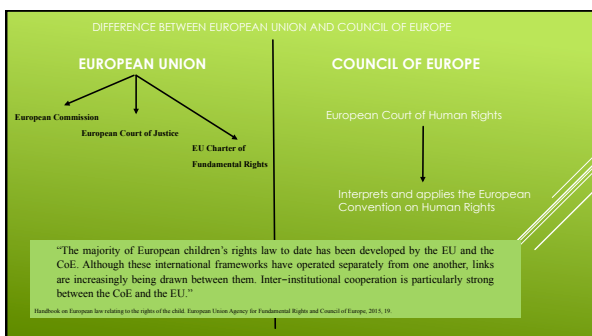


EDUCATION LAW IN EUROPE

Where education overlaps with human rights pertaining to religion and minority groups
By Georgia du Plessis



1. EDUCATION LAW AT THE COUNCIL OF EUROPE AND THE EUROPEAN UNION



WHAT ARE THE COMMITMENTS OF THE EUROPEAN UNION TO EDUCATION?

Article 6 of the *Consolidated Version of the Treaty on the Functioning of the European Union*, the European Union has competence to carry out actions to *support, coordinate or supplement* (Note! Not subsume or replace) the actions of the Member States with regards to (e) education, vocational training, youth and sport.

Article 14 (2) of the EU Charter of Fundamental Rights

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

WHAT ARE THE COMMITMENTS OF THE COUNCIL OF EUROPE TO EDUCATION?

Article 2 of the First Protocol of the European Convention on Human Rights: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

ARTICLE 14 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS
Prohibition of discrimination (also relevant for education)

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. CASE LAW DEALING WITH THE VARIOUS RELATIONSHIPS IN EDUCATION LAW

2.1 Case law from the *Council of Europe* (European Court of Human Rights)

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THE RIGHT TO RELIGIOUS FREEDOM IN EDUCATION

LAUTSI V ITALY

European Convention on Human Rights

ARTICLE 9
Freedom of thought, conscience and religion
 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 14
Prohibition of discrimination
 The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol to the European Convention on Human Rights

ARTICLE 2
Right to education
 No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

LAUTSI V ITALY

FACTS?

RELEVANT LEGISLATION?

DOMESTIC COURTS?

CHAMBER JUDGEMENT?

GRAND CHAMBER JUDGEMENT?

} Difference between these two?

LAUTSI V ITALY

GRAND CHAMBER JUDGEMENT

- 1) Neutrality? Exclusive or inclusive neutrality?
- 2) Article 2 of Protocol 1?
- 3) Margin of appreciation?
- 4) Confessional and non-confessional education?
- 5) Proselytism?

2. CASE LAW DEALING WITH THE VARIOUS RELATIONSHIPS IN EDUCATION LAW
 2.1 Case law from the Council of Europe (European Court of Human Rights)

THE RIGHT TO RELIGIOUS FREEDOM IN EDUCATION

Osmanoglu Kocabas v Switzerland (Education as social inclusion)

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European Convention on Human Rights

Osmanoglu Kocabas v Switzerland (Education as social inclusion)

CHAMBER JUDGEMENT

- 1) Social integration?
- 2) Integration into principles of secularism?

2. CASE LAW DEALING WITH THE VARIOUS RELATIONSHIPS IN EDUCATION LAW
- 2.1 Case law from the Council of Europe (European Court of Human Rights)

THE RIGHT TO RELIGIOUS FREEDOM IN EDUCATION

Confessional religious education and non-confessional religious education

- WHAT IS THE DIFFERENCE?
- ARE BOTH ALLOWED IN PUBLIC SCHOOLS?
- IF SO, IN WHAT MANNER?

- See, *Lautsi v Italy*, CASE OF *KJELDSEN, BUSK MADSEN AND PEDERSEN v. DENMARK* and *Grzešek v Poland*

Religious freedom in public and in private schools?

- How can all the different ideologies and religions be accommodated in education law?
- Is the Margin of appreciation helpful?
- Is "social integration" an adequate justification?
- Why can a crucifix be allowed but not exemption from swimming lessons?
- How should state interests and individuals interests be balanced in education?
- Do you see the potential controversies present in the school?
- How is religious freedom interpreted differently in public and private schools?
- What is confessional religious education and what is non-confessional religious education? Are they both allowed in public schools?

THANK YOU