

EUROPEAN PARLIAMENT

# Working Documents

1983-1984

---

24 February 1984

DOCUMENT 1-1456/83

## Report

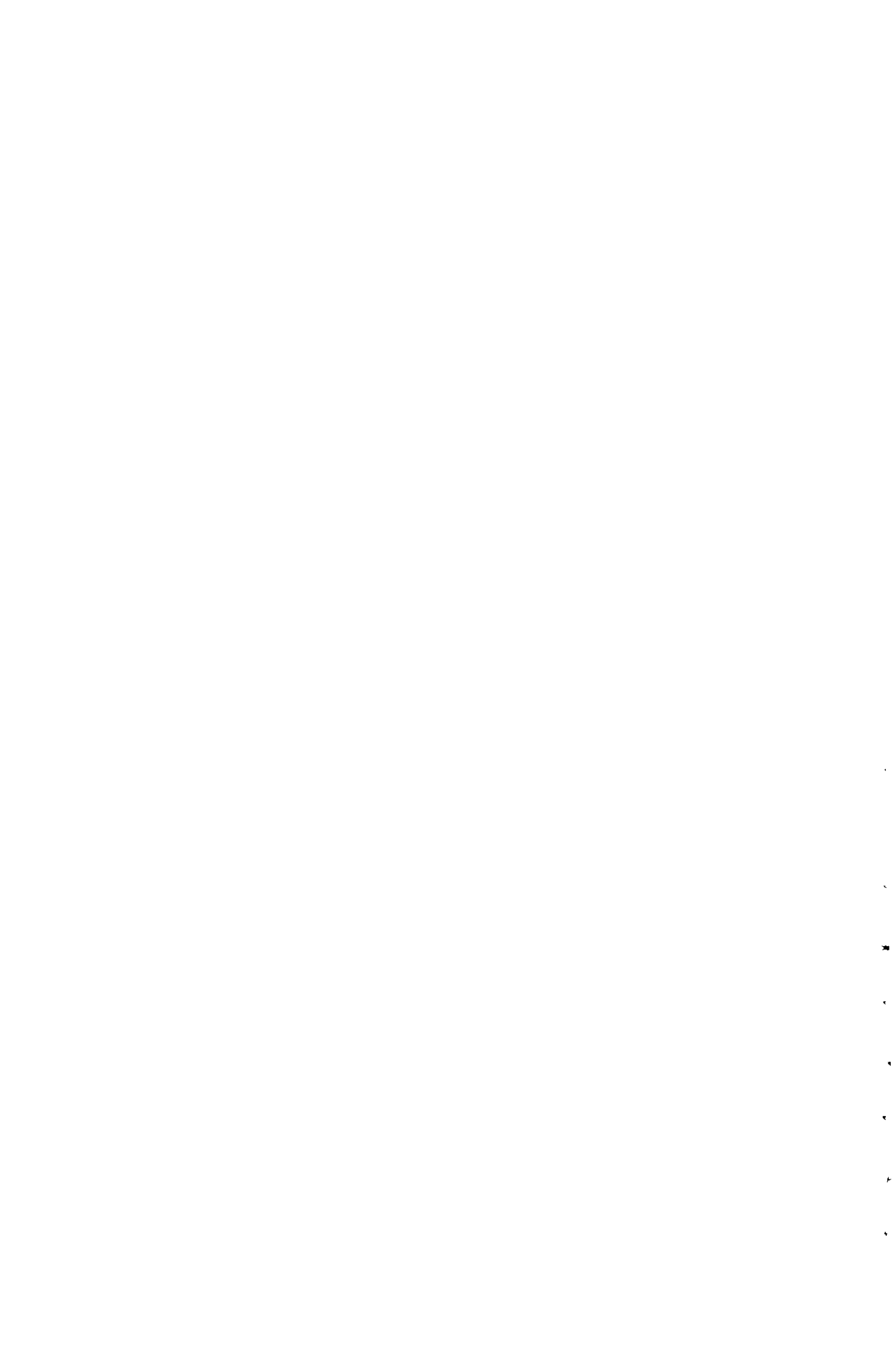
drawn up on behalf of the Legal Affairs Committee

on freedom of education in the European Community

Rapporteur: Mr R. LUSTER

PE 80.100/fin.  
Or. De.

English Edition



At its sittings of 14 October 1981, 6 June 1983 and 29 June 1983 respectively, the European Parliament referred the motion for a resolution by Mr Vié on the freedom of education in the Community (Doc. 1-585/81), the motion for a resolution by Mr Sassano and others on freedom of teaching in Europe (Doc. 1-356/83) and the resolution by Mr HORGAN on multi-denominational education (Doc. 1-1085/82) to the Legal Affairs Committee as the committee responsible and to the Committee on Youth, Culture, Education, Information and Sport for an opinion.

The committee appointed Mr LUSTER rapporteur on 25 November 1981, 21 June 1983 and 21 September 1983.

The committee considered the draft report at its meetings of 18/19 October, 4/5 November and 1/2 December 1983. At the last of these meetings an application to cancel the discussion because of inadmissibility was rejected by 11 votes to 2.

On 25/26 January 1984 the committee concluded its consideration of the draft report and adopted the motion for a resolution by 9 votes to 6 with 2 abstentions.

The following took part in the vote: Mr Luster, acting chairman and rapporteur; Mr Champeiron, vice-chairman; Mr De Gucht, Mr Del Duca, Mr Geurtsen, Mr Majonica (deputizing for Mr Goppel), Mr Megahy, Mrs Tove Nielsen, Mr Ouzounidis, Mr Pfennig, Mr Prout, Mr Rinsche (deputizing for Mr Malangré), Mr Sieglerschmidt, Mr Tyrrell, Mrs Vayssade, Mr Vetter and Mr Vié.

The opinion of the Committee on Youth, Culture, Education, Information and Sport is attached.

This report was tabled on 15 February 1984.

The deadline for tabling amendments to the report will be shown on the draft agenda for the meeting at which the report is to be considered.



C O N T E N T S

	<u>Page</u>
A. MOTION FOR A RESOLUTION .....	5
B. EXPLANATORY STATEMENT .....	10
1. Provisions of international and supranational law relating to school education .....	10
I. United Nations Conventions .....	10
II. Council of Europe Conventions .....	12
III. The legal situation in the European Community .....	14
2. The education systems in the Member States .....	16
I. Belgium.....	17
II. Denmark .....	22
III. Federal Republic of Germany .....	26
IV. France .....	37
V. Greece .....	47
VI. Ireland .....	51
VII. Italy .....	55
VIII. Luxembourg .....	62
IX. The Netherlands .....	67
X. United Kingdom .....	72
3. Minority opinion (Rule 100(4) of the Rules of Procedure) ...	75
Annex 1: Motion for a resolution Doc. 1-585/81 on the freedom of education in the Community .....	76
Annex 2: Motion for a resolution Doc. 1-356/83 on freedom of teaching in Europe .....	78
Annex 3: Motion for a resolution Doc. 1085/82 on multi- denominational education .....	81
Opinion of the Committee on Youth, Culture, Education, Information and Sport .....	82

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on freedom of education in the European Community

The European Parliament,

- A. having regard to the motion for a resolution of 9 October 1981 by Mr VIE on the freedom of education in the Community (Doc. 1-585/81), the motion for a resolution of 25 May 1983 by Mr SASSANO and others on freedom of teaching in Europe (Doc. 1-356/83), and the motion for a resolution of 6 January 1983 by Mr HORGAN on multi-denominational education (Doc. 1-1085/82),
- B. having regard to the report of the Legal Affairs Committee and the opinion of the Committee on Youth, Culture, Education, Information and Sport (Doc. 1-1456/83),
- C. having regard to the Universal Declaration of Human Rights of 10 December 1948, in particular Article 26 concerning education and the rights of parents, and the International Covenant on economic, social and cultural rights in particular Article 13 thereof concerning the universal right to education and freedom to found and run schools,
- D. having regard to the International Covenant against discrimination in education adopted by the 11th General Assembly of UNESCO in Paris on 14 December 1960 and more particularly, Articles 4 and 5 thereof relating to equality of opportunity and treatment in education and the freedom of parents to choose other institutions for their children than those offered by the public authorities,
- E. having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, in particular Article 9 concerning freedom of thought, conscience and religion, and Article 2 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of 20 March 1952, concerning the right to education,

- F. having regard, moreover, to the decisions on the right to education and the parents' rights as regards upbringing taken by the European Court of Human Rights, in particular the judgment of 7 December 1976, Series A. No. 23, which reaffirms the right of parents to choose freely their children's education in accordance with the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms,
- G. having regard to the Joint Declaration by the European Parliament, the Council and the Commission of 5 April 1977 on the protection of fundamental rights<sup>1</sup>,
- H. having regard to the European Parliament's resolution of 7 July 1983 on the European Schools<sup>2</sup>,
- I. having regard also to the particularly marked pluralism within the Member States in the field of education,

Calls for

I. recognition within the European Community of the following principles:

1. Every child and young person shall have the right to education and teaching; this includes the right of the child to develop his or her abilities to the full; the parents shall have the right to decide on the type of education and teaching to be given to their children of school age;
2. Every child and young person shall have the right to education and teaching without any discrimination based on sex, race, philosophical or religious beliefs, nationality, social class or economic standing;

---

<sup>1</sup> OJ No. C 103, 27.4.1977 or Treaties establishing the EC, 1978, p. 214

<sup>2</sup> OJ No. C 307, 14.11.1983, p. 36

3. The admission of a child to a school receiving public funds shall depend on its abilities and inclinations and not on the parents' economic standing nor the social, racial or ethnic background of the child;
4. The school system must comply with the relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Community law, especially where it relates to education for the children of migrant workers and the national constitution and the cultural and social needs of the Member States concerned;
5. The purpose of education and teaching shall be to enable the individual to develop fully and to promote respect for human rights and fundamental freedoms;
6. Freedom of education and teaching shall be guaranteed;
7. Freedom of education and teaching shall include the right to establish a school and provide instruction;

It shall further include the right of parents to select a school in which their children will receive the instruction desired; every child must be offered the possibility of attending a school which gives no precedence to specific religious or philosophical beliefs in its education and teaching;

It cannot be the duty of the state to recommend or give preferential treatment either to denominational schools in general or to schools of a particular denomination, nor can the state give such recommendations or preferential treatment to non-denominational education;

It is the parents' right to choose a school for their children until the latter can do so for themselves; it is the duty of the State to provide the necessary facilities for state or private schools;

Respect for beliefs is incumbent both on educational establishments under the direct authority of the state and on establishments which have contractual agreements with it;



8. Freely established schools, which meet the objective criteria established by law for the award of specific qualifications, shall be recognized by the state; they shall award the same qualifications as state schools;
9. In accordance with the right to freedom of education, Member States shall be required to provide the financial means whereby this right can be exercised in practice, and to make the necessary public grants to enable schools to carry out their tasks and fulfil their duties under the same conditions as in corresponding state establishments, without discrimination as regards administration, parents, pupils or staff;

Notwithstanding this, however, freely established schools shall be required to make a certain contribution of their own as a token of their own responsibility and as a means of supporting their independent status;

II. the following action to implement the above principles:

1. The appropriate Community authorities shall ensure the right to freedom of education is guaranteed in the Member States;
2. To facilitate the entry of school-leavers into working life the Council shall, pursuant to Article 57 of the EEC Treaty, issue directives for the mutual recognition of school-leaving certificates, diplomas and other examination certificates, under which the qualifications awarded by state schools and state-approved schools are to be treated as equal;
3. In order to guarantee freedom of movement for school-leavers within the Community without discrimination between pupils of state schools and pupils of state-approved schools, the Education Ministers meeting in the Council shall, pursuant to Article 235 of the EEC Treaty, take appropriate measures to ensure equivalence in the content of certificates from state schools and state-approved schools;

4. Where there are grounds for suspecting violation of the right to freedom of education and teaching, the Commission of the European Community shall institute the proceedings applicable in the event of violation of the fundamental rights of Community citizens, as defined in particular by the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms;
  
5. Instructs its President to forward this resolution to the Education Ministers meeting in the Council, the Council and Commission of the European Communities.

EXPLANATORY STATEMENT

1. PROVISIONS OF INTERNATIONAL AND SUPRANATIONAL LAW RELATING TO SCHOOL EDUCATION

I. United Nations Conventions

- A. The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10 December 1948.

Article 26 provides with regard to the right to education and parental rights that:

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

- B. The International Covenant on Economic, Social and Cultural Rights was concluded within the context of the United Nations on 19 December 1966.

Article 13 of the International Convention provides as follows with regard to the right to education, schooling, parental rights and the right to establish a school:

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this Article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Neither the Universal Declaration of Human Rights nor the International Covenant have direct legal force. The same applies to the United Nations 'Declaration of the Rights of the Child' of 20 November 1959, which guarantees children the opportunity to develop mentally (Principle 2) and the right to free compulsory education (Principle 7) and the UNESCO Covenant against discrimination in education adopted on 14 December 1960.

Even without any legally binding effect, the Universal Declaration of Human Rights has been used by many States as a model for the human rights laid down in their national constitutions (Reports of Cases before the European Court of Human Rights 1981, p. 614).

## II. Council of European Conventions

- A. The Convention for the Protection of Human Rights and Fundamental Freedoms was signed on 4 November 1950 in Rome. It has been ratified by all Member States of the European Community and is therefore legally binding. The Signatory States resolved 'as the Governments of European countries ... to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration'.

Article 9(1) of the Convention provides as follows:

'Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom ..., in public or private, to manifest his religion or belief, in worship, teaching, practice and observance'.

- B. The Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms was signed on 20 March 1952 in Paris. All Member States of the European Community have ratified this protocol.

Article 2 of the Protocol provides as follows:

ARTICLE 2

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.

- C. The European Court of Human Rights in Strasbourg reached, in its judgment of 7 December 1976 in the Kjeldsen, Busk Madsen and Pedersen Case, findings of principle as regards the parental right of education when it interpreted Article 2 of the Protocol (see Reports of Cases before the European Court of Human Rights 1976, page 478 et seq).

In the judgment, the Court states as follows:

- fifth subparagraph of paragraph 50

'The second sentence of Article 2 (of the Protocol) aims in short at safeguarding the possibility of pluralism in education, which possibility is essential for the preservation of the 'democratic society' as conceived by the Convention'.

- second subparagraph of paragraph 51

'Article 2, which applies to each of the State's functions in relation to education and to teaching, does not permit a distinction to be drawn between religious instruction and other subjects. It enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire State education programme'.

- first subparagraph of paragraph 52

'As shown by its very structure, Article 2 constitutes a whole that is dominated by its first sentence. By binding themselves not to 'deny the right to education', the Contracting States guarantee to anyone ... 'a right of access to educational institutions existing at a given time'.'

- second subparagraph of paragraph 53

'The second sentence of Article 2 implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. 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'.

D. Results of the survey

It follows from the relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Protocol thereto and the case-law of the European Court of Human Rights, all of which are binding on the Community, that the Member States must provide a pluralist education which takes into account parental rights.

III. The legal situation in the European Community

A. The legal bases

- (a) The Common Declaration by Parliament, the Council and the Commission, on fundamental rights was adopted on 5 April 1977 in Luxembourg.

Paragraphs 1 and 2 of the declaration state as follows:

- '1. The European Parliament, the Council and the Commission stress the prime importance they attach to the protection of fundamental rights as derived in particular from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms.
2. In the exercise of their powers and in pursuance of the aims of the European Communities they respect and will continue to respect these rights.'

Thus the remarks made above on the Council of Europe Convention are also of importance for the Community from the legal point of view.

(b) The provisions of the Treaties relate primarily to vocational training and the recognition of occupational qualifications (see Articles 41(a), 57, 118 and 128 of the EEC Treaty and Article 9 of the Euratom Treaty).

(c) The resolution of the Council and of the Ministers of Education meeting within the Council of 9 February 1976 (Official Journal No. C 38 of 19 February 1976, page 1) adopted an action programme in the field of education, paragraph 20 of which states as follows:

'The achievement of equal opportunity for free access to all forms of education is an essential aim of the education policies of all the Member States.'

(d) The case-law of the Court of Justice of the European Communities clarified, in the judgment of 3 July 1974 in Case 9/74, Donato Casagrande v Landeshauptstadt München, the status of pupils who are children of migrant workers (1974 ECR, p. 773).

According to the interpretation of the Court of Justice, Article 12 of Regulation (EEC) No. 1612/68 is intended to encourage special efforts 'to ensure that the children may take advantage on an equal footing of the education and training facilities available'. It does not only refer to rules relating to admission but also to general measures intended to facilitate educational attendance (see paragraph 9 of the judgment).

B. The conclusion which must be drawn is that at Community level legislation and case-law are concerned with educational issues and the status of pupils.

Because the European Convention on Human Rights is binding on the Community the main principles of the judgment of the Court of Human Rights of 7 December 1976 (see II(C) above) also apply to school education within the Community.



## 2. THE EDUCATION SYSTEMS IN THE MEMBER STATES

The following description of the school systems in each of the Member States reveals a particularly marked pluralism in the field of education.

As far as possible, the presentation of the education system of each country is subdivided as follows:

Facts and figures

(A) LEGAL BASIS

(B) FINANCIAL BASIS

(C) SCHOOL-LEAVING EXAMINATIONS AND QUALIFICATIONS

(D) CURRENT POSITION.

## I. THE BELGIAN EDUCATION SYSTEM

(See Jacques Velu, Attorney-General at the Court of Cassation, Professor of Law at the Free University of Brussels: 'Existence and status of basic rights in the education sector in Belgium'- (Europäische Grundrechte Zeitschrift (EuGRZ) (European Basic Rights Bulletin),) 31 December 1981, pp. 595 et seq, letter from the Belgian Senate of 12 August 1982).

### Facts and figures

1. The following shows the distribution of students between the various types of non-university educational establishments in the 1977/78 academic year (figures from EuGRZ 1981, page 598):

Types of School	State Schools	Private Schools
FRENCH LANGUAGE AREA		
Pre-school education	61.63%	38.37%
1. Primary education (7 to 12 years)	60.45%	39.55%
2. Secondary education (12 to 18 years)	52.53%	47.47%
3. Higher and further education (excluding universities)	53.20%	46.80%
DUTCH LANGUAGE AREA		
Pre-school education	28.51%	71.49%
1. Primary education (7 to 12 years)	38.44%	61.56%
2. Secondary education (12 to 18 years)	28.29%	71.71%
3. Higher and further education (excluding universities)	37.82%	62.18%

2. This shows that while the state sector dominates at all levels in the French language area, the majority of students in the Dutch language area attend private educational establishments.

According to the letter from the Belgian Senate's information service, the breakdown of all pupils/students in the 1979/80 academic year was as follows:

	State schools	Private schools	Total
Pre-school education	161,423 (41.9%)	223,478 (58.1%)	384,901
1. Primary Schools	418,344 (47.7%)	458,794 (52.3%)	877,138
2. Secondary Schools	325,266 (38.2%)	525,592 (61.8%)	850,858
3. Higher and further education	70,521 (37.5%)	117,711 (62.5%)	188,232

Educational establishments run by Catholic organizations account for 99% of the private sector.

3. Education accounts for 17% of the national budget. 50% of these budget resources go to the private schools, which have 56% of the pupils (page 3 of the letter of 9 June 1982 from the Belgian Bishops' Conference).

(A) LEGAL BASIS

4. In Belgian public law, the principle of freedom of instruction is enshrined in the Constitution. This prohibits the legislature from enacting provisions which are irreconcilable with this principle. The constitutional principle of freedom of instruction has a higher status than the law.

5. The relevant provision is contained in Article 17 of the Constitution of 7 February 1831 which states:

'(1) Education is free; any preventative measure is forbidden.

(2) Public education provided at the expense of the state is also regulated by law.'

6. This freedom of instruction under Article 17 of the Constitution takes two forms:

- firstly the right to provide instruction and open a school;
  - secondly the right to receive the form of instruction desired in the school of one's choice (EuGRZ 1981, p. 601).
7. As everyone has the right to provide instruction and open a school, this right may be enjoyed both by legal persons under public law and private individuals (EuGRZ 1981, p.602).
  8. The legal provisions in force today as regards the implementation of this basic law were enacted following the conclusion in November 1958 of the 'School Pact'. The text of the School Pact was published in the Official Gazette of 17 June 1959 (see Omnilegie 1959, No. 341, pp. 504 et seq.). This agreement was concluded between the Christian Social Party, the Belgian Socialist Party and the Liberal Party to enhance the cultural and material welfare of the country by expanding the education system and as a means of promoting more friendly relations in the field of education (EuGRZ 1981, p.597).
  9. The substance of the agreement became the Act of 29 May 1959 amending various provisions in education legislation.
  10. This legislation which represents a substantive and financial compromise between the major political parties forms the basis of the entire education system.
  11. The main provisions of the Act of 29 May 1959 relate to:
    - fostering better relations and rules governing the relations between the various education systems;
    - ensuring free choice of school;
    - expansion and greater democracy in the education system;
    - support for all forms of instruction deemed to deserve assistance (EuGRZ 1981, p. 597).
  12. Further laws to implement the School Pact were enacted on 11 July 1973 and 14 July 1975.

(B) FINANCIAL BASIS

13. Under Article 3 of the Act of 29 May 1959 as amended by the Act of 6 July 1970, the state subsidizes above all those organizations whose educational establishments meet the legal requirements. The sponsors only receive subsidies if they accept the legal provisions relating to the organization of syllabuses and application of language regulations.
14. Sponsors of educational establishments in the non-university sector receive three types of state subsidy:

Salary subsidies, running cost subsidies and equipment subsidies (see Articles 26 to 34 of the Act of 29 May 1959 as amended by the Act of 6 July 1970).

15. Pre-school and primary education, and secondary education in state schools and education establishments receiving state aid is free of charge by law. The sponsoring organizations are not permitted to charge any form of direct or indirect school fees. At the pre-school and primary level, the standard school textbooks and materials are provided free of charge (see Article 12 of the Act of 29 May 1950).

(C) SCHOOL-LEAVING EXAMINATIONS AND QUALIFICATIONS

16. An education system in which the independent school sponsors did not have the right to issue accepted school-leaving certificates and diplomas would not be reconcilable with Article 17 of the Constitution (see EuGRZ 1981, p.601).
17. The question of school-leaving qualifications was covered by Resolution No. 6 of the School Pact. Provided that the independent school sponsors receiving subsidies accept the syllabuses and timetables laid down by the state and accept state inspection, the qualifications awarded by joint examining bodies are equivalent to those issued by state schools.

(D) CURRENT POSITION

18. There is a growing trend in Belgium no longer to regard basic rights in the educational sector exclusively in terms of the classical right to resist the power of the State.
19. The trend is for freedom of instruction to be seen as ensuring the freedom of choice between various types of educational system without financial obstacles and the right to education as an economic and social right (EuGRZ 1981, p 609).
20. As a corollary of this development, the differences between the state and independent schools are becoming less and less as the independent schools are increasingly dependent on state subsidies which are only granted in return for compliance with abstract generalized requirements formulated by the legislature.

## II. THE DANISH EDUCATION SYSTEM

(See Frants Thygesen, Supreme Court Judge, Copenhagen: 'Existence and status of basic rights in the education sector in Denmark' - EuGRZ 31 December 1981, pp. 629 et seq., letter from the Library and Information Service of the Danish Parliament of 27 September 1982).

### Facts and figures

1. In 1980, approximately 7% of schoolchildren attended private schools, including religious schools and schools for the German minority in North Schleswig. The proportion of schoolchildren attending private primary schools has increased slightly in recent years because many parents prefer small local schools to large centralized schools. There is no legal bar to education by the parents. In 1980 this only applied to some 200 children.
2. In the 1981/82 academic year the relative numbers of schoolchildren were as follows:

	<u>State Schools</u>	<u>Private Schools</u>	<u>Total</u>
1. Primary schools (including schools for the handicapped)	716,308 (92.3%)	60,103 (7.7%)	776,411
2. Secondary school with or without specialist qualification	69,979 (95.0%)	3,700 (5.0%)	73,679
3. Advanced secondary courses	11,785 (82.7%)	2,466 (17.3%)	14,251

- 2.1 In the 1980 academic year, the financing of the private schools was as follows:

	<u>State Subsidy</u>	<u>School Fees</u>	<u>Other</u>	<u>Total</u>
Private Primary Schools	78.4%	17.6%	4.0%	100%
Private Secondary Schools	73.3%	23.1%	3.6%	100%
Private Advanced Courses	78.7%	16.3%	5.0%	100%

(Data in 2 and 2.1 from the letter from the Library and Information Service of the Danish Parliament of 27 September 1982, p. 2).

(A) LEGAL BASIS

3. Section 76 of the Danish Constitution (Danmarks Riges Grundlov) of 5 June 1953 refers to schools and education as follows:

'All children of school age shall be entitled to free instruction in primary schools. Parents or guardians making their own arrangements for their children or wards to receive instruction equivalent to the general primary school standard shall not be obliged to have their children or wards taught in a publicly provided school' (see: The Constitutional Act, Press and Cultural Relations Department of the Ministry of Foreign Affairs of Denmark, Copenhagen, page 4).

4. Section 76 of the Constitution may be interpreted as follows:

- (a) Parents or guardians have a duty to ensure that children are educated;
- (b) Everyone has the right to such education in a state school;
- (c) Children need not attend a state school; parents or children may educate children privately.

5. The Constitution leaves the form of the educational system to more general legislation. Under the 'folkeskole' Act of 26 June 1975 as amended on 20 August 1980, the local authorities are responsible for providing such free schools. The private schools are required by the Independent Schools (friskoler) Act of 8 June 1977 to provide an education which matches the general standards of state schools. The setting up of an independent school has to be registered with the educational authorities but only requires authorization from the building, fire and health authorities.



6. Until 1970 the private German schools in North Schleswig were covered by a special Education Act of 1946. They now come under the abovementioned Independent Schools Act of 1977 which applies to the whole of Denmark.
7. Normally the school syllabuses are determined centrally by the Ministry so that there is little freedom of decision for the schools' head or teachers.
8. The Constitution makes no reference to education beyond the basic level. This sector of education is covered by ordinary legislation. The three years of upper secondary school and two years of advanced courses, which both lead to the school-leaving certificate, are covered by the 1958 Act as amended on 28 June 1977. Most upper secondary schools are run by the state or local authority and a small number are independent.

(B) FINANCIAL BASIS

9. A special law of 1969 as amended on 5 January 1971 gives independent schools the right to state subsidies calculated in accordance with a formula specified in detail in the law. The state is subsequently reimbursed by the pupil's local authorities in accordance with set procedures.
10. The private upper secondary schools and advanced courses have a legal claim to state subsidies. The same applies to independent schools. The legal provisions in this sphere are contained in the Act of 4 June 1970.
11. According to prevailing legal opinion, such subsidies are necessary in modern society if the freedom of education accorded by the Constitution is to exist in practice (see EuRGZ 1981, p. 631).

(C) SCHOOL-LEAVING EXAMINATIONS AND QUALIFICATIONS

12. Qualifications gained at independent schools are formally equivalent to those from State schools as the final examinations are the same. Examinations are set centrally and marked by external examiners in addition to teachers from the school (see letter from the Library and Information Service of the Danish Parliament of 27 September 1982, p. 1).

(D) CURRENT POSITION

13. In the view of Mr Justice Thygesen 'the right to private education under Section 76 could mean that if state subsidies to private schools were abolished completely by amending the Independent Schools Act, the courts would declare this to be unconstitutional and null and void'.
14. He also took the view that 'in the present circumstances such a measure would be tantamount to a ban for most private schools' (see EuGRZ 1981, p. 633).

### III. THE EDUCATION SYSTEM IN THE FEDERAL REPUBLIC OF GERMANY

(See Prof. Dr. Hans Joachim Faller, Judge at the Federal Constitutional Court, Karlsruhe: 'Existence and status of basic rights in the education sector in the Federal Republic of Germany' - EuGRZ of 31 December 1981, pp. 611 et seq.; letters: from the Secretariat of the Standing Conference of the Education Ministers of the Laender of the Federal Republic of Germany of 15 October 1982, the Association of Independent Schools of 10 October 1982, the Central Agency for Education of the German Bishops' Conference of 10 November 1982 and the Bundestag of 15 November 1982.)

#### Facts and figures

1. At the primary and lower secondary level (Grund-und Hauptschulen) the proportion of private schools is extremely small because Article 7 (5) of the Basic Law creates a considerable obstacle to founding primary schools. The small number of pupils at private primary schools tends to disguise the fact that the proportion in large cities (such as the city states of Berlin, Bremen and Hamburg) is higher.
2. The proportion of private church schools would moreover be higher if there were not so many state religious schools in Lower Saxony and North-Rhine Westfalia, with 189 in Lower Saxony alone (comments by the Association of Independent Schools of 10 October 1982, p. 8).
3. The 'Waldorf' schools which operate on the basis of the pedagogical theories of Rudolf Steiner for the first twelve years of school represent a special form of general school. In the thirteenth year, teaching is geared to the school leaving certificate. The Waldorf schools only exist on a private basis. In 1982 there were 75 of these schools which were attended by 35,000 children (comments of the Association of Independent Schools of 10 October 1982, pp. 9 and 10).

4. In 1975 538,700 of the total 12.3 million school children attended private schools. This represented some 4.4%. Of these, 73.3% attended Catholic schools, 10.9% Protestant Schools, 8.5% private schools belonging to the Association of German Private Schools, 6.4% the independent Waldorf schools and 1% country boarding schools (see pp. 5 and 6 of the letter from the Central Agency for Education).

The breakdown of schools and schoolchildren between the State and private sector in 1970 and 1980 was as follows:

Numbers of schools and pupils in the state and private sector

- 1970 -

- 1980 -

	<u>TOTAL</u>	<u>State schools</u>	<u>private schools</u>	<u>TOTAL</u>	<u>State schools</u>	<u>private schools</u>
Nursery schools	1,303	1,225 (94.0%)	78 (6.0%)	3,207	2,943 (91.8%)	264 (8.2%)
Primary and lower secondary schools	21,504	21,287 (99.0%)	217 (1.0%)	18,411	18,126 (98.5%)	285 (1.5%)
Intermediate secondary schools	2,116	1,920 (90.7%)	196 (9.3%)	2,623	2,379 (90.7%)	244 (9.3%)
General secondary schools	2,311	1,913 (82.7%)	398 (17.3%)	2,477	2,142 (86.5%)	335 (13.5%)
Vocational schools	6,883	5,648 (82.1%)	1,235 (17.9%)	8,201	6,995 (85.3%)	1,206 (14.7%)
	<u>TOTAL</u>	<u>pupils at state schools</u>	<u>pupils at private schools</u>	<u>TOTAL</u>	<u>pupils at state schools</u>	<u>pupils at private schools</u>
Nursery schools	33,422	32,006 (95.8%)	1,416 (4.2%)	66,389	61,150 (92.1%)	5,239 (7.9%)
Primary and lower secondary schools	6,347,451	6,312,863 (99.5%)	34,588 (0.5%)	5,044,424	4,994,100 (99.0%)	50,324 (1.0%)
Intermediate secondary schools	863,450	808,467 (93.6%)	54,983 (6.4%)	1,351,070	1,268,042 (93.9%)	83,028 (6.1%)
General secondary schools	1,379,455	1,225,810 (88.9%)	153,645 (11.1%)	2,119,019	1,916,665 (90.5%)	202,354 (9.5%)
Vocational schools	1,998,996	1,896,187 (94.9%)	102,779 (5.1%)	2,572,055	2,445,859 (95.1%)	126,196 (4.9%)

WP026ZE  
OR.DE.

(A) LEGAL BASIS

5. Basic rights in the education sector are guaranteed both by the Basic Law of the Federal Republic of Germany and the constitutions of most of the Federal Laender. As a rule the basic law provisions are formulated in general terms, and the provisions of the Laender for the scale and substance of the legal entitlement of individuals in the education sector are consequently of crucial importance.
6. The basic rights relevant to education as specified in the Basic Law of the Federal Republic of Germany of 23 May 1949 can be found in:
- Article 2(1) which guarantees everyone, and thus every child, the free development of his personality;
  - Article 3(1), which specifies general equality;
  - Article 4 (1) and (2) (freedom of faith and creed);
  - Article 5(3) which guarantees freedom of science (research and teaching) and thus contains a fundamental guarantee of freedom for the entire education system;
  - Article 6(2) which designates the care and upbringing as the natural right of, and a duty primarily incumbent on, the parents;
  - Article 7 which is concerned with education and reads as follows:
    - '(1) The entire education system shall be under the supervision of the State.
    - (2) The persons entitled to bring up a child shall have the right to decide whether it shall receive religious instruction.
    - (3) Religious instruction shall form part of the ordinary curriculum in State and municipal schools except in secular schools.

Without prejudice to the State's right of supervision, religious instruction shall be given in accordance with the tenets of the religious communities. No teacher may be obliged against his will to give religious instruction.

(4) The right to establish private schools is guaranteed. Private schools as a substitute or municipal schools, shall require the approval of the State and shall be subject to the laws of the Laender. Such approval must be given if private schools are not inferior to the State or municipal schools in their educational aims, their facilities and the professional training of their teaching staff, and the segregation of pupils according to the means of the parents is not promoted thereby. Approval must be withheld if the economic and legal position of the teaching staff is not sufficiently assured.

(5) A private elementary school shall be permitted only if the education authority finds that it serves a special pedagogic interest, or if, on the application of persons entitled to bring up children, it is to be established as an interdenominational or denominational or ideological school and a state or municipal elementary school of this type does not exist in the commune';

- Article 12(1) which gives every German the right to choose freely his occupation, place of work and place of training;

- Article 20(1) and the first sentence of Article 28(1) which embody the principle of the social state.

7. The constitutions of the Laender normally accord everyone an equal right to education and this is assured by open access to the education system and financial support. The relationship between the basic rights in the Basic Law and the guarantees of basic rights in regional constitutions is covered by the rule in Article 31 of the Basic Law: Federal Law overrides Land law.

8. Increasing attention has been paid in more recent discussions of educational law to the right of the child under Article 2(1) of the Basic Law to the maximum freedom to develop its personality with the emphasis on its inclinations and skills. The education system must enable this development to take place and provide the necessary support. This basic right precludes intervention and restrictions on the part of the state which would prevent the development of the individual to an independent personality (see Faller, EuGRZ 1981, p. 616).
  
9. The equality guaranteed by Article 3 of the Basic Law means, in the educational sector, that the individual must be enabled to receive an education appropriate to his ability independent of his social, racial or other background.
  
10. Under the first sentence of Article 5(3) of the Basic Law: 'Art and science, research and teaching shall be free'. This constitutional principle is based on the crucial importance of the freedom of science not only for the personal development of the individual but also of society as a whole. It prohibits state intervention and requires the state to support the concept of freedom of teaching and to actively encourage this.
  
11. The first sentence of Article 6(2) of the Basic Law entrenches the rights of parents to enjoy priority over the state as regards responsibility for education. This basic right consists primarily in a right to fend off unwarranted state intervention in the parents' rights relating to education. The second sentence of Article 6(2) of the Basic Law provides that the national community shall watch over the endeavours of the parents in this respect. Thus both the parents and the national community have a responsibility for education. The common educational goals of parents and school, namely developing the child's personality, calls for appropriate cooperation between the two (decision of the Federal Constitutional Court of 26 September 1972 - BVerfGE 34, 165).



12. The parents' rights concerning education in the school sector become more pronounced the more they have to choose between the types and forms of school provided by the state. This right includes freedom of choice by the parents between the different types of education. The state may demand certain qualifications, but it cannot seek to determine the child's entire pattern of life by the way it organizes education (EuGRZ 1981, page 616).
  
13. The basic right under Article 6(2) (care and upbringing of children) in combination with Article 4(1) and (2) (freedom of faith and creed) includes the right of parents to give their child the religious or ideological education they consider appropriate. Article 6(2) of the Basic Law, however, does not give parents a right of positive determination on the basis of which they could demand that the state set up schools of a specific denominational or ideological nature. Nowadays the non-denominational school is generally recognized as the appropriate form of state school (EuGRZ 1981, page 616). Non-denominational schools in this context are schools in which the children are taught and brought up together independently of their individual religions or creeds apart from religious instruction which is given in religious groups.
  
14. In two fundamental decisions of 17 December 1975, the Federal Constitutional Court ruled that this type of school did not involve an unreasonable (with regard to the Constitution) conflict of conscience either for parents or children who rejected religious education or for those who wished for a religious education, provided that ideological pressures were eliminated as far as possible and scope given for a rational discussion of all religious and ideological views - albeit on a generally Christian basis - in a spirit of tolerance.
  
15. The institution favoured, namely this type of non-denominational school, accords therefore with the parents' rights under Article 6(2) and the freedom of religion and creed guaranteed by Article 4(1) of the Basic Law (see footnote 31 in EuGRZ 1981, page 616).

16. The first sentence of Article 7(4) of the Basic Law grants everyone the right to establish private schools. The right to establish private schools as a substitute for state schools is, however, limited by the requirement of state approval (Article 7(4), second sentence). The right to approval is subject to the conditions set out in Article 7(4) of the Basic Law (quoted in paragraph 6, page 28).

17. This provision in the Basic Law gives every natural or legal person the basic right, and a constitutional right which can be invoked before the administrative courts, to establish and run a private school.

The Federal Constitutional Court interprets this basic right as a 'rejection of a state educational monopoly' and as a 'willingness by the state to accept schools of a variety of forms and kinds' (Decisions of the Federal Constitutional Court, Volume 27, pp. 195 et seq).

18. The principle of variety in types of school gives the parents the opportunity to exercise their rights as regards education. The parents can thus choose between schools based on different pedagogical concepts and with differing ideological views (see pages 2/3 of the letter from the Central Agency for Education of the German Episcopal Conference).

The various Laender constitutions reaffirm or reinforce the Basic Law. The education laws in the Laender assign the independent schools the task of complementing and enhancing the state school system. The laws in the Laender are based on the decision of the Standing Conference of the Ministers of Education of the Laender of 10/11 August 1959 concerning an 'Agreement on independent schools' on the basis of Article 7 of the Basic Law (page 10 of the letter from the Bundestag of 15 November 1982).

(B) FINANCIAL BASIS

19. In a fundamental decision of 29 May 1973 (BVerfGE 35, page 114 et seq) the Federal Constitutional Court ruled that the state should provide the manpower, financial and organizational resources needed to ensure the freedom of knowledge and ensure its transmission to the following generation.
  
20. It is not sufficient from the point of view of equality of opportunity to establish educational establishments, it is also necessary to assist individuals. A system of educational assistance has therefore been set up in the Federal Republic which takes the form either of blanket assistance, with financial contributions to the cost of educational material, instruction and travel, or material help for individuals as 'personal' assistance. Nowadays the state provides free materials at almost all levels and there are no school or university fees. This system is rounded off by a system of grants which allow the less well-off sectors of the population to attend educational establishments. Various laws grant individuals who meet certain requirements an individual legal claim to state educational grants. Both systems taken together give all sectors of the population as far as possible the same realisable right to education, both in law and in practice (EuGRZ 1981, page 623).
  
21. The Federal Law on Individual Educational Aid as amended on 2 April 1976 (Federal Gazette I p. 989) provides for a general system of grants. Under this law every German has a legal claim to assistance to obtain an education which matches his inclinations, abilities and performance in the form of grants and, possibly, loans. The number of potential claimants is restricted by various preconditions and the means testing of parents.
  
22. The detailed provisions on financial aid for independent schools are contained in the laws of the Laender on independent education. These laws guarantee the legal entitlements of individuals. The legal basis for such a claim is the constitutional obligation on the state to maintain alternative independent schools which would not be able to exist without state aid (first sentence of Article 7(4) of the Basic

Law in conjunction with the social state principle of Article 20(1) of the Basic Law - see Decision of the Federal Administrative Court of 22 September 1967, BVerWGE 27, page 360). The claim of independent schools to financial support is therefore recognized as the necessary resources cannot be provided by the users of the school themselves. Nor, given the far higher requirements of education nowadays, could the independent schools offer a proper education without an adequate financial basis.

23. In the above decision, the Federal Administrative Court based the claim to financial aid directly on Article 7(4) of the Basic Law on the grounds that the basic right to establish a private school would be undermined if only those organizations which were in a position to bear the full cost were able to run private schools. Moreover there was an obligation on the state once it had abolished school fees at state schools to restore the social balance vis-a-vis independent schools.

The provisions in the individual Land laws differ as to the types of school entitled to aid, the purposes for which it may be used and the amount of aid.

24. Alternative schools have the right to claim financial aid because the alternative schools have to meet the requirements for approval which involve considerable expense. The amount claimable is such as to prevent an economic decline of alternative schools.
25. Most Laender reimburse the independent schools between 75 and 90% of the staff and material costs incurred per pupil in the state education system (p. 16 of the letter from the Bundestag). In 1982 financial aid amounted to between DM 3,000 and DM 4,500 per secondary school pupil, with a pupil at a state secondary school in 1982 costing a total of DM 7,000. Financial aid is paid to the sponsoring body in each case and is lower than the figure mentioned above in the case of intermediate schools and vocational schools and higher for special schools (schools for the handicapped) (paragraph 22 to 25: comments by the Association of Independent Schools of 10 October 1982, pages 6 and 7 and the letter from the Central Agency for Education of 10 November 1982, page 4).

(C) SCHOOL-LEAVING EXAMINATIONS AND QUALIFICATIONS

26. The laws of the Laender vary in the extent to which they require alternative schools to accept state examination and certificate requirements and in the regulations concerning the acceptance of pupils (comments by the Association of Independent Schools, page 6).
27. Recognized alternative schools are allowed to issue school qualifications (certificates) which embody individual entitlements under public law. With such certificates, the students have a right to admission to the appropriate class of a state school. Those who have completed alternative school courses therefore have the right, for example, to a place at university or to enter a specific profession.
28. To this limited extent, independent schools exercise an autonomous function and issue administrative documents (see 'Das Recht der freien Schulen nach dem Grundgesetz' (the law relating to independent schools under the constitution), Friedrich Müller, 2nd edition Dunker and Humboldt/Berlin 1982: page 280). Educational assessment by means of certificates and examinations has become a sphere of activities of independent schools protected by the first sentence of Article 7(4) of the Basic Law.
29. Leaving examinations at recognized alternative schools are conducted in accordance with state examination regulations and supervised by an examining board appointed by the state school authority (comments by the Association of Independent Schools, page 21).

(D) CURRENT POSITION

30. In advanced modern societies, teaching and education have become an essential aspect of the welfare and social services system. Fulfilment of basic rights by the state is a specific problem in the education sector. Thus the development of the machinery for the protection of human rights above and beyond the conventional concept of basic rights has become very important for this sector. This applies in particular to the objective, legal meaning of basic rights and the question of basic rights in the sense of the individual's right to a share of the services provided by the state (EuGRZ 1981, page 615).

#### IV. THE FRENCH EDUCATION SYSTEM

(Sources: Letter from the ASSEMBLEE NATIONALE, Foreign Documentation Service of 8 October 1982; Letter from the SENATE, EUROPEAN AFFAIRS OFFICE of 18 October 1982; Magazine: Actualités, 1981-1982, Paris, 277 Rue Saint Jacques;)

##### Fact and figures

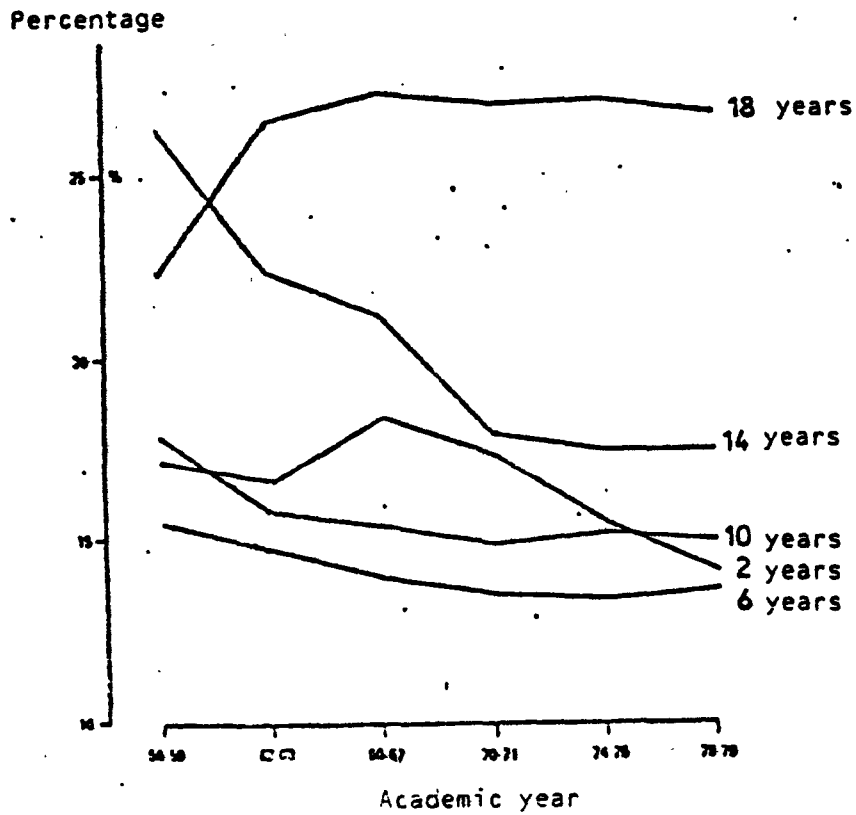
1. The percentage of pupils in independent schools in France developed as follows between 1958 and 1979:

ACADEMIC YEAR	AGE				
	2 years	6 years	10 years	14 years	18 years
1958-1959	17.2	15.7	18.0	26.3	22.4
1962-1963	16.7	14.9	15.9	22.4	26.4
1966-1967	18.4	14.1	15.5	21.2	27.2
1970-1971	17.3	13.6	15.0	18.0	26.9
1974-1975	15.4	13.5	15.3	17.5	27.0
1978-1979	14.1	13.7	15.0	17.5	26.6

(Source: Annex I of the letter from the ASSEMBLEE NATIONALE, Foreign Documentation Service of 8.10.1982).

2. This table shows the position for different age groups which coincide with certain stages in the education system. In general the proportion of pupils at private schools increases with the age of the pupils over the age of 6.

3. The proportion of pupils at independent schools at ages 2, 6, 10, 14 and 18 yields the following graph:



(Source: ANNEX II of the letter from the ASSEMBLEE NATIONALE, Foreign Documentation Service, of 8 October 1982).

4. The breakdown of pupils at independent and state schools in 1980/1981 and 1981/1982 was as follows:

	<u>1980/1981</u>		
	<u>State Schools</u>	<u>Independent Schools</u>	TOTAL
1. Pre-school and primary level	6,010,848 (86.0%)	982,026 (14.0%)	6,992,874
2. Secondary level	<u>3,983,623</u> (79.5%)	<u>1,030,043</u> (20.5%)	<u>5,013,666</u>
Total	9,994,471	2,012,069	12,006,540

	<u>1981/1982</u>		
1. Pre-school and primary level	5,914,347 (85.9%)	968,831 (14.1%)	6,883,178
2. Secondary level	<u>4,003,945</u> (79.6%)	<u>1,027,373</u> (20.4%)	<u>5,031,318</u>
Total	9,918,292	1,996,204	11,914,496

(Source: Letter from the ASSEMBLEE NATIONALE, page 2,  
Letter from the SENAT, page 1)

5. The independent sector comprises 10,837 educational establishments with 117,819 teachers, of whom 37,866 are primary school teachers and 80,133 secondary school teachers (see Actualités, 1981-1982, paragraph 5).

(A) LEGAL BASIS

6. The preamble of the Constitution of the French Republic of 28 September 1958 'solemnly proclaims its attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, reaffirmed and complemented by the preamble of the Constitution of 1946' (Amos J. Peaslee, 'Constitutions of Nations', Volume III - Europe, 3rd edition, page 312).
7. The preamble of the Constitution of the French Republic of 27 October 1946 stated that the Nation should guarantee the child and the adult equal access to teaching, vocational training and education and that the organization of free, secular and public instruction at all levels was the duty of the state.



8. Under Article 10 of the Declaration of the Rights of Man and Citizen of 26 August 1789 no one was to be discriminated against for his opinions, even religious opinions as long as their expression did not disrupt the properly constituted legal order.
9. According to a decision of the Constitutional Council of 23 November 1977, the principle of freedom of education is a fundamental tenet recognized by the laws of the Republic confirmed by the preamble of the 1946 Constitution and given constitutional status by the 1958 Constitution (see Official Gazette of the French Republic of 25 November 1977, page 5530).
10. The Constitutional Council moreover notes that the sentence in the preamble of the 1946 Constitution: 'it is incumbent on the state to organize free, secular and public instruction at all levels', does not exclude non-state education nor the granting of the state aid to such instruction under the conditions laid down by law (4th recital of the Decision of the Constitutional Council of 23 November 1977).
11. In its decision, the Constitutional Council accords freedom of conscience the same status under the Constitution as freedom of education.
12. The Constitutional Council interprets the abovementioned Article 10 of the Declaration of the Rights of Man and Citizen and the statement in the preamble of the Constitution of the French Republic of 27 October 1946 that no one shall be discriminated against in work or employment because of his origins, beliefs or creed, to mean that freedom of conscience is also a vital principle recognized by the laws of the Republic (see 5th recital of the Decision of the Constitutional Council of 23 November 1977).
13. The right to establish private schools has been gradually given concrete form by legislation.

14. The main laws governing relations between the state and the independent schools are the following:

- Law of 15 March 1850 (Lex Falloux) on the setting up of private secondary schools;
- Law of 12 July 1875 on freedom in higher education;
- Laws of 16 July 1881, 28 March 1882 and 30 October 1886 relating to pre-school education and primary schools;
- Law of 30 October 1886 on primary school education, with provisions on the setting up and organization of independent schools;
- Law of 25 July 1919 (Lex Astier) on vocational training;
- Law of 21 September 1951 (Lex Marie) and 28 September 1951 (Lex Barangé) extending the system of grants and school fee refunds to pupils at non-state schools;
- Law of 31 December 1959 (Lex Debré) on the relations between the state and independent schools (Law No. 59-1557), which was amended by Law No. 71/400 of 1 June 1971, and
- Law of 27 November 1977 (Lex Guerneur) which formed the background for the abovementioned decision by the Constitutional Council (Law No. 77-1285).

15. The Law of 31 December 1959 (Lex Debré - Official Gazette of the French Republic of 3 January 1960, page 66), was particularly important for relations between the state and independent schools.

16. Article 1 of this Law reads as follows:

'In accordance with the principles laid down in the Constitution, the state guarantees children and young people the opportunity in state educational establishments to receive an education in accordance with their abilities while respecting all ideological differences.

The state proclaims and respects freedom of education, the exercise of which it entrusts to properly constituted independent schools.

It shall take all appropriate measures to ensure pupils at state schools the exercise of religion and religious instruction.

In independent schools which have concluded an agreement with the state, instruction shall be subject to state supervision. The school must, notwithstanding its special nature, provide instruction with full respect for freedom of conscience. The school must be open to all children independent of their origins, faith or creed.'

(B) FINANCIAL BASIS

17. In its decision of 23 November 1977, the Constitutional Council observed that the clause in the preamble of the Constitution of the French Republic of 27 October 1946 stating that: 'It is incumbent upon the state to organize free, secular and public instruction at all levels', did not preclude state aid to independent schools.
18. In relation to state subsidies to independent schools, the Constitutional Council observes: 'The legislation under which the state pays the running costs and cost of teacher training for independent schools does not violate the Constitution' (final recital of the Decision of 23 November 1977).
19. The Constitutional Council therefore declared the Law of 31 December 1959 as amended by the Law of 1 June 1971 on freedom of education for constitutionally acceptable (Article 1 of the Decision of 23.11.77.).
20. As far as the state bearing costs is concerned, Article 4 of the Law of 31 December 1959, the provisions of which were further improved by the Lex Guermeur of 25 November 1977, states that independent schools can conclude agreements with the state.
21. The Law of 31 December 1959 introduced two types of agreement: the Association Agreement (Article 4 of the Law) and the Simple Agreement (Article 5 of the Law).

22. Under Article 4, independent schools can apply to conclude an Association Agreement with the state if there is a recognized academic need. Under this agreement the independent school participates in fulfilling the state's obligation to provide instruction.
23. Following conclusion of the agreement, instruction is given in accordance with the regulations and syllabuses of the state scheme. Instruction in such schools is either given by state employees or teachers who have concluded a contract with the state.
24. The running costs of associated schools are paid for in the same way as the cost of similar classes in state schools (Article 4(3) of the Lex Guermeur of 27 November 1977). Subsidies are calculated according to the number of pupils.
25. The teachers in schools under contract must have the same qualifications as teachers in state schools.
26. An independent school must meet the requirements of 'recognized academic need' to be able to conclude an Association Agreement.
27. Occasionally this requirement has been interpreted restrictively in relation to the location and places available in neighbouring state schools.
28. Since then, the courts have ruled that 'recognized academic need' has to be determined with regard to the family's freedom to choose a school of a particular type.
29. The presence of a state school in close proximity to an independent school is therefore irrelevant in ascertaining 'academic need' and the conclusion of an Association Agreement (Actualités 1981/1982, paragraph 3).
30. Under Article 5 of the Law of 31 December 1959, private schools can conclude a simple Agreement with the state which means that the teachers are paid by the state at a rate set by the state having regard to their qualifications.

31. Here too the state supervises the teaching and financial conduct of the school as it pays the teaching staff (letter from the ASSEMBLEE NATIONALE, pages 2 and 3).
32. Under this type of agreement, running costs are paid by the school, i.e. the parents. The local authorities can reimburse a proportion of these costs on a contractual basis (Law of 22 April 1960). State subsidies are also possible under Decree No. 65-335 of 30 April 1965. These subsidies can be used to maintain or repair school buildings and for the purchase or replacement of equipment (letter from the ASSEMBLEE NATIONALE, page 3).
33. There is no legislation providing for financial support from the state for setting up private schools which normally have to have been in operation for two to five years before they can conclude an agreement with the state.
34. The state does not therefore contribute towards the investment costs of independent schools but on the basis of the Finance Law of 24 November 1969 it can guarantee loans to finance the construction of school buildings (Letter from ASSEMBLEE NATIONALE, page 4).
35. 21.4% of the 38,210 classes in Catholic primary schools are party to an Association Agreement, 78.1% to a Simple Agreement and 0.4% operate without an agreement. In the case of the Catholic secondary schools, 98% are party to an Association Agreement (Actualités 1981/1982, paragraph 5).
36. The resources under the budget of the Education Ministry for independent schools in the primary and secondary sector have increased since 1975 as follows:

Administrative Budget	1975	1976	1977	1978	1979	1980	1981
Total amount	4,398	4,885	5,882	7,557	9,126	10,698	12,041
as % of administrative budget of the Ministry	10.2	9.5	10.7	11.3	11.7	12.4	13.2

(Source: Letter from the SENATE, EUROPEAN AFFAIRS OFFICE, 18.10.1982, page 3).

(C) SCHOOL-LEAVING EXAMINATIONS AND QUALIFICATIONS

37. The state specifies the requirements for and status of diplomas throughout the education system. Pupils at independent and state schools alike acquire their diplomas under standard procedures supervised by appropriate examination boards which are composed exclusively of state representatives (Letter from the Senate of 18 October 1982, page 2). The problem of the equivalence of qualifications does not therefore arise.

(D) CURRENT POSITION

38. As the figures and legal provisions show, state schools and independent schools which exist alongside each other, the latter being able to receive subsidies from the state on a contractual basis.

39. The government in office since the elections of 10 May 1981 is planning a major nondenominational integrated public service (un grand service public unifié et laïc) for the school sector.

40. At a rally of the Comité national d'action laïque, the Prime Minister Mr Mauroy said on 10 May 1982 in Bourget: 'The general principles of openness, tolerance and diversity will be the defining features of the major nondenominational integrated public service in the school sector. Without preconceived ideas and with a sense of proportion and resolution we shall create a genuine public service organization which ensures pluralism and the expression and development of ideas and beliefs, i.e. the essential right to diversity. The gradual introduction of this public service will not take the form of government decrees but negotiations; it will not be introduced overnight but in a carefully coordinated manner. Because after all no one in France is interested in creating trouble in the schools. And in fact it is not a question of the position of private and state schools but a question of changing outdated schools and fashioning the schools of tomorrow' (see Républicain Lorrain of 10 May 1982).

41. At the present time it is impossible to judge how the French school system will develop. Some indication may perhaps be gained from the leading article in 'Le Matin' of 10 May 1982, in the penultimate paragraph of which we read: 'In many areas, independent schools are by no means the preserve of the privileged classes or 'right-wing' Frenchmen. Many children from poorer homes and 'left-wing' families attend Catholic schools which are party to an Association Agreement.'
42. The final paragraph of the leading article quotes an interview given by Prime Minister Mauroy to the magazine 'Vie'.
43. Interviewer: 'Why do Socialists, even Socialist deputies, send their children to independent schools?'. Prime Minister: 'Socialists have just as much right to send their children to independent schools as Christian parents do to send their children to state schools. I should also like to add that - as is widely known - active socialists can be Christian parents'.
44. Within the major integrated public service in the education sector, therefore, it would seem from the Prime Minister's remarks that pluralism is to be guaranteed.

## V. THE GREEK EDUCATION SYSTEM

(See letter from the Greek Parliament of 21/27 September 1982)

### Facts and figures

1. According to the figures of the Greek Ministry of Education there are:

(a) Nursery schools:

private	311 ( 6.3%)	children	13,016 ( 8.7%)
state	<u>4,594</u> (93.7%)	children	<u>135,827</u> (91.3%)
<u>Total</u>	4,905		148,843

(b) Primary schools:

private	460 ( 4.8%)	pupils	60,443 ( 6.7%)
state	<u>9,091</u> (95.2%)	pupils	<u>840,766</u> (93.3%)
<u>Total</u>	9,551		901,209

(c) Secondary schools (level 1):

private	121 ( 8.1%)	pupils	16,571 ( 3.7%)
state	<u>1,372</u> (91.9%)	pupils	<u>432,364</u> (96.3%)
<u>Total</u>	1,493		448,935

(d) Secondary schools (level 2):

private	83 ( 9.8%)	pupils	11,822 ( 5.3%)
state	<u>761</u> (90.2%)	pupils	<u>210,606</u> (94.7%)
<u>Total</u>	844		222,428

(Source: Letter from the Greek Parliament of 21 September 1982).

### (A) LEGAL BASIS

2. The Greek Constitution which came into force on 11 June 1975 refers in Article 16 of its second section 'Individual and social rights' to matters relating to education and training.

3. The relevant paragraphs of Article 216 are:



- '1. Art and science, research and teaching shall be free; the development and promotion shall constitute an obligation on the part of the state. Academic freedom and freedom of teaching shall not override loyalty to the Constitution.
2. Education shall constitute a fundamental objective of the state and shall aim at moral, intellectual, professional and physical instruction of the Greek people and the development of their national and religious consciousness and of their ability to live as free and responsible citizens.
3. Schooling shall be compulsory for at least nine years.
4. All Greeks have the right to free education at all levels in state educational establishments. The state shall support to the best of its abilities students who excel or are in need of help or special protection.
- ....
7. Vocational and any other special training shall be provided by the state in colleges for a maximum of three years; further details shall be determined by a law which will also regulate the professional rights of graduates from these colleges.
8. A law shall regulate the requirements and conditions for authorization to establish and operate non-state educational establishments, their supervision and the employment status of their teaching staff.

The establishment of universities by private persons is forbidden.'

4. Since, under the first sentence of paragraph 1 of this Article, research and teaching are free, the establishment of private schools alongside state schools is permitted (see Article 16(8) ). Law No. 682/1977 sets out the requirements for the organization and operation of private teaching.

5. The legal basis for the education sector consists chiefly of the constitution, implementing laws and presidential decrees, ministerial decisions and the general directives of the relevant supervisory authorities in the Ministry of Education . Special laws apply to independent schools, which are subject to state supervision (Source: Letter of the Greek Parliament of 21 September 1982, page 2).
6. The most recent jurisprudence of the Council of State recognizes in principle the right of every Greek citizen to establish a private school (see Decision No. 382/1980).

(B) FINANCIAL BASIS

7. Under Article 16(4) all Greeks have a right to free education in state educational establishments.
8. The costs of independent schools are financed by the school fees charged by private schools. The state provides no financial support of any kind to these schools; at most they can take up a loan on special conditions and subject to the approval of the Ministry of Education which is only given on the advice of the appropriate supervisory authority (Source: Letter from the Greek Parliament of 21 September 1982, page 2).
9. Teachers salaries are paid in full by the independent schools. Unlike pupils at state schools, the pupils in private schools do not receive learning materials free of charge.
10. Special regulations apply to the financial support for the German school and the French school.

(C) SCHOOL-LEAVING EXAMINATIONS AND QUALIFICATIONS

11. Under Law 682/77, school-leaving certificates from independent and state schools are of equal status.

Pupils who have completed a course at a private secondary school must, however, under Presidential Decree No. 380/79, pass an additional examination set by a state examining board to obtain an equivalent certificate. (Letter from the Greek Parliament of 21 September 1982, page 2).

(D) CURRENT POSITION

12. It is not possible to compare precisely the trends in private schools and state schools since the Second World War as the statistics of the Ministry of Education do not go far enough back. The proportion of independent schools rose initially whereas it has tended to decline somewhat during recent years (Letter from the Greek Parliament of 21 September 1982, page 2).
13. To some extent the new government has, as in France, cast doubts as to the continued existence of independent schools because its election manifesto called for the elimination of private schools by incorporating these into a national public service.
14. So far, however, no measures to this effect have been taken.

## VI. THE EDUCATION SYSTEM IN IRELAND

(See Brian Walsh, Supreme Court Judge, Dublin: 'Existence and status of basic rights in the education sector in Ireland' - EuGRZ of 31 December 1981, page 643 ff, Letter from the Secretariat for Secondary Schools, Milltown Park, Dublin 6, of October 1982).

### Facts and figures

1. Virtually all schools offering a basic or further education are organized on religious lines even if in most cases they are either run directly by the state or largely financed by the state.
2. There are no statistics on the preschool sector. In 1980/81, the breakdown in the different types of school was as follows:

	<u>private</u>	<u>state</u>	<u>total</u>
Primary school:	18,311	547,431	565,742
Secondary school:	<u>200,311</u>	<u>89,124</u>	<u>289,435</u>
Total	218,622	636,555	855,177

### (A) LEGAL BASIS

3. The only positive legal source for basic rights in the field of education is the Constitution. Article 42 of the Irish Constitution of 1 July 1937 reads as follows:

'(1) The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

(2) Parents shall be free to provide this education in their homes or in private schools or in schools recognized or established by the State.

(3)(i) The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.

(ii) The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.

(4) The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative; and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

(5) In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard to the natural and imprescriptible rights of the child' (see Amos J. Peaslee: 'Constitutions of nations', Vol. III - Europe, 3rd Edition, 1968 pp. 491-494).

4. Under Article 42 parents are free to choose between education at home, or private schools or in state or state recognized schools. The state cannot compel parents against their conscience to send their children to state schools or schools designated by the state.
5. As the guardian of the common good, the state is entitled to specify certain minimum criteria for the education of children in three of the five abovementioned categories, namely moral, intellectual and social education. It is however not entitled to prescribe minimum criteria for religious or physical education.
6. The state is obliged either to provide education itself or to ensure that it is provided; it can fulfil its obligations in this respect by making the resources available to other corporate bodies or individuals to enable them to offer free primary education instead of running primary schools itself.

(B) FINANCIAL BASIS

7. Article 44(4) of the Irish Constitution reads:

'Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.'

8. Only the completely private schools which take less than 4% of primary school children are self-financing. The state finances the 'public' schools which are usually run by religious societies.

State support is normally granted in proportion to the number of school children. Most secondary schools, although legally autonomous are entirely or almost entirely financed by the state on condition that they charge no fees. In these cases the teachers are paid directly from public funds and the state contributes to the maintenance of buildings although it does not own them (EuGRZ 1981, p. 645).

9. As in almost all schools finance is mainly if not entirely provided by the state, the state naturally plays an important role in providing equipment and teachers. The various sponsoring organizations select teachers and conclude employment contracts in accordance with certain requirements set by the state which are designed to ensure the uniformity of educational standards and working conditions for teachers.

10. The Constitution prohibits the state from subsidizing any religious organization. The provision of state support for denominational schools does not constitute such a subsidy. These schools are denominational in the sense that they may be Catholic, Protestant or Jewish schools in which religious instruction is given in the specific faith but where no child is obliged to attend religious instruction. These schools known as 'national schools' are state schools despite their denominational character (EuGRZ 1981, p. 647).

(C) SCHOOL-LEAVING EXAMINATIONS AND QUALIFICATIONS

11. Given the uniformity of the Irish education system, the question of the recognition of qualifications does not arise.

(D) CURRENT POSITION

12. The Irish constitutional provisions do not restrict the right of the various religious bodies to establish schools which are then financed by the state.

## VII. THE EDUCATION SYSTEM IN ITALY

(See Professor Dr. Leopoldo Elia, President of the Constitutional Court, Professor Dr. Edoardo Volterra, Vice-President, and Professor Dr. Antonio La Pergola, Judge at the Constitutional Court, Rome: 'Existence and status of basic rights in the education sector in Italy' - EuGRZ 31 December 1981, pp. 647 et seq; report for the Italian Chamber of Deputies of 3 March 1982 on Bill No. 198 - Regulation of Independent Schools; letter from the Chamber of Deputies of 11 October 1982).

### Facts and figures

1. The figures drawn up by the rapporteur of the Italian Chamber of Deputies, Costante Portatadino, on p. 12 of his committee report on Bill No. 198 on Regulations for Independent Schools show the distribution of pupils in the State and independent sector.

Percentage of pupils at independent schools:

Year	Pre-school	Primary	Intermediate	Upper Secondary
67/68	100.0	7.3	5.7	13.0
68/69	100.0	7.2	5.3	12.5
70/71	94.1	7.3	4.7	10.9
73/74	78.9	7.0	4.1	10.1
74/75	74.9	6.9	4.0	9.9
75/76	71.9	6.8	3.9	9.7
76/77	67.9	6.8	4.0	9.8
77/78	65.2	7.0	4.1	10.1
78/79	62.6	7.4	4.4	10.4
80/81	59.0	7.5	4.5	11.1

On the basis of these statistics, the rapporteur of the Italian Chamber of Deputies notes:

- that the number of pupils at all types of independent school fell steadily from 1967/68 - 1975/76;
- the percentage of pupils at independent schools has been rising since 1976/77 except at the pre-school level.



2. The table published by the Italian Statistics Office (ISTAT) for the 1980/81 academic year shows the following breakdown of pupils at state and independent schools:

	NURSERY SCHOOLS			PRIMARY SCHOOLS			
	Total no. of nursery schools	Groups	Number of children	Total schools	Classes	Pupils	
						Total pupils	Pupils leaving
state	12,740 (42.7%)	29,547	755,420 (41.0%)	28,047 (92.2%)	251,488	4,102,310 (92.5%)	860,406
independent	17,126 (57.3%)	39,053	1,085,135 (59.0%)	2,342 (7.8%)	13,174	332,907 (7.5%)	62,748

	ELEMENTARY SCHOOLS			GRAMMAR SCHOOLS		
	Total no. of schools	Classes	Total no. of pupils	Total no. of schools	Classes	Total no. of pupils
State schools	9,157 (90.9%)	127,719	2,762,697 (95.5%)	5,546 (76.0%)	91,995	2,147,242 (88.9%)
Independent schools	910 (9.1%)	4,923	130,573 (4.5%)	1,747 (24.0%)	11,331	268,083 (11.1%)

(Source: Letter from the CHAMBER OF DEPUTIES of 11 October 1982, page 3).

(A) LEGAL BASIS

3. The general principles governing schools and education are laid down in the Constitution.
4. The Constitution is binding on the legislature compelling it where necessary to adopt the additional legal provisions needed and preventing the adoption of legislation which runs contrary to the Constitution.

5. There are two articles in the Italian Constitution which explicitly recognizes the right to education: Articles 33 and 34 of the Constitution of 27 December 1947.
6. Articles 33 and 34 in Title II: 'Ethical - social relations' read as follows:

Article 33

- (1) Freedom of art and science and freedom of instruction in them is affirmed.
- (2) The Republic lays down general rules for education and establishes public schools of all kinds and grades.
- (3) Organizations and private citizens are entitled to found schools and educational institutions which do not involve charges on the State.
- (4) The law, in laying down the rights and obligations of private schools which apply for official recognition, must ensure for them full liberty and for their pupils conditions equivalent to those of the public schools.
- (5) State examinations are prescribed for admission to the various types and grades of schools, or on the conclusion of educational courses, and for securing diplomas and certificates entitling candidates to exercise a profession or trade.

....

Article 34

- (1) Education is available to everyone.
- (2) Elementary education, imparted for at least eight years, is compulsory and free.
- (3) Capable and deserving pupils, even if without financial resources, are entitled to attain the highest grades of learning.

(4) The Republic gives effect to this privilege by means of scholarships, of contributions to the families of the pupils, and other provisions, to be obtained by competitive examination'

(Amos J. Peaslee: 'Constitutions of nations', Volume III -Europe, 3rd Edition, 1968, p. 505).

7. The right to education is classified as a freedom and social right. As a freedom it possesses all the features of classic basic rights, i.e. guarantees against state intervention (EuGRZ 1981, p. 651).
8. The abovementioned Article 33 of the Constitution provides for a pluralist system in which the state has no exclusive rights to education and incorporates freedom of schooling, under which the school may be ideological (Decision No. 195/1972 of the Constitutional Court - EuRGZ 1981, p. 653). There is therefore no state monopoly in the educational sector but a constitutionally enshrined option for a mixed schools system with state and independent schools (letter from the Chamber of Deputies of 11 October 1982, p.4).
9. Under Article 33(2) of the Constitution, the state has a major obligation in the education sector. The state has to lay down general rules for education while respecting the divisions of powers between national and regional legislatures.
10. The transfer of public administrative powers in the schools sector from the central organs of state to the non-autonomous regions was implemented by Presidential Decrees No. 3 of 14 January 1972 and No. 616 of 24 July 1977.
11. Specific provisions relating to the education sector can be found in individual laws such as the Casati Law of 13 December 1859 which remained the basis for educational legislation in Italy even after national unification; also Law No. 1859 of 31 December 1982 which extended free compulsory education beyond the primary school and introduced a three-year intermediate stage.
12. Article 33 of the Constitution also enables organizations and private citizens to found schools and educational establishments.

13. The founding of an independent school has to be approved by the authorities. The creation of primary schools as 'alternative schools', i.e. schools run by organizations which partly or entirely relieve the state of its duties has been accorded legal recognition (EuRGZ 1981, p. 653).
14. A distinction is made in the case of secondary schools between state-recognized schools and schools with equivalent status.
15. State-recognized schools may be run by any private individual. The teachers at these schools must have the same qualifications as teachers in state schools.
16. Equivalent status schools can only be run by local authorities or church organizations. The qualifications and salaries of teaching staff are equivalent to those of teachers at state schools. Equivalent status schools can become state schools and thus part of the state education system (see EuGRZ 1981, p. 653).

(B) FINANCIAL BASIS

17. The independent schools have no general claim to financial support from the state.
18. Subsidies to independent nursery schools are governed by Law No. 1073 of 24 July 1982. This law makes support dependent on specific conditions such as: free attendance for children from less well-off families.
19. The financial contributions for the equivalent status private primary schools are specified in Article 159 of Royal Decree No. 1297 of 26 April 1928. The amount is determined by the sum needed for the salaries of the primary school teachers.
20. In such cases the state grants block aid to independent schools which the schools can then use at their own discretion for current expenditure, teaching materials, building maintenance and payment of teachers.

21. There is therefore state financial support for independent nursery schools and primary schools, but there is no state support for independent secondary schools (letter from the Chamber of Deputies of 11 October 1982, p. 7).

(C) SCHOOL-LEAVING EXAMINATIONS AND QUALIFICATIONS

22. Article 33 (5) of the Constitution prescribes state examinations for admission to the various types and grades of schools, for the conclusion of educational courses and for diplomas and certificates entitling candidates to exercise a specific profession or trade. The state therefore has to assess the results achieved by the individual schools in their role as educators.
23. Consequently all pupils, whether at a state or independent (private, state recognized or equivalent status) school, must acquire their school-leaving qualifications in a state examination. This examination procedure seeks to ensure equal treatment for pupils at state and independent schools.
24. The examining boards are appointed by the Minister and consist partly of examiners who are not employed at the school attended by the candidate. The state determines the form and content of examinations.

(D) CURRENT POSITION

25. In Italy nowadays, the right to education is seen as the right of the individual to acquire an education to enable him to develop his personality and to fulfil his social obligations irrespective of economic circumstances. The right to education is no longer simply seen as a classic freedom but also as a social right i.e. the right of the individual to an appropriate education to develop his personality and achieve the effective equality of all citizens.
26. The question of whether, to what extent and under what conditions the state should provide financial support to independent schools is a topical political issue in Italy as can be seen from the submission of Bill No. 198 of 28 June 1979 to the Italian Chamber of Deputies.

27. The rapporteur of the Italian Chamber of Deputies, Mr Costante Portatadino, described Bill No. 198 as follows:

'The proposal in Bill 198 is fundamentally different from the ideological proposition which has hitherto obstructed legislative activity: rather than a head-on collision between ideologies and therefore opposing educational systems, it proposes the recognition of inalienable rights for the pupil and the specific material possibility of exercising these rights in any state or independent educational establishment which meets the necessary requirements' (see p. 15 of the report).

## VIII. THE EDUCATIONAL SYSTEM IN LUXEMBOURG

(See Albert Goedert, Councillor of State, Luxembourg: 'Existence and status of basic rights in the education sector in the Grand Duchy of Luxembourg' - EuGRZ of 31 December 1981, pp.658 et seq.; the draft law on relations between the State and post-primary private education - No. 2555 of 1 February 1982; the report of the Council of State of 18 March 1982 and the report of the Committee on Education and Cultural Affairs of 6 May 1982 on this draft law and the law of 31 May 1982 published in the Mémorial - the Official Gazette of the Grand Duchy of Luxembourg - of 9 June 1982, pp. 1126-1130).

### Current issues

1. In the 1981/1982 academic year, the numbers of schoolchildren in the state and independent secondary schools were as follows:
2. Of 23,933 schoolchildren, 22,071 attended state schools and 1,859 independent schools. Thus 92% of the schoolchildren attended state schools and 8% independent schools.
3. In the academic year 1970/71, the independent schools still accounted for 15% of all pupils (see report of the Committee on Education of 6 May 1982, p. 4).
4. Until 1979, no resources in the national budget were set aside for support to independent schools. Since 1980 resources have been allocated in this way amounting in 1982 to BF 41,275 m (see Report of the Council of State of 18 March 1982, page 2).

### (A) LEGAL BASIS

5. The sources in national law for basic rights in the education sector are: the Constitution, laws and Grand Ducal decisions, government decisions and ministerial decrees enacted on the basis of an authorization in law.
6. The Constitution provides the framework which is binding on all citizens and authorities, above all the legislature.

7. In Chapter II of the Constitution: 'Luxembourgers and their rights', Article 23 states:

'(1) The State shall provide for every Luxembourger primary education, which shall be compulsory and without charge. Medical and social assistance shall be governed by law.

(2) The State shall create establishments of secondary education and the necessary courses of superior instruction. It shall also establish free professional courses.

(3) A law shall determine the means for meeting the cost of public instruction, as well as the conditions of surveillance by the Government and the communes; it shall regulate, moreover, all that relates to education, and establish a fund for those exceptionally gifted.

(4) Every Luxembourger shall be free to pursue his studies in the Grand Duchy or abroad and to attend the universities of his choice subject to the provisions of law on conditions of admission to employments or the exercise of certain professions' (see: Amos J. Peaslee 'Constitutions of Nations' Volume III - Europe, 3rd edition, 1968, page 556).

8. As these provisions show, the Luxembourg Constitution does not explicitly provide for freedom of instruction; consequently it guarantees no private person the right to open a school. Instead it makes it incumbent on the state to legislate for, organize and supervise the educational system (EuGRZ 1981, page 658).

9. The law of 10 August 1912 obliges every commune to set up one or more primary schools in its area. Secondary level education establishments are set up by law and founded by the state.

10. The relationship of the state to independent schools in the various sectors of education is regulated by precise but not entirely uniform legal provisions.

11. The establishment of a private school in the primary sector requires approval from the government which is not the case in the secondary and vocational sphere.



12. In private primary education, the textbooks used require approval from the authorities which is not the case with secondary education.
13. The law gives the state a right to supervise and inspect primary and secondary schools (EuGRZ 1981, page 663).
14. The most recent item of legislation relating to education in Luxembourg, and probably in the European Community, is the Law of 31 May 1982 on relations between the State and post-primary independent schools (Official Gazette of the Grand Duchy of Luxembourg of 9 June 1982, pp. 1126 et seq.). Under Article 31 of this Law, its provisions came into force on 15 September 1982.
15. Under Article 1 of the Law, it applies to all schools which provide private education beyond the primary stage. The Law is based on the government declaration of 24 July 1979 which stated that the problem of private schools would be solved as part of a contractual arrangement under which in return for state support the private schools would be subject to supervision as regards the syllabus and qualifications of teaching staff (see page 6 of the Report of the Committee on Education of 6 May 1982).
16. Consequently the law specifies in detail the requirements for the founding and state support of independent schools.

(B) FINANCIAL BASIS

17. The Constitution leaves it to the legislature to determine the material resources required for the public education sector. In 1948 the principle of free primary school education and vocational training was incorporated into the Constitution. Under the Law of 23 July 1848 annual school fees were to be paid for secondary schools. School fees were abolished by the Law of 16 August 1966 so that every Luxembourger now has the right to free education in all state schools (EuGRZ 1981, page 665).

18. As far as financial support from the state is concerned there are no legal provisions relating to state subsidies to private primary schools. Private secondary schools are covered from 15 September 1982 by the provisions of the Law of 31 May 1982.
19. Title II of this Law specifies the details of a contractual arrangement under which the state can subsidize those schools which provide an education comparable with the state post-primary education (see page 1 of the Report of the Council of State of 18 March 1982).
20. Private schools which meet the requirements laid down in the law for concluding the contract with the State may charge school fees which require prior authorization from the Ministry of Education.
21. Under Article 23 of the Law of 31 May 1982, the State provides a subsidy for the costs not covered by school fees. The amount of subsidy is based on the costs per pupil in the state education system. These subsidies relate to running costs and not the cost for buildings which have to be borne by the school (Article 23(4) of the Law).
22. The individual criteria according to which the subsidies for running costs are calculated are set out in Article 25 of the Law.
23. As regards the costs of FLux 113,500,000 involved for the Grand Duchy of Luxembourg in adopting this law, the Council of State notes in its opinion: 'This expenditure is considerable; it is however not as much as the state would have to pay if the private schools were not there and it had to provide the education to which the pupils at the independent schools are entitled' (See Opinion of the Council of State of 18 March 1982, page 9).

(C) SCHOOL-LEAVING EXAMINATIONS AND QUALIFICATIONS

24. At the primary school, pupils from private schools receive the same final certificate as at state schools. In the case of the private secondary schools, the state recognizes the leaving certificates of pupils at private schools under contract (Article 22 of the Law).

(D) CURRENT POSITION

25. In its Report of 6 May 1982, the Committee on Education comes to the following conclusion: 'For both practical reasons and on principle, Bill No. 2555 does not wish to dispense with private initiatives and contributions. As education represents a public service to the community, the state cannot not decline either its right or its responsibility to legislate for this sector and provide administrative supervision. The subsidies paid by the state to costs are in return for the contribution by independent schools towards fulfilling the state's obligation to provide education. This policy avoids the tendencies towards nationalization which would be involved in a radical or gradual integration of the independent sector, which would lead in the more or less distant future to a state monopoly in the field of education'. (See page 15 of the Report of the Committee on Education of 6 May 1982).
26. Consequently the government too in its justification of the draft law expressly stated: 'Concrete measures need to be taken to ensure the survival of independent schools on a solid foundation. Clearly the planned legislative measures will apply to all independent schools which meet the requirements of the future law, irrespective of whether they are governed by ecclesiastical or secular bodies (see Bill No. 2555, page 2).

## IX. THE EDUCATION SECTOR IN THE NETHERLANDS

(See Professor Dr H.J.M. Jeukens, Member of the Supreme Court, Professor Dr David Simons, Government Commissioner for Constitutional Reform, Dr H.J. de Jong, Department for Constitutional and Legislative Affairs of the Ministry of the Interior; 'Existence and status of basic rights in the education sector in the Netherlands' - EuGRZ 1981, pp. 667 et seq, Letter from the Dutch Parliament of 24 August 1982).

### Facts and figures

1. Independent schools play a major role in the education system. This is shown by the fact that 70% of pupils attend independent schools and 30% state schools.

In 1980 the breakdown of pupils at the individual types of school was as follows:

Type of school	State education	Independent sector	Total
Nursery schools	111,057 (30.2%)	256,709 (69.8%)	367,766
Primary schools	417,822 (31.7%)	902,250 (68.3%)	1,320,072
Special schools	24,662 (26.2%)	69,376 (73.8%)	94,038
Secondary schools (ex. vocational schools)	227,894 (27.7%)	595,736 (72.3%)	822,640

(Page 1 of the Letter from the Dutch Parliament of 24 August 1982).

2. During the seventies public spending on education (independent and state schools) rose enormously as the following table shows:

	1970 (in million guilders)	1974	1977
State education	1,489.7 (17.4%)	2,611.2 (17.4%)	3,751.0 (17.3%)
Private education	4,605.9 (54.0%)	8,176.3 (54.6%)	11,864.8 (54.7%)
Academic education	1,810.6 (21.2%)	2,982.3 (19.9%)	4,042.5 (18.7%)
General	629.2 ( 7.4%)	1,219.2 ( 8.1%)	2,016.9 ( 9.3%)
<b>Total</b>	<b>8,535.4 (100%)</b>	<b>14,989.0 (100%)</b>	<b>21,675.2 (100%)</b>

Source: Zakboek onderwijsstatistieken 1980. Central Statistics Office, The Hague, 1980, page 87.

3. In the 1981 budget, 7,300 m guilders were allocated for pre-school and primary education, 7,900 m for secondary education and 4,600 m for vocational further education. 1,200 m guilders were earmarked for grants (EuGRZ 1981, page 670).

(A) LEGAL BASIS

4. The principle of freedom of teaching is enshrined in the Constitution. The detailed constitutional provisions relating to education can be found in Article 208. This article was incorporated into the Constitution in 1917 and put an end to the long educational controversies which had dominated political life in the Netherlands in the 19th century (EuGRZ 1981, p. 667). Article 208 reads as follows:

'(1) Education should be an object of constant solicitude on the part of the Government.

(2) The imparting of education shall be free, saving superintendence by the government, and moreover, insofar as general education, elementary as well as secondary, is concerned saving the examination with regard to the ability and morality of the teacher, the whole to be regulated by law.

(3) Public education shall be regulated by law, every person's religious views being duly respected.

(4) In each municipality the authorities shall impart sufficient public general elementary education in an adequate number of schools. According to rules to be laid down by law, deviation from this provision may be permitted, provided that opportunity is given for such education to be received.

(5) The standards of efficiency to be prescribed for education to be defrayed wholly or in part from public funds shall be regulated by law, with due observance of ideological freedom in private schools.

(6) These standards shall be regulated for general elementary education in such a manner as to guarantee equally well the efficiency of the private school education defrayed entirely from public funds and public education. In these regulations freedom of private school education concerning the choice of means of instruction and the appointment of teachers shall, particularly, be respected.

(7) Private general elementary education fulfilling conditions to be imposed by law shall be defrayed from public funds according to the same standards as state education. The conditions upon which private general secondary education and preparatory university education shall be granted contributions from public funds shall be fixed by law.

(8) The King shall cause a report of the condition of education to be made annually to the States-General' (see Amos J. Peaslee: 'Constitutions of nations', Vol. III - Europe, 3rd edition, 1968).

5. This article guarantees among other things the right of parents to an education for their children which conforms to their ideological beliefs; it sets requirements as regards the quality of education partly or totally paid for from the public purse and establishes the equal financial status of private and State education.

6. These principles have been incorporated into education legislation and apply to pre-school, secondary, vocational and higher education (EuRGZ 12981, p. 667, letter from the Dutch Parliament of 24 August 1982, pp. 3 - 5).

#### (B) FINANCIAL BASIS

7. It is not the Constitution but educational legislation containing the detailed implementing provisions for Article 208 on the financing of the instruction given by private education establishments which creates a right to state services. Article 208(4) obliges the local authorities to provide an adequate amount of general elementary education and Article 208(7) determines the equal financial status of private primary schools.

8. The local authorities are normally responsible for private nursery schools and primary schools and bear the costs of teaching staff and other costs of instruction. The local authorities act as a link between the school and the state with the latter reimbursing the costs of the local authorities. This system does not exist in the private technical, secondary and further education sphere, where the state reimburses costs directly (EuGRZ 1981, p. 670).
  
9. Not every school is automatically financed by the state. The relevant education legislation makes financing dependent on certain conditions. For example, a primary school must have a certain minimum number of pupils, newly established private primary schools have to provide financial surety and respect certain qualitative requirements to ensure that schools are not established unnecessarily. For the secondary education system the law specifies a planning procedure. On the basis of detailed legal provisions which cover among other things a minimum number of pupils, the Ministry of Education draws up a plan annually in which the schools are included which may qualify for state financing (EuGRZ 1981, p. 667).
  
10. As far as financing is concerned, therefore, private schools at all levels have absolutely equal status with state schools, they are entirely financed from public funds (see Article 208(7) of the Constitution). This applies to construction (buildings), running costs, payment of teaching staff and teaching materials. Private schools must, however, meet the legal requirements of the state, known as the subsidy requirements. These relate to: proper management and administration of the school, building specifications and conditions as regards teaching and teaching staff ('reliability' requirement). (Letter from the Dutch Parliament of 24.8.1982, p. 6).

(C) SCHOOL-LEAVING EXAMINATIONS AND QUALIFICATIONS

11. Formally there is equality of status between the school-leaving qualifications from independent schools and state schools. Final examinations are conducted by teachers from the schools under supervision of experts appointed by the Minister. The Minister specifies the form for diplomas.

(Source: Letter from the Dutch Parliament of 24.8.1982, p. 6).

(D) CURRENT POSITION

12. The duty of the State to educate young people is carried out in the Netherlands by private and state schools on the basis of equality.



## X. THE EDUCATION SYSTEM IN THE UNITED KINGDOM

Source: Letter from the Education and Social Services Section, Research Division, House of Commons Library, London, of 30 September 1982)

### Facts and figures

1. There are in the United Kingdom three separate and distinct statutory systems of public education: for England and Wales, Scotland and Northern Ireland respectively. These three systems are regulated by separate Acts of Parliament and are separately financed and administered. It follows that the relationship of the private sector to the state sector differs from country to country.
2. In 1959 there were about 4,250 private schools containing about 500,000 pupils. By 1975 the number of schools had been almost halved but the number of pupils was about the same (Education in England and Wales, H.C. Dent 1982). Between 1976 and 1979 the number of pupils in private schools fluctuated between 536,000 and 521,000. Private education caters for between 5 and 6% of children in England and Wales (p. 3 of the letter from the Research Division of the House of Commons Library).

In 1979 the breakdown of pupils between state and independent schools was as follows:

		<u>State</u>	<u>Independent</u>	<u>TOTAL</u>
Children	Full-time	461,000 (95.6%)	21,000 (4.4%)	482,000
<u>under 5 years</u>	Part-time	182,000 (93.8%)	12,000 (6.2%)	194,000
<u>Primary</u>	Full-time	4,370,801 (95.4%)	211,373 (4.6%)	4,582,174
<u>education</u>				
<u>Secondary</u>		3,872,036 (93.0%)	292,979 (7.0%)	4,165,015
<u>education</u>				

(Source: Statistics of Education, 1979, HMSO, Vol. 1).

(A) LEGAL BASIS

3. Private schools in England operate under Part III (Sections 70 to 75) of the Education Act of 1944. This act defines independent schools as 'any school at which full-time education is provided for 5 or more pupils of compulsory school age (whether or not such education is also provided for pupils under or over that age), not being a school maintained by a local education authority or a school in respect of which grants are made by the Secretary of State to the proprietor of the schools'.
4. Private nursery schools are governed by the Nurseries and Child Minders Act of 1948 Sections 1 and 2.

(B) FINANCIAL BASIS

5. Private schools receive no state finance for buildings, current expenditure, teachers' salaries or teaching materials. One exception in the case of teaching materials is the present government's 'micros in schools' scheme under which 50% funding is available to schools in both the state and independent sector for buying micro-computers.
6. In 1976 State aid to independent schools which had previously been granted to those with direct grant status was abolished. There were, in 1975, 174 direct grant grammar schools receiving aid from the government in return for offering at least a quarter of their places to pupils in maintained primary schools whose fees were paid by the Local Education Authorities. In May 1975 the Labour Government asked the schools whether they wished to join the maintained sector or become financially independent; 51 became maintained, 4 closed and 119 remained independent.
7. When the Conservative Government came into power in 1979, it did not reestablish the direct grant grammar schools but offered instead a scheme whereby academically able pupils from maintained schools could be transferred to independent schools at little or no cost to their parents. Section 17 of the 1980 Education Act set up this scheme. In 1981/82 4,200 pupils took up assisted places at independent schools. The funding in this scheme is to the parents rather than to the schools.

(C) SCHOOL-LEAVING EXAMINATIONS AND QUALIFICATIONS

8. There are no separate school leaving examinations for state and private schools. Certificate of Secondary Education examinations are administered by regional boards and General Certificate of Education examinations by 6 university boards and one independent board. Schools choose which examinations they wish to enter pupils for.

(D) CURRENT POSITION

9. As independent schools in the United Kingdom receive little financial support from the State, it is reasonable to assume that the pupils have a special status by virtue of their parents' income which is counter-acted to a certain extent by the abovementioned Section 17 of the 1980 Education Act.

3. MINORITY OPINION (Rule 100(4) OF THE RULES OF PROCEDURE)

The views of the minority are mainly based on three objections:

1. This is inadmissible interference in the educational policy and legislative competence of the Member States;
2. Community law is being interpreted too widely;
3. The Community's powers in this field are not sufficient for binding legislation but only for recommendations on harmonization.

European Communities

---

EUROPEAN PARLIAMENT

WORKING DOCUMENTS

1981 - 1982

---

9 October 1981

DOCUMENT 1-585/81

MOTION FOR A RESOLUTION

tabled by Mr VIE  
on behalf of the Group of European  
Progressive Democrats

with request for topical and urgent debate  
pursuant to Rule 48 of the Rules of Procedure

on the freedom of education in the Community

The European Parliament,

- whereas the Charter of the United Nations, the Human Rights Convention and the European Communities prohibit discrimination of any kind on the grounds of religious beliefs and recognize the parents' freedom of choice in the education of their children as a fundamental right,
  - whereas in all the Community countries every family has a choice of education, in different forms but at comparable cost, corresponding to its philosophical or religious beliefs,
  - whereas instruction in religious faith - whether Christian, Jewish or Islamic - should not simply be an adjunct to secular education, since religious faith postulates a view of life with which the whole of education must legitimately be imbued,
  - whereas statements made in certain countries reveal a desire to put an end to the parents' freedom of choice in the education of their children, which would be a serious encroachment on a fundamental aspect of human rights,
  - whereas a freedom not accompanied by the means of exercising it is an illusion; to claim, therefore, that freedom of education remains a fundamental principle, whereas it is in fact confined to families having adequate financial resources, is to tolerate a grave social injustice,
  - whereas the tax levied equally on all citizens should not, when distributed, discriminate against certain religious beliefs,
  - whereas the free movement of persons and ideas proclaimed by the Treaties would be held up to ridicule if a Community family of whatever faith did not have the opportunity to continue to practise that faith in every Community country in one of its principal dimensions, the education of children,
1. Calls on the various Community authorities concerned to ensure strict respect for the freedom of education;
  2. Calls on the Commission to take action, where necessary, by using the procedures applicable in the event of the contravention of the European Convention on Human Rights, which is considered an integral part of the general principles of Community law;
  3. Instructs its President to forward this resolution to the Council and Commission of the European Communities and to the governments of the Member States.