

JUDICIALIZATION OF HIGHER EDUCATION?

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ABSTRACT

The term “judicialization” and even “judicial activism” is often used when people resort to the judicial system to demand their fundamental rights, in particular when it is related to the adjudication of economic and social rights. Some authors consider that extending the scope of judicial authority represents a risk to democracy (progressive argument) or to legal certainty (conservative argument). This article analyzes the jurisprudence of the higher courts in the last five years in areas as consumer protection, protection of basic rights and application of general rules for institutions of higher education. In practice, there is not an excessive level of intervention by judges; in effect there is no “judicial activism” in applying student rights or the requirements of the legal framework. On the contrary, recent jurisprudence has simply accompanied and contributed to consolidate what has been termed “a culture of rights”. It is a condition for democracy that judges base their decisions on existing rules and not on their political or public policy preferences.

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