

CHILDREN'S RIGHTS AS CONSUMER OF LATIN AMERICAN SCHOOL FEEDING PROGRAMMES

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Abstract

School feeding programmes (SFP) provide food to millions of children around the world in partnership with United Nations' member states using the existing school infrastructure. (State of school feeding Worldwide 2013). Thus, it has been necessary that each state and / or government develop the creation of SFP as part of its public policies, in order to provide quality and safety food supplements and services to children and adolescents of school age. Program operators become suppliers of goods and services, creating a consumption relationship, where the food recipients are the final consumer. Therefore, this consumption relationship is protected by international protocols, consumer policies and regulations of the constitutional and legal order, which protects consumers' rights with special relevance for children and adolescents. Experience in Latin American countries such as Colombia, Brazil and Chile (Feeding the Future 2018) has determined that access to nutritious food leads to eradication of hunger and malnutrition; school attendance and permanence and contributes to closing gender gaps in school education. (Zero hunger 2018). This paper reviews the evolution and development of the SFP from the Colombian experience, as well as the identification of bad practices, abuses and complaints in the operation of the SFP. As a result, SFP's act as form of protection of children's rights as consumer through the application of consumer rights regulation.

Keywords: child development; children as consumer; consumer rights; food safety; right to education; School feeding programmes.

1. INTRODUCTION

Children and youngsters of school age are the main recipients of World Food Programme (WFP) developed by the United Nations (UN). Its aim is to make all children in the world to be included in the school system, guaranteeing them a nutritional food of quality, needed to develop their abilities (Panorama 2019).

WFP from its consolidation, in 1965, in fact and law by UN, provides school feeding to millions of children in the world in partnership with UN's member states and governments using the existing school infrastructure (State of school feeding Worldwide 2013). To do this, it has been necessary for each state or government to develop, in its public policies, the creation of School Feeding Programme (SFP), which provides quality, safety and suitable goods and services. Besides providing children with the access to a nutritional food, eradicating hunger and malnutrition, SFP also guarantees school attendance and permanence, reduces dropout and closes gender gaps in school education. (Zero Hunger 2018). Unquestionably, SFP in addition to being an excellent strategy to eradicating hunger and malnutrition of children and young people in the world, it also has become an "educational, health, nutritional safety, social protection and human development promotion tool" for Latin America states or governments (Espinoza 2015).

It is therefore appropriate to compare the experience of Latin American countries as Colombia, Brazil and Chile creating and implementing SFP. This comparison will allow us to know their legal frameworks, financial capacity, infrastructure, improvement and challenges (Feeding the future 2017). It is also important to highlight the proximity and influence of SFP in accomplishing the 2 and 4 Sustainable Development Objectives (SDO) of the Agenda 2030 approved by UN as a result of the agreement of more than 150 heads of States and

Governments at the Sustainable Development Summit 2015, regarding to zero hunger and education for 2030 (SDO 2018).

Consequently, SFP in each school system must guarantee a quality, safety and appropriate service to children recipients. So, the children recipient becomes a consumer protected by the international protocols as well as constitutional and legal regulations protecting consumers' rights especially children and young people, as is shown in Colombian case¹. Thus, if the children is seen by the SFP as a consumer subject, in the case of existing anomalies or irregularities in the development of this program in relation to the incomplete delivery of food, food security and health problems (Committee on World Food Security 2013), the preventive and corrective actions must guarantee the integral protection of children and adolescents not just as simple actors in the program but consumer subjects whose fundamental rights, such as health, life and education, could be violated (SFP 2019).

This is why it is absolutely necessary to guarantee this population the access to the knowledge of their rights, actions and duties, not only as a state programme's beneficiaries but also as consumer subjects, who have a national and international protection in constitutional and legal frameworks, i.e. the Consumer Statute, which provide administrative and jurisdictional actions that consumers may take in front of a deficient provision of goods and services on the part of providers. The present analysis will show the Colombian regulatory framework and the juridical tools available to the consumer children to protect their rights in SFP.

1.1. School Feeding Programme in Latin America

1.1.1. Colombia

The Colombian SFP started very recently when comparing to the emergence of UN feeding programmes. SFP is defined as "a state strategy that promotes children and adolescents' access with permanence in the official education

system, by providing a nutritional supplement during the school day, in order to maintain safety levels, impact positively on the learning processes and cognitive development, reduce the truancy and dropout, and promote healthy lifestyles”, in accordance with the Decree 1075 of 2015, art. 2.3.10.2.1.1.

The actors of SFP, with specific responsibilities are:

- ✓ Ministry of National Education - MNE-
- ✓ Certified Territorial Entity - CTE-
- ✓ Children and adolescent beneficiaries
- ✓ Parents
- ✓ Operators
- ✓ Food handlers
- ✓ Principals - Educational institutions
- ✓ Teachers and directive teachers
- ✓ Community in general.

In accordance with the Law 1450 of 2011 (National Development Plan 2010-2014), the National Education Ministry assumes the execution and development of SFP, early operated by the Colombian Institute of Family Welfare (ICBF by its acronym in Spanish), and later, with an orientation, execution and articulation work, with territorial entities. However, since 2013 the NEM has assumed the commitment of operating the program under its supervision, under two modalities: centralized and decentralized.

Such a program (SFP) is ruled by the Decree 1852 of 2015 issued by the NEM. This Decree points out at CTE as responsible of the selection, recruitment and implementation of the program. In the same way, Resolution 16432 of 2015 establishes the specificities about responsibility, minute pattern and social control mechanism of the program. Its funding depends on national resources transferred to CTEs; however, these as responsible of the educational service in their jurisdiction must execute with their own resources the implementation, financing and execution of the program in accordance with NEM guidelines, specified in the art. 2.3.10.3.2. of the Decree 1075 of 2015.

Among the functions of the NEM regarding SFP, it can be mentioned:

1. *Define, deliver and update the Technical-Administrative Guidelines of SFP, the standards and minimum conditions for the execution of the Program and the*

provision of the service, which will be mandatory and applicable for territorial entities, operators and in general the actors of the program, regardless of the source of resources with which is financed.

2. *Guide and articulate SFP based on minimum standards of mandatory compliance for its provision.*
3. *Provide technical assistance to territorial entities for the implementation and execution of the SFP in their respective jurisdictions.*
4. *Distribute and transfer to the territorial entities the co-financing resources of the Nation General Budget to the SFP, so that they are executed in accordance with this Title and the conditions indicated by the Ministry, verifying that the execution of the resources of the different sources of financing for SFP are executed in a coordinated manner under the Common Stock scheme.*
5. *Define and implement an information system, as well as the instruments for planning, monitoring and control of the Program.*
6. *Promote citizen participation and social control in accordance with the principles of participatory democracy and democratization of public management in accordance with current regulations and Technical-Administrative Guidelines.*
7. *Enter into contracts for the execution of the program.*
8. *Promote co-financing models and common stock schemes with different resources for financing the SFP.*
9. *Make selective visits to territorial entities, educational institutions and program operators, directly or through supervision, to verify the conditions under which the program is being executed and compliance with the guidelines, standards and conditions of it. These visits may be carried out with the participation of control bodies or entities, or of the competent authorities in matters related to the program. (Decree 1852 of 2015)*

On the other hand, CTE must attend, among other functions, to guarantee the provision of equipment, utensils and household needed to operate the program in the prioritized educational institution, according to the modality being provided; execute SFP, directly or indirectly, in compliance with the guidelines, standards and minimum conditions provided by the NAM.

In order to do the above, CTEs must guarantee the provision of the food service from the first day of the school calendar; appoint the supervision and, if

necessary, the technical supervision, in the contracts subscribed, in order to properly monitor and control its execution, as well as to adopt the actions and measures provided by the law as contracting and expenditure officer for guaranteeing the suitable and timely accomplishment of those contracts, of the program and of the guidelines, conditions and standards of the NEM for the SFP, in their jurisdiction; provide technical assistance to educational institutions in their jurisdiction in search of SFP effectiveness and efficiency in accordance with NEM guidelines, for the implementation and execution of the SFP in their respective jurisdictions; guarantee that educational institutions have the proper infrastructure for storing, preparation, distribution and consuming nutritional supplements, and subscribe improvement plans with those institutions which do not meet these conditions, monitor them and support the implementation and execution of the plan.

In the same way, the principals, during the development of the SFP must assign and manage suitable spaces in the educational institutions in order to develop the program in a proper way, ensuring that SFP operators have and meet the technical guidelines prescribed by law. That is, principals become the real auditors of the program because they have to verify that operators do their duty providing, properly and timely, the nutritional supplements to each beneficiary namely children and young people. It is noteworthy that among others duties of principals, there is the divulgation of SFP among the academic community, explaining the development and way of the program.

But they are not the only ones who will have to ensure compliance of the program in the institutions; in the same way, the coordinators of the program, school administrators, teachers, administrative staff, citizen oversight committees and society in general, have to do the corresponding monitoring. This can be done by establishing controls to food handle conditions and quality, proper tools to manipulate food, pack quality, staff and transportation hygienic conditions, as well as adherence to food rations specifications.

It cannot be forgotten one of the crucial actor in the successful development of the program: the Operator, who is the provider and is hired to execute SFP. S/he is obliged to:

1. Timely comply with the technical-administrative guidelines, operating conditions and minimum standards of the Program set by the Ministry of National Education.
2. Permanently guarantee the quantity, quality, safety and timeliness in the delivery of food to the student beneficiaries of the program under the conditions of the contract, and those indicated by the Ministry of National Education and the authorities in the matter.
3. Plan, organize and execute the daily supply of food supplements, and ensure that the personnel, who carry out the activities during the execution of the SFP in the different stages of the process, have sufficient suitability and experience to comply with their functions.
4. Comply with the training plan and deliver the provision to the food handling personnel used for the operation of the program.

Regarding the recommendations of energy and nutrients for the beneficiary population of SFP, they are summarized as follows:

Table No. 1 Food and Nutrition aspects

Recommendations	Calories Kcal	Proteins G	Fat G	Carbohydrates. G	Calcium. Mg	Iron. Mg
4 years – 6 years and 11 months	1643	57.5	54.8	230	600	10.3
7 years – 12 years and 11 months	1986	69.5	66.2	278	800	15
13 years – 17 years and 11 months	2556	89.5	85.2	357.8	900	15

Source: Resolution 16432 of 2015.

The distribution of the net caloric value or the acceptable range of distribution of macronutrients should be:

- Proteins: 12- 14%
- Fat: 28-32%
- Carbohydrates: 55 a 65%

Since March 14, 1969, Colombia has adhered to the Codex Alimentarius or “Food Code”, promoted by FAO and the World Health Organization (WHO) aiming at protecting consumers’ health. The Codex Alimentarius is composed of a set of regulations, norms and practice codes approved by a Commission known as CAC, a central element of FAO/WHO Joint Program about Food Regulation. The Codex Alimentarius Colombian National Committee was created by the Decree 0977 of 1988; it is ascribed to the Ministry of Economic Development as a consulting organ of the National Government in the formulation of the country policy regarding processes of normalization, and the analysis of principles and procedures that can be advanced in the Joint Commission FAO/WHO of Codex Alimentarius, its Executive Committee and its Auxiliary Organs (Codex Alimentarius). “FAO supports governments in developing school feeding programmes with local products (HGSF), which acquire safety, various and nutritive food, produced by small local farmers, for school feeding. This approach aims at providing children with healthy food, and at the same time, fosters local agriculture and economy. For this to be effective, the food and nutrition programmes have to be supported by national policies, regulations and institutions. In the Second International Conference on Nutrition (CIN2), the governments have agreed to develop policies, programs and initiatives to ensure healthy diets during all the life, included school feeding and nutrition programmes. To achieve these objectives, FAO helps countries to adopt proper policies, and juridical and institutional frameworks for implementing integral school feeding and nutritional programmes, with approaches based on human rights that joint diverse sectors with school feeding, such as agriculture, health, education and social protection” (FAO School feeding and nutrition).

This means that to create guidelines of SFP nutritional and protein content, the NEM together with the territorial entity have to be based on each one of the guidelines of the Codex Alimentarius. In such a way, the level of complaints and claims about safety, security and suitability of SFP food would not compromise the program sustainability.

Currently, SFP has been submitted to a regulatory reengineering with the aim of ensuring the strengthening and renewal of the program to guarantee its sustainability and coverage to more educational institutions in the different CTEs in Colombia. To do this, a series of regulations has been issued to promote the widening of this coverage to more educational institutions in the country. Some of them are listed below:

Resolution 8147, May, 2018 - CONPES 151

Resolution 016294, October 1st, 2018 - CONPES 151

Resolution 08147, November 21st, 2018

Resolution 016294, February 13th, 2019 - CONPES 151

Resolution 016294, March 18th, 2019 - CONPES 151

Resolution 2248, 2018.

Despite the wide range of normativity regulating the implementation, development, monitoring and control of SFP, it has been affected, from its implementation, by diverse irregular situations. An evidence of this is the different reports and investigations that exists in the Office of the Procurator General of the Nation, related to the recruitment of operators by the CTEs (Bulletin 28, 348, 194 Office of the Procurator General of the Nation 2019), claims about the incomplete delivery of food to the educational institutions by the operators (Bulletin 455 Office of the Procurator General of the Nation 2019), as well as complaints about the safety, intoxication and health damage of food provided by the program (Herrera 2019). Thus, it is important to analyse and identify another mechanism to protect children as SFP consumers.

1.1.2. Brazil

For its part, the national school feeding programme in Brazil was implemented in 1955, in the Federal District, states and municipalities in the country. The program provides school lunch to the students of pre-basic (day nurseries, kindergarten, indigenous schools and quilombolas), primary and secondary education, and to youngsters and adults enrolled in official, charitable and community schools, by transferring financial resources through the National

Fund of Education Development (FNDE, by its acronym in Portuguese) to executing entities (FNDE. School feeding)

In accordance with Law 11947, June 16th, 2009, the resources for the program sustainability come from the National Treasury. The states, municipalities and the Federal District must make available a 30% of the transfer carried out by the Treasury for the functioning of the national school feeding program. As a characteristic of the program it is highlighted the creation of vegetable garden in schools and the incentive to the family agriculture and the rural family entrepreneurship.

1.1.3. *Chile*

The SFP in Chile is regulated by Law 15720 of 1964, which created the National Board of School Economic Assistance and Grants, which is characterized by providing daily food rations: breakfast, lunch, snacks, and dinner, according to the vulnerability of students of the educational institutions at every level (kindergarten, primary, secondary and adults), aiming at ensuring their attendance to class and avoiding the school dropout. (School Feeding Programme. JUNAEB).

According to the information provided by the Chilean Ministry of Education, the program is for students "focused according to their condition of vulnerability. For this, the Institution processes and analyses all the information considered by its model of measurement of the condition of vulnerability, for about 3 million students of the Official System, identifying with name and course the lists of those who have the greatest condition of vulnerability. These listings are obtained by the establishment (the JUNAEB regional directions send the lists of beneficiary students to the educational institutions). (School Feeding Programme. JUNAEB).

The right to feeding in Chile is protected in the Political Constitution of 1980 that expresses in the art. 5 that "the exercise of sovereignty recognizes as a limitation respect for the essential rights that emanate from human nature" and that "it is the duty of the State organs to respect and promote such rights, guaranteed by

this Constitution, as well as by the international treaties ratified by Chile and that are in force”.

In the same way, Chile develops a governance and normativity regarding nutritional health, safety and sanitary infrastructure, applied to school feeding programmes.

2. PROTECTION TO CHILDREN AS CONSUMERS

In fact, the judicial protection to consumers’ interests has existed for a long time, even though not as a specific discipline, it has been done through different norms in the juridical order or with the creation of movements and/or associations aiming at offering juridical tools to consumers in front of misleading advertisement and the unreasonable influence of the consumerist marketing; asking for the existence of protection regimens for consumers in the society (De León Arce 2007)

The position as the weak party in a contractual relationship that has been given to the consumer that acquires goods and services, and the asymmetry in the market relation have always existed. From the Roman Law and in all the juridical orders, it has been used regulations to protect to the acquirers of goods and services against the possible fraud situations on the part of the providers or producers (De León Arce 2007).

Hence, the apparition of successive norms addressed to protect legally that consumer and the interests of all a collectivity, aiming at re-establishing the equality and equivalence of benefits in the contractual relationships.

Before the promulgation of the Colombian Political Constitution of 1991, there was not a constitutional disposition that explicitly was in favour of protecting a specific citizen category, such as consumers.

The Colombian Political Constitution establishes a fair political, economic and social order in a democratic and participative juridical framework. In this way, the justice enacted is not only based on a formal equilibrium or equality, but one equal, real and social, enshrined as fundamental principle of the Social State based on the rule of the law (Camargo 2001, 24-30). Note how articles 13, 44, 67,

78, 88, 95 numeral 1 and 334 of the Colombian Political Constitution of 1991 are the base of protection of the one considered the weakest party in a consume relationship in the market.

When examining the article 78 of the Political Constitution, it is highlighted the State has to carry out the constitutional mandate legal development: on one hand, the tutelage of rights such as health, security and consumers' interests; on the other hand, elaborate effective procedures for protecting the consumer, guarantee the participation of consumers on their own rights and assist consumers through their organizations. This allows the legislator a wide range of action when developing the constitutional mandate of protecting the consumer. It is noteworthy that even though it is the Political Charter what determines the protection framework favouring the consumer, with the aim of re-establishing the equilibrium and equality of the consumer in front of the strong party in the consume relationship, it does not indicate all the protection assumptions for the consumer, it just determines an action o protection field, as the Judgement of the Constitutional Court C-1141/2000 of August, 30th, expresses:

"...The Constitution orders the existence of a field of protection in favour of the consumer, inspired by the purpose of restoring their equality vis-à-vis producers and distributors, given the real asymmetry in which the person attending the market develops in pursuit of satisfaction of his/her human needs. However, the Constitution does not determine the specific cases of protection, an issue that is developed through the legal system. The protection program, mainly, is determined from the law, regulations and contract. It is clear that the contractual source must be interpreted in accordance with the consumer's guiding principles embodied in the Constitution. With the right of the consumer, something similar is presented of what is observed with other constitutional rights."

"The Constitution defines a field of protection, but the precise content of the program of defence of the protected interest is that which is developed and added by law and by other norms and sources of legally valid rules. In particular, when the constitutional framework has been drawn up, the dynamic task of specifying the specific content of the respective right is entrusted to the law,

specifying the level of its constitutional protection in historical time and in real circumstances. The meaning of a certain right and its extension, therefore, is not established only by the Constitution a priori and once and for all."

Note that in this sentence the Constitutional Court does not only provide an action plan developed by the legislator through the law, but also it ensures that consumers' rights are protected according to the country political reality and materialized in public policies. In another paragraph of the sentence it can be read:

"As already stated, the reason for this regime is based on the need to compensate with diverse measures the position of inferiority with which consumers and users, generally dispersed and endowed with scarce knowledge and potential, face the forces of production and marketing of goods and services, necessary in order to satisfy their material needs. When the Constitution entrusts the legislator with the development of a certain protection regime, it is not simply enabling a specific competence to dictate any type of norms. What the Constituent proposes is that the purpose of the protection be effectively tried to be updated and imposed on the political and social reality - at least to a reasonable degree and to the extent of the possibilities and existing resources -, articulating in the more just and harmonious manner within public policies the just demands of the subjects deserving of such special protection".

Taking up this criterion, another example is the sentence of the Constitutional Court C-973/2002, which indicates that not only the assumptions of violation enshrined in law, decrees or regulations the single situations of violation of consumer's rights, let's see:

"From such a sentence it can be seen that the legislator does not enjoy absolute freedom to configure the regime of consumer rights, since the Constitution requires him to take into account, for that purpose, the integral protection established in his favour in the same text above. This entails the necessary examination of the situations surrounding the development of the productive process - which constitute the basis of constitutional protection - to produce norms that harmonize with the Constituent spirit of counteracting the inequality that market relations imply."

"In that sense, it is the duty of the legislative body to take into account the asymmetric relationships generated by the manufacture, commercialization, distribution and acquisition of goods and services, and that arise from the

preponderant role of the producer as regards the development of the good or design of the service imposing conditions for its operation and use, as well as the advantage of the distributor or supplier because of its dominance of the marketing channels of goods and services; but above all, the law must carefully observe the helplessness to which the consumer is subjected because of the need s/he has to obtain the goods offered in the market."

"Consequently, the rules that the legislator gives, by virtue of the competence that has been granted to regulate the regime for the protection of consumer rights, which includes the way in which the producer's responsibility can be demanded, must take into account the special protection of those rights recognized by the Charter and be oriented towards their full effectiveness."

"Likewise, it is necessary that the interpretation of the norms relative to the rights of the consumer that have been issued prior to the issuance of the Constitution, as well as the examination of its constitutionality, be carried out under the postulates established by the superior norm in this matter".

Regarding the international environment, as supranational norms we must mention the UN's Guidelines for consumer protection promoted by the United Nations Conference on Trade and Development- UNCTAD. They are defined as "a valuable set of principles that establishes the main characteristics of the laws of consumer protection, the institution in charge of apply them and the compensation system in order to be effective". The guidelines were approved by resolution 39/248, April 16th, 1985, and after that they were extended by the Economic and Social Council by resolution 1999/7, July, 26th, 1999, and approved by UN General Assembly by resolution 70/186, December 22nd, 2015. Their action field is centred on the transactions between enterprises and consumers, in their relationship of goods and services provision, including state enterprises. The guidelines aim at meeting mainly the needs of consumers towards an access to essential goods and services, protecting the consumer in vulnerable and disadvantage situation, facing risks for his/her health and safety, providing education about the environmental, economic and social consequences of his/her elections (UNCTAD 2016, 3,6 - 7).

The guidelines aim at the States to adopt and promote policies addressed to maintain goods and services security, ensuring safety and quality products. That is, “appropriate policies must be adopted to ensure that assets produced by manufacturers are safe for the intended use or for the normally predictable. Those responsible for introducing goods in the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as “distributors”), must ensure that, while they are in their care, those goods do not lose their safety due to inadequate handling or storage” (UNCTAD 2016, 11). In the same way, the Convention on the Rights of the Child in 1989, ratified by Colombia through the Law 12 of 1991, by its normative body, recognizes the rights of children to education, feeding, and proper information about their rights, among others. (UNICEF 2006, 22).

Consequently, it could be said that to protect the consumer rights if a norm is considered, it must be also considered all that surround the consume relationship and address the protection where needed and fight against the inequality between the parties of the relationship, because it is so recognized by the Colombian Political Chart.

Now it must be mentioned the legal body of protection of consumers’ rights in Colombia, which started with the issuance of Law 73 of 1981, which allows the State to intervene in the distribution of goods and services for the protection of consumer. This Law gave extraordinary faculties to the President of the Republic to issue regulations directed to the control of the distribution or selling of goods and services and the establishment of sanctions and procedures. Based on this, Decrees 1441 and 1320 of 1982 were issued; the former regulated the creation, organization, control and surveillance of the consumer leagues¹ and consumer associations, and the latter defined the topics concerning the consumer leagues and association. (Caicedo Pombo 2000, 18-20)

Later, the Decree 3466 of 1982, so called Statute for the Protection of the Consumer, was issued. This decree regulated topics such as suitability, quality, guarantees, marks, slogans, advertisements and public pricing of goods and

services, and the responsibility of their producers, sellers and providers, being 1982 and the following the most productive concerning to consumer protection. The Decree 3466 of 1982 was revolutionary in its time and put the country at the forefront of other States' legislations concerning the protection of consumers' rights.

However, its effectiveness facing the changes of the market and the birth of new juridical relationship forms where consumers intervened made its applicability to decay, forcing the legislator to update such dispositions. This is why, after 29 years of validity, Law 1480 of 2011 is issued, which adopts a new Statute of the Consumer in Colombia, reaffirming the mandate of the Political Constitution of 1991.

This regime of consumers' protection benefits all consume relationships in which producers and providers participate in front of the consumer in all the sectors of the economy, according to the article 2 of law 1480 of 2011. That is, anyone who acquires a product or service for his/her own satisfaction and is not linked intrinsically to his/her economic activity, will be consumer, and the relationship with the producer or provider of the good or service, will be one of consume; as a consequence, it will be the general regime of Law 1480 of 2011 which protects the rights and duties of the parties in this relationship, as well as the responsibility of producers and providers both substantial and procedurally: *being this the object of the Law.*

But, who are considered consumer for the new Statute of the Consumer? At this point, it is necessary to highlight the importance of the change of consumer concept and the definition of other series of concepts, included in the article 5 of Law 1480 of 2011, which are not in a wide way and specifically defined in the Decree 3466/82. In that regard, it moves of identifying the consumer as the simple natural or juridical person who contracts the acquisition, use or enjoyment of a good or service for the satisfaction of his/her necessities, to consider as such to *"every natural or juridical person who, as final recipient, acquires, uses or enjoys a determined product, whatever its nature, for the satisfaction of his/her own, private, family or domestic, and business necessity"*. It is necessary to understand this new concept is more complete that the previous one, both for

the definition of consumer and for the concept of entrepreneur, producer or provider, among others.

On its part, in Law 148/2011, there are also highlighted some principles of protection, among them it is convenient to highlight the *especial protection to children and adolescents, in their quality of consumers, according to what is established in the Code for Children and Adolescents*. More than principles, they “are rights largely done by the criteria of UN about the specific needs to be covered by national normativity of consumer protection” reaffirming the constitutional protection of consumers. (Giraldo, Caycedo, Madriñan, 2012).

Regarding the basic rights of consumers, even though the Decree 3466/82 did not mention or describe them specifically, the article 3 of the Law 1480/11 does make a general description of rights and duties of consumers and users, without prejudice of those recognized by especial laws, such as: quality, safety (art. 6-18), receiving information (art. 23-28), protection against mislead advertisement (art. 29-33), contractual protection (art. 34-44), election, participation, representation, education, equality, among others.

When specifying the protection of the information in consume relationships, the article 28 of Law 1480 of 2011 establishes a especial protection for children and adolescents, which is reinforced by the article 34 of Law 1098 of 2006, which issues the Code of Children and Adolescents, and the regulatory Decree 975 of 2014, which “regulates the cases, content and form in which the information and advertisement addressed to children and adolescents as consumers has to be presented”.

In accordance with it, the article 67 of the Colombian Political Constitution points out that the *education is a person right and a public service*, in charge of the State, which must ensure an effective quality and including provision. This supposes to have a national education policy that ensures the access to the education services to all children and adolescents. According to the review report carried out by the Organization for Economic Co-operation and Development (OECD), as a contribution to the process of adherence of Colombia, the Colombian set of policies and practices regarding education were assessed, making evident, among other advances, the increase in the access of children and adolescents to the education services, attended to school from early

age and ensuring their continuity until the higher education (OECD Education in Colombia 2016).

The access and permanence in the school system is achieved, as it was mentioned, through the SFP. This means that food provided through the program have to be safe, secure and suitable. In case of irregularities in the development of the program that affect those qualities of food, such a situation has to be protected in accordance with the protection norms established by the laws of creation of SFP, without prejudice of recurring in a general manner to the norms protecting consumer rights.

The dispositions of the school feeding programme establish that any type or claims or complaints about the quality, safety and suitability of food providing by the operator has to be channelled by the claimer, first, to the educational institution in order to this, files a formal complaint to the supervisor entity and to the territorial entity. Then, a formal investigation starts heading by the NEM or other competent authorities. Other SFP actors that can participate in the surveillance of the service and food provided by the program are the committees of school feeding (CSF) in the educational institutions, especially integrated by representatives of parents.

This is the reason why, for the integral protection of children and adolescent consumers regarding the food and services received by the SFP, it is absolutely necessary to ensure the access to the program education to all the academic community and the recognition of children and adolescent rights as consumers and not only as beneficiaries of a State school feeding programme.

It is unquestionable the position of children and adolescents as the weak party of SFP regarding the food received on the part of the Operator in the program. Children and adolescents are consumers or users because they are natural people, final recipient of the food received from the SFP Operator, and they are the people who receive and enjoy such a service in order to satisfy a private need, in this case feeding. The SFP Operator is a real provider because in a habitual way, directly or indirectly, s/he provides and distributes the food. S/he can offer this service as a natural person or a juridical person, with or without profit benefit.

This reasoning takes us to configure between these two actors an actual consume relationship, notion used by the Argentinian legislation in its Political Constitution of 1994, including in such a regulation all a theory around the consume relationship, as is defined in the article 3 of the Argentinian Law 26.361 of 2008, like a link between the provider and the consumer or user. (Villalba, 2012, 109)

In the Colombian regulation, it can also be found a reference to the notion of this relationship between the SFP Operator and the children recipient, when reviewing concepts issued by the Industry and Commerce Superintendence (ICS), such as the one that define it as *those established between consumers and producers and/or providers, in order to apply the norms of the consumer* (ICS Concept 2016, 4).

On the other hand, the text of STC 1518 of February 11th of 2019, when in front of the valuation of a proof recognizes the existence of a consume relationship because there is a consumer who wants to acquire a determined good for his/her own satisfaction, and, on the other part, a provider who offers a product through his/her virtual channels to others.

In the same way, the STC of April 30th, 2009, refers what the Civil Room of the Supreme Justice Court considers as a consumer relationship, as follows:

The consume relationship is one special category that arises among those professionally involved in preparing or providing goods or provide services with whom acquires in order to consume; and it is precisely the consumer, who, being in conditions of economic vulnerability and imbalance, is the recipient of special regulatory protection; of course, the professionalism of the producer, who makes him an expert in the technical and scientific matters around which he carries out his work, his solid economic capacity, its vocation to contract massively, the hiring modalities to which it goes, among many other peculiarities, place it in a plane of undeniable business advantage that demands the intervention of legislators and judges with a view to restoring the lost balance.

As a matter of fact, when there is a violation in providing SFP services, the ICS would be called to ensure children protection as consumer in the consume

relationship. For this, Law 1480/2011 establishes, as one of the ways of promoting or protecting consumers' rights, the exercise of actions of jurisdictional type, especially the actions mentioned in the article 56, whose competency would correspond to the ICS or to the judges of the Republic. In the same line, the Law 1564 of 2012, current General Code of Procedure, in its article 24, reaffirms the jurisdictional functions of ICS, the procedure to be followed and the nature of the decisions proffered.

Turning back to the actions contained in the article 56, Law 1480 of 2011, it must be mentioned the mechanism instituted by the Colombian Political Constitution (art. 88) and developed by the Law 472 of 1998; these are the popular and group actions, which serve to protect consumers' rights because these are considered as collective rights. With these laws, the consumer may prevent the irregular actions of the producer and/or the provider of the good or service, or failing that, procure the reparation or compensation of the damage on the protected interest. Both actions are established to repair the damage caused to a plural number of people. When the ingestion of school food causes health damage to a plural number of children of the school system, together with the investigation and administrative sanction by the SFP surveillance and control actors, these actions become the expeditious mechanism to sanction to such a provider -SFP Operator-, and obtain effective damage reparation.

The article 56 of the Law 1480/11 also mentions the action of responsibility by damage due to defective products, which will be managed before the ordinary jurisdiction. Its nature is explained from the compromise that the producer or provider acquires when offers, distributes and/or puts into circulation goods and services, for consumers. S/he cannot remain aloof or indifferent to the eventual defects, anomalies, danger or risks that these can cause to the consumer life or health. In this way, the operators of SFP can be passive subjects of this action on the part of the child consumer.

In the same line, the action of protection to the consumer, numeral 3, article 56 of Law 1480/11, of competency of ICS, is adjusted to the direct violation of norms about the protection of consumers and users, whenever the food and services provided by SFP present irregularities that produce damage to health, life and food security of the children actors of the program. In this way, the ICS will be

in charge of settling the jurisdictional process in which the action of protection to the consumer is in advance, whose judicial procedure will be the verbal or summary verbal, being the ICS the competent to know prevention in all the national territory, or otherwise the civil judge, of such an action.

Without prejudice of the jurisdictional faculties, ICS have administrative faculties to ensure the observance of Law dispositions and to process the investigations because of its non-compliance, as well as to impose the respective sanctions. To impose administrative sanctions, it will be followed the procedure established by the Contentious-Administrative Code – Law 1437 of 2012.

3. CONCLUSION

In this way, it is evident that there is a national authority regarding the protection of consumers' rights, that counts on effective administrative and jurisdictional procedures to prevent and sanction those actions carried out by producers or providers of good and services, when affecting their quality, suitability or safety, and produce damage to the consumer.

The SFP and its actors are not aloof to the rights of consumer protection established constitutionally and legally. Thus, without prejudice of the administrative and punitive actions that territorial entities, or if failed, the National Ministry of Education may execute, the children consumer through their legal representative or the consumer leagues may assume the defence of their rights when these are violated by SFP Operators when providing food.

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