

## The Right To Education In Colombia: A Jurisprudential Analysis

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### Abstract

Education, as a basic guarantee that contributes to the development of the human being, is a public service. However, this service is required in its provision to the State as it is incorporated in national and international legal norms, a situation that transforms it into a right. The purpose of this article is to analyze the jurisprudential development that the Constitutional Court has given to the right to education in Colombia. The debate revolves around the fact that the right to education in Colombia is a fundamental right as it is enshrined in the Political Constitution. Therefore, such a right is superior in the Colombian legal system, since it is the positivization of an indispensable guarantee to achieve human dignity. Methodologically, the text is installed in the interpretative paradigm and the study is approached from the documentary method, starting from theoretical and conceptual references on the right to education. The deliberation concludes that the Constitutional Court of Colombia has carried out a rigorous analysis of the different constitutional scenarios, which reflects a solid, coherent and progressive position, aimed at protecting the right to education as a complex, relational and enforceable fundamental right, which imposes specific duties on the State, educational institutions and society.

**Keywords:** law, education, education as a right, the right to education, fundamental right, jurisprudential analysis.

### INTRODUCTION

Education is a process aimed at teaching how to learn, while at the same time being a fundamental element for the formation of the human being. Currently, the concept of education must address the construction of knowledge and its application to real situations, as well as contribute to generating situations of change to improve, unlearn,

work on multiple approaches and analyze experiences, all in favor of the transformation of the human being, with the purpose of being better people and, through it, to learn to live in society. Likewise, education is a public service and a right, essentially social, by generating conditions for human beings to develop their faculties, eradicate their poverty, exercise their rights and improve their living conditions.

In this context, a public service becomes a right when it can be enforceable in its provision to the State, that is, when it is incorporated into legal norms, within the framework of the social rule of law. In this sense, education is a fundamental right, since it is of constitutional rank and, therefore, superior in the Colombian legal system, since it is the positivization of an indispensable guarantee to achieve human dignity, as the source principle of all rights. For this reason, national and international legal norms are the instruments for the guarantee and implementation of the right to education, since positive legal norms allow the expansion of social freedoms and guarantees.

In line with Judgment T-227 of 2003, issued by the Constitutional Court, education is a fundamental right, since it is functionally related to the realization of human dignity, it is translated or concentrated into a subjective right as it is a juridical or legal right, and it finds dogmatic, jurisprudential, international, legal and regulatory consensus on its essentiality. Consequently, we will now address the conceptual approach to the right to education, and then develop the respective jurisprudential analysis.

## **A CONCEPTUAL APPROACH TO THE RIGHT TO EDUCATION**

Education is a public service that contributes to the fulfillment of the purposes of the State, as it is an intangible element that satisfies basic needs for human and social development. Specifically, education is an impure, meritorious or preferential public service, characterized by its exclusionary, but not rivalry, nature, which is why its availability may be limited, even so, its use by one person does not prevent the enjoyment of others. However, since its provision is required of the State, by virtue of its incorporation into legal norms, this service becomes a right, whose fundamental core is human dignity. Precisely, education is a fundamental right because it is positive, protectable, immediately applicable and of interpretative priority, according to Sánchez and Higuera (2022).

Education is framed within the social rule of law, a perspective that entails a weighting in the protection of rights, since no right is absolute in the Colombian legal system. Consequently, the implementation of the right to education must observe the parameters of progressivity, in the sense of moving towards universality through policies aimed at expanding the coverage of the education service at all levels, since the right to education is one of the priorities in the development of humanity. Therefore, the elements of the right to education must be addressed in a comprehensive manner and as a system, given that the availability, access, permanence and quality of education are components that need to be interrelated because the realization of the right to education implies respect for the entire set of elements.

The availability of the education service refers to the fact that all people have the right to have educational organizations and quotas at their service in such a way that people interested in entering education at any of its levels can do so, when they so decide, a situation that requires a basic public and private offer of the service. in favor of satisfying

the demand generated; while access to the education service refers to the fact that everyone has the right to access this service, without any type of discrimination. Staying in the education service refers to the fact that students enrolled in an educational organization have the right to remain in the education system, provided that they meet certain academic, economic, and disciplinary requirements. Finally, quality education implies that students have the right to receive an appropriate education within the framework of values and knowledge, therefore, it is urgent to have competent teachers committed to the cause.

In this context, the realization of the elements of the right to education must be supported by a broad vision. For this reason, Torres (2003, cited by Pineau, 2008) states that the right to education must be sustained as a right of every person that implies access to school and education. Access to education must be a function of quality education, while access to education implies achieving learning, not only in the short term, but throughout life. Likewise, access to education must also involve citizen participation.

To materialize the protection of the right to education, there are institutions, both international and national. At the international level, there are various treaties and declarations, ratified and adopted by a large part of the States of the world, in such a way that the right to education is instituted as a priority in the development of humanity. Such is the case of the Universal Declaration of Human Rights, whose article 26 indicates that "everyone has the right to education", an expression that makes a global recognition of a basic guarantee that contributes to the progress of the human being. Likewise, the International Covenant on Economic, Social and Cultural Rights, in its article 13, states that "the States parties to the present Covenant recognize the right of everyone to education", in such a way that education must be a right of universal coverage for individuals, as well as a duty of the State that recognizes it.

Articles 28 and 29 of the Convention on the Rights of the Child also state that primary education should be compulsory and free for all, and should promote the development of children's abilities to the fullest extent possible; while the American Convention on Human Rights enshrines in Article 24, paragraph h, the duty of States to rapidly eradicate illiteracy and to increase, for all, opportunities in the field of education.

In Colombia, the right to education has special protection in the Political Constitution, consequently, through jurisprudential development, it has been classified as an autonomous fundamental right subject to immediate protection through expeditious constitutional actions. Specifically, Articles 67 and 68 address the right to education. Article 67 states that the right to education is a right of the person that must be offered free of charge by state educational institutions, establishing the possibility of charging academic fees to those who can pay them. Education must be compulsory between the ages of five and fifteen and must cover at least the levels of pre-school and basic education. Article 68, within the framework of education as a public service, creates the possibility for individuals to manage educational establishments, in accordance with State regulations. As for the legal support, there are basically Law 115 of 1994 or General Education Law and Law 30 of 1992 that organizes the public service of higher education, norms that regulate education as a public service.

On the other hand, Sánchez and Higuera (2022) point out that the State must progressively materialize education. However, in the case of Colombia, there is still a gap between what is declarative and what is effective in terms of the right to education. While

it is true that the components of availability and permanence show significant advances, the quality of education reflects weaknesses, expressed, for example, in the results of the Program for International Student Assessment of the Organization for Economic Cooperation and Development (OECD), better known as PISA tests, whose purpose is to measure the ability of fifteen-year-old students to use their reading knowledge and skills. math and science to meet real-life challenges. The results of the aforementioned tests, 2022 version, in the case of Colombia, decreased compared to the 2018 application. Thus, the aforementioned results provide sufficient information for the competent authorities to carry out a serious process of structural transformation of the education system, in favor of advancing in terms of quality, given that quality education contributes to making democracy and economic growth possible, according to González (2019). In reference to access, this component addresses two elements: entry into the education system without any discrimination and progressive access. In this sense, the reality indicates that there is broad educational coverage, especially in basic primary and secondary education, accompanied by unequal access affected, in particular, by the socioeconomic situation, since the education received by the poor is different from that received by the rich, in the sense that academic performance improves as the socioeconomic level increases. a situation that brings with it social inequality, that is, it generates an effect contrary to the relevant objective of education to promote equality and social welfare. The difference in performance also occurs between rural and urban areas, as well as between public and private educational institutions, gaps that end up having an impact on access to quality higher education, as a fundamental support for competitiveness in the labor market.

## METHODOLOGY

The article gathers theoretical elements, in the light of which it examines the jurisprudential development of the Constitutional Court of Colombia to identify the traceability that in its pronouncements it has given to the right to education as a mandate, which is why the text is installed in the interpretative paradigm. The study is approached from the documentary method, consisting of a technique of selection and compilation of information that allows systematic observation and reflection on a theoretical reality, using different types of documents. For this reason, jurisprudence, legal norms and doctrine were consulted, as fundamental inputs that support the theme developed. In this context, when analyzing the judicial rulings issued by the closing body of the constitutional jurisdiction, where it has ruled on the right to education, it has been shown that the Constitutional Court has issued, from 1992 to 2023, 109 judgments, of which nine were classified as important, namely: T-002/1992, T-440/1992, T-337/1995, T-167/1997, SU-641/1998, T-491/2003, T-743/2013, T-478/2015 and T-240/2018.

## RESULTS AND DISCUSSION

This jurisprudential analysis examines the evolution of the constitutional understanding of the right to education in Colombia, identifying the decisive milestones that have shaped its protection, its essential components and the criteria that guide the intervention of the constitutional judge in the face of its violation.

**Judgment T-002 of 1992.** In the review venue, the Constitutional Court had to determine whether the judicial decisions that denied the tutela action ignored the fundamental nature of the right to education, considering that the academic exclusion of a university student – derived from the failure to comply with regulatory obligations – was not susceptible to constitutional protection. In particular, the Constitutional Court had to decide whether the right to education is a fundamental right that can be protected and whether the decisions adopted by the university, protected by its autonomy, could affect the essential core of that right.

The Constitutional Court established as a central decision-making reason that the right to education is a fundamental constitutional right, even when it is not formally located within the chapter on fundamental rights of the Political Constitution. For the Constitutional Court, the essentiality of a right does not depend exclusively on its systematic location, but on its direct relationship with human dignity, the free development of the personality and the real possibility of accessing knowledge as a prerequisite for the exercise of other rights. In this sense, the Constitutional Court held that education is a right inherent to human nature, indispensable for the personal and social fulfillment of the individual, a situation that makes it a fundamental right susceptible to protection through tutela action when it is threatened or violated. This reasoning gave rise to one of the first lines of jurisprudence, in which the right to education is not merely programmatic or benefit-based, but has an essential content that is immediately enforceable in certain cases.

Likewise, the Constitutional Court articulated this conclusion with the idea that education is a right-duty and a social function, which implies that its exercise can be subject to reasonable rules, such as academic and disciplinary regulations. However, it specified that such rules cannot lead to the absolute denial of the right, since no institutional sanction can affect its essential core. Consequently, university autonomy, although constitutionally protected, is not an absolute power and finds clear limits in the fundamental rights of students. In this way, the Constitutional Court established a jurisprudential criterion according to which educational institutions, even in the exercise of their autonomy, must respect the essential content of the right to education, and decisions that imply exclusion or restriction must be reasonable, proportional and respectful of human dignity. This approach laid the foundations for subsequent developments on the protection of the right to education against authorities and individuals, as well as for the constitutional control of internal regulations that, under the guise of legality, may generate unjustified barriers to access or permanence in the education system.

**Judgment T-440 of 1992.** In the review proceedings, the Constitutional Court had to determine whether the administrative decisions that disciplined a teacher for the way she addressed sex education issues in the classroom violated fundamental rights, in particular freedom of teaching, due process and the right to education, and whether the judicial refusal to grant protection of protection disregarded the constitutional protection of those rights. Likewise, the Constitutional Court had to analyze whether the tutela action was appropriate to challenge disciplinary sanctions imposed in the educational field, or if there were other suitable judicial mechanisms for doing so.

The Constitutional Court established as a decision-making reason that education is an integral process aimed at the full development of the personality, which is not limited to

the transmission of academic knowledge, but includes social, ethical and affective dimensions of the human being. In this framework, sex education is recognized as a legitimate expression of the right to education, as it contributes to the responsible training of students and their preparation for life in society. The Constitutional Court held that the teaching of these contents is not *per se* contrary to the constitutional order, as long as it is taught with appropriate pedagogical criteria, respect for the age and maturity of the students, and observance of their human dignity.

In development of the above, the Constitutional Court affirmed that freedom of teaching is a fundamental right that protects the teaching activity, allowing educators to address training content in accordance with the constitutional purposes of education. However, he specified that this freedom is not absolute, since it finds limits in the rights of children, in respect for their privacy and in the need for coordination with parents. In this way, sex education must be taught in a responsible, contextualized and respectful manner of pluralism, avoiding practices that may affect the personal or emotional integrity of minors.

In addition, the Constitutional Court pointed out that the educational authorities cannot arbitrarily or disproportionately sanction the legitimate exercise of the teaching function, especially when it is aimed at fulfilling the constitutional purposes of education. Disciplinary sanctions that seriously affect the professional practice of teachers must be duly motivated, respect due process and be proportionate to the facts investigated. In the specific case, the Constitutional Court warned that the imposition of an extreme sanction for the development of educational content related to sexuality ignored the social function of education and emptied the freedom of education of content.

Finally, the Constitutional Court reiterated that the right to education must be interpreted in the light of the best interests of the child, which implies guaranteeing educational processes that promote their integral development, progressive autonomy and dignity. In this sense, sex education, far from being excluded from the school environment, must be understood as part of the fundamental right to education, as long as it is taught under constitutional parameters of respect, protection and comprehensive training.

**Judgment T-337 of 1995.** The tutela action was filed by Mrs. A on behalf of her daughter B, a nine-year-old minor, against teacher C for events that occurred in a religion class in a public school in Panqueba (Boyacá), where statements were made that led her classmates to consider that B was sick with acquired immunodeficiency syndrome and pregnant. which generated rejection, discrimination and school dropout of the minor. The guardian maintained that these statements and the way in which the teacher handled the situation violated the fundamental rights of the girl, in particular the right to education and to the free, full and harmonious development of her personality. It is up to the Constitutional Court to determine whether the facts constitute a violation of the fundamental rights of the minor in the educational context and, if so, to order the necessary measures for her protection.

The Constitutional Court held that the educational process involves much more than the simple transmission of knowledge; it is a social space where subjects with fundamental rights and duties such as teaching, learning, communicating and participating concur, all of them with deep constitutional significance. The classroom, in this sense, is not a mere physical place but a stage where the right to education is materialized in its human and integral dimension. In this ruling, the Constitutional Court clearly stated that education

in Colombia, in accordance with the Political Constitution, has clear purposes: to promote democracy, the free, full and harmonious development of the personality and citizen participation from the experiences lived in the school context. Thus, education serves not only to acquire knowledge but also to incorporate democratic and social values essential for the exercise of citizenship.

With regard to sex education, although the teacher acted within the framework of the educational and religious freedom recognized by the Political Constitution – since religious education can be taught when the free will of the student and his or her parents is mediated and does not become biased indoctrination – the Constitutional Court pointed out that pedagogical interventions related to sensitive issues such as sexuality must consider the level of cognitive and emotional development of the students. students, so that they do not generate stigmatization or harm to the child. In this case, the teacher's response, by resorting to moral and religious concepts without an adequate pedagogical context, did not contribute to clarifying the situation and ended up being part of a climate of discrimination that negatively affected the minor, which evidenced failures in the education provided on these issues.

The Constitutional Court also emphasized that the right to education is not exhausted with access to or permanence in the system, but requires that teaching be given "by persons of recognized ethical and pedagogical competence," which also implies adequate training of teachers to handle sensitive content in a respectful and effective manner. especially in areas such as sex education and education in democratic values. In analyzing the repercussions of the case, the Constitutional Court considered that the school environment generated had a direct impact on the minor's personality, affecting her self-esteem and social integration, which constituted a violation of the right to free, full and harmonious development of the personality, intimately linked to the right to education. Consequently, the Constitutional Court protected both rights and ordered concrete measures to correct the educational situation and protect the minor, pointing out the responsibility of the State and the educational authorities to guarantee a school environment that promotes democratic values, respects the dignity of students and has trained teachers.

**Judgment T-167 of 1997.** The tutela action was filed by Mrs. MAA, who alleged that the directors of the "Francisco Julián Olaya" Nationalized Departmental School violated the fundamental rights of her youngest son, AMA, by arbitrarily canceling his school enrollment without respecting due process and defense. The plaintiff requested that the resolution to cancel the enrollment be ordered by means of tutela and the immediate reinstatement of the student to the campus, arguing that the sanction was not based on clear evidence or an adequate disciplinary procedure. The Ninth Chamber of Review heard the case to evaluate whether the rights to due process, defense and education were violated and whether the tutela action was the ideal means to protect those fundamental rights.

In this case, the Constitutional Court observed that, although the student had already been reinstated to the school before the tutela decision – which had overcome the fact that gave rise to the controversy – it was necessary to affirm doctrinally that disciplinary sanctions must be applied with proportionality, respect for due process and with full consideration of the purpose of education. which is the integral formation and development of the student. The Constitutional Court emphasized that educational

institutions, even when they have autonomy to establish and apply internal regulations, cannot ignore the essence of the right to education by imposing sanctions that are disproportionate to the conduct charged. In particular, disciplinary rules and their applications must be in harmony with the pedagogical purposes of the school and with the higher legal order, in such a way that they do not result in unwanted mechanisms of exclusion.

The constitutional judge also stressed that the right to education, due to its foundational nature, must be interpreted in a way that facilitates the access and permanence of students in schools, without the educational authorities using procedures or sanctions that exceed their educational function or frustrate the educational objective of the institution. This approach reaffirms that education cannot be conditioned or restricted by arbitrary or administrative criteria that lack pedagogical justification and proportionality with the facts under investigation. Although the specific case had already been materially overcome because the student had been readmitted, the Constitutional Court protected the fundamental right to education of the minor in doctrinal terms, by establishing that the cancellation of enrollment without adequate evidentiary assessment, without due motivation and without proportionality with respect to the fault, constitutes an unjustified affectation of the right to education of the students when it is carried out without observing the principles constitutional rights of due process and educational equity.

**Judgment SU-641 of 1998.** The tutela action was filed by a minor student, represented by his guardians, against the San José del Citará Departmental Institute of Secondary Education and/or its authorities, for the alleged violation of his fundamental rights to the right to education, to the free development of personality and to democratic participation within the educational context. The plaintiff alleged that the school's coexistence manual and regulatory provisions imposed disciplinary, aesthetic, and behavioral rules that exceeded constitutional limits, affecting his permanence and treatment in the establishment, and that these rules lacked a legitimate pedagogical purpose or were discriminatory. The Constitutional Court heard the tutela to resolve whether, in effect, the internal regulations and their application unjustifiably violated fundamental rights, and consequently whether the tutela action was appropriate to protect the exercise of the right to education against arbitrary educational regulations or contrary to the Constitution.

The Constitutional Court pointed out that education, in accordance with Article 67 of the Constitution, is a formative and socializing activity, not merely instructional; Its mission is to train citizens capable of participating in the political, civic and community life of the country, preparing them in democratic values, respect for human rights, pluralism and peaceful coexistence. In this sense, education implies an active relationship between educators, learners and the educational community, in which the subjects are not passive recipients of knowledge but holders of rights and duties that guide their training process.

The Constitutional Court held that the regulations and manuals of coexistence of educational establishments have a legitimate regulatory role, but this power is not absolute nor can it ignore constitutional principles. Regulations may not contain rules or principles that contravene the Political Constitution or permit practices that violate respect for human dignity, the free development of personality or the equality of

students. Consequently, disciplinary rules that are arbitrary, discriminatory, or disproportionate—such as those that impose exclusionary aesthetic standards or sanction behaviors without a clear pedagogical basis—are unconstitutional because they threaten the permanence of the student in his or her training process without a reasonable educational justification.

The Constitutional Court emphasized that the right to the free development of personality, intimately linked to the right to education, requires that educational institutions respect the autonomy, identity and different individual expressions of the students as long as they do not affect the rights of third parties or the constitutional order. Thus, practices such as the imposition of uniform aesthetic criteria or sanctions that do not contribute to constitutional educational purposes must be evaluated with pedagogical and democratic criteria, since education must promote creativity, participation, tolerance and respect for diversity and cannot become an instrument of exclusion or repression.

The Constitutional Court also stressed that the educational community – made up of students, parents, teachers and administrators – has the power to participate in the adoption and modification of the coexistence manual, which reaffirms the right to participation in the educational process. However, this normative power is subject to the limits imposed by the Political Constitution and the legal order, and cannot disregard or oppress constitutionally enshrined freedoms. Therefore, the guardianship judge may disapply or modify the rules of the coexistence manual if compliance with them violates the fundamental rights of any member of the educational community, including the right to education in its material and formative dimension. In short, the Constitutional Court unified doctrine by reiterating that the right to education is a fundamental right with a social function, the exercise of which requires institutions with regulations that respect human dignity, the free development of the personality and democratic values, and that education cannot be conditioned to arbitrary disciplinary rules that hinder or distort the integral formation of the student or undermine his or her effective access to the educational service.

**Judgment T-491 of 2003.** The tutela action was filed by EGA against the Ricardo González de Subachoque Departmental School and its principal, on the grounds that the disciplinary sanction imposed – declaring her an irregular student and forcing her to complete grade 11 by submitting work without normally attending classes – violated her fundamental rights to education, honor, privacy, due process, and presumption of innocence. The plaintiff maintained that the conduct for which she was sanctioned occurred outside the campus, in a strictly private environment, and as a result of an investigation by the Attorney General's Office, and that the school acted arbitrarily and without respecting procedural guarantees. He requested that his fundamental rights be protected and that he be ordered to be fully reinstated in school to complete the school year and obtain his baccalaureate degree on equal terms with his classmates.

The Constitutional Court reaffirmed that the right to education is a fundamental right and a public service with a social function, which transcends mere attendance at classes, since its essential core implies the possibility of access to knowledge, the harmonious development of the personality and social integration, guaranteeing the necessary conditions for its consolidation as a permanent training process. This right is inherent in

human dignity and therefore requires constitutional safeguards against institutional decisions that may restrict it without reasonable grounds.

The Constitutional Court stressed that, although educational institutions have a legitimate sanctioning power within the framework of their autonomy to enforce the internal regime and the coexistence manual, this power is subject to the requirements of due process and the limits imposed by the Constitution. In particular, any disciplinary sanction must respect the predetermination of conduct and misconduct, allow the exercise of the right of defense —including the opportunity to dispute evidence and allegations—, be reasonable and proportionate with respect to the seriousness of the facts, and be supported by a reliable demonstration of responsibility by the student.

In this case, the Constitutional Court observed that the facts that gave rise to the sanction took place in a strictly private forum, without direct relation to the student's academic activity or to the normal functioning of the educational community, so they could not be subject to disciplinary reproach by the institution. The Constitutional Court explained that conduct displayed in areas of private life that do not affect or interfere with the educational context cannot be sanctioned by the school, since such actions are part of the free development of the individual's personality, a constitutionally protected area.

Likewise, the Constitutional Court emphasized that the imposition of a sanction based on facts that do not compromise the good institutional name or have an impact on academic activity not only constitutes a violation of due process, but also directly affects the right to education when the sanction restricts the student's full access to his or her training process. The sanction, by unduly limiting normal attendance at classes and conditioning the completion of the school year to alternative procedures, meant an unjustified restriction of the student's fundamental right to education.

The High Court also linked this analysis to the right to free development of personality and privacy, reiterating that the autonomous development of the private life of students, as long as it does not affect the rights of third parties or the constitutional order, cannot be subject to disciplinary sanction by an educational institution. This constitutional protection not only safeguards the scope of freedom of the individual, but also prevents educational institutions from becoming mechanisms of social control that invade areas that have no relation to academic training or school coexistence.

Finally, the Constitutional Court determined that the sanction imposed was unconstitutional and proceeded to grant the tutela ordering that the school's decision be annulled and that the necessary measures be adopted so that the student could complete her academic curriculum and opt for her baccalaureate degree on equal terms with her classmates. provided that it met the relevant academic requirements. This decision underlines that the guarantee of the right to education requires that educational institutions respect constitutional limits when exercising their sanctioning power and do not undermine the access and permanence of students in the education system without valid justification.

**Judgment T-743 of 2013.** The tutela was filed by EABC, a high school student at the Santa Ana Educational Institution, against the Ministry of Education of Huila and other educational authorities, considering that the lack of appointment of a chemistry teacher – after the transfer of the teacher who taught that subject – violated his fundamental rights to quality education. to equal opportunities and the free development of their personality. The plaintiff alleged that the absence of this teacher prevented the continuity

of his educational process and affected his ability to complete the complete curriculum to opt for higher education. The Constitutional Court should have decided whether the omission of the educational authorities constituted a violation of the fundamental right to education and ordered measures to remedy it.

The Constitutional Court reaffirmed that the right to education is a fundamental right and, at the same time, a public service with a social function, as enshrined in Article 67 of the Political Constitution of Colombia. This right is not merely limited to access to and permanence in the education system, but includes a series of structural facets—availability, accessibility, adaptability, and acceptability—that the State must guarantee for education to be effective, continuous, and of quality.

The first significant contribution of the Judgment was the clear recognition that the right to education requires not only the existence of quotas or educational institutions, but also the timely provision of suitable teachers in sufficient quantity to teach the subjects that make up the curriculum. In this sense, the absence of a chemistry teacher for the tenth and eleventh grades – an essential subject to complete the secondary education cycle – implied a violation of the facet of educational adaptability, since it prevented the continuity of the educational service and the realization of the academic life project of the students.

The Constitutional Court also addressed the acceptability of education, understood as the provision of a service that is relevant, equitable, culturally appropriate and of quality, in accordance with the minimum standards that the State itself has established. The absence of the teacher not only interrupted the provision of the service, but also undermined the right of students to receive education in conditions of quality and equity, affecting their ability to compete on equal terms for access to higher education. This implied an impact not only on educational rights in the strict sense, but also on equal opportunities and integral human development.

Another fundamental contribution of the High Court in this Judgment was the reaffirmation that the educational authorities cannot hide behind the lack of resources or internal technical standards to justify the omission in guaranteeing the right to education. The Constitutional Court held that, although the assignment of teachers depends on administrative criteria and teaching staff, this does not exempt the State from complying with its obligation to guarantee the continuous and effective provision of the educational service, avoiding unjustified gaps between urban and rural areas or between different educational levels. Consequently, the failure to provide the required teacher constituted a violation of the fundamental right that required judicial intervention.

The Judgment also consolidated the constitutional understanding that judicial protection of the right to education may require the ordering of specific enforcement measures, even when it comes to rights to benefits or the provision of public services. In these cases, if the omission of the State authority deprives the State of basic conditions for educational training, the guardianship is appropriate and may give rise to orders that ensure the satisfactory provision of the service, always within the framework of the obligations of respect, protection and compliance imposed by constitutional law.

In short, the *ratio decidendi* of Judgment T-743 of 2013 focuses on the fact that the right to education has a rich and enforceable normative content, which includes the obligation of the State to ensure the provision of qualified teachers, continuity of the educational

service, quality conditions, equity of access and the elimination of structural obstacles to learning. The unjustified absence of teaching staff that affects these elements constitutes a violation of the fundamental right that generates obligations of immediate and progressive compliance by the competent authorities.

**Judgment T-478 of 2015.** The tutela action was filed by ALRA, on its own behalf and on behalf of its son, the minor SDUR, against the Castillo Campestre Gymnasium, the Ministry of Education of Cundinamarca, the Colombian Institute of Family Welfare, the Attorney General's Office and the Family Commissariat, on the grounds that the actions of these entities – especially those of the school – violated various fundamental rights of the minor. In particular, it was stated that an unfair and discriminatory disciplinary process motivated by the sexual orientation and gender identity of the minor led to institutional decisions that restricted his access to and permanence in the educational service, which would have been a determining factor in an environment of bullying that culminated in the suicide of the adolescent. The tutela sought to recognize and protect the rights to privacy, to a good name, to equality and non-discrimination, to the free development of the personality and to the right to education, as well as the prevalence of children's rights, and to impose measures to repair the effects of the violation.

The Constitutional Court affirmed that the right to education is a fundamental right of special protection, which, as a public service with a social function, not only includes access to the education system, but also the integral development of the student in an environment of respect, inclusion and human dignity. In this context, the High Court reiterated that education in Colombia must guarantee that students are trained in democratic values such as tolerance, respect for diversity and equality in difference, and that it is the responsibility of the State and all actors in the educational community to ensure conditions that allow the materialization of this right in conditions of equality.

The Judgment reaffirmed that education must be affordable, accessible, adapted and acceptable, which implies not only the existence of institutions and teachers, but also the elimination of structural barriers that prevent the permanence and personal fulfillment of students. Specifically, the disciplinary process and institutional conduct described in the case—which led to the restriction of the minor's access to the classroom under pretexts related to his sexual orientation and affective behavior—constituted an unjustified restriction of the right to education, because they neither had a clear pedagogical basis nor conformed to the constitutional principles of proportionality, non-discrimination and respect for human dignity.

The Constitutional Court also specified that educational institutions may not sanction or discriminate against students on the basis of sexual orientation, gender identity or other expressions of personality that are part of their intimate sphere, since all of this belongs to the sphere of dignity and free development of personality, and any institutional action that affects the permanence of a student must be subject to strict requirements of due process and guarantee of fundamental rights. Therefore, imposing measures that affect access, continuity or quality of education for reasons unrelated to objective disciplinary offenses or that exceed the framework of legitimate school coexistence violates the right to education.

In this regard, the Constitutional Court linked the right to education with equality and non-discrimination, stressing that an educational environment that permits or reproduces bullying or discrimination on the basis of sexual orientation or gender identity directly

undermines the possibility for students to exercise their right to education in full conditions of equality and dignity. The lack of effective measures on the part of the educational and state authorities in response to the complaints presented evidenced structural deficiencies in the protection of the right to education, both in the prevention and in the treatment of situations of violation related to discrimination or bullying.

In addition to confirming that the tutela was appropriate even in the face of parallel administrative or criminal proceedings when the violation of fundamental rights is manifest, the High Court called for the implementation of public policies of school coexistence that integrate the protection and prevention of bullying, respect for diversity and the effective guarantee of the right to education without discrimination. He recognized the importance of the school coexistence system and comprehensive care protocols as essential mechanisms to make this right effective, and stressed that strengthening the educational environment as a space for inclusion is a constitutional obligation of the authorities.

In summary, the *ratio decidendi* of the Judgment establishes that the right to education cannot be limited by discriminatory conduct or unjustified institutional decisions, and that the protection of this right requires conditions of school coexistence that guarantee the dignity, equality and free development of the personality of the students. Judgment T-478 of 2015 represents a jurisprudential milestone in the defense of the right to education in situations of discrimination in the education system, obliging institutions and the State to adopt effective measures to prevent and address bullying and ensure inclusive and respectful educational environments.

**Judgment T-240 of 2018.** In this tutela action, the CAJC adolescent and his mother filed the action against the ACFE-LFLP of Bogotá (a private educational establishment), considering that the definitive expulsion of the student from the school, as a disciplinary sanction for the "malicious use of social networks" to obtain or disseminate photographs of other students, violated his fundamental rights, especially to due process and education. The plaintiffs asserted that, although the conduct was reprehensible, the sanctioning process did not respect the guarantees of defense, contradiction, and legality, and the sanction was disproportionate, affecting the student's permanence in the educational system. It was requested, through tutela, that the violation of these rights be declared and that the student's right to continue with his education be protected.

The Constitutional Court stressed that the manuals of coexistence and internal regulations of educational establishments fulfill an important normative and pedagogical function, since they define the rights and duties of students and establish disciplinary procedures. However, these regulations cannot and should not be applied in a way that disregards the guarantees of due process, including the right to defense, contradiction, knowledge of the alleged facts and sufficient reasons for sanctioning decisions. Therefore, educational institutions must ensure that any disciplinary process is carried out with strict respect for these constitutional guarantees, so that it does not become a source of violation of the right to education.

In the Judgment, the Constitutional Court reiterated its jurisprudence according to which the exercise of the sanctioning power of the schools is conditional on respect for the principles of due process and proportionality. Although institutions have the power to impose sanctions on those who violate the rules of school coexistence, this power is not

absolute and is subject to the obligation to evaluate the age, maturity and context of the student, as well as the pedagogical purpose of the disciplinary measure, as has been established in previous decisions. Under this approach, the mere existence of a misdemeanor does not justify an extreme sanction, such as definitive expulsion, when it has not been demonstrated that other less burdensome measures are insufficient to guarantee coexistence and comprehensive education.

The Constitutional Court specified that, in the specific case, the educational establishment did comply with the formalities of the disciplinary procedure as required by its coexistence manual, so it was not proven that the student's rights to due process and education had been violated. In other words, the expulsion was considered within the parameters of reasonableness, proportionality and legitimate educational purpose, since the student's conduct – dissemination of intimate photographs without consent – not only affected school coexistence, but also compromised the dignity and rights of other members of the educational community, which justified the sanction in accordance with the legitimate exercise of institutional disciplinary power.

Finally, the Constitutional Court stated that the tutela is appropriate to protect the right to education when there is serious impairment by institutional decisions that unjustifiably restrict the educational permanence of a student, especially in contexts in which constitutional procedural guarantees are not respected. However, when the procedure is adjusted to the parameters established both in the coexistence manual and in the Political Constitution – including due process and the proportionality of the sanction – there is no violation of the right to education, although the sanction may have relevant academic consequences.

## **CONCLUSIONS**

Education, from the legal point of view, is a superior and essential right to human coexistence. In this sense, the Political Constitution of Colombia values education as a fundamental right. By virtue of its developments in this field and the action of the Constitutional Court through jurisprudence, the argument in favor of making the right to education a reality has been consolidated. However, there is still a gap between the declarative and the effective in terms of the right to education, especially in the elements of access and quality. Likewise, the Constitutional Court has played an important role in the defense and strengthening of the fundamental right to education, by virtue of the fact that, on a recurring basis, people resort to constitutional actions, especially to the tutela action, for different reasons, in favor of guaranteeing the aforementioned right to education, a situation that reflects the vulnerabilities experienced by students, among other actors, in the Colombian education system.

The jurisprudential analysis allows us to establish that the Constitutional Court has constructed, in a progressive and coherent manner, a robust, comprehensive and guaranteeing conception of the right to education, understood not only as a public service or a right to provide, but as a directly enforceable fundamental right, intimately linked to human dignity, the free development of the personality and material equality. Since the

founding Judgments T-002 of 1992 and T-440 of 1992, the Constitutional Court has made it clear that the essentiality of the right to education does not depend on its formal location in the constitutional text, but on its structural nature as a prerequisite for the realization of other rights and for the effective democratic participation of people.

A first point of convergence, among all the decisions analyzed, is the reiterated affirmation that the right to education is not exhausted in formal access to the educational system, but includes the permanence, quality and acceptability of the educational process. This common thread runs through decisions as early as Judgment T-002 of 1992, by limiting university autonomy in the face of the essential core of the right, and is consolidated in subsequent Judgments such as SU-641 of 1998 and T-743 of 2013, where the Constitutional Court emphasizes that education must be provided in conditions that allow the integral development of the student, which includes suitable teachers, adequate content and an institutional environment that respects fundamental rights. In this sense, the Constitutional Court has uniformly held that any institutional measure that expels, excludes or marginalizes the student without sufficient pedagogical justification violates the right to education.

A second axis of convergence is found in the constitutional limitation of the autonomy of educational institutions. Throughout the analysis, the Constitutional Court recognizes that colleges and universities have the power to establish internal regulations, coexistence manuals and disciplinary regimes; however, it insists that this autonomy is not absolute and is subordinate to respect for the fundamental rights of students. Judgments such as T-167 of 1997, SU-641 of 1998, T-491 of 2003 and T-240 of 2018 reiterate that disciplinary sanctions must be reasonable, proportional, duly motivated and aimed at pedagogical purposes, otherwise they become exclusion mechanisms incompatible with the social rule of law. Education, in the view of the Constitutional Court, cannot be transformed into an instrument of punishment or social control alien to its formative purpose.

A third common point is the close link between the right to education and other fundamental rights, especially due process, equality, privacy and the free development of personality. The Constitutional Court has consistently affirmed that there is no constitutionally valid education if it is provided in contexts of arbitrariness, discrimination or violence. This idea appears strongly in Judgment T-337 of 1995, where a minor is protected against stigmatization in the classroom; and it is deepened in Judgment T-478 of 2015, recognizing that discrimination based on sexual orientation destroys the minimum conditions for exercising the right to education.

Another cross-cutting element is the consolidation of the "four dimensions" of the right to education, affordability, accessibility, adaptability and acceptability, as a hermeneutical criterion and constitutional control. Its material content can be seen in decisions that require continuity of service, educational quality and respect for diversity. In Judgment T-743 of 2013, for example, the Constitutional Court develops adaptability and acceptability by requiring the effective provision of teachers.

Finally, the jurisprudential analysis converges on an essential idea: the right to education is only fully realized in democratic, inclusive and violence-free educational environments. From different perspectives, disciplinary, pedagogical, institutional and social, the Constitutional Court has insisted that the school environment is a constituent part of the law itself. Thus, bullying, sexual violence, discrimination and censorship are not ancillary

phenomena, but factors that directly affect accessibility and permanence in the education system. This understanding, clearly developed in Judgment T-478 of 2015, shows a jurisprudential evolution that conceives education as a space for citizen training, respect for diversity and effective guarantee of human rights.

To summarize, the jurisprudential analysis expresses a solid, coherent and progressive position of the Constitutional Court, aimed at protecting the right to education as a complex, relational and enforceable fundamental right, which imposes specific duties on the State, educational institutions and society. The convergence of the judgments shows that the Constitutional Court does not conceive of education as a privilege conditional on uncritical compliance with institutional norms, but as an essential right for the realization of human dignity, equality and democracy, the protection of which requires active constitutional control against any form of exclusion, arbitrariness or discrimination.

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