

The rights of children to access education appropriate to their needs and for the interests of children to be paramount

(Judgment T-008/16 Eighth Chamber of Review of the Constitutional Court of Colombia)

Case at a glance

Full citation

[Corte Constitucional \[C.C.\] \[Constitutional Court\], Sala Octava de Revisión, enero 22, 2016, M.P.: A. Rojas Ríos, Sentencia T-008/16 \(Colom.\).](#)

Forum

Eight Chamber of Review of the Constitutional Court of Colombia

Date of decision

22 January 2016

Summary of decision

In this decision, the eighth chamber of review of the Constitutional Court of Colombia found that the State had violated the fundamental rights to education and equality of four children who lived outside the urban centre by not providing transportation to the closest secondary education institution.

Significance to the right to education

This decision confirms that the obligation to protect the right to education rests with the state and that it has a responsibility to take intentional, concrete measures to make education accessible to all without discrimination

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Facts

The mothers of four minors, between the ages of 10 and 14, brought actions against the State for not allowing their children to enrol in the Tutorial Learning System (*Sistema de Aprendizaje Tutorial* or "SAT") and for failing to provide a means of transportation for their children to be able to access the nearest secondary school.

The plaintiffs and their children lived in rural areas, between four and five hours walking distance to the nearest urban area. The four minors finished primary school in areas near their homes but these institutions did not have secondary education programs. The closest institution that provided secondary education was located in the urban area and the petitioners' families did not have the resources to cover transportation to the institution and there is no school transportation service that goes to the petitioners' homes.

However, the SAT program is accessible in rural areas. The SAT was developed specifically for adults in rural areas and only admits students over the age of 15. Although the petitioners were not yet 15, their mothers requested that their children be allowed to enrol in the SAT program in order to continue their education because they could not access a traditional secondary education institution.

The lower court found that the right to education of the minors had been violated and that the best educational option was to enrol them in the SAT program.

Issue

The Court addressed two issues. Firstly, whether the State violated the fundamental right to education and equality of children by refusing to enrol them in the SAT program because they weren't at least 15 years of age. And secondly, whether the State violated fundamental rights to education and equality of children by not providing transportation from the rural areas where they live to the urban centres.

Article 67 of the [Constitution of Colombia](#)

Education is an individual right and a public service that has a social function. Through education individuals seek access to knowledge, science, technology, and the other benefits and values of knowledge.

Education shall train the Colombian when it comes to respect for human rights, peace, and democracy, and in the practice of work and recreation for cultural, scientific, and technological improvement and for the protection of the environment. The state, society, and the family are responsible for education, which shall be mandatory between the ages of five and fifteen years and which shall minimally include one year of preschool instruction and nine years of basic instruction.

Education shall be free of charge in the State institutions, without prejudice to those who can afford to defray the costs. It is the responsibility of the State to perform the final inspection and supervision of education in order to oversee its quality, for fulfilling its purposes, and for the improved moral, intellectual, and physical training of those being educated; to guarantee an adequate supply of the service, and to guarantee for minors the conditions necessary for their access to and retention in the educational system. The nation and the territorial entities shall participate in the management, financing, and administration of state educational services within the limits provided for in the Constitution and statute.

Decision

The Court concluded that the State did not violate the fundamental rights to education and equality of the children by refusing to enrol them in the SAT program for not being at least 15 years of age since the SAT program was designed for adults in rural areas and the SAT method and practice of teaching are aimed at this particular type of student and focus on work and non-play components. The Court reasoned that the minors' right to education would be better protected in a teaching environment designed for children still under development.

On the other hand, the Court concluded that the State did violate the fundamental right to education and equality of the children by not providing transportation from the rural areas where they live to the urban area.

The State has an obligation to take intentional, concrete measures to make education accessible to all. This includes the obligation to provide a transportation service to ensure that children in rural areas can attend school and have the same educational opportunities as children who live in urban areas.

Impact

Although the decision is favourable to the plaintiffs, since Colombia is a civil law country, other courts are not required to follow the decision in this case because judicial decisions do not have the force of law. However, in deciding other cases, the courts may use this case as persuasive authority and follow their reasoning.

Remedy

The Court ordered the State to enrol the minors in a secondary education institution in the urban centre within two weeks of the decision and ordered the State to provide transport to the children from their homes to the institution and back. The Court appointed a municipal official to supervise and guarantee compliance with the order and mandated him to submit a report on compliance with the order one month after the judgment.

Relevant Legal Provisions

National

- Articles 13, 44 and 67 of the Colombian Constitution

International

- Article 28 of the Convention on the Rights of the Child
- General Comment No. 13 of the International Covenant on Economic, Social and Cultural Rights

Cases

- Judgment T-458 of 2013
- Judgment T-779 of 2011
- Judgment T-781 of 2010
- Judgment T-1259 of 2008
- Judgment T-497 of 1994

Commentary

This decision is aligned with international law interpretation of the right to education. In particular, the Court referred to General Comment No. 13 of the International Covenant on Economic, Social and Cultural Rights which recognises accessibility and adaptability as structural components of the right to education. Education should be accessible to all, including individuals residing in rural areas, and should be tailored to individual needs, i.e. adults and children should have differentiated educational programs. This decision also confirms that the obligation to protect the right to education rests with the State, which is consistent with international law principles.

Related cases

[Corte Constitucional \[C.C.\] \[Constitutional Court\], Sala Tercera de Revisión, octubre 26, 1994, M.P.: E. Cifuentes Muñoz, Sentencia T-467/94 \(Colom.\).](#)

In this decision, the Court determined that the State had violated the right to education and equality of a second grader whose education had deteriorated because the rural school he attended had not appointed a teacher for that year. The judgment stated that the difficulties inherent in the provision of the public education service in certain locations that are remote from urban areas do not undermine the institutional obligation to provide a service with acceptable conditions. The Court went on to say that students of small rural schools have the right to receive a service that allows them to go through the whole educational process without being in a disadvantaged position compared to students from other schools.

[Corte Constitucional \[C.C.\] \[Constitutional Court\], Sala Séptima de Revisión, octubre 20, 2011, M.P.:J.I. Pretelt Chaljub, Sentencia T-779/11 \(Colom.\).](#)

In this decision, the Court found that the State had violated the fundamental right to education of two girls living in a rural area by not providing transportation to the nearest educational institution since the girls had to travel two hours on foot to reach the institution. The ruling concluded that the State is responsible for ensuring the necessary means to allow children to access education.

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