

**BESONDERHEDE OOR RESPONDENTE
VIR SEMI-GESTRUKTUREERDE ONDERHOUDE:**

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**VRAELYS VIR SEMI-GESTRUKTUREERDE ONDERHOUDE:
TREITERING, DIE STRAFREG EN WETGEWING**

1. Wat is die impak van die volgende “leemtes” in die Suid-Afrikaanse reg met betrekking tot treitering, op die hantering van regsaksie asook op die bestuur van treitering in ‘n skool:
 - Daar bestaan nie ‘n regsdefinisie van treitering in die Suid-Afrikaanse reg nie.
 - Suid-Afrika beskik nie oor treitering–spesifieke wetgewing nie.
 - Treitering op sigself (*per se*) word nie in die Suid-Afrikaanse reg as ‘n misdaad beskou nie.

2. Treitering op sigself word nie in die Suid-Afrikaanse reg as ‘n misdaad beskou nie, maar die handeling wat treitering uitmaak kan wel as misdaad kwalifiseer. Watter van die volgende tipes treitering kan in die Suid-Afrikaanse reg as misdaad kwalifiseer en watter vorm van misdaad kan dit uitmaak?
 - Fisiese treitering
 - Psigologiese (emosionele) treitering
 - Verbale treitering
 - Kubertreitering
 - Sosiale treitering
 - Verhoudingsgerigte treitering
 - Rasgedrewe treitering

- Seksuele treitering
3. Watter rol kan die strafreg speel om die probleem van treitering in skole aan te spreek?
 4. Hoe moet 'n skool te werk gaan (watter stappe moet gevolg word) wanneer 'n skool 'n boelie strafregtelik wil aankla? Sou kinderhowe 'n konstruktiewe rol kan speel by die strafregtelike vervolging van die boelie?
 5. Navorsing toon dat treitering kan lei tot fisiese nadeel, psigologiese nadeel, sosiale nadeel en opvoedkundige nadeel. Kan die Suid-Afrikaanse strafreg 'n rol speel om elk van genoemde tipes (kategorieë) nadeel / skade te voorkom of te vergoed?
 6. Treitering lei tot die skending van fundamentele regte. Beskik die strafreg oor remedies vir die skending van fundamentele regte as gevolg van treitering?
 7. Die verband tussen treitering en die strafreg bring onder andere ook die volgende knelpunte / vraagstukke / vrae na vore:
 - Wanneer moet treitering as 'n strafszaak hanteer word? Hoe ernstig moet die nadeel wees? Hoe word ernstigheid gemeet?
 - Indien 'n skool moet kies tussen die lê van 'n strafklag of aanbeveling vir uitsetting ten opsigte van 'n boelie, watter faktore moet in ag geneem word (1) met betrekking tot die boelie en (2) met betrekking tot die slagoffer, voor 'n keuse gemaak word?
 - Kan ernstige treitering na die polisie verwys word as deel van 'n strategie teen treitering – dus nie met die doel om 'n strafszaak te begin nie, maar as 'n “afskrikmiddel” teen treitering?



- Watter betrokkenheid het die skool nadat 'n strafklag gelê is of nadat die saak na die polisie verwys is?
- Wat is die rol en regte van die ouer van die boelie wanneer 'n klag deur skool gelê word of (2) wanneer die saak na die polisie verwys word?
- Indien 'n strafsak teen 'n boelie aanhangig gemaak is ('n klag by die polisie teen die boelie gelê is) moet die skool voortgaan met sy eie ondersoek en dissiplinêre verhoor? Wat is die rol van die *sub judice*-reël?
- Wat is die regsimplikasies vir die skool indien die skool in geval van ernstige nadeel (misdaad) nie 'n klag lê nie?
- Is dit moontlik dat die skool as regspersoon ook strafregtelik aanspreeklik kan wees met betrekking tot treitering wat onder sy toesig plaasvind?
- Wanneer sal treitering geklassifiseer word as direkte opset en wanneer as konstruktiewe opset?
- Kan die passiewe boelie (assistente), die aanhitser en die opvoeder (wat nie optree nie as gevolg van sy onverskillige houding ten opsigte van treitering) van medepligtigheid aangekla word?
- Sou die optrede van 'n passiewe slagoffer deur die boelie vertolk kan word as toestemming?

ADDENDUM B

VRAELYS VIR SEMI-GESTRUKTUREERDE ONDERHOUDE: TREITERING, DIE DELIKTEREG EN FUNDAMENTELE REGTE

1. Die aantasting van 'n fundamentele reg kan ook 'n delik daarstel. Voorbeelde van fundamentele regte wat deur treitering geskend kan word is die reg op lewe; die reg op vryheid en sekerheid van die persoon (inbegrepe die reg op liggaamlike en psigiese integriteit); die reg op privaatheid; die reg op menswaardigheid; die reg op gelykheid; bykomende kinderregte; die reg op onderwys en moontlik die reg op vryheid van uitdrukking en 'n omgewing wat nie skadelik vir die gesondheid en welsyn is nie.
 - Hoe sou die Suid-Afrikaanse regstelsel die skending van bogenoemde fundamentele regte deur treitering hanteer as: (1) deliktuele aanspreeklikheid; (2) as grondwetlike regskenning of (3) enige ander wyse?
 - Treitering as grondwetlike regskenning is nog nooit in 'n hof getoets nie. Hoe kan dit verklaar word?

2. 'n Delikpleger se gedrag word normaalweg as onregmatig vir die vereistes van deliktuele aanspreeklikheid beskou indien sekere regserkende regte (subjektiewe regte) as gevolg van die optrede van die delikpleger aangetas word en die optrede nie geregverdig kan word nie; en ook indien 'n regsplig om op te tree sonder enige regverdiging verbreek word:
 - Watter subjektiewe regte van die slagoffer kan deur treitering aangetas word?
 - Onder watter omstandighede kan deliktuele aanspreeklikheid volg weens die handeling of versuim van 'n opvoeder onder wie se toesig treitering plaasvind (direkte en / of middellike aanspreeklikheid)?



- Hoe kan die regsplig omskryf word wat op die opvoeder rus en wat verbreek word as gevolg van sy versuim om te voorkom dat treitering onder sy toesig plaasvind?
3. Die skade of nadeel (gevolge) wat deur treitering veroorsaak kan word is onder meer: psigologiese nadeel; fisiese nadeel; sosiale nadeel en opvoedkundige nadeel.
 - Maak die Suid-Afrikaanse deliktereg voorsiening vir die vergoeding vir al bogenoemde tipes nadeel?
 4. Watter struikelblokke bestaan daar vanuit 'n deliktereg-oogpunt vir die verhaal van veral psigologiese, sosiale en opvoedkundige nadeel?
 5. Kan die boelie of sy ouers ook deliktueel aanspreeklik gehou word vir die nadeel wat sy optrede teweeggebring het? Is daar besondere faktore wat in hierdie gevalle 'n rol kan speel by die bepaling van deliktuele aanspreeklikheid?
 6. Kan daar sprake wees van opsetlike optrede by die opvoeder onder wie se toesig treitering plaasvind? Indien wel, wat sal die gevolge van sodanige opsetlike optrede vanuit 'n deliktereg-oogpunt wees?
 7. Is dit moontlik dat 'n opvoeder persoonlik deliktueel aanspreeklik gehou kan word, maar nie die skool of staat nie?
 8. Hoe word die "redelike deskundige"-nalatigheidskriterium beïnvloed deur opvoeders se lae bewustheidsvlak en min kennis van treitering en deur die feit dat opvoeders min of geen opleiding oor treitering ontvang nie?
 9. In watter stadium (wat moes alreeds verloop het) is daar genoeg gronde vir 'n ouer om 'n siviele saak teen 'n skool aanhangig te maak?
 10. Watter rol speel die ouderdom van die boelie en van die slagoffer by die bepaling van die graad van sorg wat van die toesighoudende opvoeder verwag word?



11. Wat betref leerderveiligheid is die beskouing van Suid-Afrikaanse howe dat 'n opvoeder nie elke oomblik elke leerder onder sy toesig kan hou nie? Gesien in die lig van die feit dat treitering soms subtiel plaasvind en moeilik waarneembaar is, hoe sou howe hierdie beginsel op treitering toepas?
12. Wat kan 'n skool doen om moontlike deliktuele aanspreeklikheid met betrekking tot treitering tot die minimum te beperk?
13. Wat is die skool se verantwoordelikheid ten opsigte van die treitering (1) voor en na skoolure (op die skoolterrein); (2) af van die skoolterrein (nie skool-gesanksioneerde nie) en (3) kubertreitering via 'n boelie se tuisrekenaar na 'n skoolrekenaar?
14. Wat is die kernelemente van 'n prosedure waarvolgens 'n ouer 'n saak van treitering by die skool rapporteer?

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