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Monthly Caselaw Update



ESCR-NET CASELAW DATABASE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
RELATED JURISPRUDENCE, CASES AND OTHER DECISIONS

ISSUE 16, NOVEMBER 2010

Colombian Constitutional Court Issues Landmark Decision on the Right to Education

Decision C-376/10, Constitutional Court of Colombia. May 19, 2010.

Petitioners filed a constitutional claim challenging the imposition of fees on primary education (under Law 115 of 1994) in Colombia, which is the only country in the region without free primary education. The Court found the law unenforceable on two grounds: first that fees may only be applied to secondary and tertiary education and also because charging fees for primary school would contradict international human rights law which form the basis of Colombia's Constitution. In establishing Colombia's obligation to guarantee a compulsory, free and accessible education, the Court cited the Universal Declaration of Human Rights (art. 26), the International Covenant of Economic, Social and Cultural Rights (art. 13), the Protocol of San Salvador (art. 13), the Committee of Economic, Social and Cultural Rights (General Comments 11 and 13), and others. According to such international instruments and comments, the State has the unequivocal, immediate obligation to guarantee free primary education, while in the case of secondary and higher level education, the obligation is of a progressive nature. However, the progressive nature applicable to the other two levels does not justify the government's lack of action. The Court also restated the fundamental nature of the right to education, which applies, according to its own case law, to all persons younger than 18, as well as the hierarchy of children's rights over the rights of others, as established in the Constitution. Furthermore, the Court stated that this obligation is immediately enforceable.

This decision has been communicated to the organizations and academic institutions devoted to ESCR work in Colombia which had submitted civil society presentations before the Constitutional Court, and which will use the decision in its litigation and lobbying efforts. In addition, this decision is extremely significant because it restates that human rights treaties and comments by bodies regarding economic, social and cultural rights are part of the Colombian legal system and, within it, have a superior standing compared with the remaining regulations.

For a [full case summary](#) and information on the enforcement and other outcomes of this decision, visit the [Caselaw Database](#) at www.escr-net.org. There you will also find information on groups involved, case documents and secondary literature.

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