

EUROPEAN ASSOCIATION FOR EDUCATION LAW AND POLICY

SUMMER SCHOOL, JULY 2010

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Saturday 24 July: afternoon session

and

Sunday 25 July: morning session

'Some legal implications of violence in schools: England'

OUTLINE and ASSIGNMENTS

1. Introduction

- 1.1 Some peculiarities of the UK constitution – absence of formal constitutional protection of rights (including the right to education) under the UK constitution
- 1.2 Statute and common law – statute as highest form of law in UK (subject to EU law) – sovereignty of UK Parliament – no court can (in theory) challenge validity of a duly enacted statute
- 1.3 ECHR now incorporated into UK law by Human Rights Act 1998 – note the UK's reservation to second sentence of Art 2 Protocol 1

UN Convention on Rights of the Child ratified by UK, but not incorporated into domestic UK law – not directly justiciable in UK courts, though evidentially important
- 1.4 Background - very brief outline of schools system in ENGLAND. Note that, following devolution, UK has four separate systems of school education law (England, Wales, Scotland, Northern Ireland) – we will focus on England

Schools system in England governed by statute and a large and complex volume of delegated legislation, interpreted and applied by courts. Also some important COMMON LAW principles (e.g. *in loco parentis* principle; and the duty of care on the part of schools, governing bodies, teachers). Department for Education (the Ministry) also issues 'Guidance' to local authorities/schools which is a form of 'soft law' which may well be evidentially significant

Some of the key features of the legal and administrative framework of schools governance in England – central and local governance – school governing bodies – school head teachers (principals/directors) – different types of schools within the state (public) maintained sector - parental rights and duties – children's rights

A very few key statistics.

2. The nature and incidence of violence – rights that may arise – conflicting rights

Assignment 1: please prepare a very brief talk outlining from your own perspective the nature of rights arising in relation to violence in schools in its many different forms. Please be as comprehensive as possible in identifying the different types of 'violence' that may arise, giving 'violence' a wide definition. Who in your view are the rights holders, and how may their rights/interests conflict? Which rights should prevail in the event of conflict?

- 2.1 Violence in schools in England – socio-economic inequalities in education – anticipated expenditure cuts as result of recession, accentuating socio-economic divisions and disadvantage - some statistical information as to incidence of violence in English schools (some of the statistics cover other countries within the UK) – different types of violence – Dunblane (Scotland) massacre as extreme example - bullying in its many forms (see Neville Harris chapter for discussion) – drugs/alcohol/offensive weapons – gang rivalry – ethnic/religious tensions (see case of *Ridgeway School*) – children in conflict zones – corporal punishment as a form of violence

3. Legal framework in England in respect of violence in schools

- 3.1 Legal duties of governing bodies and head teachers – formulation and publication of policies/ rules – ‘Guidance’ issued by Department for Education and its legal force
- 3.2 Disciplining of pupils – new Conservative/Liberal Democrat government’s proposals to extend schools’ disciplinary powers - the range of powers available to teachers - particular legal concerns relating to detention
- 3.3 Powers of search and confiscation
- 3.4 Power to use ‘reasonable force’ as a restraining measure
- 3.5 Drugs – offensive weapons
- 3.6 Reluctance of teachers to search pupils or use reasonable force – possibility of pupil alleging assault/sexual assault – serious consequences for teacher’s career
- 3.7 Involvement of the police
- 3.8 The power to exclude pupils – fixed term and permanent exclusions – role of governing body – Independent Appeals Panels – whether proceedings before IAPs subject to Article 6, ECHR – burden of proof – particular issues when the exclusion was for a disciplinary offence which is also a criminal offence under the general law – see the English Court of Appeal case of *R(LG) v Independent Appeal Panel for Tom Hood School* [2010] EWCA Civ 142 – reinstatement of excluded pupils and the definition of ‘reinstatement’ : see case of *R (L) v Governors of J School* [2003] UKHL 9
- 3.9 Anti-Social behaviour orders/ parenting contracts/parenting orders

Assignment 2: Please prepare a brief talk outlining the legal scope of teachers' powers in your own country to discipline pupils, including in particular their power to search pupils for drugs/offensive weapons, to detain pupils after normal school hours, and the power to exclude a pupil from school. What consequences flow from exclusion from a particular school for the pupil's continuing education? What arrangements are made for the education of pupils who have been excluded? Is another school in the area required to admit the child?

- 4 **Legal liability of school governors for failure to prevent violence/ bullying, etc.**
- 4.1 Common law duty of care (Auld, LJ in *Gower v London Borough of Bromley* (1999))
- 4.2 The *Ridgeway School* case (*Webster v Ridgeway Foundation School* [2010] EWHC 157): attack on a pupil by an outsider at end of school day on school premises – school premises not secure – pupil suffering severe brain damage – was the school liable in damages for failing to prevent the attack? – rather hopeless argument under Article 3, ECHR
- 4.3 Failure to prevent bullying – bullying of a pupil outside school – potential liability on part of school – cases of *Bradford Smart v West Sussex County Council* [2002] ELR 139 and *Faulkner v London Borough of Enfield and Lea Valley High School* [2003] ELR 426

Assignment 3: Please prepare a brief talk explaining the potential for liability for damages in your own country in the event of a school's failure to prevent a serious attack on a pupil by another pupil or by an outsider. What legal principles would govern the determination of the issues here? Do you have any relevant case law?

- 5 **Pupils being educated in conflict zones/areas of ethnic or religious tension/industrial conflict**
- 5.1 Sectarian violence in Northern Ireland – much abated but still continuing today to some extent – e.g. rioting in Belfast July 2010 accompanying Orange Order Parades – the Holy Cross School case (*Re E Application for Judicial Review* [2004] NIQB 35) – primary school pupils being physically and verbally abused on way to and from school - claim by mother of one of the pupils that the Chief Constable of the Royal Ulster Constabulary had failed to take adequate steps to prevent the violence – claim that pupils' right to education under A2P1, ECHR violated – claim also under Art 3, ECHR
- 5.2 Violence may well flow from industrial conflict (e.g. year long miners' strike in UK in 1984 (Billy Elliot)) – highly likely that will be extensive industrial conflict flowing from public expenditure cuts as result of recession – potential for violence with consequences for schools

- 6 Use of corporal punishment in schools as a form of violence**
- 6.1** Case of *Campbell and Cosans v UK* (1982) – objections by parents to use of corporal punishment in STATE MAINTAINED schools - claims under both Art 3 and A2P1, ECHR – led to abolition of corporal punishment in state schools
- 6.2** Case of *Costello-Roberts v UK* (1993) – objections to use of corporal punishment in INDEPENDENT schools – particular question of STATE liability where a non-state school involved (Art 1) – claims under Arts 3, 8 and 13, ECHR.
- 6.3** Case of *R (Williamson) v Secretary of State for Education* [2005] UKHL 15 – this case the converse of *Campbell and Cosans v UK* – parents of children attending independent schools based on particular Christian principles argued that the (by that time total) ban on use of corporal punishment contrary to their religious convictions – Biblical texts supporting use of moderate physical chastisement – Article 9, ECHR