SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

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THE RIGHT TO EDUCATION DOES NOT INCLUDE THE PARENTS' RIGHT TO ENROL THEIR CHILDREN AT A REGULAR SCHOOL IF THE ADMINISTRATION DECIDES THAT THEY NEED SPECIAL EDUCATION

The Spanish Constitutional Court (TC) has dismissed a relief appeal ["*recurso de amparo*"] lodged by the parents of a minor against the resolution adopted by the Department of Education of the Government of Castilla y León, which resolved that their child should continue his special needs education instead of at an ordinary school, as requested by the plaintiffs. Said resolution was upheld by Contentious-Administrative Court Number 1 in Palencia and by the High Court of Justice of Castilla y León. The judgment, delivered by Chamber One of the TC, includes the particular dissenting vote of the judges Luis Ignacio Ortega and Juan Antonio Xiol Ríos.

According to the account of events included in the judgment, right from the start of his schooling, when he was only three years old, the appellants' autistic son displayed a "*severe disability*". The Administration's educational experts recommended that he be enrolled thereinafter at a public special needs school, given that the minor's difficulties required "*the teacher's personalized and constant attention in a small group (maximum of 4 students)*".

The plaintiffs believed that the minor's right to education (Art. 27 Spanish Constitution (CE)), the right to equal treatment (Art. 14 CE) and the right to moral integrity and personal dignity (Arts. 15 and 10.1 CE) had been breached, on the grounds that their son should have been allowed to enrol at an ordinary school "*with the necessary resources for his integration*". The State Prosecutor partly backed up the claim regarding the right to education and to equality, on the basis that the Administration did not adequately explain why it was not possible for the necessary resources to be provided in order for the minor to be enrolled at an ordinary school. According to the Public Prosecution Service, this attitude meant that the student was being discriminated on the grounds of his disability.

The judgment, where Santiago Martínez-Vares acted as the Reporting Judge, specifies, in the first place, the scope of the right to education, understood as "*the freedom of parents when choosing a school*". "*As a right of freedom*", it declares, "*it also includes the right to choose a school, even if it differs from the one provided by the public powers*". However, adds Chamber One, this does not include *"the parents' right to enrol their child at an ordinary school, instead of a special needs school, as this will depend on the competent authorities accrediting the minor's specific educational needs*".

In turn, Organic Act on Education2/2006, of 3 May, forbids any discrimination of disabled students and proposes "*inclusive schooling*", meaning that the Administration should "*encourage that minors be educated at ordinary schools, allocating the necessary resources for their integration into the educational system if they suffer any kind of disability*". However, this general rule shall not apply when "*the adjustments required for this inclusion are disproportionate or unreasonable*", in which case the Administration "*may decide that these students be enrolled at special needs schools*". In these situations, "*the reasons for adopting this decision must be explained*".

In this case, as stated by the judgment of the TC, from the challenged Resolution "*one may conclude that the reasons that led to a decision in favour of a special needs school were explained, and that such reasons, furthermore, are consistent with the main goal intended, namely that the minor adequately cover his special education needs*". According to the Chamber, the right to education and equal treatment cannot be claimed as infringed due to lack of reasoning in the resolution "*given that based on the student's academic records as a whole, it may be easily inferred that the Resolution does in fact justify its decision to have the student continue at a special needs school, appraising his special education needs*".

The Chamber reaches the conclusion that, once the Educational Administration has proven that enrolment at a special needs school is the most appropriate decision "*in the minor's interest*", "*there is no need to evaluate whether the necessary arrangements can or cannot be provided by an ordinary school, since this enrolment decision, given the student's serious disability and required individualized attention, implicitly suggests that his particular educational needs will be better served in a special needs school than as part of the general educational system of ordinary schools*".

The Constitutional Court finally disagrees with the fact that the decision to enrol the boy at a special needs school entails degrading treatment, given the absence of "*humiliation or debasement that is in the slightest way significant*".

In their particular dissenting vote, judges Ortega and Xiol share the Public Prosecution Office's opinion, and maintain that the challenged resolution "*does not expressly analyse or explain the reasons why the resources required by the minor cannot be provided "as part of assistance measures for diversity at ordinary schools*"". In the case of disabled minors, "*extra effort should be required*", it adds.

Madrid, 6 February 2014