

Claim of unconstitutionality against article 183 of the General Education Law

(Colombia Constitutional Court; 2010)

Case at a glance

Full citation

Demanda de inconstitucionalidad contra el artículo 183 de la Ley 115 de 1994 “Por la cual se expide la ley general de educación”; Sentencia C-376/10; expediente D-7933

Forum

Constitutional Court of Colombia

Date of decision

19 May 2010

Summary of decision

In this case, petitioners supported by the Colombian Coalition for the Right to Education filed a claim with the Constitutional Court of Colombia challenging a provision in the General Education Law ([Law No. 115](#) of 1994), which allowed the government to impose fees for primary education. The Constitutional Court found that the provision of law that allowed the charging of fees for primary education was unenforceable and in violation of the [Colombian Constitution](#) and international human rights treaties.

Significance to the right to education

This decision reaffirmed that Colombian laws must be interpreted in light of the provisions of international human rights treaties, which have a superior standing. The decision also confirmed the fundamental nature of the right to free primary education.

Keywords

Free and compulsory education; Primary education; Tuition fees

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Context

The [Colombian Constitution](#) guarantees a right to free and compulsory education, without prejudice to charges for the cost of education for those who can afford them (Art. 67). The Colombian government has generally interpreted the 'without prejudice' clause to mean that some fees for education may be charged if students can afford them. Pursuant to this understanding, in 1994 the Colombian legislature passed [Law No. 115](#) (the 'General Education Law'), which allowed local authorities to charge fees in public schools (Art. 183).

Under Article 183, a number of state-run primary schools across the country were charging matriculation and administration fees. In some circumstances, disadvantaged students were exempted from paying such fees. For instance, in 1999 the city of Bogota exempted displaced children from paying school fees for the first year of attendance. However, in most circumstances children were required to pay fees to attend state-run primary schools.

Article 67, [Colombian Constitution](#)

Education is an individual right and a public service that has a social function...

The State, society, and the family are responsible for education, which will be mandatory between the ages of five (5) and fifteen (15) years and which will minimally include one (1) year of preschool instruction and nine years of basic instruction.

Education will be free of charge in the State institutions, without prejudice to those who can afford to defray the costs...

Facts & Issue

Two Colombian citizens (Castillo Cornell and Hoyos Ceballos), supported by the Colombian Coalition for the Right to Education (the plaintiffs), filed a claim with the Constitutional Court challenging the constitutionality of Article 183 of the National Education Law, which permitted fees to be imposed for primary education in public schools.

The Court was asked, in relevant part, to decide whether Article 183 of the General Education Law violates article 67 of the Constitution of Colombia, which protects the right to free and compulsory education.

Relevant Legal Provisions

National

- [General Education Law](#) (No. 115 of 1994)
- [Constitution of Colombia](#) (Arts. 44, 67 and 93)

International

- [General Comment No. 13](#), UN Committee on Economic, Social and Cultural Rights
- Article 26, [Universal Declaration of Human Rights](#)
- Article 28, [Convention on the Rights of the Child](#)
- Articles 13 and 14, [International Covenant on Economic, Social and Cultural Rights](#)

Decision

The Court found Article 183 of the General Education Law to be unconstitutional, to the extent that it could be construed to authorise the charging of fees for primary education in state schools.

The Court reasoned that the Constitution and General Education Law could not be interpreted to authorise the government to charge fees at all academic levels, as this would be clearly and unequivocally contrary to international human rights treaties ratified by Colombia.

Specifically, the Court found such an interpretation of the General Education Law to be contrary to:

- Article 26 of the Universal Declaration of Human Rights, which states that education “shall be free, at least in the elementary and fundamental stages”;
- Article 13 of the International Covenant on Economic, Social and Cultural Rights, which provides that “primary education shall be compulsory and available free to all”;
- Article 16 of the Protocol of San Salvador, which provides that “every child has the right to free and compulsory education, at least in the elementary phase...”
- Article 28 of the Convention on the Rights of the Child, which establishes that the State must make “primary education compulsory and free education for all.”

Commentary

Prior to this decision, Colombia was the only country in the Latin America region without free primary education. The fees charged were limiting children’s access to primary education, and compromising the fulfilment of right to free and compulsory primary education guaranteed by the Constitution and international human rights law.

The immediate impact of the decision is that Colombia’s 12 million school-aged children can attend public primary schools free-of-charge. This decision reaffirmed that **Colombian laws must be interpreted in light of the provisions of human rights treaties, which have a superior standing**. The decision also confirmed the fundamental nature of the right to free primary education.

Additional Resources

Robert F Kennedy Center for Justice & Human Rights (3 June 2010). [Colombian Constitutional Court Orders the Government to Provide Free and Compulsory Primary Education.](#)

[Amicus Brief](#) prepared by the Cornell International Human Rights Clinic, Robert F Kennedy Center for Justice & Human Rights and Association NOMADESC.

Cornell Law School. [Colombia: Free Education Case.](#)

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