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## **Educational Philosophies and their Legal Significance.**

by Mike Fortune-Wood

For the last few years those offering advice to home educators have strongly suggested that an initial submission to a local authority should include a statement of the family's educational philosophy. Why?

Section 7 of the 1996 Education Act covering England and Wales states that parents have a duty to cause their children to receive an efficient education suitable to age, ability and aptitude and any special needs. Efficient is not defined by the Act but a senior judge created case law when he said that efficient in this context means, "that which achieves what it sets out to achieve".<sup>1</sup> What should education achieve?

Firstly it must be 'suitable', i.e. suit the child for the society in which she finds herself, providing that this would not prevent living in wider society<sup>2</sup>. Who gets to determine the form of education which should be employed to achieve this?

To understand the answer to this question one must look to European law. The second sentence of Protocol 2 Article 1 of the European Convention of Human Rights says:

"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."<sup>3</sup>

Here "philosophical convictions" includes any parental convictions relating to education. This was itself part of a decision made by the European courts:

"The second sentence of Article 2 (P1-2) implies ... The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded."<sup>4</sup>

But what is meant by philosophical and can this extend to pedagogy? In another ruling relating to the use of corporal punishment in a Scottish school prior to it being outlawed in the UK the European courts ruled that 'convictions':

"is more akin to the term "beliefs" (in the French text: "convictions") appearing in Article 9 (art. 9) - which guarantees freedom of thought, conscience and religion - and denotes views that attain a certain level of cogency, seriousness, cohesion and importance."<sup>5</sup>

From this context it emerges that "philosophical convictions" means any serious, cohesive belief held to be important by parents must be taken as the primary measure by which education is determined as efficient. This includes their educational and parental philosophies as well as religious and world view beliefs.

An educational philosophy would however be viewed deficient in law if it failed to offer a suitable education and neither would it be acceptable to claim that the family's educational philosophy was not to offer any education to their children at all since the first sentence of Protocol 2 Article 1 says:

"No person shall be denied the right to education."<sup>6</sup>

An educational philosophy should therefore make it clear that the child's right to an education is paramount.

Having done so, by offering a cohesive, thought out educational philosophy as part of a submission to the local authority parents then establishes control of the way any assessment of their provision should take place. The parents' educational philosophy becomes the context within which any assessment of provision is made.

Claims by some local authorities that a suitable education must include various listed subjects may contravene the parents' human rights should the list be in contradiction to the parents' philosophy providing that the parents' philosophy is consistent with Article 7 of the 1996 Education Act.

For example in a recent submission to the DfES Cambridgeshire LEA stated that:

"It is difficult to conceive of an education being deemed adequate unless the premises are equipped to a particular standard, work is marked, and detailed plans are made in advance."<sup>7</sup>

It is highly likely that such a presumption contravenes the human rights of many parents within Cambridgeshire LEA and, by providing an LEA with a parental philosophy of education home educators can take the first and crucial step towards preventing LEAs from wrongfully prejudging what is acceptable education; this is not the remit of LEAs.

## References

<sup>1</sup> Harrison & Harrison V Stevenson Worcester Crown Court 1981

<sup>2</sup> R v The Secretary of State for Education and Science ex parte Talmud Torah Machzikei Hadass School Trust Queen's Bench Division, (Crown Office List) 3 April 1985

<sup>3</sup> Sentence 2 of Protocol 2, Article 1 of the European convention of human rights quoted in Paragraph 36 of CAMPBELL AND COSANS v. THE UNITED KINGDOM - 7511/76;7743/76 [1982] ECHR 1 (25 February 1982) [www.worldlii.org/eu/cases/ECHR/1982/1.html](http://www.worldlii.org/eu/cases/ECHR/1982/1.html)

<sup>4</sup> Kjeldsen, Busk Madsen and Pedersen judgment states (p. 26, par. 53): quoted in CAMPBELL AND COSANS v. THE UNITED KINGDOM - 7511/76;7743/76 [1982] ECHR 1 (25 February 1982) [www.worldlii.org/eu/cases/ECHR/1982/1.html](http://www.worldlii.org/eu/cases/ECHR/1982/1.html)

<sup>5</sup> Paragraph 36 of CAMPBELL AND COSANS v. THE UNITED KINGDOM - 7511/76;7743/76 [1982] ECHR 1 (25 February 1982) [www.worldlii.org/eu/cases/ECHR/1982/1.html](http://www.worldlii.org/eu/cases/ECHR/1982/1.html)

<sup>6</sup> The first sentence of protocol 2 article 1 quoted in Paragraph 36 of CAMPBELL AND COSANS v. THE UNITED KINGDOM - 7511/76;7743/76 [1982] ECHR 1 (25 February 1982) [www.worldlii.org/eu/cases/ECHR/1982/1.html](http://www.worldlii.org/eu/cases/ECHR/1982/1.html)

<sup>7</sup> unpublished submission to the DfES consultation on guidance for LEAs on home education from Cambridgeshire LEA obtained by the author using the Freedom of Information Act

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