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Use of school-related police reports involving minors in Sweden: in accordance with the best interest of the child?

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Introduction

The overall aim of this article is twofold. The first is to describe and analyse how the Swedish compulsory school system works with the police in dealing with problems of disorderly conduct and degrading treatment among minor school children.¹ The second aim is to discuss school-related police reports as a way to respond to order problems and degrading treatment in accordance with UN Convention on the Right of the Child, (CRC) Article 3.²

Studies show that school-related police reports on minors' offences have increased in recent years.³ For example, the proportion of reported assaults, unlawful threats, molestations and insulting behaviour per thousand children in ten communities in Stockholm County increased almost four times during 2002-2009.⁴ Furthermore, a number of children in the studied sample have been reported on multiple occasions.

A first spontaneous explanation for the increase is that children simply have become more violent and threatening in school. However, previous research shows no evidence of this being the explanation, and instead, a likely reason for the increase is a change of attitude to order problems from a school perspective.⁶ Based on the above, the following questions will be addressed:

- The increased use of school-related police reports on minors indicates that this

method of response is seen as having some effect: what effect can be expected from a school-related police report in connection with authorities' legal responsibility to address minors' criminal behaviour?

- Is any political will expressed in legal documents and preparatory works that would explain the increased number of reports over time?
- How well does use of school-related police reports for minors harmonize with the principle of the best interest of the child?

The compulsory school system in Sweden consists of municipality schools and independent schools, and children are obliged to go to school from 7 to 15 years of age.⁷ School activities are set out through goal-related management and framework legislation in the Education Act and curricula. This means a legislative strategy is used in which interpretation of the Act is transferred to the application stage, with the purpose of achieving certain political goals.⁸ To various extents, this opens the way for free judgments and interpretations by teachers and headmasters as to how to perform the task of educating children.

The main goals for compulsory schooling are to provide education and to communicate respect for human rights and democratic values to the students.⁹ The latter is said to take place "through practical and everyday actions by fostering the children to achieve a

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¹ Children aged 7-14 years old who have not reached the age of criminal responsibility according to Penal Code 1962:700, Chapter 6, Section 1, and who are therefore a primary responsibility for the social services.

² According to Education Act 2010:800, Chapter 6, Section 3, the concept of degrading treatment is defined as conduct that violates a child's or a student's dignity and which could not be defined as discrimination according to the Discrimination Act 2008:567.

³ See for instance Estrada, F. (1999). Ungdomsbrottsligheten som samhällsproblem. Utveckling, uppmärksamhet och reaktion. pp. 85-122. Kriminologiska institutionens avhandlingsserie nr 3. Stockholm: Stockholms universitet.

⁴ The total sample of school-related reports (1,239) was taken from 2000-2010, and came from 158 compulsory schools. Average age when reported was 12.9 years, and the youngest group of children, 7-11 years old, constituted about 15 per cent of the reported children (Vainik, A. Skolbarnen i polisens register. Forthcoming 2014).

⁵ Ibid. Ten per cent have been reported twice, five per cent three to four times, and one per cent five times or more.

⁶ Estrada, F. (1999). Ungdomsbrottsligheten som samhällsproblem. Utveckling, uppmärksamhet och reaktion. pp. 85-122. Kriminologiska Institutionens avhandlingsserie nr 3. Stockholm: Stockholms universitet; Estrada, F., Nilsson, A. & Wikman, S. (2007). Det ökade våldet i arbetslivet. En analys utifrån de svenska offerundersökningarna. no 94 pp. 56-73 Nordisk Tidsskrift för Kriminalvetenskap; The Swedish National Council for Crime Prevention (2009). Grövre våld i skolan. Rapport 2009:6. p.24. Stockholm: Brottsförebyggande Rådet.

⁷ Independent schools are privately owned schools, but they are still compelled to perform their education in accordance with the Swedish Education Act. For the obligation of parents to send their children to school, see Education Act 2010:800, Chapter 7, Sections 20-23.

⁸ Hollander, A. & K, Alexius Borgström (2009). Juridik och rättsvetenskap i socialt arbete. p.52. Lund:Studentlitteratur.

⁹ Education Act 1985:1100; Education Act 2010:800.

sense of justice”.¹⁰ The goal-related legislation also identifies goals for handling conduct problems and degrading treatment. All schools are obliged to have written plans showing how they will prevent and correct degrading treatment during school hours.¹¹ The plan must be updated and validated on a regular basis.

Every school is also supposed to establish general rules of order together with students. These rules are intended to make it easier for teachers and headmasters to decide what actions they can take when conduct problems occur.¹² How these plans and rules are designed may differ from school to school. To encourage the assurance of equal rights for children and students, and to combat discrimination and other degrading treatment, special amendments were introduced in 2006.¹³ The political purpose of introducing this law was to clarify the schools’ responsibility to guarantee the safety of all school children.¹⁴ In accordance with the law, an ombudsman, the Child and School Student Representative role, was introduced.

The Ombudsman can represent children and students who have been victims of degrading treatment in school and decide if a school should pay economic compensation to a child who has been exposed to degrading treatment. Since 2009, acts of discrimination are regulated in accordance with the national discrimination statute from 2008.¹⁵ Goals for preventing and acting on degrading treatment are now introduced in the Education Act 2010:800. Discriminatory treatment is investigated by the Equality Ombudsman. If the Ombudsman decides to take a case of discrimination to court it is possible for the child discriminated against to obtain economic compensation from the school. All schools are supervised by The Swedish National Agency of Education and the School Inspectorate.¹⁶

The compulsory school is to be understood as a workplace for the students. This means that they are covered by the Work Environment Act 1997:1160.¹⁷ Conduct problems and degrading treatment in school can lead to threats and violence, and this is supposed to be prevented. In accordance with the Act, the employer has a responsibility to investigate and prevent the risks of threats and violence as much as possible.¹⁸

Even Swedish penal law is applicable in connection with the responsibility to prevent and act against violence in school. The children suspected of crime described in this article are minors, which means that they are primarily a legal responsibility for their custodians.¹⁹ Since education in the schools is compulsory, custodians are obliged by law to ensure that their children are present at the school.²⁰ This leads to a shift of responsibility for protection, safety and correction of the child, from the custodians to the school. As temporary fosterer, the school is responsible for preventing violent actions among children on the same premises those of the ordinary custodians. This means school personnel must intervene to interrupt the actions of a child engaged in committing violence.²¹ It must be possible to intervene without risking the health and safety of custodians or temporary fosterers.²²

Since Sweden ratified the CRC in September 1990, the principle of the best interest of the Child (Article 3) is supposed to be used as guideline and as an element in national law, regional policies and local action plans about education.²³ The principle was introduced in the Education Act 2010:800, and is supposed to be applicable and valid for every child and for children as a group. The Convention is based on the Universal Declaration of Human Rights, which is commonly divided into two groups: *freedom from* improper governmental intervention and *freedom to*

¹⁰ Curriculum (1994) for the compulsory schools, preschool class and the leisure-time; Prop.2009/10:165 Regeringens Proposition Den nya skollagen. För kunskap, valfrihet och trygghet. Utbildningsdepartementet;

Curriculum (2011) for the compulsory school, preschool class and the leisure-time centre.

¹¹ Education Act 2010:800, Chapter 6.

¹² Skolverket (2006). Ordningsregler för en trygg och lärande skolmiljö. Stockholm: Skolverket.

¹³ Act of prohibiting discrimination and degrading treatment of children and students 2006:67.

¹⁴ Prop. 2005/06:38. Trygghet, respekt och ansvar – om förbud mot diskriminering och annan kränkande behandling. Utbildningsdepartementet

¹⁵ Act 2006:67 of prohibiting discrimination and degrading treatment of children and students which was repealed in The Discrimination Act 2008:567.

¹⁶ The School Inspectorate is a controlling agency regulated by the state; its mission is to ensure the quality of all schools in Sweden.

¹⁷ And the Work Environment Ordinance 1997:1166, Section 18.

¹⁸ The employer in this case is the group of the principal organizers, i.e. the community or the private owner.

¹⁹ Children and Parents Code 1949:381, Chapter 6, Section 2.

²⁰ Education Act 2010:800, Chapter 7, Sections 20-23.

²¹ Penal Code 1962:700, Chapter 23, Section 6.

²² Ibid.

²³ The interpretation of the convention is indivisible and four of the principles (articles 2, 3, 6 and 12) are supposed to be used as guidelines. Since 1993, this activity has been monitored by the Ombudsman for children.

benefit from welfare rights.²⁴ The CRC also consists of a third group of rights, the right to *protection*. Article 3, which is discussed here, belongs to this group of rights. However, the principle of the best interest of the child is by no means a self-evident concept; the best interest of a child varies from situation to situation and from child to child.²⁵

Legal responsibility and effects of school-related police reports

The Swedish authorities, social services, police force and schools are obliged by legislative force to collaborate regarding children in need.²⁶ The Social Service has the legal responsibility to ensure that collaboration takes place. Schools are obligated to report concerns about children's well-being to the Social Service.²⁷ According to Swedish penal law, a child under the age of fifteen years cannot be punished for a crime.²⁸ Instead, criminal acts committed by children under this age are primarily considered as a matter for the social services. However, the law grants the police the power to detain and/or interrogate minors, to various extents.²⁹ In Sweden, when a crime is reported to the police and the suspect is a minor, the police must report this to social services authorities.³⁰ Although social services are obliged to make a preliminary assessment as to whether further investigation is necessary, far from all reports result in a personal assessment meeting with the suspected child and its parents.³¹ In some cases, parents are offered contact with social services.³² In some communities the police officer has a meeting with the reported child and its parents shortly after the reported offence. In the majority of the police reports in the statistical study, the victim is a child under the age of 15 years, who attends the same school as the suspected perpetrator.³³ In some police districts, the victimized child is encouraged to

contact a support centre for young victims.

Earlier Swedish research implies that in most cases, police reports to social services regarding children's welfare do not lead to further investigations or any intervention from social services.³⁴ In that case, the procedure may lead to a system where the school makes a police report, and the police in turn make a report to social services expressing concern for the child's welfare. In an institutional perspective, the responsible authorities, i.e. the school, the police and social services, have then only administered the "case" by sending the "case" to another responsible authority. In connection with this, previous recommendations existed in 1998 regarding which one of these responsible authorities would be most suitable to handle minors' offences in compulsory schools.³⁵ These recommendations were made by the Swedish parliamentary representative for legal matters when police reports were investigated as constituting a possible offence against CRC Article 3 p.1. The recommendation was that schools should primarily investigate the incidents and then take necessary in-house measures and that a police report must not be used as a sanction/punishment against the child. If a police report is made, the crime must be investigated where it allegedly took place, by the police and a prosecutor; however, this seldom occurs when the child is under 15 years old and the offence is minor.

Political will in legal documents?

So far it has been seen that there has been an increase in school-related police reports on minors' offences, and that a number of children have been reported on multiple occasions during their schooling. Furthermore, previous research on youth violence indicates that the increase has not been caused by increased violent behaviour among children in school.

²⁴ Dunér, B. (1992). *Fria och lika värde. Mänskliga rättigheter i ett samhällsvetenskapligt perspektiv*. Stockholm: Natur & Kultur. p.41.

²⁵ Singer, A. (2000). *Föräldraskap i Rättslig belysning*. p. 50. Uppsala: lustus förlag; Mattson, T. (2002). *Barnet i rättsprocessen. Rättssäkerhet, integritetsskydd och autonomi i samband med beslut om Tvångsvård*. p. 35. Lund: Juristförlaget; Schiratzki, J. (2006). *Barnrättens grunder*. 3:e uppl. p. 30. Lund: Studentlitteratur; Englundh, E. (2009). *Barnets bästa i främsta rummet – en pedagogisk utmaning?* p. 50. Stockholm: Liber.

²⁶ Administrative Act 1986:223, Section 6; Social Services Act 2001:453, Chapters 3 and 5.

²⁷ Social Services Act 2001:453, Chapter 14, Section 1.

²⁸ The Swedish Penal Code 1962:700, Chapter 6, Section 1.

²⁹ Act of Special Provisions for Young Offenders 1964:167, Section 31; SOU 2008:111.

³⁰ Social Services Act 2001:453, Chapter 14, Section 1.

³¹ The Swedish National Council for Crime Prevention (2008). *Barn som begår brott: Socialtjänstens och polisens åtgärder*. p.30-38. Stockholm: Brottsförebyggande rådet.

³² *Ibid.*

³³ Vainik, A. *Barnen i polisens register*. To be published 2014.

³⁴ Östberg, F. (2010). *Bedömningar och beslut: Från anmälan till insats i den sociala barnvården*. p.90. Doktorsavhandling Institutionen för socialt arbete. Stockholm: Stockholms universitet; BRÅ. (2008). *Barn som begår brott: Socialtjänstens och polisens åtgärder*. p.30-38. Stockholm: Brottsförebyggande rådet.

³⁵ The Parliamentary Ombudsman 1998 Dnr 352-1998 *Angående polisanmälningar av minderårig i skolan*. The Ombudsman especially questioned police reports on children under the age of twelve.

Moreover, it can be assumed that the chain of reports which normally follows a police report may not be a primary reason for using police reports to a greater extent. In addition, the recommendation from The Parliamentary Ombudsman is to avoid making police reports on minors' offences, so their use has not increased because of this recommendation. Is it possible, then, to find any guidance or political will in Swedish education acts and related documents, which could explain the increase in police reports?

During the era of the Swedish compulsory school system, three major legal reforms of the Education Act have taken place. The first reform was to the Act of 1962:319, when the modern compulsory school system was established; in the second, to the Act of 1985:1100; and in the third, to the Act of 2010:800, when the latest Education Act was established and implemented in July 2011. The three Acts have regulated approximately the last half-century of schooling in Sweden, and there is at least one curriculum and preparatory document connected to each Education Act reform³⁶.

The material in this study consists of a considerable amount of text, and this requires establishment of certain search criteria for conducting the study. Four concepts were chosen to structure the reading: (i) *police*, (ii) *threats/violence*, (iii) *conduct problems/conduct regulations*³⁷ and (iv) *degrading treatment*. The method used for reading the material has been to search for these (or related) concepts in the texts.

The first period: 1962-1985

In relation to school attendance, the involvement of the police is mentioned only once in the Education Act from 1962.³⁸ If a student did not attend school as a result of neglect on the part of the parents, the school's board had the right to charge a conditional fine against the parents. If this did not have the desired effect, the school had the right to require assistance from the police to retrieve and accompany the student to school. Nothing is mentioned about threats/violence or degrading treatment. There is nothing in this framework law that sets out any goals or detailed regulations

regarding conduct problems/conduct regulations. The Act states that the general goals for nine-year compulsory education were that education should aim to provide knowledge to the students and to encourage the development of students as harmonious, capable and responsible citizens.³⁹

The preparatory Bill from 1962 does not include the concepts of police, threats/violence or conduct problems. The discussion mostly concerns the responsibility of communities and rules for the transition from the old school system to the new nine-year compulsory system. Under the section regarding general provisions, the concept of degrading treatment is mentioned, but merely to clarify the prohibition against corporal punishment, a rule that had already been introduced in the old school system in 1958. The main message in the preparatory Bill is to clarify that teachers are obliged to win students' trust and to respect them as independent human beings.

During this same time period three curricula for compulsory schooling had an impact on the school situation. The first was formulated in 1962, the second in 1969 and the third in 1980.

In the first curriculum, the police are discussed in connection with collaboration between the police, the school and social services. The goals for the collaboration were considered to be both institutional and personal.⁴⁰ Teachers were encouraged to give the police the opportunity to take part in education during school hours and not engage them only for traffic education. The text emphasised that it is important for young people to form a positive opinion of the police, and that they learn that it is a natural choice to contact a police officer when they need help. In the content of the first curriculum, the words "threat" and "violence" are not mentioned. The concept of conduct problems is mentioned, however, and the view is that if the teacher conducts classes calmly and with restraint, he or she has a better chance of tackling difficult situations. Adults are recommended to behave in a passively interested manner and to intervene without disruption.⁴¹ Degrading treatment is not mentioned, though deviant treatment is mentioned; still, this is

³⁶ These are the curriculum (1962) for the compulsory school, curriculum (1969) for the compulsory school, curriculum (1980) for the compulsory school, general section, curriculum (1994) for the compulsory schools pre-school class and the leisure-time centre and curriculum (2011) for the compulsory school, pre-school class and the leisure-time centre. Three preparatory connected to the legal reforms: 1)1962 Kungliga Maj:st proposition nr 136; Prop. 1985/86:10; Prop. 2009/10:165.

³⁷ Previous Swedish criminological research on youth violence uses the term order problem in relation to when the suspected criminal act probably is defined as criminal or not (Estrada, F. (1999). Ungdomsbrottsligheten som samhällsproblem. Utveckling, uppmärksamhet och reaktion. pp. 85-122. Kriminologiska Institutionens avhandlingsserie nr 3. Stockholm: Stockholms universitet)

³⁸ Education Act: 1962:319, Chapter 6, Sections 38 and 39.

³⁹ Education Act 1962:31, Chapter 1, Section 1

⁴⁰ Curriculum (1962)for the compulsory school, p.29.

⁴¹ Ibid p. 77.

mentioned only in relation to the contexts of common-sense behaviour in traffic situations, shoplifting and lack of truthfulness.

In the second curriculum and in connection with the concept of police involvement, general goals were set up for crime prevention work. Teaching tasks to be performed by the police are stated in detail (by the hour).⁴² The stated aim is to increase students' awareness of and familiarity with fairness, honesty, respect and tolerance, and the consequences of violating laws and regulations.⁴³ The main crimes in focus are traffic offences, shoplifting, vandalism and drug abuse. Threats/violence, conduct problems/regulations, and degrading treatment are not on the agenda in this curriculum, and nothing is mentioned about police reports about students' crimes.

The third curriculum does contain a section discussing students with learning and disciplinary difficulties, and in which the police are mentioned.⁴⁴ A close collaboration between the police, parents, social services, youth clubs and all school staff is mentioned as the best way to deal with these difficulties. The third curriculum also states that the school boards are responsible for making the collaboration work and endure.⁴⁵ The wish to engage police officers in teaching tasks, such as crime prevention discussions in school, is not found in the text of this curriculum. The concepts of threats/violence, conduct problems/regulation, and degrading treatment are not found in this text either. The content emphasises that the schools are obliged to give students increased responsibility and participation, in relation to their age and maturity.⁴⁶

The second period: 1985-2009

In the mid-eighties, the need for a linguistic and structural change of the Education Act from 1962 was considered necessary.⁴⁷ The police are mentioned only in connection with the right of headmasters and teachers to confiscate objects that can be a threat to safety⁴⁸. How the school should deal with threats and

violence or disciplinary problems is not stated. Degrading treatment is mentioned in connection with the responsibility of school personnel to promote gender equality and actively combat all forms of degrading treatment, such as bullying and racism.⁴⁹ The responsibility of the schools to prevent, investigate and correct degrading treatment was added to the Education Act in 2008.

The preparatory work contains an explicit wish to repeal the section that gave the police the right to fetch students from their homes if they did not attend school.⁵⁰ This is the only place where the police are mentioned in this text, and there is nothing that supports or discourages police reports about minor children's suspected school-related crimes.

The curriculum of 1994 is the first that really underlines the idea that one of the goals in school should be to prevent discrimination and degrading treatment.⁵¹ In the 1994 curriculum, nothing is said about the police, threats or violence, or conduct problems/order regulations. The concept of degrading treatment is found in the section where it is stated that teachers shall pay attention to all forms of degrading treatment, and cooperate with all school staff to take the necessary measures to prevent and combat this treatment.⁵² How this should be done is not formulated in this curriculum.

The third period: 2009 and onwards

In this Education Act 2010:800, the police are mentioned only in relation to disposal of dangerous objects. Nothing is mentioned about threats or violence. This is the first Act that contains a demand for conduct regulations in every school, to be established together with the students⁵³. In the regulation it is stated that the school is obliged to prevent, investigate and act against degrading treatment.⁵⁴ One of the general goals is that education should communicate and instil the respect for human rights and fundamental democratic values on which Swedish society is based.⁵⁵ The CRC is introduced in

⁴² Curriculum (1969) for the compulsory school, p.16.

⁴³ Ibid. p.13.

⁴⁴ Curriculum (1980) for the compulsory school, general section.

⁴⁵ Ibid. p.56 & p.21.

⁴⁶ Ibid p.17.

⁴⁷ Prop. 1985/86:10, leading to the Education Act 1985:1100.

⁴⁸ Act 2007:378 of changes in the Education Act 1985:1100

⁴⁹ Act 1999:886 of changes in the Education Act 1985:1100

⁵⁰ Prop.1985/86:10 p. 48-49.

⁵¹ The curriculum of 1980, which is included in the first period 1962-1985, established the goals until 1994.

⁵² Curriculum (1994) for the compulsory schools preschool class and the leisure-time centre, p. 89.

⁵³ Ibid. Chapter 5, Section 5.

⁵⁴ Ibid. Chapter 6.

⁵⁵ Education Act 2010:800, Chapter 1, Section 4.

this Act, and it is stated that in all education and other activities in relation to the Act, the best interest of the child should be a starting point. A child is defined in the Act as a person under the age of 18. The child's attitude should be clarified to the greatest degree possible, children should have the opportunity to express their views freely in all matters affecting them, and a child's opinion should be taken into account in relation to the child's age and maturity.⁵⁶ In the regulation it is stated that the school is obliged to prevent, investigate and act against degrading treatment.⁵⁷

In the preparatory work 2009/10:165, nothing is mentioned about police or threats and violence. Conduct regulations and disciplinary actions are discussed. It is noted that any disciplinary rules must be applied with regard to the principle of the best interest of the child. Furthermore it is noted that disciplinary measures are not to be used as punishment.⁵⁸ Degrading treatment and the importance of preventing and acting on it is discussed.

The curriculum does not indicate if or when schools are to work together with the police. Nothing is mentioned about threats and violence or conduct problems. It is expressly articulated in the curriculum that all staff in school should combat all forms of discriminatory and degrading treatment.⁵⁹

The main part of the curriculum primarily concerns demands for educational knowledge levels, grades and how education should be provided. It is explicitly set out that students should be taught about their rights in relations to CRC.

Conclusions

This article has a twofold purpose. The primary purpose is to describe and analyse how conduct problems and degrading treatment are managed in the Swedish compulsory school system, with help from the police. The secondary purpose is to discuss school-related police reports among minors as a way to respond in accordance with CRC and the principle of the best interest of the child (Article 3). This concluding section is divided into chronological order in accordance with the three questions addressed.

First, the increased use of school-related police reports on minors indicates that this method of response to conduct problems and degrading treatment has some effect; what effect can be expected

of a school-related police report in connection with authorities' legal responsibility to address minors' criminal behaviour? As it seems, in most cases a school-related police report ends up in a "reporting chain" with an abrupt ending. At a first glance it does not seem to lead to any further support or effect for respective child (perpetrator or victim) or the school. There may be several reasons and expectations from the informer about what the police report really can achieve. Until further research has taken place, we can only guess what this really means. However, it may be reasonable to assume that the increased frequency of police reports on minors' offences is not built on experiences of quick and effective action, or care on the part of the police or social services – if quick action was one of the expected effects.

Secondly, since there is no evidence for an increased level of violence in schools which could help explain the increase in police reports, we have to look for explanations elsewhere. Is it possible to find any political will expressed in legal documents and preparatory works which would explain the increased proportion of reports over time? This study shows that the Acts of Education from 1962-2010 and related documents that govern the school system in Sweden do not contain anything about police reports as a way to respond to degrading treatment and/or conduct problems. The concepts of threats and violence are absent in the documents. It is never even mentioned that violence can occur, or what the school is supposed to do about it. The concept of degrading treatment is getting more and more attention in the documents over time, but police involvement is not mentioned.

The curriculum of 1962 states that schools should establish a close collaboration with the police force. It is even more pronounced in the ordinance of 1969, which stipulates that the police force is to be engaged as a tutor in traffic practices and law and order. The governmental wish is that young people and children should create good contact with the police, but the wish for close involvement of the police as a teaching resource disappears when we get closer to the eighties and the second legal school reform. After the second reform in 1985 and into the nineties, the police are mentioned in the Education Act only in relation to disposal of hazardous objects.

The concept of conduct problems receives

⁵⁶ Ibid. Chapter 1, Section 10.

⁵⁷ Ibid. Chapter 6.

⁵⁸ Ibid p. 92.

⁵⁹ Curriculum (2011) for the compulsory school, preschool class and the leisure-time centre, pp. 7-12.

considerable focus in the third and most recent school reform. Conduct regulations are properly motivated and formulated but do not involve the police at any stage. The studied documents provide no guidance about how the schools should act in relations to treats, violence and the use of police reports.

The compulsory school is a complex judicial field with different possibilities and room for disciplinary, authoritarian interventions to prevent and correct degrading treatment and conduct problems. With no guidance from the State, school headmasters are left to use their own judgment to decide if and when a police report should be made, for example when a fight between children should or should not be defined as a crime. This may be a result of the goal and framework regulation. For example, the Education Act states that a school must combat degrading behaviour and that every school shall have conduct regulations. But the Act or the curriculum does not tell the headmaster how this is to be managed. This leaves significant room for personal judgments by headmasters about how to respond to degrading treatment and conduct problems, i.e. when a report to the police is required.

The third question to be addressed here is this: how well does the use of school-related police reports among minors harmonise with the principle of the best interest of the child?

The use of school-related police reports has been called into question by The Parliamentary Ombudsman – especially regarding children under the age of twelve who are suspected of a crime – as not being in accordance with the principle of the best interest of the child. The interpretation here is that the principle is much more complicated to consider when both the perpetrator and the victim are children, since the CRC must be taken into consideration in respect of every child. In this case both children's best interests need to be weighed (i.e. those of both victim and perpetrator).

Swedish compulsory schools are committed to observe the principles of the CRC, both in relation to the rights of the individual child and in relation to children as a group. All children have the right to be ensured protection in accordance with Article 3, and furthermore, Article 19 specifies the child's right to freedom specifically from all forms of violence.⁶⁰ In

accordance with the latter, the state parties are obliged to prevent and respond to all forms of *physical* or *mental* violence, injury or abuse while the child is in the care of the parents, one or more legal representatives, or any other person, including those acting on behalf of the state.⁶¹

In a legal analysis of Article 19 and an overview of various forms of violence to which children can be exposed it is mentioned that “*violence also can occur among children*”.⁶² The interpretation in this article is that when children are in school they are under the care and responsibility of the temporary fosterer. This fosterer is obliged to protect and prevent children from being abused or degraded by other children, and even more, to respond if it happens. But – and now it is getting even more complicated – the right to be protected also covers children who act violently towards other children.

This takes us back to the Swedish parliamentary representative for legal matters (JO), who states that a police report must not be used as a sanction/punishment against the child, especially for a child under the age of twelve – because that would probably not be in accordance with the best interest of that child. Moreover, Article 40 in the Convention, regarding children suspected of crime, also states that: “States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth (...)”.⁶³

In relation to the “chain reporting” among authorities described earlier, which may be a result of the young age of children suspected of crime, and the mandatory system requiring reporting to social services,⁶⁴ the following question arises: is the best interest or dignity and worth of any child (i.e. the victim or the perpetrator) fulfilled when a police report is made, and no special action or care is the result?

Lastly, since 2010 (when Article 3 was introduced into the Education Act) to what extent and how do school headmasters take Article 3 into consideration when deciding whether a police report is the correct response to a situation of violence, and/or a threat amongst minor children? What effect is a police report supposed to have, and for whom? These are forthcoming research questions still to be answered.

⁶⁰ Barnrättskommitténs allmänna kommentarer 2011 nr 13. Barnets rätt till frihet från alla former av våld.

⁶¹ Ibid p.5.

⁶² Ibid p.11.

⁶³ CRC, Article 40 p. 1.

⁶⁴ Penal Code 1962:700, Chapter 6, Section 1; Social Services Act 2001:453, Chapter 14, Section 1.

References

- The Swedish National Council for Crime Prevention. (2008) *Barn som begått brott: Socialtjänsten och polisens åtgärder*. Rapport 2008:11. Stockholm: Brottsförebyggande Rådet
- The Swedish National Council for Crime Prevention. (2009). *Grävre våld i skolan*. Rapport 2009:6. Stockholm: Brottsförebyggande rådet.
- Dunér, B.(1992). *Fria och lika värde. Mänskliga rättigheter i ett samhällsvetenskapligt perspektiv*. Stockholm: Natur & Kultur.
- Estrada, F. (1999). *Ungdomsbrottslighet som samhällsproblem. Utveckling, uppmärksamhet och reaktion*. Kriminologiska institutionens avhandlingsserie nr 3. Stockholms universitet.
- Estrada, F., Nilsson, A., och Wikman, S. (2007): *Det ökade våldet i arbetslivet. En analys utifrån de svenska offerundersökningarna*. Nordisk Tidskrift för Kriminalvetenskap no 94 pp. 56–73
- Englundh, E., (2009). *Barnets bästa i främsta rummet – en pedagogisk utmaning?* Stockholm: Liber.
- Hollander, A. & Alexius Borgström, K. (2009). *Juridik och rättsvetenskap i socialt arbete*. Lund: Studentlitteratur.
- The Parliamentary Ombudsman 1998 Dnr 352-1998. *Angående polisanmälningar av minderårig i skolan*. Justitieombudsmannen.
- Mattsson, T.(2002). *Barnet och rättsprocessen. Rätts säkerhet, integritetsskydd och autonomi i samband med beslut om Tvångsvård*. Lund: Juristförlaget.
- Schiratzki, J.(2006). *Barnrättens grunder*. 3:e uppl. Lund: Studentlitteratur.
- Singer, A. (2000). *Föräldraskap i rättslig behysning*. Uppsala: Iustus förlag.
- Skolverket. (2006). *Ordningsregler för en trygg och lärande skolmiljö*. Stockholm: Skolverket.
- SOU 2008:111 *Barn som misstänks för brott*. Statens offentliga utredningar. Justitiedepartementet.
- Vainik, A. *Barnen i polisens register*. Fothcoming 2014.
- Östberg F (2010). *Bedömningar och beslut: Från anmälan till insats i den sociala barnvården*. Doktorsavhandling. Stockholms Universitet: Institutionen för socialt arbete.

Legal documents

- Curriculum (1962) for the compulsory school.
- Curriculum (1969) for the compulsory school.
- Curriculum (1980) for the compulsory school, general section.
- Curriculum (1994) for the compulsory schools preschool class and the leisure-time centre.
- Curriculum (2011) for the compulsory school, preschool class and the leisure-time centre.
- Prop.1962 Kungliga Maj.st proposition nr 136 år 1962. Förslag till skollag m.m.
- Prop.1985/86:10 Regeringens proposition. Om ny skollag m.m. Utbildningsdepartementet. Prop. 2005/06:38 *Trygghet, respekt och ansvar – om förbud mot diskriminering och annan kränkande behandling*. Utbildningsdepartementet.
- Prop. 2009/10:165 Regeringens Proposition *Den nya skollagen. För kunskap, valfrihet och trygghet*. Utbildningsdepartementet.

Law

- Act 1964:167 of special provisions for young offenders, Section 31
- Act 1999:886 of changes in the Education Act 1985:1100
- Act 2006:67 of prohibiting discrimination and degrading treatment of children and students
- Act 2007:378 of changes in the Education Act 1985:1100
- Administrative Act 1986:223
- Children and Parents Code 1949:381
- Discrimination Act 2008:567
- Education Act 1962:319
- Education Act 1985:1100
- Education Act 2010:800
- Penal Code 1962:700
- Police Act 1984:387
- Social Services Act 2001:453