

PUBLIC EDUCATION POLICY IN COLOMBIA: JURISPRUDENTIAL ANALYSIS

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Abstract

The realization of the right to education is developed through the formation of public education policy, which contributes to the fact that this right transcends from the declarative to the effective. The objective of this article is to analyze the jurisprudential treatment that the Constitutional Court has given to public education policy in Colombia. The debate revolves around the fact that there are advances in the field of education as a result of the formulation and implementation of the respective policy. However, there is still a gap between the declarative and the effective in terms of the right to education, especially in terms of quality and coverage, as essential supports of the education system, despite being central issues in the different instruments that support public education policy in Colombia. 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 public education policy in Colombia. The deliberation concludes that the Constitutional Court of Colombia has consolidated a structural understanding of education as a fundamental right and as a public service with a social function, whose materialization necessarily depends on the design, implementation and evaluation of public education policy consistent with constitutional mandates.

Keywords: education, right to education, public policy, public education policy, jurisprudential analysis.

1. INTRODUCTION

Education is a process that involves transmitting, among human beings, powers, ideals and know-how, that is, it addresses the ability to solve problems of society and the individual, as well as the development of skills. In this sense, the aforementioned process involves training for work, as well as the scientific attitude and the training of citizens, in the understanding that education affects the personal and social perspective of the human being by providing him with conditions for his development and survival, while contributing to the formation of the subject and to humanization. since education is the fundamental variable of human capital.

To achieve the purposes described above, States, through their competent authorities, must formulate and implement public education policy. In a broad sense, a public policy must be integrated by a set of decisions and actions in the short, medium and long term, based on power, offered by the State, whose action must be aimed at solving or avoiding a public problem or problem, for which it is necessary to mobilize resources, issue legal norms and sentences, establish procedures, use strategies and lines of action, formulate, implement and evaluate plans, programs, projects and activities to achieve objectives and goals, in whose training process there must be the participation of agents other than public authorities.

This allows us to infer that public education policy is made up of several decisions, affirmation of values, legal norms, sentences, action plans, programs, procedures, resources and actors. Decision-making corresponds to the government, while actions are the responsibility of the public administration. Consequently, the conceptual approach to public education policy in Colombia is addressed below, and then the respective jurisprudential analysis is developed.

A CONCEPTUAL APPROACH TO PUBLIC EDUCATION POLICY IN COLOMBIA

Public education policy is understood as a set of decisions and actions taken with the deliberate purpose of changing the inputs, processes, and outputs of an education system, in accordance with Reimers (1995, cited by Pita, 2020). Such a policy must therefore be harmonized with the social, political, economic and cultural reality of the country, while at the same time it must be gradual, coherent and consistent. Likewise, public education policy in Colombia is an instrument for systematic and coherent planning of decisions, actions, programs, norms and resources adopted by the State, at its different levels and authorities, for its different territories, aimed at guaranteeing the fundamental right to education, ensuring the continuous, accessible, acceptable, adaptable and quality provision of the educational service. and to fulfill the constitutional purposes of comprehensive education, material equality and social development.

Thus, in order to solve or avoid problems of education, the Colombian State has a public policy on education, the formulation of which is the responsibility of the Nation, through the Ministry of National Education, in accordance with article 208 of the Political Constitution. Likewise, the Nation, through the competent entities, coordinates and monitors the policy. The total or partial implementation of this policy corresponds, within the framework of decentralization, to the territorial entities, that is, to the departments, districts and municipalities, to decentralized entities by services, to organizations of the non-state public sector and to private entities, among other actors, with regard to preschool, basic and secondary education. Likewise, in the execution of higher education policy, private and public higher education institutions also play a leading role, among which are state universities as autonomous entities.

The formation of public education policy, likewise, is characterized by the flexibility or adaptability, typical of the elements of the periphery that make up the policy, that is, the networks of actors, institutions, resources, procedures, strategies, plans and programs of the policy. Therefore, the policy in question must change as the country's educational development advances. The policy is also geared towards poverty reduction; financing is the responsibility of the Nation, the territorial entities and the users, while universalism is presented in the case of preschool, basic and secondary education, when the service is provided by state educational institutions, through free public education in Colombia, a program in force since 2011; while for higher education, the focus on the aforementioned process prevails, through zero enrollment, in force since 2021, aimed at low-income students who are studying their undergraduate degree in state higher education institutions.

On the other hand, the guidelines of public education policy in Colombia are established in international instruments, in legal norms, fundamentally in the Political Constitution, in Law 115 of 1994 or General Law of Education and in Law 30 of 1992 that organizes the public

service of higher education, as well as in some plans, among which are the national development plans, the ten-year national education plans and some CONPES (National Council for Economic and Social Policy) documents, among other elements.

At the international level, there are binding legal instruments, in which States give their consent to be legally bound, which is why they acquire a commitment to adapt their domestic regulations to international standards, for example, the various treaties and declarations. In the case of public education policy, there are the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the American Convention on Human Rights, among other international standards. There are also non-binding legal instruments, such as the Sustainable Development Goals.

In this sense, in 2015 the United Nations approved the 2030 agenda made up of seventeen goals, known as the Sustainable Development Goals, among which number four stands out, called quality education, through which it seeks to achieve inclusive and quality education for all, since education contributes to guaranteeing sustainable development. Therefore, children must complete their free primary and secondary education by 2030, as well as equal access to technical training, eliminate gender and income parities, and achieve universal access to quality higher education, a situation that has implied adapting public education policy.

In terms of national legal norms, we have as a starting point the Political Constitution of Colombia, especially Article 67 which indicates the right to education as 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. at the same time, it establishes as the responsibility of the State to regulate and exercise the supreme inspection and surveillance of education in order to ensure quality, among other purposes. Education must be compulsory between the ages of five and fifteen and must cover at least the levels of pre-school and basic education. Likewise, Article 68, within the framework of education as a public service, generates the possibility for individuals to manage educational establishments, in accordance with State regulations, while Article 69 guarantees university autonomy.

On the other hand, Law 115 of 1994 establishes different actions in favor of guaranteeing the right to education. In this sense, the guidelines of the education policy are oriented to the structure and coverage, aims of education, participation and school governance, curriculum and school autonomy, compulsory and free education, quality and relevance, education for the populations and evaluation, among other aspects. Consequently, article 11 of the aforementioned Law structures the educational service at the preschool, basic and secondary levels; at the same time, it establishes, in terms of coverage, the compulsory nature of education between five and fifteen years of age, by including at least one year of preschool and nine years of basic education, while promoting attention to vulnerable populations, aspects in tune with the free education progressively established in state institutions since 2011.

Likewise, article 5 of Law 115 of 1994 indicates the purposes of education, among which are the full development of the personality, the formation of upright, ethical and critical people, respectful of life, human rights, peace, democracy and cultural diversity. These aims are aimed at promoting scientific, technical, environmental knowledge and work, preparing citizens for active participation in society. With respect to school participation and governance, article 142 of the aforementioned law indicates that said government is the highest instance of participation and democratization of educational establishments, made up of the rector, the board of directors and the academic council, with the participation of teachers, students and parents in decisions.

In addition, Article 76 of the aforementioned law specifies that the curriculum is made up of the set of criteria, curricula, programs, methodologies and processes that contribute to comprehensive education, a situation that obliges each educational institution to formulate

and implement an institutional educational project; while school autonomy refers to the framework that allows educational institutions to organize the fundamental areas of knowledge defined for each level, introduce optional subjects within the areas established in the law, adapt some areas to regional needs and characteristics, adopt teaching methods and organize training, cultural and sports activities, within the guidelines established by the Ministry of National Education, according to Article 77 of Law 115 of 1994.

With regard to the quality and relevance of education, article 4 of the Act establishes the obligation of the State, society and the family to ensure the quality of education and to promote access to the public education service, while at the same time making the national and the territorial entities responsible for coverage. These actions are complemented by comprehensive training, inclusion and the adoption of the curriculum to the needs of the environment and the student, among other aspects. In addition, Law 115 of 1994 provides education for specific population groups under the principles of equity, inclusion and cultural relevance. Finally, evaluation is established as a continuous, comprehensive and qualitative process. In this regard, Articles 80 and 84 of Law 115 of 1994 are highlighted, with respect to the evaluation of educational quality and institutional self-evaluation, respectively.

Likewise, Law 30 of 1992 established public policy guidelines aimed at making the constitutional precept that education is a right and a public service with a social function, which seeks access to knowledge, science, technology and other cultural goods and values, a norm through which fundamental aspects such as university autonomy are addressed, higher education as a public service and as a right, quality and education, relevance and promotion, state financing, freedom of teaching, higher education modalities, national information system and strengthening of the higher education system. For this reason, the aforementioned regulation registers the educational, scientific and collaborative purposes. Educational purposes include personal training, skills development and skills training; while scientific purposes are classified into creation of culture, research in science and training of researchers. Collaborative purposes are divided into institutional and social.

In addition, the aforementioned norm defines the relations between the State and higher education institutions, which have acquired greater institutional autonomy in contrast to state deregulation, which is why institutions must self-regulate, mainly through accreditation in search of the quality of programs and institutions, for which the National Accreditation Council was created. Also, the Law gave rise to a transformation of those institutions of lower status to higher institutions, since Law 30 of 1992, Article 16, considers as institutions of higher education professional technical institutions, university institutions or technological schools and universities, whose training is aimed at undergraduate and postgraduate programs.

On the other hand, the most relevant courses of action on public education policy set out in the National Development Plan 2023-2026, "Colombia, world power for life", are reviewed below, as it is the current plan, which is supported by quality education to reduce inequality, in favor of a society of knowledge and own knowledge. To this end, it establishes lines of action in the following aspects: happy and protected early childhood, resignification of the school day, dignification, development and training of the teaching profession for quality education; social mobilization for education in the territories, curricula for social justice, educational and community territorial management, secondary education for the construction of life projects, towards the eradication of illiteracy and the closure of inequities, intercultural and bilingual education program, equitable school feeding program and higher education as a right.

Likewise, the ten-year national education plans are instruments of public education policy, since they have become the educational agenda for ten-year periods, while their objectives and strategies have been the support for the different national development plans. Currently, the Ten-Year National Education Plan 2016-2026 is in force, which establishes an agenda aimed at achieving a quality education system. In this regard, as a result of participatory exercises with

the community concerned and based on its experience and knowledge, the plan is based on ten strategic challenges, namely: to regulate and specify the scope of the right to education, the construction of an articulated, participatory, decentralized education system with effective mechanisms for consultation; the establishment of general, pertinent and flexible curricular guidelines, the construction of a public policy for the training of educators.

In addition, the aforementioned plan seeks to promote an education that transforms the paradigm that has dominated education so far, to promote the relevant, pedagogical and widespread use of new and diverse technologies to support teaching, the construction of knowledge, learning, research and innovation, strengthening development for life; to build a society in peace on a basis of equity, inclusion, respect for ethics and gender equity; to give priority to the development of the rural population on the basis of education, the importance given by the State to education will be measured by the share of educational expenditure in the gross domestic product and in the expenditure of the Government, at all its administrative levels; and to promote research that leads to the generation of knowledge at all levels of education.

Finally, the CONPES documents that establish guidelines for public education policy refer to the different educational levels, that is, they start from early childhood to higher education, among which are 4123 of 2023 on educational infrastructure, 4122 of 2023 on coverage in higher education, 4068 of 2022 that defines the national policy on reading, writing, orality and school libraries to improve educational quality; 3988 of 2020 on digital educational innovation, 3975 of 2019 on artificial intelligence and 109 of 2007 on early childhood policy.

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 it has given to public education policy in its pronouncements, 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, to analyze the most relevant decisions that the closing body of the constitutional jurisdiction has issued to public education policy in Colombia, six judgments have been selected, namely: T-523 of 2016, C-149 of 2018, T-120 of 2019, T-170 of 2019, T-205 of 2019 and T-139 of 2022.

RESULTS AND DISCUSSION

The sentences are part of the decisions that make up public education policy in Colombia. Consequently, this jurisprudential analysis examines public education policy, identifying the decisive milestones that have shaped its progress, its components and the criteria that guide the intervention of the constitutional judge in the face of its violation.

Judgment T-523 of 2016. The tutela action was filed by an unofficial representative on behalf of her minor son and other children with special educational needs against the Ministry of National Education, requesting that the National Government be ordered: (i) a fair and differentiated evaluation of the quality of the specialized schools that serve these students, so that they were not excluded from generic criteria such as the percentiles of the Saber Tests; and (ii) that the necessary administrative steps be taken to expand the special educational coverage that these children require, so as to guarantee the continuity of the inclusive or specialized education service and thus protect their fundamental right to education, dignity, personal integrity, and well-being.

In the first place, the Court analyzed the admissibility of the tutela and determined that, due to a change in the procedural actions and in the entity sued, moving from the municipal to the national level, there was no recklessness or exact identity of parties in the face of a prior tutela.

It also stated that any person can file for guardianship on behalf of a minor, whenever there is a threat or manifest violation of fundamental rights, although it specified that the sole intention of selecting a specific educational model to collectively represent a large group of children without the effective participation of their guardians is not enough.

On the merits of the case, the Court examined the constitutional and legal regulations on the right to education, emphasizing that this is not only a fundamental right but also a public service with a social function, the realization of which must be oriented towards integral human development, equity and educational quality, under the direction, financing and administration shared between the Nation and the territorial entities. as established in Article 67 of the Political Constitution. These elements, according to the Court's reiterated jurisprudence, constitute enforceable duties of the State in the face of inclusive and quality education.

Crucially, the Court focused on the inclusive education model as a public policy guiding the actions of the State and the Ministry of National Education. Following internationally recognized parameters, better articulated in instruments such as the International Covenant on Economic, Social and Cultural Rights, integrated into the block of constitutionality, the Court recalled that the right to education incorporates the characteristics of availability, accessibility, acceptability and adaptability. These characteristics imply that education must be available in sufficient quantity, accessible without discrimination and, crucially, sufficiently adapted to the diverse needs of learners, in particular those with disabilities.

The Court emphasized that public education policy cannot be limited to quantitative criteria such as standardized test scores to evaluate institutions that serve students with special conditions, since such measurements do not capture the real needs of these students or guarantee effective inclusion. In this sense, he stressed that an inclusive public education policy must guarantee reasonable accommodations, the elimination of social and pedagogical barriers, and the participation of students in regular educational contexts whenever possible. Based on this, the Court ordered the prevalence of the inclusive education approach over any form of educational segregation that restricts equal opportunities.

In addition, the Chamber took into account the absence of a specific public policy on inclusive education for persons with disabilities, pointed out by actors in the process such as the Colombian League Against Autism with respect to the mandate contained in Statutory Law 1618 of 2013, which assigns the Ministry of National Education the definition of said policy. In this sense, the Court left a clear message on the need for the Executive to adopt concrete normative guidelines to implement a public policy that harmonizes constitutional obligations, international standards and the pedagogical needs of students with functional diversities.

Finally, in its decision, the Court partially modified the order of first instance and granted the tutela insofar as it ordered the Ministry of National Education to take into account an inclusive approach in the evaluation of educational institutions that aspire to contract with territorial entities, thus guaranteeing that the design and application of quality criteria respond to the specific needs of students with disabilities and are not limited to standards undifferentiated.

Judgment C-149 of 2018. The claim of unconstitutionality was filed against various sections of the educational and social regulations, in particular Article 2 of Law 14 of 1990, Articles 46 and 48 of Law 115 of 1994, Articles of Law 361 of 1997 and Article 36 of Law 1098 of 2006. on the grounds that these provisions promoted models of segregated or "specialized" education that excluded persons with disabilities from the ordinary education system, in contravention of the elementary right to inclusive education and the constitutional and international treaty mandates on non-discrimination and material equality of opportunity. The plaintiff argued that these paragraphs violated the constitutional articles that protect equality, education, and

the rights of children and persons with disabilities, as well as the State's international obligations incorporated into the constitutional block.

In its analysis of the merits, the Court started from the nature of the right to education as a fundamental right and as a public service with a social function, the content of which must be interpreted in accordance with the block of constitutionality. The *ratio decidendi* of the judgment was structured on the basis that Article 24 of the Convention on the Rights of Persons with Disabilities imposes on States the duty to ensure an inclusive education system at all levels, which means overcoming the traditional model of segregated special education and adopting an approach based on the social model of disability. From this perspective, disability is not conceived as an individual deficiency that justifies separation, but as the result of physical, cultural, pedagogical and regulatory barriers that the State must eliminate through structural transformations of the education system.

The Court held that inclusive education constitutes a binding constitutional and conventional mandate, which must comprehensively guide legislation, regulation and public policy in the field of education. Consequently, the challenged provisions had to be interpreted in accordance with the Political Constitution, on the understanding that special education cannot operate as a parallel system or as an ordinary form of care, but only as an exceptional, transitory and duly justified measure, when it has been demonstrated that inclusion in the regular system, with the necessary reasonable support and adjustments, it is not possible in the specific case. This reasoning implied a redefinition of the normative scope of the accused provisions, aligning them with the standard of full inclusion.

The *ratio decidendi* also incorporated a robust development on the content of the public policy on inclusive education. The Court specified that it is not enough to formally recognize the right to inclusion, but that the State must adopt concrete and progressive measures aimed at transforming the structures of the education system. This includes the implementation of reasonable accommodations, teacher training, curricular flexibility, the elimination of architectural and communication barriers, the provision of personalized support, and the design of monitoring and evaluation mechanisms. In this sense, the ruling elevated inclusive education to the level of the structuring axis of public education policy, directly linking the institutional and budgetary design of the sector with compliance with standards of material equality.

The Court also established a relevant distinction between integration and inclusion. While integration meant that the student had to adapt to a previously designed educational system without taking into account their diversity, inclusion requires that the system be adapted to the needs of all students. This conceptual transformation has direct effects on the formulation of public policy, since it implies that educational planning must be based on the recognition of diversity as a rule and not as an exception. In this way, the ruling not only resolved a problem of regulatory constitutionality, but also set substantive parameters for future state action in the field of education.

Judgment T-120 of 2019. It is the result of several tutela actions filed by parents on behalf of their children, against educational institutions and the Secretariats of Education, for alleged violations of the fundamental right to education in specific cases of school coexistence and care for students with disabilities or special educational needs. In essence, the actions sought the recognition and protection of children's rights to receive education under conditions of equality, without discrimination on the basis of disability or behavioural alterations, and with the necessary measures to ensure that such rights were not frustrated or interrupted by institutional omissions or administrative decisions that were not aligned with the standards of inclusion imposed by the Constitution and the legal system international.

The Court starts from the nature of the right to education, provided for in Articles 44 and 67 of the Political Constitution, as a fundamental right of children and adolescents and as a

public service with a social function, the fulfillment of which requires not only formal access to the educational system, but also the guarantee of permanence. quality, integration and non-discrimination throughout the learning process. The Court reaffirmed that educational authorities—both national and territorial—and educational institutions have a constitutional obligation to regulate, inspect and monitor education to ensure the fulfillment of its purposes, including access to knowledge, cultural values and coexistence in conditions of dignity.

A central element of the decision was the reaffirmation of the inclusive education approach as a structural and mandatory public policy in Colombia. The Court upheld general comment standards of international bodies—such as the Committee on Economic, Social and Cultural Rights and the Committee of the Convention on the Rights of Persons with Disabilities—according to which inclusive education requires ensuring the accessibility, availability, acceptability, and adaptability of educational environments for all students, without a physical condition, psychic or sensory behavior leads to exclusion or placement in segregated spaces. Under this model, education must be adjusted to the needs of the learner, not the other way around, and public policy must be aimed at eliminating structural, cultural and pedagogical barriers that prevent the full participation of students with individual differences.

The Court explained that the inclusive approach not only protects the rights of students with disabilities, but also allows the development of social values such as equality, respect, solidarity and understanding, essential for democratic coexistence and social justice. This approach requires that public education policy must integrate affirmative measures such as the adoption of reasonable accommodations, teacher training in inclusive education, differential psychosocial and pedagogical care, curricular flexibility, the elimination of physical barriers and the adaptation of evaluation methods and processes. In this sense, the judgment stressed that the non-implementation or omission of this policy may constitute a violation of the right to education of students, which legitimizes judicial intervention to order specific measures.

The Court, in compliance with its constitutional function of protection, also analyzed the specific actions of the school and the Secretariats of Education, finding that the educational institution committed an omission by not implementing the reasonable accommodations recommended to meet the needs of a student with behavioral disorders, despite the existence of professional recommendations and a previous court ruling. That omission not only affected the student directly involved, but also created a school environment that was not "friendly" or safe for other students, thus also affecting their rights to education and a respectful school climate. This material judgment resulted in the Court ordering the Ministry of Education of Cúcuta to evaluate, monitor and train teachers and institutions regarding the public policy of inclusive education, as well as the development of mechanisms that ensure the real and sustainable implementation of this model in all educational establishments under its jurisdiction.

Among its considerations, the Court is emphatic in rejecting arguments based on the alleged lack of resources, knowledge or technical capacities of the public education system to implement inclusive education, pointing out that these are not factors that can justify the absence of effective public policy. In fact, the Colombian legal system already establishes, both in the Political Constitution and in the norms of the General Education System and the international framework, the explicit obligation of the State, territorial entities and schools to promote, implement, evaluate and finance the policy and practices necessary to ensure that all students, regardless of their particular conditions, can access and remain in an educational environment that respects their rights.

Judgment T-170 of 2019. The tutela action was filed by the Regional Ombudsman's Office of Casanare, in its capacity as an unofficial agent on behalf of a minor diagnosed with childhood autism, against the Municipality of Yopal and the EPS Colombiana de Salud S.A., for alleged violation of multiple fundamental rights, including the right to inclusive education. human dignity, equality and health. The tutela demanded, in essence, that the Ministry of Education and the educational institution guarantee a real and effective inclusive education process,

which included the assignment of a therapeutic or "shadow" companion for the minor in the classroom, as well as the adequacy of the pedagogical supports and reasonable adjustments necessary for his permanence and educational development without discrimination.

The Court was anchored in the understanding of the right to education as a fundamental right with benefit content and deeply linked to the principle of non-discrimination, especially when it comes to students with disabilities. The Court recalled that the Political Constitution and international treaties, including the Convention on the Rights of Persons with Disabilities, impose on the State the obligation to ensure that persons with disabilities are not excluded from the general education system and receive an inclusive, quality and free education under equal conditions. Under this understanding, he pointed out that disability cannot be used as a reason to deny educational continuity in a regular environment, nor to postpone the adoption of adjustments that guarantee the full participation of the student.

The Court identified that both the educational institution and the Ministry of Education of the Municipality of Yopal failed to comply with the obligations of inclusive education by conditioning the continuity of the child's educational process to the presence of a shadow companion who had to be paid for by the family, while the Ministry of Education denied its duty to provide that support. This position contravened both the Colombian constitutional framework and the obligations established in Decree 1421 of 2017, which regulates inclusive education and assigns clear responsibilities to the Ministry of National Education, certified territorial entities and educational institutions to organize the educational offer, provide support personnel and manage reasonable adjustments that allow the effective inclusion of students with particular needs.

From the perspective of public education policy, the judgment delves into several doctrinal and institutional guideline contributions that are crucial. First, it reaffirms that inclusive education should be interpreted as a mandatory public policy, which is not only declared in the abstract in sectoral regulations, but must be materialized in a concrete way in educational practices and in the allocation of human and technical resources necessary to meet the diversity of students. The ruling recalls that inclusive education, as defined in Decree 1421 of 2017, is "a permanent process that recognizes, values and responds in a pertinent way to the diversity of characteristics, interests, possibilities and expectations in a common learning environment, without discrimination or exclusion of any kind" and that implies reasonable support and adjustments within the framework of human rights.

The ruling also emphasizes the shared institutional responsibility of the educational authorities in the implementation of the public policy on inclusive education: the Ministry of National Education is in charge of the general direction of the public policy on educational inclusion, incorporating assistance and monitoring into the care strategies, while the secretariats of education of the certified territorial entities must manage the resources, design care strategies and guarantee the reasonable adjustments that educational institutions require to ensure the progressive inclusion of students with disabilities. Similarly, educational establishments are obliged to promote conditions for teachers to prepare and comply with Individual Plans for Reasonable Accommodations and to hold dialogue with families and caregivers to strengthen these processes.

In this context, the Court concluded that the omission of the Ministry of Education of Yopal in not linking and providing a therapeutic companion, when this was required in accordance with the needs of the minor outlined in the Individual Plan of Reasonable Accommodations, constituted a violation of the fundamental right to inclusive education. The Chamber ordered that said entity provide the companion of a therapeutic nature within the school day in the terms indicated in the specialized technical concepts and the Individual Plan of Reasonable Adjustments, for the time indicated by them and in accordance with the prudent adjustments established.

Judgment T-205 of 2019. The Court heard a tutela action filed by the Municipal Ombudsman of Villa de Leyva (Boyacá) against the Ministry of Education of Boyacá, on behalf of children and adolescents with disabilities enrolled in two educational institutions in the municipality. The plaintiff alleged that the defendant entity had not adopted or implemented sufficient measures to guarantee the fundamental right to inclusive education of this school population, since the contracts and actions carried out, such as agreements and external support, did not manage to effectively materialize the inclusion of these students in conditions of equality, permanence, participation and adaptability within the regular education system. Under this claim, they are demanding substantial reasonable accommodations, teacher training and the implementation of technical and pedagogical support mechanisms that guarantee access and learning for the aforementioned students.

The Constitutional Court reiterated that the right to education, enshrined in articles 44 and 67 of the Political Constitution, has a benefit and material dimension, which requires the State to adopt and implement effective public policy that guarantees access, permanence, non-discrimination, quality and adaptability for all persons, particularly for subjects of special protection such as minors with disabilities. This analysis is based on the international standards on inclusive education contained in the constitutional block, especially General Comment No. 13 of the Committee on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities, which impose the obligation to guarantee the elimination of physical, pedagogical and attitudinal barriers in the education system and to promote reasonable accommodations based on rigorous evaluation of the needs of each student.

The public policy approach to inclusive education is not merely formal, but involves an adaptation of the general education system to address the functional, cognitive and social diversity of students. Under this model, the Court affirmed, educational institutions must have conditions that allow for an adequate school environment and pedagogical strategies that ensure the equitable participation of all students, regardless of their abilities or limitations. Judgment T-205 of 2019 took into consideration sectoral regulations such as Decree 1421 of 2017, which defines reasonable accommodations and obliges educational entities and public education service operators to implement them to guarantee the accessibility, availability, adaptability and acceptability of the service in each case.

The Court found that, although the Ministry of Education of Boyacá had entered into inter-administrative contracts and agreements with external entities to support educational inclusion, these were not designed or executed in a sufficient, efficient manner, or in accordance with the real needs of the population with disabilities. The lack of effective implementation of these programs meant that reasonable adjustments did not materialize, teacher training was insufficient, and clear institutional protocols were not generated to guarantee inclusive education in the aforementioned schools. For this reason, the Court considered that the right to access and permanence with quality and adaptability that a public education policy consistent with the human rights approach demands had not materialized.

The Court's decision, therefore, revoked the ruling of the second instance and protected the right to inclusive education of minors with disabilities represented by the municipal representative. In its order of compliance, the Fifth Chamber of Review established clear obligations to the Ministry of Education of Boyacá, including: (i) carrying out a detailed evaluation and monitoring of the implementation of the public policy on inclusive education in the denounced institutions; (ii) promote the periodic training of teachers in inclusive education methodologies and tools; (iii) to promote inclusive educational actions for all students; and (iv) prepare and present a Progressive Implementation Plan for the public policy on inclusive education in accordance with Decree 1421 of 2017. It also ordered educational institutions to design internal protocols to materialize the effective enjoyment of the right to inclusive education, adapted to the available resources.

Judgment T-139 of 2022. The guardianship was filed by the parents of a minor against the Ministry of National Education, the Ministry of Education of Cundinamarca and the affected educational institution, in order to order to guarantee the access and full permanence of the minor in the regular education system, incorporating pedagogical and organizational adjustments necessary to meet her special educational needs. that were not sufficiently contemplated or implemented. Specifically, it called for the adoption of the pertinent actions to ensure that the fundamental right to inclusive education is respected, in accordance with constitutional and legal standards.

The Court began its analysis by recalling that the right to education is a fundamental right enshrined in Articles 44 and 67 of the Political Constitution, with a benefit content and judicial enforceability, especially when it affects populations that are discriminated against or in a condition of vulnerability, such as children with special educational needs. This right is based on the principles of equality, human dignity, progressivity and non-regressivity, and has clear implications for the design and implementation of public education policy that guarantee its real and effective exercise.

The ruling is based on the fact that inclusive education is not an isolated concept, but an essential component of public education policy, required both from the Ministry of National Education and from territorial entities and educational institutions. To this end, the Court integrated national and international doctrinal criteria, especially the Convention on the Rights of Persons with Disabilities and the observations of the Committee on Economic, Social and Cultural Rights on the right to education, which urge States to guarantee accessible environments, participate actively in the elimination of barriers and strive for reasonable accommodations in curricula, pedagogical resources and methodologies.

The Court stressed that mere formal inclusion or enrollment in an educational institution is not enough; the real effectiveness of the right is necessary, which implies creating material and organizational conditions that allow the student to participate fully in the educational process, without his physical, cognitive or psychosocial condition constituting an obstacle. For this reason, it determined that the educational authorities and the institution had the obligation to implement the necessary measures – such as teacher training, design of flexible teaching strategies and adequate pedagogical resources – so that the minor could access, remain, progress and complete her education under conditions of equality with her peers.

CONCLUSIONS

Public education policy is the State's instrument for realizing the right to education. While it is true that there has been progress in the field of education as a result of the formation of the respective policy, there is still a gap between the declarative and the effective in terms of the right to education, especially in terms of quality and coverage, as fundamental pillars of the education system, despite being central issues in the different instruments that support the aforementioned policy. that is, international and national legal norms, judgments, national development plans, ten-year national education plans and CONPES documents, among others.

Likewise, the jurisprudential analysis allows us to establish that the Constitutional Court of Colombia has consolidated a structural understanding of education as a fundamental right and as a public service with a social function, whose materialization necessarily depends on the design, implementation and evaluation of public education policy consistent with constitutional mandates. Based on judgments such as T-523 of 2016, C-149 of 2018, T-120 of 2019, T-170 of 2019, T-205 of 2019 and T-139 of 2022, a consistent evolution is observed towards the affirmation that the right to education is not satisfied with simple formal access to the education system, but requires real conditions of availability, accessibility, acceptability, adaptability and quality.

The articulating axis of this analysis is the public policy of inclusive education, elevated by the

Court to a binding constitutional mandate. The jurisprudence definitively abandons the model of segregated special education and adopts the paradigm of the social model of disability, according to which the education system must be transformed to respond to the diversity of students. Thus, inclusion is not an exceptional measure, but a structuring principle of educational policy. This implies reasonable accommodations, effective implementation of the Individual Reasonable Accommodation Plan, permanent teacher training, curricular flexibility, elimination of physical and attitudinal barriers, and adequate allocation of resources. The failure to implement these measures constitutes a direct violation of the fundamental right to education.

However, the analysis is not limited to inclusion. Other dimensions of public education policy are also identified: the policy of educational quality, which cannot be measured exclusively by standardized criteria when it comes to diverse populations; the policy of coverage and permanence, which requires continuity and non-exclusion; the policy of school coexistence, which requires safe and respectful environments; and the policy of inspection, surveillance and management of the educational service, which commits both the Ministry of National Education and the certified territorial entities. All these policy guidelines must be articulated under a human rights approach.

In summary, the Constitutional Court has established that education, as a fundamental right and an essential public service, is developed and implemented through the public policy of compulsory, progressive and assessable education. The constitutional judge concentrates his action on the control of the omission or deficient implementation of the aforementioned policy, when they affect fundamental rights. In this way, the jurisprudence consolidates a vision in which public education policy is not discretionary, but a binding legal instrument for the effective realization of human dignity, material equality and social inclusion in the social rule of law.

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