

Sultan

International Protection of Human Rights

Spring 1999

A.M.T., age 15, a citizen of the United Kingdom resident on the Isle of Man, pleaded guilty in the juvenile court to unlawful assault occasioning actual bodily harm to a senior pupil at his school, the latter having reported A.M.T. and three other boys (all of whom were involved in the assault) for taking beer into the school, as a result of which they had all been caned. On March 7, 1998 the court sentenced the applicant to three strokes of the birch. An appeal to the Staff of Government division of the Isle of Man High Court was heard and dismissed on the afternoon of April 28, 1998, the court taking the view that an unprovoked assault occasioning actual bodily harm was always very serious and there were no reasons for interfering with the sentence. The applicant had been medically examined before the appeal by order of the court and he was declared fit to receive the punishment. Later that afternoon, after waiting a considerable time in a police station for a doctor to arrive, the birching was carried out in the presence of his father and the doctor. He was made to take down his trousers and underpants and bend over a table; two policemen held him while a third administered the punishment, pieces of the birch breaking at the first stroke. His father had to be restrained from attacking one of the police officers. The applicants skin was raised but not cut and he was sore for about a week and a half afterwards.

The isle of Man was not a part of the United Kingdom but a dependence of the Crown with its own government legislature and courts and its own administrative, fiscal and legal systems. The Crown was ultimately responsible for the good government of the Island and acted through the privy Council on the recommendation of Ministers of the UK Government in their capacity as Privy counselors, the Home Secretary having primary responsibility for Man affairs.

By constitutional convention, the UK Parliament did not exercise the power it had to legislate on the Island's domestic affairs such as penal policy, without its consent. This Policy would be followed unless

overridden by some other consideration, such as an international treaty obligation. Since 1950, the UK had not regarded international treaties applicable to the UK as extending to the isle of Man unless there were an express inclusion.

Judicial corporal punishment was abolished in Britain in 1948 and in Northern Ireland in 1968. The Isle of Man legislative body considered the question in 1963 and 1965 and decided to retain the penalty that had been in practice for over 500 years. The legislature regarded birching (or the cane) as a deterrent to hooligans visiting the Island as tourists and more generally as a means of preserving law and order. It reaffirmed its view in 1977 by a vote of 31 to one. A privately organized petition in favor of the retention of judicial corporal punishment attracted 31,000 signature. Approximately 45,000 persons were enfranchised on the Island. In practice, the penalty was awarded only in respect of crimes of violence.

A.M.T. and his father wish to make an international human rights claim to gain compensation and to have the practice declared illegal for the future on the Isle of Man. They seek you out for legal advice.

In your research you find that "torture and cruel and degrading treatment" is prohibited by:

1. The Universal Declaration of Human Rights
2. The International Covenant on Civil and Political Rights
3. The International Convention on Torture and Other Forms of Cruel and Degrading Treatment, and
4. The European Convention on Human Rights

You also learn that the UK is a signatory, without reservation, and without express inclusion for the Isle of Man, of all of the above that

are international agreements.

What international remedy or remedies that we studied this semester could be utilized, and which cannot, and why?

With respect to the one(s) that could be utilized, what problems, if any, do you perceive will stand in the way of a successful outcome?