

Compilation of relevant legal documents regarding education

INTERNATIONAL CONVENTIONS

I. International Covenant on Civil and Political Rights (I.C.C.P.R.)

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

II. International Covenant on Economic, Social and Cultural Rights, (I.C.E.S.C.),

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 laid down or approved by the States 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 to direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirements that the educations given in such institutions shall conform to such minimum standards as may be laid down by the State.

General Comment on Article 13

Article 13, § 1 – Aims and objectives of education

4. States parties agree that all education, whether public or private, formal or non-formal, shall be directed towards the aims and objectives identified in article 13 (1). The Committee notes that these educational objectives reflect the fundamental purposes and principles of the United Nations as enshrined in Articles 1 and 2 of the Charter. For the most part, they are also found in article 26 (2) of the Universal Declaration of Human Rights, although article 13 (1) adds to the Declaration in three respects: education shall be directed to the human personality's "sense of dignity", it shall "enable all persons to participate effectively in a free society", and it shall promote understanding among all "ethnic" groups, as well as nations and racial and religious groups. Of those educational objectives which are common to article 26 (2) of the Universal Declaration of Human Rights and article 13 (1) of the Covenant, perhaps the most fundamental is that "education shall be directed to the full development of the human personality".

5. The Committee notes that since the General Assembly adopted the Covenant in 1966, other international instruments have further elaborated the objectives to which education should be directed. Accordingly, the Committee takes the view that States parties are required to ensure that education conforms to the aims and objectives identified in article 13 (1), as interpreted in the light of the World Declaration on Education for All (Jomtien, Thailand, 1990) (art. 1), the Convention on the Rights of the Child (art. 29 (1)), the Vienna Declaration and Programme of Action (Part I, para. 33 and Part II, para. 80), and the Plan of Action for the United Nations Decade for Human Rights Education (para. 2). While all these texts closely correspond to article 13 (1) of the Covenant, they also include elements which are not expressly provided for in article 13 (1), such as specific references to gender equality and respect for the environment. These new elements are implicit in, and reflect a contemporary interpretation of article 13 (1). The Committee obtains support for this point of view from the widespread endorsement that the previously mentioned texts have received from all regions of the world.

Article 13, § 2 – The right to receive an education - some general remarks

6. While the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features:

(a) Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;

(b) Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

i) Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paras. 31-37 on non-discrimination);

ii) Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme);

iii) Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education;

(c) Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));

(d) Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

7. When considering the appropriate application of these "interrelated and essential features" the best interests of the student shall be a primary consideration.

Article 13, § 2 a) – The right to primary education

8. Primary education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.

9. The Committee obtains guidance on the proper interpretation of the term "primary education" from the World Declaration on Education for All which states: "The main delivery system for the basic education of children outside the family is primary schooling. Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community" (art. 5). "[B]asic learning needs" are defined in article 1 of the World Declaration.

While primary education is not synonymous with basic education, there is a close correspondence between the two. In this regard, the Committee endorses the position taken by UNICEF: "Primary education is the most important component of basic education."

10. As formulated in article 13 (2) (a), primary education has two distinctive features: it is "compulsory" and "available free to all". For the Committee's observations on both terms, see paragraphs 6 and 7 of General Comment 11 on article 14 of the Covenant.

Article 13, § 2 b) – The right to secondary education

11. Secondary education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.

12. While the content of secondary education will vary among States parties and over time, it includes completion of basic education and consolidation of the foundations for life-long learning and human development. It prepares students for vocational and higher educational opportunities.

Article 13 (2) (b) applies to secondary education "in its different forms", thereby recognizing that secondary education demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings. The Committee encourages "alternative" educational programmes which parallel regular secondary school systems.

13. According to article 13 (2) (b), 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". The phrase "generally available" signifies, firstly, that secondary education is not dependent on a student's apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all. For the Committee's interpretation of "accessible", see paragraph 6 above. The phrase "every appropriate means" reinforces the point that States parties should adopt varied and innovative approaches to the delivery of secondary education in different social and cultural contexts.

14. "[P]rogressive introduction of free education" means that while States must prioritize the provision of free primary education, they also have an obligation to take concrete steps towards achieving free secondary and higher education. For the Committee's general observations on the meaning of the word "free", see paragraph 7 of General Comment 11 on article 14.

Article 13, § 3 and 4 – The right to educational freedom

28. Article 13 (3) has two elements, one of which is that States parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The Committee is of the view that this element of article 13 (3) permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13 (3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

29. The second element of article 13 (3) is the liberty of parents and guardians to choose other than public schools for their children, provided the schools conform to "such minimum educational standards as may be laid down or approved by the State". This has to be read with the complementary provision, article 13 (4), which affirms "the liberty of individuals and bodies to establish and direct educational institutions", provided the institutions conform to the educational objectives set out in article 13 (1) and certain minimum standards. These minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn, these standards must be consistent with the educational objectives set out in article 13 (1).

30. Under article 13 (4), everyone, including non-nationals, has the liberty to establish and direct educational institutions. The liberty also extends to "bodies", i.e. legal persons or entities. It includes the right to establish and direct all types of educational institutions, including nurseries, universities and institutions for adult education. Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty set out in article 13 (4) does not lead to extreme disparities of educational opportunity for some groups in society.

III. Convention on the Right of the Child

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

EUROPEAN LEVEL

I. The European Convention on Human Rights (ECHR)

Article 9 – Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 – Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol 1 (additional to the ECHR)

1. Enforcement of certain Rights and Freedoms not included in Section 1 of the Convention

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.

II. The Charter of Fundamental Rights

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.

Explanation on Article 14 – Right to education

1. This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:

‘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.’

It was considered useful to extend this Article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. In so far as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.

2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.

III. The Lisbon Treaty

Article 8

In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and woman.

Article 9

In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

Article 10

In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 165

1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and organisation of education systems and their cultural and linguistic diversity.

(...)

The Charter of Fundamental Rights of the European Union (EU)

This Charter of Fundamental Rights summarises the common values of the EU Member States and brings together in a single text the traditional civil and political rights as well as economic and social rights. Its purpose is set out in the preamble: "it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter."

Background

In June 1999 the Cologne European Council concluded that the fundamental rights applicable at EU level should be consolidated in a charter to give them greater visibility. The Heads of State or Government believed that the charter should contain the general principles set out in the Council of European Convention of 1950 and those derived from the constitutional traditions common to the Member States, as well as the fundamental rights that apply only to the Union's citizens and the economic and social rights contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers. It would also reflect the principles derived from the case law of the Court of Justice and the European Court of Human Rights.

The Charter was drawn up by a Convention consisting of the representatives of the Heads of State or Government of the Member States, one representative of the President of the European Commission, members of the European Parliament and members of national parliaments. Formally adopted in Nice in December 2000 by the Presidents of the European Parliament, the Council and the Commission, it constitutes a political undertaking that has no binding legal effect.

In the Lisbon Treaty amending the Treaties, the Charter is given binding effect by the insertion of a phrase conferring on it the same legal value as the Treaties. To this end, the Charter was proclaimed a second time in December 2007.

Content

For the first time, a single document brings together all of the rights previously to be found in a variety of legislative instruments, such as national laws and international conventions from the Council of Europe, the United Nations and the International Labour Organisation. By making fundamental rights clearer and more visible, the Charter helps to develop the concept of citizenship of the European Union and to create an area of freedom, security and justice. It enhances legal certainty as regards the protection of fundamental rights, where in the past such protection was guaranteed only by the case law of the Court of Justice and Article 6 of the EU Treaty.

The Charter contains a preamble and 54 Articles, grouped in seven chapters:

- Chapter I: **Dignity** (human dignity, the right to life, the right to the integrity of the person, prohibition of torture and inhuman or degrading treatment or punishment, prohibition of slavery and forced labour);
- Chapter II: **Freedom** (the right to liberty and security, respect for private and family life, protection of personal data, the right to marry and found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and the right to engage in work, freedom to conduct a business, the right to property, the right to asylum, protection in the event of removal, expulsion or extradition);
- Chapter III: **Equality (equality before the law, non-discrimination, cultural, religious and linguistic diversity, equality between men and women, the rights of the child, the rights of the elderly, integration of persons with disabilities)**;

- Chapter IV: **Solidarity (workers' right to** information and consultation within the undertaking, the right of collective bargaining and action, the right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people at work, family and professional life, social security and social assistance, health care, access to services of general economic interest, environmental protection, consumer protection);
- Chapter V: **Citizens' rights (the right to** vote and stand as a candidate at elections to the European Parliament, the right to vote and stand as a candidate at municipal elections, the right to good administration, the right of access to documents, the ombudsman, the right to petition, freedom of movement and residence, diplomatic and consular protection);
- Chapter VI: **Justice (the right to an effective remedy and a fair trial, the presumption of innocence and the right of defence, principles of legality and proportionality of criminal offences and penalties, the right not to be tried or punished twice in criminal proceedings for the same criminal offence);**
- Chapter VII: General provisions

In general, the rights referred to apply to everyone. However, the Charter also refers to categories of persons with special needs (children, the elderly, people with a disability). Chapter V also examines the specific situation of European citizens, referring to certain rights already mentioned in the treaties (freedom of movement and residence, the right to vote, the right to petition) and introducing the right to good administration.

Recognising the changes that have occurred in society, the Charter includes not only the traditional rights (right to life, freedom of expression, right to an effective remedy, etc.), but also rights that were not included in the Council of Europe Convention of 1950 (data protection, bioethics, etc.).

Scope

The general provisions serve to establish links between the Charter and the European Convention on Human Rights and to determine the scope of the Charter. The Charter applies to the European institutions, subject to the principle of subsidiarity, and may under no circumstances extend the powers and tasks conferred on them by the Treaties. The principles of the Charter also apply to the Member States (to central, regional and local authorities) when they are implementing Community law. The Court of Justice had already confirmed the duty of Member States to respect fundamental rights (see, for example, the judgment in Case C-292/97).

The Charter as a point of reference for the courts

The Charter has been repeatedly cited in the opinions of the Advocates-General and has on several occasions influenced the conclusions of the Court of Justice of the European Communities. The opinions of the Advocates-General are not binding on the Court, but suggest legal solutions that are likely to influence it. In some cases the reference to the Charter has been marginal, but in other the Advocates-General have used it to interpret fundamental rights, though noting that it is not legally binding. The Charter's lack of legal status does not mean, however, that it has no effect. Advocates-General Tizzano, Léger and Mischo have stated that "the Charter has undeniably placed the rights which form its subject-matter at the highest level of values common to the Member States." For the first time, in its ruling of 27 June 2006 concerning the Directive on family reunification (Case C-540/03), the Court of Justice made explicit reference to the Charter and stressed its importance.

Resolution of the Council of Europe – Right to freedom of choice in education in Europe

1. The Parliamentary Assembly points out that the effective enjoyment of the right to education is a necessary precondition to enable each and every individual to fully develop and carry out his or her role in society. In order to guarantee the fundamental right to education, every education system must ensure equal opportunities and provide high-quality education for all pupils, seeking to transmit not only the knowledge required to enable them to find employment and play a full part in society, but also the values nurturing the protection and promotion of fundamental rights, democratic citizenship and social cohesion. In this respect, public authorities (at national, regional and local level) have a fundamental and irreplaceable role which they accomplish in particular through a network of educational institutions that they run (hereafter “public-run schools”).
2. It is on the basis of the right to education as explained above that the right to freedom of choice in education should be understood. This right, which is intimately linked to freedom of conscience, is enshrined in Article 2 of the Additional Protocol to the European Convention on Human Rights (ETS No. 9). It carries with it the obligation for all Council of Europe member States, in the exercise of their functions in the field of education and teaching, to “respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”, insofar as these are compatible with the fundamental values of the Council of Europe.
3. The Assembly welcomes the fact that the right to freedom of choice in education is recognised in the constitutions and laws of most Council of Europe member States. It considers that, within a sound national legal framework, schools which are not run by public authorities (hereafter “private schools”, irrespective of terminology and specific arrangements in different countries) can foster the development of high-quality education and bring the education possibilities available into line with families’ demands.
4. Accordingly, the Assembly recommends that the Council of Europe member States:
 - 4.1. uphold the role of public authorities in the field of education and the availability of public-run schools in all parts of the country, as well as the principle of State neutrality and pluralism in the national education system;
 - 4.2. ensure the viability and quality of the network of public-run schools;
 - 4.3. recognise clearly in law, where this has not already been done:
 - 4.3.1. the right to establish and run private schools, at least at primary and secondary level;
 - 4.3.2. the possibility for these schools to be part of the national education system
 - 4.3.3. the possibility for their pupils to obtain the same qualifications as those awarded following the successful completion of studies in public-run schools;
 - 4.4. ensure that this recognition is subject only to objective, fair and nondiscriminatory conditions;
 - 4.5. guarantee, through these conditions, the standards applicable to private schools and a system of regular inspections, accreditation processes and quality assurance assessments, that:
 - 4.5.1. the content of the curricula and the teaching methods are not based on or do not advocate attitudes which conflict with the values of the Council of Europe;
 - 4.5.2. no aspect of the school environment violates the rights of children and in particular their dignity and physical and psychological integrity;
 - 4.5.3. private schools do not encourage, by the messages they deliver or the policy they implement, communitarian segregation;
 - 4.5.4. pupils are provided with suitable and secure premises;
 - 4.5.5. the quality of teaching complies with the standards applied to public-run schools;
 - 4.5.6. the nurturing of critical thinking and cultural openness are an integral part of any educational project.

5. The Assembly recommends that the Council of Europe member States, while guaranteeing the viability and quality of the network of public-run schools, ensure that sufficient funding is made available to allow all children to access statutory education provision in private education establishments if sufficient provision is not available within the public-run school sector.
6. Finally, the Assembly recommends that the Council of Europe member States:
 - 6.1. carry out as soon as possible the analyses required to identify the reforms needed to effectively guarantee the right to freedom of choice in education;
 - 6.2. ensure the gradual implementation of these reforms at each level of government concerned (central government, regions and local authorities) in line with the competencies of each level, in order to achieve the desirable systemic improvements within a reasonable time, with due regard for the necessary budgetary implications.

Resolution adopted by the Parliamentary Assembly of the Council of Europe
October 2012

REPORT LUSTER
Doc. 1-1456/83

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 HOGAN 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 judgement of 7 December 1976, Series A. No. 23, which reaffirms the rights 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,¹
- h) having regard to the European Parliament's resolution of 7 July 1983 on the European schools,²
- i) having regard also to the particularly marked pluralism within the Member States in the field of education,
- j) having regard to the forthcoming accession of Spain and Portugal,

Calls for

1. 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; within the framework of the constitution common to all the Member States and the legislation based thereon, 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 children 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;

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

² OJ No. C 307, 14.11.1983, p.36

3. The admission of a child to the 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, from among comparable schools, 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 parent's 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 recognised 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;
10. Expects that the abovementioned principles of free education will be fully respected by Spain and Portugal on their accession to the Community;

II. The following action to implement the above principles:

1. 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; the commission shall ensure that, in the application of these directives, the right to freedom of education is upheld in the Member States;

2. 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 make appropriate recommendations to ensure equivalence in the content of certificates from state schools and state-approved schools;
 3. The procedures applicable in the event of violation of fundamental rights and the general legal principles laid down in the European Convention for the Protection of Human Rights recognised by the European Community shall also apply in the event of violation of freedom of education;
- III. Instructs its President to forward this resolution to the Education Ministers, the Council and Commission and to the Governments of Spain and Portugal.***

Extract from the Minutes of the sitting of the European Parliament of 14 March 84
PE 89.403 - pp.21-25
(Resolution adopted by 118 votes for, 53 against and 17 abstentions)

Some useful links

Council of Europe

European Convention for the Protection of Human Rights and Fundamental Freedoms

http://www.echr.coe.int/Documents/Convention_ENG.pdf

+ Additional Protocol

<https://rm.coe.int/168008371a>

European Union

Charter of fundamental Rights

http://www.europarl.europa.eu/charter/pdf/text_en.pdf

+ Consolidated Treaties

https://europa.eu/european-union/sites/europaeu/files/eu_citizenship/consolidated-treaties_en.pdf

United Nations

Universal Declaration on Human Rights

<http://www.un.org/en/universal-declaration-human-rights/>