro normativo e sua aplicação administrativa. A exigência de documentos inexistentes, a criação de requisitos infralegais e a ampliação indevida da discricionariedade administrativa configuram restrições ao acesso de docentes estrangeiros ao mercado de trabalho. Essas práticas contrariam os princípios da legalidade, igualdade e proporcionalidade, além de comprometer direitos fundamentais como o direito ao trabalho e à educação. Observa-se, ainda, que tais barreiras agravam a escassez de professores no sistema educacional português e fragilizam os objetivos de cooperação bilateral. **Conclusão:** Conclui-se que a interpretação restritiva adotada pela administração pública portuguesa revela inadequação jurídica e institucional, exigindo a revisão dos procedimentos de reconhecimento profissional e a adoção de mecanismos de supervisão e uniformização normativa, de modo a assegurar segurança jurídica, efetividade dos direitos fundamentais e coerência com os compromissos internacionais assumidos.

Palavras-chave | Reconhecimento de Títulos. Direito ao Trabalho. Igualdade. Imigração. Legalidade.

RESUMEN | Objetivo: Analizar las implicaciones jurídicas de la interpretación administrativa del Decreto-Ley n.º 80-A/2023 por la Dirección General de Administración Escolar en Portugal, con énfasis en los impactos sobre la empleabilidad de docentes extranjeros, especialmente brasileños, y en la compatibilidad de dicha interpretación con los principios constitucionales y los compromisos internacionales. **Metodología:** La investigación adopta un enfoque cualitativo basado en el análisis documental de la legislación portuguesa y de los actos administrativos, complementado por un estudio de caso y un análisis comparativo con el Tratado de Amistad, Cooperación y Consulta entre Brasil y Portugal. Se examinaron normas jurídicas, documentos administrativos y referencias teóricas del derecho administrativo y de los derechos humanos. **Resultados:** Los resultados evidencian una discrepancia entre el marco normativo y su aplicación administrativa. La exigencia de documentos inexistentes, la creación de requisitos infralegales y la ampliación indebida de la discrecionalidad administrativa constituyen barreras para el acceso de docentes extranjeros al mercado laboral. Estas prácticas vulneran los principios de legalidad, igualdad y proporcionalidad y comprometen derechos fundamentales como el derecho al trabajo y a la educación. Asimismo, se observa que tales restricciones agravan la escasez de profesores en el sistema educativo portugués y debilitan los objetivos de cooperación bilateral. **Conclusión:** Se concluye que la interpretación administrativa restrictiva adoptada por la administración pública portuguesa revela una inadecuación jurídica e institucional, lo que exige la revisión de los procedimientos de reconocimiento profesional y la adopción de mecanismos de supervisión y uniformización normativa, con el fin de garantizar la seguridad jurídica, la efectividad de los derechos fundamentales y la coherencia con los compromisos internacionales asumidos.

Palabras clave | Reconocimiento de títulos. Derecho al trabajo. Igualdad. Inmigración. Legalidad.



1 INTRODUCTION

Recognizing qualifications and utilizing experience in a country different from one's own is one of the most necessary points for the integration of immigrants in a country. All countries are aware of the need to establish norms that allow the new population member to develop their professional and academic skills in the country, however, some obstacles are sometimes perceived.

Regarding Portugal, there is a shortage of qualified teachers that is a long-recognized problem. The most recent data demonstrate the difficulty of the Portuguese educational system in filling teaching positions, especially in regions such as the Algarve. At the same time, a significant number of professionals trained outside the country, mainly Brazilians, face administrative and legal obstacles to integrate into the Portuguese labor market.

In this sense, Decree-Law No. 80-A/2023 brought certain hopes by establishing equivalence between degrees obtained in Portugal and abroad, provided that specific recognition was made by a Portuguese public university. However, due to an interpretation made at an administrative level regarding the degree, crystallized in the Information Note published by the Directorate-General for School Administration (DGAE), there are additional barriers generated that, by requiring documents that are not issued by universities, as well as having no place or relation to the scope of specific recognition.

This article seeks to analyze these issues from a legal perspective, especially from human rights, raising the following research question:

1. How does the interpretation of Decree-Law No. 80-A/2023 by DGAE impact equal opportunities for teachers with degrees obtained abroad?
2. How is DGAE's interpretation directly affecting Brazilian teachers trained in Brazil?

2 METHODOLOGY

This research adopted a qualitative approach based on documentary analysis and case study, designed to examine the legal implications of administrative interpretation in the context of foreign degree recognition in Portugal. The qualitative approach proves to be the most appropriate for this research, as it addresses hermeneutic problems by proposing legal-dogmatic solutions (Mora, 2023) and allows for in-depth analysis of normative discrepancies and their practical effects.

2.1 Research design and delimitation

The study was delimited as follows:

- Temporal scope: The analysis focuses on the period from September 2023 (publication of DGAE's Information Note) to September 2024, encompassing the implementation phase of Decree-Law No. 80-A/2023 and documented cases of its restrictive application.
- Spatial scope: The research concentrates on Portugal, specifically examining the administrative practices of the Directorate-General for School Administration (DGAE)



and their impact on Brazilian teachers seeking professional recognition in the Portuguese education system.

- Subject delimitation: The study focuses exclusively on the recognition of teaching qualifications obtained in Brazil and does not extend to other professions or countries of origin, although parallel patterns may exist in other contexts.

2.2 Methodological procedures

The research employed three complementary methodological strategies:

- Documentary review: Systematic and detailed analysis of primary legal sources, including Decree-Law No. 80-A/2023, DGAE's Information Note (September 29, 2023), Ordinance 967/2009, the Treaty of Friendship, Cooperation and Consultation between Portugal and Brazil, and the Constitution of the Portuguese Republic. Secondary sources, including academic literature on administrative law, migration, and educational policy, were also examined to contextualize the findings.
- Case study: The complaint filed by Ricardo Jacob, a professionalized teacher with Brazilian qualifications, served as the empirical basis for examining the practical effects of DGAE's interpretation. This case was selected due to its representativeness of the broader issue and the availability of detailed documentation, including email correspondence with DGAE and the Ministry of Education. The case study method allows for an in-depth understanding of how abstract legal provisions translate into concrete administrative decisions affecting individual professionals.
- Comparative legal analysis: Comparison of the Portuguese normative framework with international standards for qualification recognition, particularly within the European Union context and bilateral agreements between Portugal and Brazil. This comparative dimension helps identify deviations from established best practices and international commitments.

2.3 Data analysis

The data were organized and analyzed through thematic categories, seeking to understand the discrepancies between formal legislation and its administrative implementation. The analysis focused on identifying:

- Normative contradictions between different hierarchical levels of legal instruments
- Administrative practices that extend beyond legal authorization
- Impacts on fundamental rights (right to work, equality, non-discrimination)
- Implications for educational policy and teacher shortage mitigation



2.4 Research limitations this study has several acknowledged limitations

- It focuses on a qualitative analysis of a specific case, which limits the statistical generalization of results.
- The reduced number of researchers (two) may limit the breadth of perspectives in data interpretation.
- The temporal scope is limited to the initial implementation phase of Decree-Law No. 80-A/2023.
- The study does not quantify the total number of affected teachers or the broader economic impacts. These limitations are addressed through rigorous methodological procedures and transparent documentation of the analytical process, while also indicating pathways for future research.

3 RESULTS

Regarding the Portuguese situation, documentary analysis and empirical data revealed significant discrepancies between Decree-Law No. 80-A/2023 and DGAE's Information Note. Among the main findings, the following stand out:

Requirement of non-existent documents: item "b" of the Information Note requests a document that Portuguese universities do not issue in the specific recognition process of foreign degrees. This makes the application of qualified teachers unfeasible.

Disparity in normative interpretation: DGAE adopts a restrictive interpretation that, in practice, violates the provisions of Decree-Law No. 80-A/2023, by creating requirements not provided for in the original norm.

Impact on educational offer: teachers with foreign training, although duly qualified and recognized, face barriers to enter the educational system, aggravating the problem of lack of teachers in critical regions such as the Algarve.

Lack of uniformity in professional recognition: while academic recognition is regulated, professional recognition remains confusing and bureaucratically burdensome, hindering the integration of teachers into the labor market.

4 DISCUSSIONS

The findings presented reveal a systematic pattern of administrative restrictions that contradict both national legislation and international commitments. These discrepancies are particularly concerning given the bilateral framework established between Brazil and Portugal. To understand the legal and institutional context that enables these practices, it is essential to examine the foundations of this cooperation and how DGAE's interpretation undermines decades of cultural and educational integration efforts.



4.1 Situation of recognition of degrees and professional qualifications: case of brazilian teachers

Brazil and Portugal share a long history of cultural, educational and economic cooperation, reflected in various bilateral agreements, such as the Treaty of Friendship, Cooperation and Consultation.

Titles III, IV and V of said treaty deal with cultural, scientific and technological integration. Within these titles, article No. 39 stands out, which establishes the mutual recognition of university degrees between the signatory countries. Furthermore, it details the minimum requirement of three years of post-secondary study for a degree to be considered a degree or title. Likewise, articles 45 and 46 guarantee nationals of each signatory country the right to exercise their respective professions under equal conditions.

It is up to each signatory country to regulate, through a norm with force of law, the recognition of foreign degrees and titles, in accordance with the aforementioned treaty and others of the same matter. In Portugal, the implementation of this agreement is regulated by Decree-Law No. 66 of 2018, which establishes specific methods for the recognition of foreign qualifications: automatic recognition, level recognition and specific recognition.

However, in practice, efforts to facilitate access to the exercise of professions face administrative obstacles. An example occurs in the Portuguese educational system, where the training of teachers abroad (including in Brazil) faces limitations that hinder their full integration into the education system.

A recent case is the problem caused by the restrictive interpretation of Decree-Law No. 80-A/2023 by the Directorate-General for School Administration (DGAE). Through an information note issued on September 29, 2023, a “procedures” section was introduced that adds additional requirements not provided for in said decree-law. Item b) of the procedures section of this information note requires that teachers trained abroad obtain adequate teaching qualifications. These requirements are translated into an amount of credits that the teacher must have completed, depending on the subject they intend to teach.

In practice, far from being a facilitator, these additional requirements become an obstacle to the hiring of teachers trained outside Portugal, since Portuguese universities do not issue the requirement contained in item b) within the scope of the title recognition process.

Although, from a legal point of view, the additional requirements imposed by public administration generally reflect arbitrariness, part of the doctrine of Portuguese educators considers the criteria established by Decree-Law No. 80-A/2023 insufficient and a “setback.” This is because, compared to the previous norm, the decree reduces the minimum requirements for access to teaching (Santos *et al.*, 2024).

This position, however, does not take into account the current problem of hiring teachers in Portuguese schools. The vast majority of teachers with permanent contracts are between 40 and 50 years old and, if the current trend persists, by 2030 there will be a deficit of teachers in Portugal, a situation already evident in the south of the country (Flores *et al.*, 2024).



Faced with this scenario, a serious disconnection of the Portuguese authorities in relation to the country's needs is observed. Said information note, by establishing additional requirements, imposes barriers to entry and permanence in the educational labor market. These barriers end up benefiting only a limited number of teachers trained in Portugal, who apparently fear competition in the market. As a possible consequence, the flight of human capital may be being fostered, further aggravating the deficit of teachers in the country.

4.2 Disconnection between the legal framework and administrative interpretation

A direct answer to the matter would lead us to point out that DGAE is in clear violation of the principle of separation of powers, since, being a public administration, its function should be limited only to compliance with laws. However, in a contemporary vision of the Rule of Law, it is understood that this division is not absolute, since the powers of the State can exercise certain residual functions. In this sense, normative or regulatory competence is recognized in most Western countries and authorizes public administration to issue secondary norms that make applicable the primary norms issued by the Legislature (Villadangos, 2021).

This second level of norms is recognized by paragraphs No. 6 and 7 of article No. 112 of the Portuguese Constitution of 1976. Said Magna Carta establishes certain requirements for these norms to be considered regulations, which are: (i) the law to be developed must establish the competence of the entity that will issue the regulation and (ii) the regulations must be formalized as development decrees contemplated in the law itself to be developed or in the law of independent regulations. Furthermore, paragraph No. 5 of said constitutional article prohibits the interpretation of any of its precepts and, consequently, it is understood that a norm of lower hierarchy cannot do so either.

In turn, Giancarlo Vignolo states that regulations are secondary norms of an infralegal character that, when developing the law from which they derive, must not transgress it, must be issued following the appropriate procedure and must not deal with matters reserved for norms with force of law (2020).

In light of the premises developed above, it can be stated that DGAE's information note does not meet the requirements to be considered a regulation and, even if it were, it could not establish the additional requirements it contains.

Despite the irregular nature of DGAE's information note, the situation of Brazilian graduates in Portugal is harmed due to a common problem in public administration: excessive discretion in the application of norms, which generates unnecessary bureaucracy and compromises fundamental rights. Cassagne defines discretion as the margin of action that public administration has to decide in a reasonable and grounded manner, in accordance with the Constitution and laws; otherwise, it would be an arbitrary legal act (2009).

In turn, Diaz and Castillo state that the administrative act is the expression of the administration's will within the legal framework, and can be exercised through bound competences and discretionary competences. The former have a predefined relationship between fact and legal consequence with the law, while the latter leave the administrator a space of action to make a duly



grounded decision. The authors conclude that an arbitrary act implies a violation of due process and an infraction of the principle of legality, constituting an abusive exercise of power (2022).

Milkes points out that discretionary competences are a reflection of the Rule of Law, since the legislator cannot foresee all possible situations and, therefore, the law grants the public administrator the possibility of choosing from a set of alternatives. Faced with these situations, the administrator must opt for the most appropriate alternative to the specific case, having a greater argumentative burden than in the exercise of bound competences (2018).

The Constitutional Court of Colombia, in its decision T-132 of 2007, defines motivation as the charge that constitutional and administrative law attributes to the discretionary exercise of administrative functions, obliging the administrator to expose the factual and legal reasons that support their action.

By establishing requirements not contemplated in Decree-Law No. 80-A/2023, DGAE incurs an abusive administrative act, violating the principle of legality, as established in paragraph 2 of article 266 of the Constitution of the Portuguese Republic, which provides: "2. Administrative bodies and agents are subordinated to the Constitution and the law and must act, in the exercise of their functions, respecting the principles of equality, proportionality, justice, impartiality and good faith." (Portugal, 1988, art. 266)

Likewise, article No. 3 of the Administrative Procedure Code of Portugal -- approved by Decree-Law No. 4/2015 -- defines the principle of legality as the limit of the power of public administration, which must act in accordance with the law and respecting the competences conferred by law.

In turn, Sandro Lezan emphasizes that, in the exercise of public function in a traditional sense, it is only possible to do what is contained in the law. However, in the context of a constitutional and social State of law, the administration's action must also be aligned with the objectives that legal and constitutional norms seek to achieve, with special emphasis on the latter, due to their axiological content (2021).

Given this, the question arises: what is the objective of the Treaty of Friendship, Cooperation and Consultation between the Federative Republic of Brazil and the Portuguese Republic? With regard to the topic under analysis, the treaty aims to promote cooperation, exchange and development of both countries in the educational, cultural and technological areas, as well as guarantee the free and equal exercise of the profession for holders of degrees from signatory countries.

Along the same lines, the objectives of Decree-Law No. 66-2018 are to regulate and facilitate the recognition of degrees and titles of degrees issued outside the Portuguese Republic, which is strictly linked to access to the exercise of respective professions by their holders.

In the concrete case, article 13 of the Constitution enshrines the principle of equality:

"Article 13

- 1. All citizens have the same social dignity and are equal before the law.*
- 2. No one may be privileged, benefited, harmed, deprived of any right or exempted from any duty on the basis of ancestry, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation, social condition or sexual orientation."*



Dr. Eguiguren points out that equality has two meanings: (i) as a constitutional principle, which establishes that one cannot legislate in a differentiated manner among citizens, guaranteeing equality before the law; and (ii) as a subjective right, which ensures every citizen the right not to be the object of discrimination (1997).

In turn, Santos differentiates, in administrative law, formal equality from material equality. The former refers to the mere notion of equality before the law, originated in the French Revolution. The latter, on the other hand, consists of ensuring that all citizens (including foreigners) can exercise their rights under equal conditions (2020).

Along the same lines as the aforementioned author, Dr. González Martín invokes the Aristotelian premise of treating equals equally and unequals unequally, concluding that States must have norms that guarantee equality, allowing all groups in society to exercise their rights equitably, a concept she calls “equality of opportunity” (2002).

In the context of the present investigation, the principle of equality is violated when professionals with formally recognized qualifications face arbitrary administrative obstacles, while their colleagues with degrees obtained in Portugal are not affected by such barriers.

After the previous analysis, it is reasonable to conclude that DGAE's information note violates the principle of normative hierarchy, the principle of legality, the principle of equality and, furthermore, contradicts the entire legal framework related to the recognition of foreign titles and access to the teaching career.

4.3 Theoretical framework on recognition of degrees and academic mobility

The importance of student and faculty mobility lies in the enrichment of interculturality and the circulation of knowledge within the pedagogical nuclei of each institution (Martínez, 2004). For this, the recognition of academic qualifications is fundamental in international educational law, based on multilateral agreements, such as the Lisbon Convention, which deals with the validation of higher education degrees in the European region (1997). In the European context, the Bologna Process played a crucial role in promoting the harmonization of educational systems, allowing simpler recognition of academic degrees within the European Higher Education Area (EHEA).

In the specific case of Brazil and Portugal, the Treaty of Friendship, Cooperation and Consultation establishes a normative framework that seeks to streamline the validation of degrees, guaranteeing reciprocity between both countries. As a complement, Decree-Law No. 66/2018, in Portugal, details three recognition modalities (automatic, level and specific), ensuring that foreign qualifications can be validated in a clear and predictable manner.

Then the question arises: does the Treaty of Friendship, Cooperation and Consultation signed between Brazil and Portugal itself recognize any exception to the rule of mutual recognition and free exercise of professions? The answer is yes. Article No. 47 of said treaty establishes that, if and only if a country is part of a regional integration process that limits access to a profession, the nationals of the other contracting party must exercise the profession under the same conditions as any other member country of said regional integration process.



Therefore, when analyzing DGAE's information note, the introduction of Decree-Law 80-A/2023 and Decree-Law No. 66/2018, it cannot be concluded that the implementation of additional requirements has as justification the adaptation to a regional integration process. On the contrary, the documents expressly mention that it is a post-Bologna reform. Consequently, it can be concluded that the Treaty of Friendship, Cooperation and Consultation signed between Brazil and Portugal does not allow the imposition of additional conditions on the exercise of the teaching profession.

It is important to emphasize that DGAE cannot decide based on an arbitrary interpretation, considering only what was stated in its information note, which seeks to unconstitutionally interpret Decree-Law 80-A/2023. This is because DGAE does not have competence for this, its information note is not part of the legal system and goes against the law and the principles of administrative law.

Decision-making bodies, being subordinated to compliance with the law, must apply appropriate methods of legal interpretation. In a Rule of Law, it is inconceivable that public officials interpret norms in an isolated or restrictive manner. In contrast to these forms of legal interpretation, there is systematic interpretation, which, according to Dr. Anchondo, is the method that, instead of considering the legal text in isolation, interprets it as part of a concatenated logic, understanding that the legal system is one (2012).

In this sense, by the principle of plurality of instances and judicial control of arbitrariness, DGAE, if it denies requests based on additional requirements contained in its information note, must be subject to nullity control by a higher authority that decides in second instance or, in its absence, to judicial control of administration through an administrative litigation process.

4.4 Case study

As a consequence of the situation previously described, professor Ricardo Augusto Gomes Jacob filed a complaint with DGAE, addressed to the Minister of Education, Science and Innovation, through an email dated September 10, 2024. In said email, the professor points out the situation of teacher deficit in the Algarve and highlights that, despite this, DGAE imposes impossible requirements to be met by teachers with foreign training, making direct reference to item b of DGAE's information note. The email details that this requirement is not part of the documents issued by Portuguese universities as a result of the specific recognition procedure.

On September 25, 2024, the technical-administrative support office of the Ministry of Education, Science and Innovation responded to professor Ricardo Augusto Gomes Jacob's complaint, attaching to its response email official letter No. 2566 -- 2024. Said official letter, in general terms, clarifies the applicant's doubt, informing that: (i) Teachers who obtained a teacher's degree abroad do not have qualification for teaching in Portugal, even after completing the recognition process at a Portuguese university, (ii) In addition to the recognition procedure at a Portuguese university, the applicant must carry out a process at DGAE to recognize qualifications and thus be able to exercise teaching in Portugal.

Additionally, DGAE attached a link to carry out the recognition of professional qualification, as well as the list of requirements necessary for the procedure:



- “1. Official identification document with mention of nationality;
2. Medical Certificate or Declaration by the applicant (cf. annex);
3. Criminal Record Certificate;
4. Degrees, certificates or other titles;
5. Study plan of the course(s) taken (cf. annex);
6. Document issued by competent authority (cf. annex);
7. Portuguese language proficiency certificate issued by the Center for Assessment of Portuguese as a Foreign Language (CAPLE) (cf. annex);
8. Specific recognition of the academic degree that in the country of origin confers professional qualification for teaching (cf. annex).”

Faced with this situation, it is evident that DGAE not only establishes, in the normative text, additional requirements for education professionals to enter teaching, but also imposes a prior procedure.

4.5 Consequences for Brazilian Teachers and the Portuguese educational system

The restrictions imposed by DGAE and Portuguese universities entail several negative consequences:

- Obstacle to access to the labor market: The imposition of additional requirements prevents qualified teachers from exercising their profession in Portugal, affecting their right to work, as established in article 58 of the Constitution.
- Obstacle to permanence in the labor market: The requirement of additional requirements has been used as justification for the dismissal of teachers from their work centers.
- Erosion of the teaching staff: Many educators give up the idea of teaching in Portugal due to excessive bureaucracy, aggravating the already worrying shortage of teachers in the country.
- Lack of uniformity in qualification recognition: While the University of Porto recognizes a teacher's competences, the University of Lisbon imposes additional requirements, evidencing inconsistency in the application of regulations.

4.6 Results with the state of the art

As a result of European integration, a large number of citizens from southern Europe (including Portugal) decided to emigrate to the north and center of the continent. This caused a phenomenon called “brain drain,” since, in migratory processes, it is people with a higher degree of education or qualification who tend to migrate first (Alaminos & Santacreu, 2010).



The literature on the recognition of degrees, foreign titles and qualifications highlights the need for administrative simplification and normative clarity, as pointed out by international studies (for example, in France and Germany).

At first glance, it would be logical to think that, after suffering a talent drain, the Republic of Portugal would eliminate illegal or irrational barriers, simplify and standardize title recognition procedures and promote the incorporation of foreigners or nationals with foreign training to supply the existing deficit. However, the situation in Portugal seems to be inconsistent with this reality and with best practices. Requiring non-existent documents represents a setback in public administration and a violation of fundamental principles of public management, such as efficiency and proportionality (article 266 of the Constitution of Portugal).

Furthermore, the barriers imposed by DGAE's Information Note violate the principle of equality enshrined in article 13 of the Constitution, since teachers with the same qualifications are treated unequally where the law makes no distinction. This directly impacts the right to education (article 73 of the Constitution), by restricting the access of qualified teachers to public schools.

DGAE's action is subject to subsequent control through an administrative litigation process. In Portugal, challenges to administrative acts are regulated by the law of administrative court proceedings -- Law No. 15/2002, published in the Portuguese Official Gazette on February 22, 2002. As in most Western administrative legislations, this norm, in its article 4, allows the plaintiff to request the annulment of the challenged administrative act and request the declaration of recognition of a right (declaration of full jurisdiction).

In the case of teachers who have their rights violated by DGAE's decisions, they may resort to administrative litigation requesting the nullity of the decision and, at the same time, a full jurisdiction ruling that allows them to enter teaching. The claim of full jurisdiction is defined as that which requests the declaration of a desired legal situation and/or the actions to be taken to restore it (González, 1990). In turn, the full jurisdiction ruling directly modifies the challenged administrative act in favor of the administered, and may also establish a civil reparation value in favor of the latter (Correa, 2020).

In jurisprudence, the Supreme Court of the Republic of Peru determined, in its cassation decision No. 546-2022, that full jurisdiction rulings are declarations by the judge that, in addition to annulling an administrative act, also revoke said act and issue a decision on the merits of the matter.

However, even with all the guarantees of administrative litigation, it may end up not being effective due to the risk of delay. This means that, despite an eventual favorable decision, affected teachers could lose the opportunity to start their activities at the education center due to the start of the school year. Faced with this situation, the administrative litigation law in Portugal provides for the possibility of requesting a precautionary measure to ensure that the teacher can exercise their activity while the process is ongoing.

Despite the existence of legal means to ensure the rights of teachers with foreign training, these procedures involve additional costs, which represents, in practice, a material affectation of the teacher's rights.



4.7 Comparison of own results with the state of the art

This research concludes that DGAE, through its restrictive interpretation of its information note and Decree-Law No. 80-A/2023, is creating illegal, irrational and unjustified obstacles for teachers who obtained their degrees abroad and who have complied with the legal requirement to recognize them according to Portuguese legislation and international treaties.

The recognition of academic qualifications is a fundamental aspect for the international mobility of professionals. The Lisbon Convention, which regulates the recognition of higher education degrees in the European Region (1997), establishes that States must guarantee clear and fair processes for the validation of foreign degrees. Within the European Union, Directive 2005/36/EC regulates this recognition, allowing the application of compensatory measures, provided they are proportional and duly justified.

Regarding the principle of proportionality, the Third Chamber of the Supreme Court Specialized in Administrative Litigation in Spain, in its sentence No. STS 3 -- 12 - 2008, which resolves cassation appeal No. 6602/2004, establishes that the action of public authorities that limits the exercise of a right will be considered proportional whenever it responds to the necessity and adequacy of the purpose that the norm intends to achieve. Now, the introduction itself of Decree-Law 80-A/2023 states:

"In this sense, considering that the recruitment of teachers with their own qualification, which includes holders of post-Bologna degrees, through competitive school hiring procedures, has allowed responding to the needs of the educational system and there being evidence that allows predicting that such needs will continue in the coming years, it is necessary to adopt legislative measures that allow bringing predictability and security to educational establishments and their respective educational communities, while there are not teachers with professional qualification in sufficient numbers to meet the temporary needs of the public education system." (Portugal, 2023, Decreto-Lei n.º 80-A/2023)

This means that the cited Decree-Law recognizes the insufficiency of qualified professionals to serve the educational system and seeks to promote and facilitate access of teachers trained abroad.

Faced with this situation, instead of issuing a disproportionate opinion, DGAE created a regulation that pursues objectives opposite to those of the Decree-Law.

Regarding justification, it is enough to read the information note's own text, which, by its very nature, has no justification other than to inform about the content of the norm (even without doing so adequately).

After analyzing the two requirements -- justification and proportionality --, it is evident that the additional requirements established in DGAE's information note violate what is provided for in Directive 2005/36/EC of the European Union.

Previous research indicates that one of the main barriers to academic mobility does not lie in the regulations themselves, but in the way they are interpreted by public administrations. In the case of Portugal, the Directorate-General for School Administration (DGAE) and universities



have adopted a markedly protectionist stance, requiring additional requirements that are not contemplated in current legislation.

This action violates constitutional and legal principles, in addition to aggravating the shortage of teachers in Portugal. To solve this problem, the following is recommended:

- Review DGAE's Information Note to ensure compliance with Decree-Law No. 80-A/2023.
- Implement a more transparent and unified professional certification system.
- Create an evaluation and appeal mechanism for teachers affected by abusive interpretations of norms.

5 CONCLUSIONS

This research examined the legal implications of dgae's restrictive interpretation of decree-law no. 80-a/2023 and its impact on foreign teachers, particularly brazilians, seeking to practice in portugal. Through documentary analysis and case study examination, this study addressed how administrative practices create barriers that contradict both constitutional principles and international commitments.

The research concludes that DGAE, by restrictively interpreting Decree-Law No. 80-A/2023, has created illegal and unfair obstacles for teachers with degrees obtained abroad. This practice contradicts constitutional and legal principles, in addition to aggravating the shortage of teachers in Portugal.

These findings reveal a pattern of administrative practice that systematically contradicts the spirit of bilateral cooperation established in the Treaty of Friendship between Brazil and Portugal. The requirement of non-existent documents and the creation of extra-legal barriers not only violate principles of legality and equality but also undermine decades of cultural and educational integration efforts between the two nations.

To solve the problem, it is recommended:

- Review of DGAE's Information Note to ensure compliance with Decree-Law No. 80-A/2023.
- Implementation of a more transparent and uniform professional recognition system.
- Creation of oversight and appeal mechanisms for teachers harmed by abusive interpretations of norms.

The study revealed several important problems in the implementation of degrees recognition for Brazilian graduates in Portugal:

1. Imposition of requirements not provided for by law: The request for a master's degree in teaching History and complementary disciplines is not included in Ordinance 967/2009, which only determines the option between aptitude test or adaptation internship as compensatory measures.
2. Excessive administrative discretion: The Directorate-General for School Administration (DGAE) bases these requirements on the principle of university autonomy, provided for in



article 76 of the Constitution of the Portuguese Republic and in Law No. 62/2007. However, this autonomy should not override higher norms, such as Ordinance 967/2009.

3. Unequal treatment of foreign professionals: While Portuguese graduates manage to enter the labor market after completing the master's degree in teaching, Brazilians are obliged to carry out complementary training, even if they have already taken equivalent subjects in their country of origin.
4. Impact on educational supply in Portugal: The shortage of teachers is a critical issue in the country, and the imposition of unnecessary barriers on professionals trained in Brazil further aggravates this reality.

6 RESEARCH LIMITATIONS AND FUTURE LINES OF RESEARCH

This study focused on a qualitative analysis and a specific case, which limits the generalization of results, in addition to having a reduced number of researchers who contributed to its writing. Future research could:

6.1 Expand the analysis to other sectors beyond education, where similar barriers may exist.

It is important to recognize that the obstacles observed in the field of education are not isolated phenomena.

These restrictive practices, which hinder access or create obstacles for certain groups, may also exist in other important sectors, such as health, employment, technology and public services. For example, there may be barriers related to access to health services for vulnerable groups in the social assistance sector, including linguistic difficulties, geographic restrictions or lack of financial resources. Although it is a community of speakers of the same language, certain linguistic differences can generate problems, especially the mistaken perception of some Portuguese that in Brazil another language is spoken, erroneously called "Brazilian," in an attempt to devalue a variant of the common language itself.

In the field of work, discrimination challenges can manifest due to factors such as gender, age or ethnicity, limiting access to employment opportunities. Awareness of these obstacles in various sectors and understanding their common roots can provide a more comprehensive vision for the development of integrated public guidelines. Cross-sectional analysis of these problems allows identifying recurring patterns of exclusion, as well as intersections where these barriers mutually reinforce each other.

This approach can encourage the creation of a more robust and holistic strategy to address structural problems that affect various areas of society. Ultimately, broadening the analysis will allow better identification of solutions that benefit not only the education sector but the entire population, promoting more integrated and sustainable development.



6.2 Conduct quantitative studies to assess the number of affected teachers and the economic and social impacts of these practices.

Quantitative research is fundamental to adequately size the problem and its impacts. Assessing the number of teachers affected by these practices can provide a solid framework for understanding the magnitude of the issue. This includes collecting data on working conditions, salaries, job stability and access to training resources.

Furthermore, it is essential to segment the data based on variables such as gender, geographic location and type of institution, as these factors can influence how teachers experience the identified difficulties. The economic and social impacts of these practices should also be carefully analyzed.

For example, unstable working conditions and difficulties in the education sector can affect the quality of teaching, with long-term impacts on students and society as a whole. Discriminatory or restrictive practices can also generate significant indirect costs, such as increased turnover of professionals, reduced motivation and loss of talent in the educational system.

In the social aspect, this dynamic contributes to the perpetuation of inequalities and reinforces the exclusion of certain groups. The implementation of quantitative research will not only highlight these effects but will also support the formulation of public policies based on concrete data, with the aim of mitigating such impacts.

6.3 Investigate solutions implemented by other European Union Countries to face similar challenges.

In a globalized and interconnected context, it is essential to learn from the experiences of other countries facing similar problems. The European Union has implemented innovative guidelines in various countries to eliminate obstacles in areas such as education, employment and technology.

For example, some countries have developed programs that expand equitable access to education through digital technology, while others have adopted comprehensive approaches to ensure the insertion of different groups in the labor market.

The analysis of these initiatives can provide a repertoire of good practices that can be adapted to the specific needs of the context studied. Furthermore, the regulatory frameworks and public guidelines applied in other countries serve as a reference to evaluate the effectiveness of different strategies and tools.

This includes measures to combat discrimination, promote continuous teacher training and ensure access to high-quality educational resources. This study will not only allow the identification of concrete solutions but will also highlight critical factors for success and lessons learned during the implementation of these policies.

Ultimately, this comparative analysis not only facilitates the adaptation of successful solutions but also strengthens cooperation among European Union countries in the pursuit of integrated and sustainable development.



Declaration on the Use of Artificial Intelligence

The authors used the Claude AI tool for the purpose of manuscript translation. All intellectual and scientific decisions related to the manuscript content are the exclusive responsibility of the authors.

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