

# Situation of Independent Schools in Austria<sup>1</sup>

Beatrice Lukas\*

## 1. Preamble

This article was written in August 2012.

Shortly after its completion, the situation has changed for the better.

It includes basic information about the legal basis and about the tradition of self-organization of Austrian Independent Schools, as well as reports of significant milestones in the quest for a balanced state-funding of non-denominational Independent Schools, followed by two informal letters.

Preceded to this article, here is brief summary of the latest development:

After a series of efforts to find a basis for discussion, four representatives of the Austrian action-committee „[www.FreieSchulwahl.at](http://www.FreieSchulwahl.at)“, including the author of this report, have been invited by the Austrian Minister of Education, to form a working group together with senior officials of the Ministry, aiming to seriously work together on bringing about a financial relief for Austrian Independent Schools. After the successful holding of the first meeting, mutual understanding was met, though an agreement is still pending.

The perspective on some of the unsatisfactory issues mentioned below changed in so far as constructive discussions with the Ministry are now in progress.

For this reason, I would strongly ask the reader to consider the following report as a collection of historical facts, in other words: as “The story so far”, “The history of what has happened until now”.

By the beginning of September 2012, however, there are clear indications of a future satisfactory improvement of the presently precarious financial situation of Austrian non-denominational Independent Schools due to the present law.

## 2. Introduction

In a global comparison, the Austrian educational system is of considerably high standard.

Yet, compared to the contemporary European legislation, there are still some areas waiting to be adapted to a modern standard, especially in the matter of a balanced and reliable state-funding of non-denominational Independent Schools.

For these schools there is no legal grant to receive any subsidies at all. Because of this unpredictability, it is practically impossible for their maintainers to create a balanced budget.

Since they have always been, and still are - by enormous idealistic dedication of teachers and parents - paving the way for trendsetting new pedagogic models, they still wait for being admitted to have the same financial start position as all other Austrian schools.

---

1 Based on the legal situation as of August 2012, statistics of 2010/2011 and the latest history of parents' activism for free choice of schools 2009 to 2012.

\* Beatrice LUKAS comes from the field of parental involvement. She is co-founder and chairwoman of the “Förderverband Freier Schulen” (FFS), [www.foerderverband.at](http://www.foerderverband.at), co-initiator and activist of the citizen initiatives [www.Schul-Petition.at](http://www.Schul-Petition.at) and [www.FreieSchulwahl.at](http://www.FreieSchulwahl.at), as well as co-organizer of the European Networking Meeting of Independent School Movements. Her activity is in close cooperation with the organizations of the above-mentioned websites, aiming to improve the situation and working for a positive pan-European future by strengthening contact between European educational organizations. Contact: [beatrice.lukas@gmx.at](mailto:beatrice.lukas@gmx.at).

All the more, as their results are proven to be as good as the results of public schools, and in some cases even better:

*,In March 2009 the Austrian PISA centre released the detailed results of the PISA-study 2006 and presented also the very positive part about Waldorf pupils compared to pupils of Austrian state schools. The results concluded that:*

*- Austrian Waldorf pupils show on average the same level in reading and mathematics as the state school pupils, although there are fewer pupils in the critical groups in reading and mathematics than in other schools. - Very significant results in science, where the Austrian Waldorf pupils are clearly above the Austrian average. The Waldorf pupils also fare the best in understanding the questions raised by science and the ability to solve scientific problems. They were also above the OECD average for their joy and interest in the subject of science.<sup>2</sup> See also: <http://www.waldorf-schoenau.at/Pisastudie.pdf>*

### 3. Legal situation

The **Private School Act** (1962) („Privatschulgesetz“) regulates establishment, operation, accreditation and inspection of private schools, as well as administrative competencies and subsidies.

*,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.<sup>3</sup>*

#### **The right of an Independent School to carry a “school name regulated by law” (“gesetzlich geregelte Schulartbezeichnung”)**

146

As stipulated in Art 11 of the Private School Act, the authorization for being allowed to carry a “school name regulated by law” (such as using the terms “Volksschule”, “Hauptschule”, “Mittelschule” or “Gymnasium” in the school name) shall be granted, when the organization of the private school, including curriculum, facilities and the use of officially approved textbooks essentially coincide with similar public schools. Teachers must meet the same qualifications as public school teachers corresponding to the respective school-type.

However two exceptions are made:

The first one in Art 11/3, for schools maintained by legally recognized churches and religious organizations (i.e. “denominational schools”) and by other corporations under public law, to meet these requirements is assumed by law. This means, for them the fulfillment of these requirements is assumed from the outset.

Secondly, as an exception from the rule, in the Private School Act, Art.26/1 seven traditional Independent Schools are mentioned by name, which are entitled to carry different names.

2 ECSWE news no 17, Oct 2009. [http://www.ecswe.com/downloads/newsletters/ecswe\\_newsletter\\_17.pdf](http://www.ecswe.com/downloads/newsletters/ecswe_newsletter_17.pdf)

3 Charles Glenn and Jan de Groof: „Balancing Freedom, Autonomy and Accountability in Education, Volume 2“, Published by Wolf Legal Publishers. Pg 7

## Public Status (“Öffentlichkeitsrecht”)

### Public Status for Independent Schools who are entitled to carry a “school name regulated by law”

Art 14/1: A school being entitled to carry a “school name regulated by law” is to be conferred the public status, if the success of lessons corresponds to that of a similar public school.

An exception is made in Art 26/2: Herein seven schools are mentioned by name, which are regarded as having „public status“ by law, assumed to be given from the outset.

### Public Status for denominational Independent Schools

As stipulated in Art 14/3 for all Independent denominational schools and private schools maintained by public bodies the fulfillment of the requirements to obtain “public status” is assumed by law, given from the outset.

### Public Status for all other Independent Schools

Art 14/2: To Independent Schools that are not entitled to carry a “school name regulated by law”, the “public status” must be conferred, when the instruction provided meets the responsibilities of the Austrian public school system, if success of its education is comparable to the public school system, and if organization, curriculum, equipment of the school, as well as teaching ability of headmaster and teachers do match an organizational statute, which must be issued or approved by the Federal Minister of Education.

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<sup>4</sup> (Berka and Geistlinger 1998, 269)  
(10)

147

## Funding of Independent Schools

### Funding of denominational (“religious”) Independent Schools

State subsidization of denominational schools has a long tradition in Austria. It has its origins in the concordats with the Holy See, in particular in the Concordat of 1933, which must be regarded as a legal international treaty between the Republic of Austria and the Vatican, including both recognition and privileges for the Catholic Church.

In order not to discriminate other recognized religions, it was stipulated in the Private School Act 1962 Art 17 and 18, that all Independent Schools, maintained by legally recognized churches and religious organizations have the right to be subsidized by the acquisition of the payment of teachers’ salaries. Independent Schools with no religious affiliation however, do not enjoy this right.

*Under the Private School Act, only the schools operated by the legally recognized religious communities (...) 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 fulfill the curriculum (full financial support).<sup>5</sup>*

4 Walter Berka and Michael Geistlinger, “The Position of Minorities in Education in the European Union: Austrian Report, “ in *the Legal Status of Minorities in Education*, edited by Jah De Groof, and Jan Fiers, Leuven (Belgium): Acco, 1998, p. 243-273

5 Charles Glenn and Jan de Groof: „*Balancing Freedom, Autonomy and Accountability in Education, Volume 2*“, Published by Wolf Legal Publishers. Pg 9.

**The Concordat of 1933:**

*On 5 June 1933, the Austrian government under Federal Chancellor Engelbert Dollfuss, signed a new concordat with Pope Pius XI., which again strengthened the power of the Catholic Church in Austria and this has been granted even partially constitutional status in 1934. The concordat was essentially incorporated into the new constitution by which the Catholic Church, through the “Christian corporative state” (Ständestaat) greatly increased its influence, especially in regard to schools, marriage laws and Church appointments. After the Anschluss in 1938 the concordat was out of force until the end of World War II.*

*Its continued validity after 1945 was initially controversial, but has been recognized by the federal government in 1957, so it is formally still in force. Through subsequent so called “partial concordats” (“Teilkonkordate”) however, essential provisions were amended.*

*(...)*

*1971 also the costs of the teaching staff have been completely taken over by the state and established it mandatory in a supplementary agreement to the Concordat. ‘*

*(Source: Wikipedia)*

**Excerpt:****Concordat between the Holy See and the Republic of Austria of 5 July 1933****Article 6**

§ 2. *Insofar as the state laws concerning the lower and middle school education which are presently in force give the Church additional rights and powers, she is to keep these.*

§ 3. *The Church, her orders and congregations have the right, whilst observing the general school regulations, to establish and run schools of the kind mentioned in § 2, which, for as long as they fulfil these requirements, receive the rights of a state school.*

§ 4. *Where such schools (§ 3) have a relatively large frequency and as a result influence the number, the extension or the establishment of comparable state schools in such a way that the relevant school boards experience financial relief, these [Catholic schools] are to receive appropriate subsidies in proportion to the improvement of economic conditions.<sup>6</sup>*

**Traditional background of the Austrian School System:**

*The development of the Austrian education system is inextricably linked to the Catholic Church. Thus, the Jesuits influenced the Austrian educational system for more than two centuries and affected existing similar institutions by their then modern organizational form (secondary I and secondary II). By omitting levying of school fees, also a broader public gained access to school education.*

*In 1549 the Benedictine monastic order established a publicly accessible Latin School.*

*From 1867, every citizen had the right to found educational institutions and therein to give lesson, if he fulfilled the required conditions of the liberal Basic State Law.*

*In 1868 the law governing the relationship between the school and the church under the principle of state supervision was adopted. Thus, the religious schools became private schools, depending on state regulations.<sup>7</sup>*

**Funding of non-denominational Independent Schools**

Neither the right to carry a “school name regulated by law” nor the obtaining of “public status” (“Öffentlichkeitsrecht”) entitle a non-denominational Independent School with a general legal right to be funded by the state, with one exception: In the Private School Act Art 27/2, a single non-

6 [http://www.concordatwatch.eu/showtopic.php?org\\_id=921&kb\\_header\\_id=1811](http://www.concordatwatch.eu/showtopic.php?org_id=921&kb_header_id=1811)

7 [http://www.schulam.t.at/privatschulen/ps\\_geschichte/0/articles/2005/03/09/a2501/](http://www.schulam.t.at/privatschulen/ps_geschichte/0/articles/2005/03/09/a2501/)

denominational school (with former military background) is explicitly mentioned by name and granted a subsidy to the total personnel costs for teachers, including the director.

Apart from this one exception, no funding is granted to non-denominational Independent Schools.

In Private School Act, Art. 21, it is stipulated that state subsidy for these schools are a matter of discretion and will depend on the current financial situation of the state, in spite of their public status. So, until 2009 Independent Schools were subsidized differently. There are some Independent Schools with public status, which never received any subsidy, some received approximately EUR 50.- to EUR 500.- per pupil per year, depending on special agreements. To put this in the right perspective, in public schools approximately EUR 6000.- – 8000.- are spent for each pupil per year by the state.

In the school years 2009/2010 and 2010/2011 the subsidy was raised to the amount of EUR 1000.- per pupil per year. In the year of 2011/12 the subsidy was lowered again, due to a higher number of pupils visiting non-denominational Independent Schools.

*It is up to the discretion of the Ministry of Education whether to award subsidies to non-confessional Independent Schools....<sup>8</sup>*

### The right to issue public certificates

As stipulated in Art 13, through receiving the public status the school has the right to issue certificates on the success of school attendance, which are – in expressis verbis - equipped with the evidentiary value of public documents and with the same legal effect as certificates of similar public schools.

In spite, the non-denominational Independent Schools received a circular letter by the lawyers of the Federal Ministry of Education, where guidelines are given concerning examinations for pupils transferring from statutory (independent) schools to public schools:

Therein it is clearly said, that the Federal Ministry for Education would only approve of those schools as compulsory, which are suitable to meet the general compulsory schooling requirements according to Compulsory Education Act of 1985, Art 12. The recognition of a school as to meet the schooling requirements (Private School Act, Art 12) may only take place if the teaching is essentially corresponding to that of a public school (elementary school, secondary school, polytechnic school, special school).

But nevertheless, in case pupils from schools with own statute, public status and admission to compulsory education, want to transfer to public schools, they had to pass certain tests, which are exactly enlisted therein.

Although from the legal standpoint this can be regarded as a proposal, it is seen as directive by many directors of public schools, who, as a result, do not regard these certificates as equal to those of public schools.<sup>9</sup>

## 4. Self-Organization

As of 2010/11 (source: Statistik Austria, [www.statistik.at/](http://www.statistik.at/))

From a total of **6.178 schools in Austria**, including schools for forestry and agriculture, different vocational schools, and schools for health care, **5.538 “Public Sector Schools”** (“öffentliche Schulen“) are financially maintained by the federation (Bund), provinces (Länder) and local communities (Gemeinden).

8 Charles Glenn and Jan de Groof: „Balancing Freedom, Autonomy and Accountability in Education, Volume 2“, Published by Wolf Legal Publishers. Pg 9.

9 reference: [http://www.bmukk.gv.at/ministerium/rs/2001\\_18.xml](http://www.bmukk.gv.at/ministerium/rs/2001_18.xml)

The remaining **640 „Private Schools“** („Privatschulen“) or **“Independent Schools”** (“Schulen in freier Trägerschaft”), are financially maintained by different denominations, associations, economic organizations and foundations.

Of those private schools, 322 schools are carried by denominations (communities of faith), and 95 are carried by economic organizations.

The rest, **223 “non-denominational Independent Schools”**, are carried by associations, private persons or foundations. They include approximately 4000 to 5000 pupils, from total of approximately 1.200.000 pupils in Austria.<sup>10</sup>

### **Umbrella Organizations of Denominational Private Schools:**

Presently, denominational schools in Austria are members of the following umbrella organizations or religious communities:

- 1.) Roman Catholic Schools, carrier: Römisch katholische Kirche / Erzdiözäse Wien (<http://www.privatschulen.at/>)
- 2.) Protestant Schools, carrier: Evangelische Kirche / Diakonie Wien (<http://schulen.diakonie.at/>)
- 3.) Jewish Schools, carrier: Israelitische Kultusgemeinde Wien ([http://www.ikg-wien.at/?page\\_id=689](http://www.ikg-wien.at/?page_id=689))
- 4.) Islamic Schools, carrier: Islamische Glaubensgemeinschaft (<http://www.schulamt-islam.at/>)

### **Umbrella Organizations of Non-denominational schools:**

150

Until 2009, the only umbrella organization for Austrian non-denominational Independent Schools was “EFFE Austria”, which constituted 1995. (European Forum for Freedom in Education, (<http://www.effe.at/>)).

EFFE Austria is part of EFFE International, established in 1990, which is recognized as an NGO in the Council of Europe, and has members in thirty European countries.

Five different organizations are working under the umbrella of EFFE Austria:

- 1.) The “Bund der Freien Waldorfschulen in Österreich” (“Federation of Waldorf Schools in Austria”), an association of Austrian Rudolf Steiner and Waldorf schools. <http://www.waldorf.at/>
- 2.) The “Kuratorium für künstlerische und heilende Pädagogik” (“Curatorship of Art and curative education”), Consisting of four connected educational institutions from kindergarten to graduation, based on the teachings of Rudolf Steiner. <http://www.waldorf-hietzing.at/>
- 3.) The “Netzwerk - Bundesdachverband für selbstbestimmtes Lernen” (“Network - federal umbrella organization for self-directed learning”) representing Independent Schools and parent initiatives committed to self-directed learning. <http://www.unsereschulen.at/> and
- 4.) The “Österreichische Montessori-Gesellschaft” (“Austrian Montessori Society”), representing Montessori schools and Montessori Children’s Houses as well as the Montessori Academy. <http://www.montessori.at>

On the occasion of an announced increase of state subsidies to EUR 1000.- per pupil per year in the school year 2009/10, a shift occurred in the organizational structure of the voluntary sector.

<sup>10</sup> reference: [www.statistik.at/](http://www.statistik.at/)

Since the Ministry of Education had decided to pay out only to umbrella-organizations, and since – due to internal rules – not all non-denominational Independent Schools with public state could be incorporated into EFFE-organizations, and this way they would not have received any subsidy, - four new umbrella organizations have been founded to represent them:

- 1.) Förderverband Freier Schulen (FFS) <http://www.foerderverband.at>
- 2.) Interessensgemeinschaft Privater Bildungseinrichtungen Österreichs (PBÖ) <http://www.p-b-oe.at>
- 3.) Verband österreichischer Privatschulen mit wissenschaftlicher Begleitung <http://www.wissen-schafft-schule.org/>
- 4.) Verband der Christlichen Bildungsinitiativen/Schulen Österreichs <http://www.edu-gate.at/cms/index.php/verbandsleitung>

## 5. History of the Quest For Fair Funding

### Negotiations by EFFE

Since its foundation EFFE has tried to establish good contact with the Ministry of Education, was continuously leading negotiations on possible increase of subsidies, organized different events, workshops, gatherings and congregations. (see: <http://www.mein.net/effe/history.htm> )

### 1st Citizens Initiative:

In 2002, Waldorf parents' spokesman Edgar Hernegger, under the umbrella organization of EFFE, organized the first Austrian Citizens Initiative for Independent Schools: "Pro educational diversity - for fair competition in the education sector". He collected 1,000 signatures. The initiative was handed over, and discussed in the National Council, was officially taken note of, and then due to new elections, was shelved.

### 2nd Citizens Initiative:

<http://www.schul-petition.at>

In March 2009 a group of five Austrian parents gathered under the name of "Schul-Petition" to organize a new Citizens Initiative, aiming to obtain financial equality of all Independent Schools with denominational Independent Schools, without compromising the pedagogic independence of these schools. They collected 4119 signatures, which were officially handed over to the President of the Austrian National Council in June 2009.

This Citizens initiative made the rounds through diverse parliamentary committees, was officially taken note of by the National Council and then was shelved.

### 3rd Citizens Initiative:

<http://www.freieschulwahl.at>

Again in 2011 five Austrian parents gathered, and once more organized a Citizens Initiative, with a nearly congruent issue: 'Free Choice of Schools – Now!' – 'We request the National Council, to amend the Private School Act in such a way that Independent Schools with public status have a legal right to cover their costs in the amount of the average cost of other schools and that Independent Schools may further enjoy full autonomy for the implementation of their pedagogical content in the framework of their approved curricula and statutes.

(...). We, the parents, do not want to pay double the amount any longer: we pay by means of tax for the public school system one hand and on the other hand through school fees of more than EUR 300.- per child per month. - We want the freedom to choose their children's school to be guaranteed even for low-income parents.'

They collected 21.060 signatures, which were officially handed over to the President of the Austrian National Council in April 2011, on the especially organized occasion of a big gathering and demonstration in front of the Austrian Parliament.

This Citizens Initiative, too, made the rounds through diverse parliamentary committees, was officially taken note of by the National Council, and then was shelved.

## **European Network Meeting of Independent School Movements, Stuttgart, 19 January 2012**

(<http://www.freieschulwahl.at/treffen-stuttgart>)

Two initiators of the 3<sup>rd</sup> Citizens Initiative organized a European Network Meeting in Stuttgart for Independent School – organizations throughout Europe to support the Austrian movement in a larger context. On this occasion contact with ECNAIS, the second pan-European umbrella organization besides EFFE, was established (European Council of National Associations of Independent Schools, <http://www.ecnais.org/>).^

In their effort to explore possible ways to reach the desired goal through joint legal action, a lawyer from Brussels was invited to present an overview of the various possibilities of legal proceedings.<sup>11</sup>

Excerpt of the minutes:

*„We were encouraged in the survey on the regulatory framework and legal proceedings on national and EU level (Commission complaints, CJEU in Luxemburg, ECHR in Strasbourg) not to be afraid of fighting for ones right with the courts.  
It seems obvious that there is an infringement with the None-Discrimination principle.*

### **Here a summary of the presentation:**

- Education as such – at least at school level – is not within the EU competence (and thus part of the treaty)
- The EU focuses always on guaranteeing the freedoms and the equal treatment with respect to competition (for all EU citizens and services)
- This principle can also be applied for the ‚service of school education‘
- The key argument is given in the joint reading of von Art. 14(3) [‘...freedom to found schools and ... to ensure the education and teaching ... in conformity with their pedagogical convictions...’] and Art. 21 [None-discrimination] of the Charter of Fundamental Rights.
- Following the Lisbon Treaty MSs must comply with the EU Charter in their national legislation even in areas which lie outside the EU agenda.
- Discrimination is evident if o the free access to school is restricted for a part of the population because of financial hurdles(social segregation)o e.g. confessional and some individual contracted schools receive considerable higher subsidies than Independent Schools with comparable pedagogic acknowledgement
- Low public funding of IS threatens their continued existence ... this might infringe Art. 2 Protocol ECHR [see below]

11 [http://www.foerderverband.at/images/stories/BarbaraRapp\\_FinancingIS.pdf](http://www.foerderverband.at/images/stories/BarbaraRapp_FinancingIS.pdf)



**Some conclusion:**

- *Most important: develop an objective and well argued European concept for an independent school system which is legally and economically secured by justified public funding.*
- *The legal basis for that are the Articles 14(3) & 21(1) EU Charter in junction with the EU principle of equal treatment of comparable situations.*
- *Law suits at the CJEU und at national courts would speed up this development\_towards a just framework for ISO The direct procedure via ECHR is likely to be less effective because already negative results of past attempts.*
- *The danger of building a complaint on the unjust/biased competition is the possible interpretation of schools as commercial service which would open the door to profit orientated*
- *Advantage of a legal procedure/law suit: emphasize the meaning of EU law and principles with respect of the guaranteed freedom of the choice of education and its public funding and to attract the attention of MS Authorities to that fact'*

**Resolution on Freedom of Education in the European Community.**

*Passed in the European Parliament 14-3-1984.*

*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 fulfill their duties under the same conditions as in corresponding State establishments, without discrimination as regards administration, parents, pupils or staff.*

**The Charter of Fundamental Rights of the European Union**

[http://www.europarl.europa.eu/charter/default\\_en.htm](http://www.europarl.europa.eu/charter/default_en.htm)):

**Article 14: Right to education**

- (1) Everyone has the right to education and to have access to vocational and continuing training.*
- (2) This right includes the possibility to receive free compulsory education.*
- (3) The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.*

**Article 21: Non-discrimination**

- (1) Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*
- (2) Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.*

**Right to education under the Protocol to the ECHR as amended by Protocol No 11 –****Article 2: Right to Education**

*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.*

## EU TREATY (LISBON)

### Article 2:

*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*

### Article 6:

(1) *The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.*

(2) *The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.*

(3) *Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.*

### Article 67:

(1) *The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member State.*

154

## A. DECLARATIONS CONCERNING PROVISIONS OF THE TREATIES

*1. Declaration concerning the Charter of Fundamental Rights of the European Union.*

*The Charter of Fundamental Rights of the European Union, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.*

*The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties.<sup>12</sup>*

## 6. Informal Letters

### A. Citizens Initiative “Freie Schulwahl - JETZT” Demonstrated In Vienna

A school director of a non-denominational independent compulsory school is asked to write a personal report about the present situation and her experience participating in the Citizens Initiative „Freie Schulwahl – JETZT!“ („Free Choice of Schools – NOW!“) in the summer of 2011.

Here is her vivid report:

*„Last year, the company where I was employed, closed down. Now I do not know how long I can financially afford that my 12 year old daughter still can stay in her school. It would be a disaster for her if she would have to leave from there”, sighs a single mother with gray hair. “We have four children between 6 and 15, which makes more than EUR 1,000 school fees per month - that has to*

12 [http://www.foerderverband.at/images/stories/Minutes\\_and\\_Conclusions\\_StuttgartMeeting\\_Protocoll\\_en.pdf](http://www.foerderverband.at/images/stories/Minutes_and_Conclusions_StuttgartMeeting_Protocoll_en.pdf)

be earned in the first place”, interjects a young father in suit and tie. “We are not rich people, but we save on everything else - instead of going on vacation or to buy a car, we pay our son’s school where he feels comfortable”, confirmed a woman in work clothes.

“If the grandparents would not financially contribute we could not afford this”, says a young mother in a long and colorful dress with a baby in a sling.

“I am director of a free school and work about 60 hours a week. Luckily, my husband does not earn bad money because only of my salary I could not live”, considers a mid-40s woman.

“I teach only voluntary. That is only possible, as long as I can still live with my parents”, says a young English teacher.

They - and hundreds of others - gather to the Parliament in Vienna on 6 April 2011 to request “free choice of school - now!”. While kids are rapping together, singing, beating drums, spread flowers, laugh, run around and enthusiastically wave their homemade banners and drawings, those responsible hand over more than 21,000 gathered signatures to Head of the Parliament, Barbara Prammer - to raise awareness for the desperate and delicate situation of the Austrian Independent Schools: Although they, as well as everyone, have the public status („Öffentlichkeitsrecht“) and do refer to the public curriculum, they receive only “alms” by the state, and even for these they have to fear and fight year by year.

Due to the minimal state funding, schools are forced to collect high school fees, which confronts some families with unsolvable problems. It is a paradox situation: Although the non-denominational private schools operate so much more economically than the public sector, the parents have to pay so much more. And although parents pay amounts over the limit of reason, Independent Schools have so much less money than state institutions.

Not only for parents the commitment to a free school has harsh consequences, even to work there demands immense idealism: Teachers earn - despite their legal obligation to be similarly qualified - only a fraction of their colleagues in the public service - for many of their working hours, they are not salaried at all. The existing theoretical right to free choice of school is lead to absurdity at all levels.

Against this situation 21,000 people have been taking stand in a petition, and hundreds marched on Vienna’s Ringstrasse. As with any meeting in the last years, they have been shown appreciation by the politicians and officials: “We have the greatest respect for the work the reform-pedagogical schools ... They are an important stimulus for the public system ... Thank you for your efforts ... We understand your concern. .. Private initiative is a cornerstone of our society ... A State thrives on motivation of its citizens ... Self-determination must be encouraged.”

Unfortunately, this lip service changes little on the problem. The petition is a good example of the “Sisyphusian struggle”, a never-ending-story, engaged citizens have to confront themselves with. The petition journeyed to the Committee on Petitions, from there back into the Committee of Education, then to the sub-committee of the Committee of Education and from there back to the Committee on Petitions. There it is stored now since one and a half years, and its ultimate end is predictable: With the end of the legislative period all introduced proposals will expire, in plain text - they end up in the trash.

Some of the organizers of this Citizens initiative and demonstration have been trying now for over 15 years to ensure fair treatment of the Independent Schools, and repeatedly experience the same: Before the election, each political party assures them to care for an equitable financing, but after the elections all the promises are forgotten, respectively are subordinated to “inherent necessities”. The hurdling through the institutions - from clerks to section chiefs and ministers to educational speakers and back - starts again.

Nevertheless, the efforts were not in vain, there are small changes and possibly even bright spots on the horizon. In the first place, relations between the authorities and “alternative schools” improved. Educational reform-oriented private schools - in Austria mostly referring to Maria Montessori and Rudolf Steiner - are no more seen as “unratable exotics”, refusing acceptance of educational goals, - their quality is widely recognized. The assessment, that private schools were an “elite circle” that would have little incentive to take care of a representative sample of students is no more relevant.

In the years 2009 to 2011 there was a federal subsidy of EUR 1,000 per child per year [note: whereas the state expends approximately EUR 6000.- to 8.000 per child per year], but this has again been reduced for the past school year (2011/2012). Given the growing number of students in private schools, it is argued by the Ministry, the constant sum has to be divided among more children.

If this logic would be applied to other areas ( e.g. with increasing number of retirees, they would have to split their pension with each other, or: with more births in one country the child support must be automatically reduced, or the more patients there are the more have to just share one hospital bed ...) it becomes obvious how ridiculous this argument actually is.

The provinces do as well lower their subsidies even further. The administration cites a Private School Law of 1962, in which it is laid down, that a grant may be awarded to personnel expenses, provided that the private school is not reducing the local number of pupils attending a public school. This situation is inevitably given - since each child attending a private school always reduces the number of pupils of the public district school.

Therefore the initiative “Free school choice - now!” strives to bring about an obsolete change of the Private School Law, but the mills of justice grind slowly.

As first success, the formation of a ministerial working group has been granted.

However, whether a result can be achieved before the next election, is written in the stars.‘

## 156 B. Hardship during development of new standard for teachers’ education.

During one state of the development of the reorganization and establishing of new educational standards for teachers, the Independent Schools were made aware of the impending changes. The following letter describes the commotion this caused in an excellent small Independent School with public status in March 2011.

This understandable reaction emphasizes the necessity to care for adequate transitional periods, and viable solutions for experienced teachers who have proven the practical effectiveness of their teaching qualification for many years.

*I am leading an Independent school with public status in Lower Austria.*

*A few weeks ago I received news from the Board of Education that from now on allowances for teaching staff with a Waldorf or Montessori diploma or of a university degree, but without an official State Teacher-Training, will be no more granted. (“...dass ab sofort keine Nichtuntersagungsbescheide für Lehrkräfte, die ein Montessori- oder Waldorf-Diplom oder eine akademische Ausbildung aber keine staatliche Lehramts-Ausbildung besitzen, mehr ausgestellt werden.”)*

*This is a disaster for schools like ours, because to be able to work high-quality - I depend on teachers who are trained in the methods and values of progressive education.*

*In the meantime, we should be reassured by the statement that existing teachers should continue to teach because old decisions cannot lose their validity, and the current instructions would only apply to new teachers. But that does not lighten the massiveness of the problem!*

*As confirmed by the Board of Education - this means that “not prohibited” teachers working for years or even decades in Montessori or Waldorf schools, may continue to teach at their school,*

*but transfer to another school is impossible! Is that not almost comparable with slavery, when people who pursue their profession may only continue to work, if they remain tied at their current employer until retirement? It is made impossible for them - with this approach - to change their job. I am not a lawyer, and I cannot understand that this is legal.*

*Already now there is a shortage of teachers, which will continue to intensify.*

*At this moment there are teachers,*

- Who privately fund their perennial and expensive training, thus cost nothing to the state*
- Who are so committed and enthusiastic about their work that they are working for far less money than any other teacher*
- Who are not paid a cent of their salary by the state*
- Who put into action much of what is required in the modern education sector (longer working-time, individualization of instruction, fostering of survey knowledge, practical experience, independence, motivation, ...)*
- Teachers who do such a good piece of work that the parents are willing to finance their salaries completely out of their own pocket.*

*And on these teachers you want to impose a blanket prohibition to work - if they want to change jobs. ...*

*I cannot believe this to be true! I urgently ask you to withdraw this directive! It would jeopardize the entire reformist educational scene of Austria, which has demonstrably brought a number of positive impulses into the public school system (for example, now there is hardly any mathematics book that does not include Montessori materials). You also threaten the Austrian school system, which - as you will probably agree with me - has too few enthusiastic, dedicated, caring and well-trained teachers anyway. Even in public schools there already are teachers who have not completed their training at all!*

*Simultaneously, the government subsidies for non-denominational private schools are going to be reduced. Some of these schools receive - despite public status - even no support at all, the criteria of funding are unclear. We do not understand why our work seems to be made more and more difficult - instead of receiving the well-deserved recognition, given the satisfaction of students and parents.*

*Non-denominational Independent Schools constantly prove their quality, by working with enormous economic efficiency and personal commitment for the satisfaction of their clients.*