


# The Legal Framework of the educational system: Foundations and Hierarchy

## El Ordenamiento Jurídico del sistema educativo: Fundamentos y Jerarquía

Digna Estefanía Julio Valencia\*

 <https://orcid.org/0009-0001-0248-3654>  
Panamá, Panamá

**Received:** August/2/2023 **Reviewed:** August/16/2023 **Accepted** September/29/2023 **Published:** January/10/2024

How to Cite: Julio, V. D. E. (2024). The Legal Framework of the educational system: Foundations and Hierarchy. *Revista Digital de Investigación y Postgrado*, 5(9), 143-150. <https://doi.org/10.59654/27kb3589>

\*Master's student in Management and Leadership. Bachelor of Education with a focus on Geography and History. National Experimental University of the Western Plains Ezequiel Zamora, Barinas - Venezuela. Email: [dignajulio@gmail.com](mailto:dignajulio@gmail.com)



## Abstract

The present academic essay explores the legal framework of the education system in Venezuela. The importance of the Constitution as the supreme norm that serves as a starting point for the development of other laws is highlighted, and it is emphasized that all norms must respect the hierarchical order and be in accordance with the Constitution. The essay also addresses the Organic Law of Education, which establishes the guiding principles and values of education, the organization and functioning of educational institutions, student evaluation, teacher training, and other crucial aspects of education. Furthermore, the essay discusses the transcendental role of the legal framework in the Venezuelan educational context, elevating it to the status of a fundamental pillar of society. The author uses the guiding documents of Fernández and the wise suggestions of Delgado to structure and develop the academic essay.

**Keywords:** Legal framework, Venezuelan education system, legal basis.

## Resumen

El presente ensayo académico explora el marco legal del sistema educativo en Venezuela. Se destaca la importancia de la Constitución como la norma suprema que sirve como punto de partida para el desarrollo de otras leyes, y se enfatiza que todas las normas deben respetar el orden jerárquico y estar en concordancia con la Constitución. El ensayo también aborda la Ley Orgánica de Educación, que establece los principios y valores rectores de la educación, la organización y funcionamiento de las instituciones educativas, la evaluación de los estudiantes, la formación de docentes y otros aspectos cruciales de la educación. Además, el ensayo analiza el papel trascendental del marco legal en el contexto educativo venezolano, elevándolo al estatus de pilar fundamental de la sociedad. El autor utiliza los documentos rectores de Fernández y las sabias sugerencias de Delgado para estructurar y desarrollar el ensayo académico.

**Palabras clave:** Ordenamiento jurídico, sistema educativo venezolano, bases legales.

## The Legal System of the Educational System: Foundations and Hierarchy

In the pages that follow, an exciting journey into the heart of the Venezuelan educational system is undertaken, where normative hierarchy stands as the guardian of coherence and legality that underpin the national legal framework. The starting point is found in [Fernández's](#) guiding documents (2023a, 2023b). In these documents, the transcendental role of the legal system in the Venezuelan educational context is illuminated, elevating it to the status of a fundamental pillar of our society.

Throughout this journey, this essay immerses the reader in an ocean of solid arguments that form the pillars supporting the presented claims. Despite the density of the topic, the essay reveals the crucial contribution of the legal system to the construction of an environment imbued with justice and respect for human rights, with a special focus on education. To ensure



the excellence and coherence of this work, the guiding center is the wise advice of [Delgado \(s.f\)](#), who provides the necessary guidelines for structuring and developing a high-caliber academic essay.

From what has been exposed, it is important to emphasize that the Venezuelan legal framework plays an essential role in the educational system, as it constitutes the main reference to determine the rights and duties of individuals in the educational context. This legal framework enables individuals to exercise their subjective rights. The State, in turn, has specific responsibilities in the educational field, while citizens, as active subjects, enjoy the human right to education by engaging in the country's different educational institutions.

Secondly, it is crucial to highlight that the Venezuelan legal system ensures the right to education. The [Constitution of the Bolivarian Republic of Venezuela \(1999\)](#), in particular, establishes education as a fundamental and universal right for all citizens. This means that every individual has the right to access quality education, regardless of their social, economic, or ethnic background.

Thirdly, the legal framework establishes the rules and regulations governing the Venezuelan educational system. This includes laws, decrees, regulations, and policies that determine the structure, organization, and functioning of educational institutions, as well as the rights and duties of teachers, students, and parents.

A fourth aspect is that the legal framework provides the legal basis for the promotion of quality and equity in education. This includes the regulation of academic standards, the assessment of school performance, and the implementation of policies for inclusion and non-discrimination in the educational system.

A fifth argument to consider relates to the legal framework and its essential function as a provider of the legal foundation supporting the planning and development of the educational system in Venezuela. This function encompasses aspects such as the formulation of study plans and programs, the establishment of new educational institutions, and the promotion of research in the educational field.

The sixth argument is that the legal framework is a fundamental element in any organized society, as it establishes the rules and norms that govern the coexistence of its members. It consists of a set of legal norms that regulate social relations in a specific place and time. This legal framework is essential to ensure peace, justice, and respect for the rights and duties of individuals within a society.

In this line of thought, it is time to mention Hans Kelsen, a prominent Austrian jurist, for whom an effective legal framework can be represented as a hierarchical structure containing all the norms of the legal system. In law, this is known as the *Kelsen Pyramid*. At the top of the pyramid is the Constitution, which is the supreme norm. As one descends the pyramid, there are laws, regulations, decrees, and other sub-legal norms. As one reaches the base of the pyramid, the number of norms increases, but their hierarchy decreases. The Constitution is the fundamental



norm that validates the entire legal system, and any norm that contradicts the Constitution is considered invalid.

Consequently, three levels can be identified in the Kelsen Pyramid: the fundamental level, the legal level, and the sub-legal level. The first level corresponds to the top of the pyramid, where the [Constitution of the Bolivarian Republic of Venezuela \(CRBV, 1999\)](#) is located. The constitution establishes fundamental principles, the structure of the state, the rights and duties of citizens, and the institutions of the country. Additionally, international treaties on human rights acquire constitutional status in Venezuela through Article 23 of the C RBV.

At this level, the Constitution and international treaties take precedence over any other norm. Thus, the Universal Declaration of Human Rights, the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention against Discrimination in Education are international treaties and agreements that establish and protect various aspects related to education and human rights.

These documents recognize the right to education as a fundamental right and promote equal opportunities in education, the elimination of gender discrimination in teaching, and the encouragement of international cooperation in educational matters. They also emphasize the importance of education in the development of human personality, respect for human rights and fundamental freedoms, as well as the promotion of peace and tolerance in society. They underline the role of parents in choosing their children's education and the importance of education in strengthening the dignity and rights of individuals.

It is important to note that all norms of the Venezuelan legal framework must respect the normative hierarchy and be in accordance with the Constitution. Any norm that violates the Constitution can be declared unconstitutional and, therefore, lack validity. The constitution as the supreme norm serves as the starting point for the elaboration of other laws since it is the fundamental norm that contains the guiding principles and values on which the legal framework of the country is based.

The [CRBV \(1999\)](#), in its Article 7, clearly establishes that "*La Constitución es la norma suprema y el fundamento del ordenamiento jurídico. Todas las personas y los órganos que ejercen el Poder Público están sujetos a esta. La Ley regulará sus características, significados y usos*"<sup>1</sup>. This means that all laws and regulations must be in line with the Constitution, as the latter is the basis on

---

<sup>1</sup> Our translation: The Constitution is the supreme norm and the foundation of the legal framework. All persons and the organs exercising Public Power are subject to it. The Law will regulate their characteristics, meanings, and uses.



which the entire Venezuelan legal system is built. In relation to education, the constitution grants it the status of a human right (Article 102) and also dictates the role that the State, family, and society must play in the educational process, equality of access conditions to education, gratuity, among others. Furthermore, Article 104 of the constitution mentions the ethical conditions that must be met by those exercising teaching.

Regarding the Legal level, just below the Constitution are the formal laws, including Organic Laws, General Laws, Codes, and Decree-Laws, among others. These laws are enacted by the Legislative Power and must be in accordance with the Constitution. Additionally, international treaties must be approved by the National Assembly to be ratified by the Executive Power. State Constitutions and Municipal Ordinances are also placed at this level and regulate the specific norms of subnational entities.

In this sense, the [Organic Law of Education \(2009\)](#) establishes the legal framework for the Venezuelan educational system, including, among other aspects not detailed here, guiding principles and values, rights, guarantees, and duties in education. The state assumes these as an unwaivable function of paramount interest, as expressed in Article 1 of said regulation. It also addresses issues related to the organization and operation of educational institutions, student evaluation, teacher training, and other crucial aspects of education. Similarly, it describes the scope of application of this law (Article 2), Principles and guiding values of education (Article 3), Education and culture (Article 4), the Teaching State (Article 5), and Educational goals (Article 15).

In a similar vein, the [Partial Reform Law of the Organic Law for the Protection of Children and Adolescents](#), although not exclusively focused on education, guarantees the rights of children and adolescents, including the right to quality education and a safe and healthy school environment. Likewise, the University Law proclaims: "*La Universidad es fundamentalmente una comunidad de intereses espirituales que reúne a profesores y estudiantes en la tarea de buscar la verdad y afianzar los valores trascendentales del hombre*", according to Article 1 of this law.

In this axiological perspective, the Constitution, in Article 2, establishes the higher purposes of the social state of law and justice, promoting superior values in its legal system. But it adds in Article 3 that "*La educación y el trabajo son los procesos fundamentales para alcanzar dichos fines*". It is worth noting that at this level of the Kelsen Pyramid, Decree 1011 is included, which is a partial modification of the Regulation of the Exercise of the Teaching Profession and contemplates two aspects of singular importance: supervision and the appointment of National Itinerant Supervisors.

---

<sup>2</sup> Our translation: The University is fundamentally a community of spiritual interests that brings together teachers and students in the task of seeking the truth and strengthening the transcendental values of man.

<sup>3</sup> Our translation: Education and work are the fundamental processes to achieve these purposes.



The Sub-legal Level constitutes the base of the pyramid, where sub-legal norms are found, including regulations, executive decrees, agreements, resolutions, and contracts, among others. These norms are issued to develop or implement laws and must be in accordance with them. However, they cannot contradict norms at the legal level. An example of this is the [General Regulation of the Organic Law of Education](#), which, in Article 1, establishes "*normas y directrices complementarias sobre el sistema, el proceso y los regímenes educativos*"<sup>4</sup>.

In this discursive order of the Sub-legal Level, the legal framework establishes mechanisms for the supervision and control of educational institutions, contributing to accountability and transparency in the management of public resources allocated to education. This ensures that resources are used efficiently and for the benefit of the educational community. For this purpose, [Resolution 058](#) states that the organization of the Educational Community occurs through an Educational Council. "*...(omisis)... instancia ejecutiva, de carácter social, democrática, responsable y corresponsable de la gestión de las políticas públicas educativas en articulación inter e intrainstitucional y con otras organizaciones sociales en las instituciones educativas... (omisis)*"<sup>5</sup>.

Similarly, noteworthy at the Sub-legal Level is the [Regulation of the Exercise of the Teaching Profession](#), which contains: "*... (omisis)... las normas y procedimientos que regulan el ejercicio de la Profesión Docente, relativos a ingreso, reingreso, retiro, traslados, promociones, ubicación, ascensos, estabilidad, remuneración, perfeccionamiento, profesionalización, licencias, jubilaciones y pensiones, vacaciones, previsión social, régimen disciplinario y demás aspectos relacionados con la prestación de servicios profesionales docentes*"<sup>6</sup>. (Article 1).

It is worth noting that this regulation is an essential component for the regulation and efficient functioning of the teaching profession in Venezuela because it addresses a wide range of fundamental aspects related to the practice of teaching, demonstrating the importance attributed to education in the country. The fact that the regulation covers areas from entry to retirement and pensions for teaching professionals highlights the intention to provide a solid and comprehensive structure for the teaching profession. Additionally, by including topics such as job stability, remuneration, improvement, and disciplinary regime, it aims to ensure the quality of education and compliance with ethical and professional standards.

---

<sup>4</sup> Our translation: complementary norms and guidelines on the system, process, and educational regimes.

<sup>5</sup> Our translation: ...(omission)... an executive instance, of a social, democratic, responsible, and co-responsible nature for the management of educational public policies in inter and intra-institutional articulation and with other social organizations in educational institutions... (omission)...

<sup>6</sup> Our translation: ...(omission)... the norms and procedures that regulate the exercise of the Teaching Profession, related to entry, re-entry, retirement, transfers, promotions, placement, promotions, stability, remuneration, improvement, professionalization, licenses, retirements, and pensions, vacations, social security, disciplinary regime, and other aspects related to the provision of professional teaching services.



In conclusion, after the elements presented and in the interest of pointing out conclusive aspects, it is indicated that the Venezuelan legal framework plays a fundamental role in the protection and promotion of the right to education, in defining standards of quality and equity, in protecting the rights of students, and in accountability in the education system. Its importance lies in establishing the legal framework that ensures education is accessible, inclusive, and of quality for all Venezuelan citizens.

It is also inferred that the Venezuelan legal framework establishes the rights of students, including the right to freedom of thought, expression, and participation in educational activities. It also guarantees the protection of students against violence, harassment, and any form of abuse in the educational environment.

Finally, it is stated that this legal framework is designed to protect and promote the rights of students in Venezuela, including aspects such as equal opportunities, the quality of education, safety in educational institutions, and student participation. In addition to these laws, there are specific regulations that regulate additional aspects of education in the country.

## References

Convención Americana sobre Derechos Humanos. *Gaceta Oficial No. 9460 del 11 de febrero de 1978*. [https://www.oas.org/dil/esp/1969\\_Convención\\_Americana\\_sobre\\_Derechos\\_Humanos.pdf](https://www.oas.org/dil/esp/1969_Convención_Americana_sobre_Derechos_Humanos.pdf)

Convención Relativa a la Lucha contra las Discriminaciones. París, 14 de diciembre de 1960. [https://culturalrights.net/descargas/drets\\_culturals422.pdf](https://culturalrights.net/descargas/drets_culturals422.pdf)

Convención sobre la Eliminación de Todas las Formas de Discriminación contra la Mujer. (1979). <https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

Convención sobre los Derechos del Niño. (2006), Unicef Comité Español. <https://www.un.org/es/events/childrenday/pdf/derechos.pdf>

Declaración Universal de los Derechos Humanos. Adoptada y proclamada por la Asamblea General en su resolución 217 A (III), de 10 de diciembre de 1948. <https://www.un.org/es/about-us/universal-declaration-of-human-rights>

Delgado, P. (s.f). ¿Qué es un ensayo académico? <https://virtual.iesip.net/mod/url/view.php?id=10899>

El decreto 1011: los supervisores itinerantes. En la perspectiva de los adversarios y defensores. *Educere*, 4(11), octubre - diciembre, 2000, pp. 227-230





Ley de Reforma Parcial de la Ley Orgánica de Protección de Niños, Niñas y Adolescentes. Gaceta Oficial N° 6.185 de fecha 8 de junio de 2015.

Fernández, F. (2023a). Leyes y Reglamentos que Regulan el Sistema Educativo. <https://virtual.iesip.net/mod/page/view.php?id=6865>

Fernández, F. (2023b). Ordenamiento Jurídico. <https://virtual.iesip.net/mod/page/view.php?id=6864>

Pacto Internacional de Derechos Civiles y Políticos. <https://www.coe.int/es/web/compass/the-international-covenant-on-civil-and-political-rights>

Pacto Internacional de Derechos Económicos, Sociales y Culturales. (1966). <https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

Protocolo Adicional a la Convención Americana sobre Derechos Humanos en Materia de Derechos Económicos, Sociales y Culturales. (1988). <https://www.oas.org/juridico/spanish/tratados/a-52.html>

Resolución No. DM/58. *Gaceta Oficial de la República Bolivariana de Venezuela No. 40.029, de fecha 16 de octubre de 2012.* <http://virtual.urbe.edu/gacetas/39068.pdf>

Reglamento del Ejercicio de la Profesión Docente (Decreto N° 1.011 de fecha 4 de octubre de 2000). *Gaceta Oficial N° 5.496 Extraordinario de fecha 31 de octubre de 2000.*

Reglamento General de la Ley Orgánica de Educación. *Gaceta Oficial N° 36.787 de fecha 15 de septiembre de 1999* Decreto N° 313.

