

Austria

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Overview

Austrian politics have long been characterized by a balance of power and – often – mutual mistrust between Catholic and Socialist parties, and a variety of arrangements to allow the interests of both to be protected. This led, in the “school compromise” of 1962, to an unusual arrangement to prevent either party, in a momentary ascendancy, from imposing its will on the educational system (Jach, 369). Thus, “school legislation at the federal level (save [for] universities) may only be amended by a two-thirds majority of the National Council with at least half of the members present. Laws and decrees regulating school life and school education are drawn up in cooperation with the social partners” (Ministry of Education, www.bmwf.gv.at).

The constitutional rule that most school acts could only be amended with a 2/3 majority in the national council was changed in the year 2005. The reason was that this rule had blocked any substantial reform of the school system (this was realized after the “Pisa-shock” – bad performance of Austrian students in the OECD-benchmarking). Now, only school acts concerning free access to public schools (free of charge), acts concerning the relations between school and religion and religious instructions and any deviation from the so called principle of a “differentiated school system” need the 2/32 majority.

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The Structure of Schooling

Austria is a federal state, but with more control over education exercised by the central government than is the case in Belgium, Germany, Switzerland, or the United States.

The *Constitution* (see below) defines the respective authorities in education and it provides (since 2005) for an extended list of educational goals.

The legally-established educational authority (*gesetzlichen Schulerhalter*) is the national government (*Bund*), to the extent that legislation and implementation in matters pertaining to the establishment, maintenance, and closing of public schools are national affairs (that is for public schools after compulsory education – “mittlere und höhere Schulen”). The legally-established educational authority is the state (*Land*) or, as the laws may provide, the community (*Gemeinde*), to the extent that legislation and regulation and implementation in matters pertaining to the establishment, maintenance, and closing of public schools are state affairs (schools for compulsory education “Volksschulen und Hauptschulen” (Jenkner, 53).

The federal government pays the salaries of teachers at public schools and also of teachers at independent schools which have been accorded official recognition. Only those at independent schools run by recognized denominations have a right that their teachers are paid by the state; other private schools get some state grants which will cover only part of their costs for the personnel. (see also your text below)

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In addition to the national Ministry of Education, there are regional education boards which are the official employers of all teachers at public compulsory schools, and issue decrees and general regulations on the structure, organization, setting up and maintenance as well as on the closing down of schools providing general education.

Since 1993, a greater degree of decision-making authority has been given to individual schools in such matters as defining how instruction will be organized (*Lehrpläne*), how discretionary funds will be spent, and what educational specialties (*Unterrichtsschwerpunkten*) to develop. In some provinces there is also flexibility about the amount of time to allot to each subject. These decisions are made in consultation with a school council (*Schulgemeinschaftsausschuß*) representing parents, teachers, and older pupils (Jach, 371-72).

In 1999-2000, there were 5,679 public schools and 528 publicly-recognized private schools (with “*Öffentlichkeitsrecht*”), and about 10 private schools without that recognition.

The Legal Framework

Under the Austrian legal system, the first area to be regulated by the Federal Constitutional Act of 18 July 1962 was the competency of federal and provincial authorities in the field of education and schooling, thus affording a basis for the 1962 school acts. This constitutional act defines the term ‘statutory school-maintaining authority,’ which may be a federal or provincial agency. Schools established and maintained by the statutory school-maintaining authority are public schools; they are universally accessible. Schools which are not public schools are private schools; they are accredited under the provisions of the Private Schools Act. The act is also the basis for the organization of the federal school authorities in the provinces and districts; these school authorities are termed provincial school boards and district school boards, respectively.

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Fundamental rights concerning the education system in Austria are constitutionally guaranteed, but although the Federal Constitutional Act (*Bundesverfassungsgesetz*) constitutes the main source of constitutional law, it is by far not the only document of which Austria’s constitutional order is composed.

With regard to constitutional provisions in the field of education Art. 17/5 of the Basic Law (*Staatsgrundgesetz*) from 1867 first stipulated the principle of supreme state responsibility for the school sector. The article empowered the state to direct and supervise the entire educational system.

All citizens of the state are entitled to set up and teach at educational institutions as long as they have furnished proof of their ability in this regard in accordance with the law. (...) The state is vested with the right of supreme control and inspection of the entire teaching and education system (www.eurymdice.org).

The provision must be seen in connection with Art. 14/6 of the Federal Constitutional Act which assigns to the Federation (Bund), the provinces (Länder) or the local communities (Gemeinden) the responsibility to maintain public sector schools. It has been concluded from this provision that establishing and running schools is a public task.

The *Constitution* stipulates in article 14 that

- (6) Public schools are those schools which are established and maintained by the legally-established educational authorities (*gesetzlichen Schulerhalter*) ... Admission to public schools is open to all without distinction of birth, sex, race, status, class, language and religion.
- (7) Schools which are not public (*öffentlich*) are private schools; they may, in compliance with statutory provisions, be accorded public status (*Öffentlichkeitsrecht*).

There are a number of federal laws which regulate the system of schooling, which are amended frequently.

All acts mentioned below are amended very often.

The *School Organization Act* provides for unlimited and free-of-charge access to all levels of public schools and for co-education in all public schools, as well as provisions on curricula and pilot projects. *It is the core of the 1962 school acts, containing for the first time an all-encompassing enumeration and systematic regulation of most types of school.*

The *Federal School Inspectorate Act* regulates the jurisdiction and the stages of appeal concerning the supervision and inspection of schools. Administration of the educational system and school inspection are carried out on behalf of the federal authorities by the Federal Ministry of Education and Cultural Affairs as the supreme authority, the provincial schools boards responsible to it, and the district school boards responsible to the provincial school boards.

The *Compulsory Education Act* regulates compulsory general schooling between the ages of 6 and 15 years and compulsory vocational schooling. Parents may choose which school their children will attend. Compulsory education comprises

- Compulsory general schooling (first to ninth school years);
- Compulsory vocational schooling;
- Compulsory agricultural and forestry schooling.

The *School Schedule Act* specifies the number of lessons per week for the various school types governed by the *School Organization Act*. It contains regulations concerning the school year, the instructional year, school days, holidays and vacations, lessons (periods), and breaks.

The *Private Schools Act* regulates the establishment and operation of private schools and private student boarding houses, accreditation of private schools, subsidies to private schools, inspection of private schools, and administrative competencies.

The *Religious Education Act* regulates the provision of religious instruction in public schools.

The *School Education Act* regulates the internal organization of schools and provides for the right of teachers, parents and pupils to participate in decision-making processes in schools. Furthermore, it contains provisions on admission to schools, on entrance exams and aptitude tests, on teaching and assessment matters, on the transfer to and repetition of a grade, on the maximum length and completion of school attendance, on examinations, school regulations, the functions of teachers, teacher meetings, the relationships of schools and pupils, schools and parents, and schools and teachers, on the extended school community and on other matters.

Provincial legislation specifies the norms for the setting up of private kindergartens, and the 1962 *Concordat* with the Vatican authorized the subsidized provision of teachers, a policy which has been extended to all types of denominational schools.

For the further development of the school system, two acts in the field of social policy must also be considered of major importance. The *Studies Promotion Act* and the *Student Grants Act* give students the legal right to study grants and talent scholarships (university and other post-secondary courses) or to school grants and boarding grants (secondary schools); social need and academic success as the prerequisites for such grants are defined, as well as their types and amounts, and questions of procedure.

Freedom to establish non-state schools

The constitutional law acknowledges the right to found private schools. Art. 17/2 of the Basic Law from 1867 endows every citizen (since Austria's accession to the European Union the term citizen has to be read as citizen of the Union) with the right to found establishments for instruction and education and to teach there, provided that the legal requirements for doing so have been met.

Art. 14/7 of the Federal Constitutional Act entitles all private schools that fulfill the conditions laid down by the Private School Act to "Öffentlichkeitsrecht," a form of public recognition which puts these private schools in a status equal to that of public sector schools.

These requirements are stipulated in the *Private School Act* of 1962, which provides that independent schools may obtain *Öffentlichkeitsrecht*, with recognition of the competencies which they certify, if their teachers meet the same qualifications as public school teachers and if the organization including equipment, curriculum and instruction provided "correspond[s] in the essential parts with the respective curricula of public schools. The head teacher and teaching staff must be in possession of the teaching qualification required for the type of school concerned.

Private schools with alternative curricula or deviating forms of organization will be recognized if their curricula and organization are approved by the Ministry of Education. In order to gain recognition, they must prove that the instruction provided meets the requirements of the responsibilities of the Austrian school system" (Berka and Geistlinger 1998, 269).

Regional education authorities must be notified at least three months before a school begins operation, during which period they may refuse permission if the proposal is in violation of law.

Home schooling

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The compulsory schooling obligation may be met not only by attending a school, but also by receiving equivalent instruction such as home schooling. The right to instruction at home is provided by the *Constitution*, which safeguards parents' right to teach their children who are of school age at home instead of sending them to a private or public sector school.

The Constitutional Court ruled, in 1954, that neither the national government nor the provinces could place any kinds of limitations upon the provision of home schooling. As a result, it may not be limited to the education of an individual child by his parents, but may extend to instruction of groups of children. Such arrangements have been used as a means of starting alternative schools on a small scale (Jach, 372, 382-83).

It should be noted, however, that public authorities have the right to insist that the education provided by home schooling be equivalent to (though not identical to) that provided in the public schools.

School choice not limited by family income

Section 5 of the 1962 *School Organization Act* lays down that in addition to the exemption from school fees provided for under other enactments relating to public compulsory schools, the attendance at any other public schools now covered by this federal act shall also be free of charge.

The principle of equal educational opportunities is socially ensured by grants (school and boarding-school allowances, lower annual fees).

In Austria, equality of opportunities and freedom of choice are inseparably connected with the right to education. However, this freedom of choice presupposes extensive information on the matter to be

chosen about. Accordingly, in order to realize this right to education, an extensive system of educational counseling was created. This is to enable pupils to avail themselves optimally of the existing possibilities of the educational system and to choose responsibly the educational career adequate to the structure of their talents, personalities, and interests.

Measures of financial support in connection with school attendance are envisaged in the Student Grants Act, Federal Legal Gazette No. 455/1983, and in section 31, letters a to h, of the Family Load Distribution Act, Federal Legal Gazette No. 376/1967, each as amended.

The Student Grants Act provides, if the pupil shows adequate achievement and is financially in need of support, school and boarding-school allowances from the 9th grade, as well as special school allowances for students at schools for working adults who are about to take their final examinations.

According to the Family Load Distribution Act, all pupils receive suitable and necessary textbooks free of charge; in addition, they have a legal title to free travel to and from school. In both cases, small deductibles apply.

Private school

There are several types of private schools which may be distinguished by possibility of State intervention:

private schools without “*Öffentlichkeitsrecht*” (public recognition) do not get any subventions. They must only comply with safety regulations, etc., but attending them does not fulfil the obligation of compulsory schooling;

schools declared suitable by the Federal Ministry for fulfilling the obligation of compulsory schooling but not empowered to issue public certificates;

private schools which are empowered to issue public certificates, whose expenses for teaching staff *may be* subsidized;

schools of one of the types listed in the *School Organisation Act*, which must comply with all regulations that public schools are subject to, with the exception of open admission and absence of tuition fees. Expenses for teaching staff at these private schools with “*Öffentlichkeitsrecht*” are subsidized.

Under the *Private School Act*, only the schools operated by the legally recognized religious communities (which means, above all, Catholic, but also some Protestant and Jewish schools) are entitled to public funding covering all of their personnel costs. Schools maintained by statutorily recognized churches and religious communities have a legal entitlement to the provision of teaching posts necessary to fulfil the curriculum (full financial support). The subsidies normally take the form of the allocation of teachers under contract of employment (under public or private law) with the Federation or (for private compulsory schools) with a *Land*; these are known as “live subsidies.” Money payments are also possible, though not required.

It is up to the discretion of the Minister of Education whether to award subsidies to non-confessional independent schools which offer a distinctive pedagogy, although no legal entitlement for the allocation of such subsidies exists. In practice the public support has covered only a small part of their costs. This unequal treatment has been appealed, unsuccessfully, to the European Commission on Human Rights (Berka and Geistlinger 1998, 270).

As a result, representatives of the twelve Waldorf (Steiner) schools claim that public funds cover only four percent of their costs (Jach, 377-80).

There exist no regulations in relation to school fees at private schools.

The *Private School Act* does not guarantee funds to meet the equipment and maintaining building cost, but allows private schools to apply for a subsidy to the Ministry, on the basis of a particular contract.

School distinctiveness protected by law and policy

Amendments to the *School Organization Act* have permitted greater autonomy at the school level since 1993. The main objective of the reform is to allow schools to develop a school image of their own by adjusting themselves to local requirements (Frankhauser 1997, 101).

Lower secondary schools are permitted a measure of autonomy to introduce their own modified curricula, specifying certain areas such as modern foreign languages, sports, fine arts, science and technology, ecology, computer science etc. Some offer an orientation towards sports or musical education. The prescribed curricula may be modified and adapted to the individual pupils' interests and to the needs and requirements of the regional areas.

At the upper secondary level, the various forms and special types of secondary academic schools constitute a range of options among which students may choose. Within the framework of school autonomy and pilot projects, the individual schools may modify their curricula and develop their own specific profiles. There are special types of schools for students gifted in music, arts and sports as well as schools for cadre athletes and the school for the ballet students of the Vienna State Opera.

Independent schools, Jach concludes, have broad freedom in theory to shape the education they provide, but this has been limited significantly by the conditions attached to public funding, on the one hand and, on the other, by the requirements for obtaining public status. Normally, independent schools are granted *Öffentlichkeitsrecht* only if they are similar to (*gleichartig*) and not simply equivalent to (*gleichwertig*) public schools. Exceptions can be made in individual cases through approval by the national ministry, and it is by this means that a number of alternative schools have been able to acquire the authority to certify the competencies achieved by their pupils (Jach, 374-75).

Distinctive character

Austrian law and policy have been far more sensitive to the parental right to choose a school that is religiously distinctive, than to choose one that has a distinctive pedagogical character. The issue appears to be a failure to recognize that a distinctive pedagogy may, under the conditions of contemporary cultural pluralism, in fact express an understanding about the world and the goals of education that is functionally "religious."

Decisions about admitting pupils

In section 4, the 1962 School Organization Act provides that "entry into every school shall be common to all, without discrimination as to birth, gender, race, social background, class, language, or religion, with the proviso that schools and classes may be set up which are designed only for boys and only for girls. Admission of a pupil to a school may be refused only if the pupil does not meet the requirements for admission as laid down in the school regulations, if the pupil does not live in the area served by the school, if, when no specific area is served, the school is overcrowded. Private schools shall come under the provisions of section 1 with the proviso that, at schools established according to the laws of, and maintained by, a legally recognized church or religious community or other legal body, except that body be a trading company or public corporation, it shall be permissible to select pupils for admission according to religion, creed or native tongue."

In general only in case of becoming overcrowded, schools not belonging to a school district may refuse pupils that fulfil the admission criteria stipulated by law (Frankhauser 1997, 106).

The law differentiates between the admission to school as an ordinary or an extraordinary pupil. To be admitted as *ordinary* pupils, children must fulfil the legal prerequisites for admission to the respective type or stage of school (age, qualification); they must know the language of instruction to such an extent as to be able to follow the instruction; and finally they must be from the point of view of their health and body considered to be suited for the respective type of school.

The necessity of sufficient knowledge of the language of instruction would prevent many children belonging to a national minority in Austria from access to school. The law therefore contains an exception clause concerning this prerequisite for children belonging to a national minority in Carinthia and in Burgenland, under condition that these children have registered for a minority school ruled by the Minority School Act for Carinthia or have been admitted to a minority school ruled by the Minority School Act for Burgenland. Refugee children and children of migrant workers, however, fall within the scope of the language barrier mentioned above.

The necessity of sufficient mental and physical health can amount to a barrier for handicapped persons. Since 1993 handicapped persons should, as far as possible, be integrated into elementary schools, and since 1996 in the first four stages of the secondary education.

The expulsion of pupils from schools is sometimes necessary to prevent other pupils from constant danger to their morality, their physical integrity and their property. The decision on expulsion is not taken by the director or any other body of the school concerned but by the District School Council (*Bezirksschulrat*) in case of a pupil attending a school providing a general compulsory education. Concerning other schools the decision on expulsion is taken by the Federal State's School Council (*Landesschulrat*). The application for such a decision is made by the conference of all teachers of the respective school (*Schulkonferenz*) under the guidelines of the director of the school after having heard the justification of the pupil and the statement of his/her parents. The decision is open for appeal to the next level as well as to revocation.

At private schools, different or additional rules concerning the obligations of pupils and the rules of school may be included into the contract on the admission of pupils to these schools. These different or additional exigencies must be brought to the knowledge of the school authorities.

Parents can remove their child from instruction in their religion, which otherwise is compulsory for all children with legally accepted religious denomination. Children are excused from going to school on certain days, if this is demanded by their religion. Children can be excused from specific subjects only for reasons of their health.

Decisions about staff

The leadership of a subsidized independent school have authority to select staff on the basis of its own criteria additional to those established by government, based on the school's distinctive character. To a subsidized school maintained by a legally recognized church or religious community a teacher can only be allocated if she or he consents and if the appropriate religious authorities apply for or do not object against her or his assignment.

The person or body maintaining the school is responsible for hiring the head teacher and teachers. There is a strong division within the teaching profession: teachers of compulsory schools are trained in non-university courses, while teachers for the upper secondary general or vocational schools need to have a university degree.

The teaching staff of private schools run by officially recognized churches of religious communities is employed and paid for by the provinces (compulsory school teachers). These schools get the necessary teaching staff from the educational authorities free of charge. Teachers are public employees, either

under private or public law. They just teach at the private school to which they have been allocated (Frankhauser 1998b, 238).

If no suitable state teacher is available, the school may recruit on its own account and will be reimbursed from public funds.

Church authorities may, for religious reasons, declare that the further employment of a particular teacher is intolerable and apply for the allocation to be rescinded.

An amendment to the *Staff Act on Compulsory School Teachers* increased the competencies of the bodies of parent and teacher co-determination concerning the appointments of principals at compulsory schools (Frankhauser 1998a, 61).

Accountability for school quality

Responsibility for school inspection rests in most cases with the district school boards, the provincial school boards, and, as the supreme authority, the Federal Ministry of Education and Cultural Affairs.

Compulsory schools come under the venue of the district school boards in first instance, the provincial school boards in second instance, and the Federal Ministry of Education and Cultural Affairs in third instance. For the academic secondary schools and for all categories of vocational school, first-instance school inspection is generally undertaken by the provincial school boards. School inspection of the compulsory schools and medium-level secondary colleges in the fields of agriculture and forestry, excepting a few federal schools, is carried out by the provinces.

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There are a couple of schools which come directly under the Federal Ministry of Education and Cultural Affairs.

Private schools which are considered equivalent to public schools on the basis of formal recognition by the State are entitled to issue certificates which have the same legal value as those issued by public schools (Berka and Geistlinger 1998, 25). Inspection of these schools is the same as for public schools.

Pupils attending or leaving schools that are not comparable to public schools in terms of their concept and aims cannot acquire any entitlements linked with qualifications issued by such schools. A pupil wishing to change from such a private school to a public school must also take a series of assessment examinations. Inspection is limited to the legality of their administrative activities.

The School Instruction Act of 1999 created a uniform framework regarding examinations and applies to all examinations at upper secondary level (Frankhauser 1999), 134).

In addition to the external control of the performance of schools by school inspectors all Austrian schools (public or with “*Öffentlichkeitsrecht*”) are encouraged to take part in the Q.I.S. (Quality in Schools project). The Austrian Ministry of Education intends to support schools to review, monitor and develop their own quality. Teachers, pupils and parents who occupy themselves jointly and systematically with quality issues will in future be an indispensable part of school culture. Autonomous quality assurance and quality development of schools is the precondition and starting point for a future-oriented school system of high quality (www.qis.at).

Teaching of values

According to the *School Organization Act*, section 2, of July 25, 1962,

it shall be the task of the Austrian school to foster the development of the talents and potential abilities of young persons in accordance with ethical, religious and social values and the appreciation of that which is true, good, and beautiful, by giving them an education corresponding to their respective stages of development and their respective courses of study. It shall give young people the knowledge and skills required for their future lives and occupations and train them to acquire knowledge on their own initiative. Young people shall be trained to become healthy, capable, conscientious and responsible members of society and citizens of the democratic and federal Republic of Austria. They shall be encouraged to develop an independent judgement and social understanding, to be open-minded to the philosophy and political thinking of others, they shall be enabled to participate in the economic and cultural life of Austria, of Europe, and of the world, and to make their contribution, in love of freedom and peace, to the common tasks of mankind (www.ibe.unesco.org):

Religious instruction in the tradition to which a pupil belongs is compulsory; exemptions are granted for those who belong to none.

Since 2005 Art 14/5a of the Federal Constitution provides for certain educational goals and fundamental values common to all Austrian schools.

(5a) Democracy, Humanity, Solidarity, Peace, and Justice, along with Openness and Tolerance toward human beings are fundamental values of the School, on the basis of which the entire People, whatever their origin, social class, or financial background, are provided with the best possible level of education, constantly ensuring and developing the highest possible quality. Through a partnership of pupils, parents, and teachers working together, children and youth will be provided with the best possible mental, spiritual, and physical development, so that they will become healthy, self-aware, happy, success-oriented, dutiful, musical, and creative adults, who are capable of taking responsibility for themselves, their fellow human beings, the Environment, and the succeeding generation, on the basis of social, religious, and moral values. Each youth shall, on the basis of his development and his course of study, be made capable of independent judgment and social awareness, receptive to the political, religious, and world-view thinking of others and able to take part in the cultural and economic life of Austria, Europe, and the World, and in Freedom and Love of Peace to work with others on the common tasks of Mankind.³

3 (5a) Demokratie, Humanität, Solidarität, Friede und Gerechtigkeit sowie Offenheit und Toleranz gegenüber den Menschen sind Grundwerte der Schule, auf deren Grundlage sie der gesamten Bevölkerung, unabhängig von Herkunft, sozialer Lage und finanziellem Hintergrund, unter steter Sicherung und Weiterentwicklung bestmöglicher Qualität ein höchstmögliches Bildungsniveau sichert. Im partnerschaftlichen Zusammenwirken von Schülern, Eltern und Lehrern ist Kindern und Jugendlichen die bestmögliche geistige, seelische und körperliche Entwicklung zu ermöglichen, damit sie zu gesunden, selbstbewussten, glücklichen, leistungsorientierten, pflichttreuen, musischen und kreativen Menschen werden, die befähigt sind, an den sozialen, religiösen und moralischen Werten orientiert Verantwortung für sich selbst, Mitmenschen, Umwelt und nachfolgende Generationen zu übernehmen. Jeder Jugendliche soll seiner Entwicklung und seinem Bildungsweg entsprechend zu selbständigem Urteil und sozialem Verständnis geführt werden, dem politischen, religiösen und weltanschaulichen Denken anderer aufgeschlossen sein sowie befähigt werden, am Kultur- und Wirtschaftsleben Österreichs, Europas und der Welt teilzunehmen und in Freiheits- und Friedensliebe an den gemeinsamen Aufgaben der Menschheit mitzuwirken.

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