

## 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

### I. Significance and context of the right to education

The right to education belongs to the group of economic, social and cultural rights. It is an ‘empowerment right’ which enables persons, adults and children alike, to participate fully in their communities.<sup>550</sup> Education forms an indispensable precondition for the enjoyment of many other human rights and freedoms. For example, individuals cannot benefit from economic rights such as the right to work and to choose one’s occupation without the requisite education and training. Likewise, political rights such as the right to vote or the right of equal access to public service depend on a minimum of education, including literacy. The meaningful participation in civil society through freely expressing opinions, assembling and associating, or by exercising the right to be elected, also requires knowledge and skills which can only be acquired through education. Recognising the importance of education, the UN General Assembly identified the achievement of universal primary education by the year 2015, meaning the completion of a full course of primary education by all boys and girls, as one of the Millennium Development Goals.<sup>551</sup>

#### *1. The right to education under international law*

The Universal Declaration of Human Rights protects the right to education, as do the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights (CESCR), the UNESCO Convention Against Discrimination in Education (CADE), and the European Convention of Human Rights (ECHR).<sup>552</sup>

The UDHR, the CESCR and the CRC stipulate certain aims of education. Article 26(2) of the UDHR regards the objective of education as ‘the full development of the human personality and [the] strengthening of respect for human rights and fundamental freedoms.’ Article 13(1) CESCR defines the goals of education as the development of the human personality and its dignity, the strengthening of respect for human rights and the promotion of peace and tolerance. Moreover, education shall enable individuals to ‘participate effectively in a free society.’<sup>553</sup> In addition to the principles set out in

<sup>550</sup> UN Committee on Economic Social and Cultural Rights, General Comment on the Right to Education (Art. 13) of 8 December 1999, 21<sup>st</sup> sess., UN Doc. E/C.12/1999/10 (1999), para. 1.

<sup>551</sup> See Art. 19 of the United Nations Millennium Declaration (UNMD) of 8 September 2000, UN General Assembly Res. 55/2, UN G.A.O.R., 55<sup>th</sup> Sess., UNDoc. A/Res/55/2 (2000).

<sup>552</sup> See Article 26 of the Universal Declaration of Human Rights (UDHR) of 10 December 1948 ; UN General Assembly Resolution 217(III), G.A.O.R., 3<sup>rd</sup> Sess., Supp. No. 13 at 71 ; Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (CESCR) of 16 December 1966 ; Article 5 of the UNESCO Convention Against Discrimination in Education (CADE) of 14 November 1960 ; Article 29(1) of the Convention on the Rights of the Child (CRC) of 20 November 1989 ; Article 2 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 4 November 1950.

<sup>553</sup> The UNESCO Convention Against Discrimination in Education in Article 5(1)(a) reproduces the objectives of education as set out in Article 13(1) of the CESCR almost word by word.

the aforementioned treaties, the Convention on the Rights of the Child emphasises the ‘development of respect for the child’s parents, his or her own cultural identity, language and values,’ as important educational goals in Article 29(1).

Article 26(1) UDHR, Articles 13(2) and 14 CESC, and Article 28(1) CRC further require States Parties to provide free and compulsory elementary education, as well as equal access to secondary education and equal access to higher education on the basis of merit, where possible free of charge.

In contrast, Article 2 of Protocol 1 to the ECHR emphasises the liberal aspect of the right. The first sentence of Article 2 of Protocol 1 is phrased in negative terms, as a prohibition to deny any person the right to education. It was interpreted by the European Court of Human Rights to guarantee equal access to educational facilities existing at a given time and freedom from state interference with receiving an education of one’s choice, rather than an entitlement to any particular kind of education or educational facilities.<sup>554</sup> However, it is understood that Article 2 of Protocol 1 implies an obligation for Contracting States to set up at least a minimum of educational facilities, since otherwise, the right to education would be meaningless. The European Court of Human Rights also held the right to education to include the right to obtain ‘in conformity with the rules in force in each state,...official recognition of the studies which have been completed.’<sup>555</sup>

While the European Social Charter refrains from defining any specific educational aims, Article 17(1)(a) does impose a duty on States Parties to ensure ‘that children and young persons...have the...education and training they need...by providing for the establishment or maintenance of institutions and services.’<sup>556</sup> Moreover, pursuant to Article 17(2), State Parties are under an obligation to ‘provide to children and young persons free primary and secondary education.’ By virtue of Article 10(1) of the ESC, States Parties commit to ‘provide or promote ...vocational training of all persons...and grant facilities for access to higher technical and university education based solely on individual aptitude.’ Article 20 ESC also prohibits any discrimination on grounds of sex in the field of vocational training and retraining.

The right to education further involves recognition of parents as the primary providers of care and education to their children,<sup>557</sup> and States’ respect for parents’ convictions of how their children will be educated when regulating education systems.<sup>558</sup> The foundation of educational institutions by private individuals shall be allowed, subject always to compliance with minimum standards set by the State.<sup>559</sup>

Article 2 of Protocol 1 to the ECHR was described by the Convention in its *Explanations relating to the Charter* as one source of inspiration to the drafters of Article 14.<sup>560</sup> Paragraph 5 of the preamble of the Charter moreover emphasises that the rights and freedoms granted, reaffirm Member States’ obligations arising under international law, including the commitments made in the CESC, the CRC, the CADE, as well as the ESC, and, pursuant to Article 53, shall not be interpreted as restricting or violating Member States’ common international obligations.

<sup>554</sup> See Eur. Ct. H.R., *Case relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium* judgment of 23 July 1968, *Ser. A*, No. 6, paras. 3-5.

This case involved French speaking families living in the Dutch part of Belgium, who complained about the government’s refusal to provide elementary education in the French language, which, they claimed, constituted a denial of their children’s right to education.

<sup>555</sup> *Ibid.*, p. 32 para. 7.

<sup>556</sup> European Social Charter (Revised) (ESC) of 3 May 1996, E.T.S. No. 163.

<sup>557</sup> See CRC Art. 14 (2) and 18(1).

<sup>558</sup> See UDHR Art. 26 (3); CESC Art. 18 (3); CADE Art. 5 (1)(b); Art. 18 (4) of the International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966, U.N.T.S. (entered into force 23 March 1976); second sentence of Art. 2 of Protocol 1 to the ECHR.

<sup>559</sup> CESC Art. 13 (4); CRC Art. 29 (2).

<sup>560</sup> See Updated Explanations relating to the text of the Charter of Fundamental Rights by the Praesidium of the European Convention of 18 July 2003, CONV 828/1/03 REV 1, p. 17.

## 2. *The right to education under EU primary legislation*

Pursuant to Article 51(2), the Charter of Fundamental Rights purports not to create any new powers for the Community. Rather, the Charter sets out obligations for the Union and Member States when acting under Community law. Nevertheless, it is important to determine the scope of EU jurisdiction in relation to education in order to specify existing powers which may be relied on when invoking the right to education in Article 14.

Article 3(1)(g) EC Treaty declares that the Community shall contribute to education and training of quality in Member States. To this end, Articles 149 and 150 equip the Community with certain powers in the field of education and vocational training. While Article 149 covers education generally and on all levels, Article 150 is preoccupied with vocational training. Both provisions in their first paragraph ensure Member States' responsibility for 'the content of teaching and the organisation of education systems...' respectively vocational training. Similarly, both articles prohibit any Community action in relation to the harmonisation of laws in this area in their third paragraph. Community jurisdiction in the field of vocational training, however, is slightly more extensive than with respect to education generally. While under Article 149, the Community shall only 'encourage cooperation' between Member States and 'if necessary' supplement and support their action, Article 150 permits the Community to 'implement a vocational training policy which shall support and supplement' Member States' activities. Targets of Community initiatives shall be, for example, the mobility of students, teachers, vocational instructors and trainees, particularly young people, as well as the mutual recognition of diplomas and periods of study. The European Court of Justice (ECJ) has repeatedly relied on these provisions to assume jurisdiction over students claiming non-discriminatory access to university courses in other Member States.<sup>561</sup>

## **II. Content of Article 14 of the Charter**

### *1. The right to education and to have access to vocational and continuing training*

In its first sentence, Article 14 stipulates that 'everyone has the right to education and to have access to vocational and continuing training.'

The emphasis of the entitlement is on non-discriminatory access to education and vocational training. It must be construed in light of the ESC, the Community Charter of Fundamental Social Rights of Workers of 9 December 1989,<sup>562</sup> and ECJ jurisprudence relating to the right to education, where it has applied the principle of free movement of workers, and the prohibition of discrimination on grounds of nationality as stipulated in Article 12 of the EC Treaty. Also of relevance is secondary legislation directing Member States to outlaw discrimination in relation to vocational and continuing training on grounds of sex, religion or belief, disability, age, or sexual orientation,<sup>563</sup> and in relation to education generally on grounds of racial or ethnic origin,<sup>564</sup> which the Council has enacted in reliance on Article 13 of the EC Treaty.

<sup>561</sup> See e.g. ECJ, Case C-147/03, *Commission v. Austria*, [2005] ECR 0 (judgment of 7 July 2005), paras. 4-5 and ECJ, Case C-65/03, *Commission v. Belgium*, [2004] ECR I-06427, para. 25.

<sup>562</sup> Communication from the Commission of 29 November 1989 concerning its action programme relating to the implementation of the Community Charter of Fundamental Social Rights of Workers, COM (1989) 568 final (CFSRW). All Member States except for the United Kingdom ratified this Charter.

<sup>563</sup> See Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303 of 2.12.2000, p. 16 ; Directive 2002/73/EC of 23 September 2002 of the European Parliament and of the Council amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 269 of 5.10.2002, p.15.

<sup>564</sup> See Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180 of 19.07.2000, p. 22.

### 1.1. Non-discriminatory access

As far as students are concerned, the ECJ's leading decision concerned *Gravier*, a French art student, who was charged fees for attending a vocational training course in Belgium which Belgian nationals did not have to pay. The Court relied on the First Principle of Council decision 63/266 to grant access to vocational training facilities to persons moving to another Member State solely for the purpose of studying, on the same conditions as nationals.<sup>565</sup> Decision 63/266 stipulates that every person is entitled 'to receive adequate training, with due regard for freedom of choice of occupation, *place of training*, and place of work'<sup>566</sup> [emphasis added]. The Court further held that access to vocational training is particularly likely to promote free movement of workers, and therefore falls within the scope of the Treaty. In *Commission v. Austria*, the ECJ decided that Austria's refusal to treat secondary education diplomas obtained in other Member States differently from Austrian diplomas for the purpose of gaining access to university courses constitutes indirect discrimination<sup>567</sup> on grounds of nationality, in violation of Article 12 of the EC Treaty. The Court argued that requiring Community nationals to meet the specific requirements for a chosen course as laid down by the Member State which issued their diploma in order to be allowed into that course in Austria, although it applied to Austrians and foreigners alike, affected nationals from other Member States more than Austrians.

In respect of workers and workers' dependants, the Court applied Regulation 1612/68 to award extensive education rights. Regulation 1612/68 awards a right of equal access to educational and vocational training facilities to workers and their dependants moving to another Member State.<sup>568</sup> Article 7 of that Regulation stipulates that workers may enjoy the same social advantages and must be granted equal access to vocational training as nationals. In *Gaal*, the Court held that even workers' children older than 21 and non-dependant may benefit from the rights established in *Casagrande*.<sup>569</sup> *Gaal*, a Belgian national who has been living in Germany for most of his life, was denied education allowance by the German authorities on the ground that he had already reached 21 years of age and was not dependant on his parents.

Such equal access naturally means that Community nationals who are students, workers, or workers' dependants need not pay higher enrolment or administrative fees than nationals for attendance of educational facilities in a Member State.<sup>570</sup> However, as regards financial support for pursuing a vocational training course, workers and workers' dependants are treated differently from persons moving to another member state solely for the purpose of studies. In *Lair*, the Court held that for students only fees related specifically to access to vocational training, such as registration and enrolment fees, are covered by the prohibition on discrimination.<sup>571</sup> This results from the fact that in contrast to workers, students are presumed not to pay taxes in the host Member State.

### 1.2. Scope of the right of access to education

It follows from the aforementioned ECJ case law that the EU right to education applies in a transnational context only. Community nationals and their dependants may claim equal access once they move to work or study in another member state. Under Community law, they cannot claim a right to education toward their home state.

<sup>565</sup> See ECJ, Case 293/83, *Gravier v. City of Liège*, [1985] ECR 593 (judgment of 13 February 1985), paras. 28-30.

<sup>566</sup> Council Decision 63/266/EEC of 2 April 1963 laying down general principles for implementing a common vocational training policy, OJ 31 of 26.04.1962, p. 1034/62.

<sup>567</sup> Article 12 EC Treaty prohibits not only direct, but also indirect discrimination. See ECJ, Case 152/73, *Sotgiu v. Deutsche Bundespost*, [1974] ECR 153 (judgment of 12 February 1974) para. 11.

<sup>568</sup> Regulation (EEC) 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, OJ L 257 of 19.10.1968, p. 2.

<sup>569</sup> ECJ, Case C-7/94, *Landesamt für Ausbildungsförderung Nordrhein-Westfalen v. Lubor Gaal*, [1996] ECR I-1031 (judgment of 4 May 1995), para. 25.

<sup>570</sup> See also ECJ, Case 152/82, *Forcheri v. Belgium*, [1983] ECR 2323 (judgment of 13 July 1983).

<sup>571</sup> ECJ, Case 39/86, *Sylvie Lair v. University of Hannover*, [1988] ECR 3161 (judgment of 21 June 1988), para. 15. *Lair* was a French national who lived in Germany and, after being employed, decided to undertake university studies in Germany. She was denied a maintenance grant for the reason of being a French national.

In *Gravier* and *Blaizot*, the ECJ interpreted broadly what constitutes vocational training as protected by the prohibition on discrimination. Thus, any form of education which prepared for a profession, trade or employment, even if it included an element of general education, qualifies as vocational training.<sup>572</sup> In *Blaizot*, dealing with a French national studying veterinary medicine at the Liège University who sought the repayment of enrolment fees unduly paid before the *Gravier* judgment, the Court extended the scope of vocational training to include higher and university studies: ‘University studies constitute vocational training not only where the final academic examination directly provides the required qualification for a particular profession, trade or employment, but also in so far as the studies in question provide specific training and skills needed by the student for the pursuit of a profession, trade or employment, even if no legislative or administrative provisions make the acquisition of that knowledge a prerequisite for that purpose.’<sup>573</sup>

The provision on access to vocational and continuing training in the first sentence of Article 14 is also based on Article 15 of the CFSRW and on Article 10 of the ESC.<sup>574</sup> Reference to both agreements is made in the preamble of the TEU, which confirms Member States’ attachment to the fundamental social rights stipulated therein.

By virtue of Article 10(1) of the ESC, State Parties commit to ensure that all persons may receive vocational training and have access to higher technical and university education on the basis of merit. They further agree in Article 10(3) to provide training and retraining facilities for adult workers and in Article 10(5) to encourage utilisation of the facilities by measures such as reducing or abolishing fees and granting financial assistance. As a result, the ESC holds States not only to guarantee non-discriminatory access to vocational training facilities, but to ensure the very existence of such facilities by either establishing public institutions or subsidising private initiatives at vocational training.

Article 15 of the CFSRW declares that ‘every worker of the EC must be able to have access to vocational training ...throughout his working life.’ It further holds the ‘competent authorities,’ meaning the State, as well as private enterprises and representations of interest such as trade unions and chambers of commerce, to set up training facilities.

Thus, the second part of the first sentence of Article 14 may be construed so as to go beyond a mere right of access to whatever training facilities exist in a given Member State, and to actually hold Member States responsible for the establishment of such institutions.

In relation to general education, Community law lacks a definition of the term since the ECJ has been preoccupied with legal issues relating to vocational training. Therefore, resort must be had to the notion of ‘education’ as envisaged by the relevant international agreements discussed above.<sup>575</sup> While ‘the right to education’ in the first sentence of Article 14 is primarily about equal access to education, its meaning does not correspond with the interpretation the European Court of Human Rights has given to the first sentence of Article 2 of Protocol 1 to the ECHR. Article 2 of Protocol 1 clearly emphasises the liberal aspect of the right to education by stating that ‘No person shall be denied the right to education.’ In contrast, the first sentence of Article 14 is phrased in positive terms, and guarantees a ‘right to education.’ Such wording suggests Member States’ obligation to not only refrain from interfering with the human right to obtain an education, but to facilitate it through positive action.

This interpretation receives support from the second sentence of Article 14 which grants the possibility of free and equal access to compulsory education.

<sup>572</sup> See Case 293/83, *Gravier v. City of Liège* [1985] ECR 593 (judgment of 13 February 1985), para. 30.

<sup>573</sup> ECJ, Case 24/86, *Blaizot v. University of Liège*, [1988] ECR 379 (judgment of 2 February 1988), para. 20.

<sup>574</sup> See Updated Explanations relating to the text of the Charter of Fundamental Rights by the Praesidium of the European Convention of 18 July 2003, CONV 828/1/03 REV 1.

<sup>575</sup> See in particular Art. 26(2) of the UDHR, Art. 13(1) of the CESC, and Art. 29(1) of the CRC.

Equal access to general education as granted in the first sentence of Article 14, pursuant to the Court's judgment in *Casagrande* permits the student to attend school 'under the best possible conditions' including access to any 'general measures intended to facilitate educational attendance,'<sup>576</sup> meaning financial assistance such as grants. *Casagrande*, the son of a deceased migrant worker, was denied an allowance to attend school in Germany because of his Italian nationality. The ECJ referred to Article 12 of Regulation 1612/68, which stipulates that a worker's child may receive education on the same conditions as nationals' children.

## 2. Possibility of free compulsory education

While the first sentence of Article 14 concerns non-discriminatory access to education, the second sentence elaborates on the nature of enjoyment of the right to education, by stating that the right to education 'includes the possibility to receive free compulsory education.'

The drafters drew inspiration from the common constitutional traditions of Member States when including this provision in Article 14. The majority of Member States guarantee free compulsory education in their constitutions,<sup>577</sup> thereby honouring the commitments they made in the CRC and the CESCR.

Access to education is rendered meaningless unless facilities are available to which a person may claim such access and receive an education of quality. Therefore, the second sentence of Article 14 holds Member States to ensure the availability of a minimum level of education, by taking positive action to establish public institutions where such education may be received at no cost. The Convention clarified that the guarantee does not imply that all educational facilities run by the State must be free of charge, so that universities, for example, may collect enrolment fees.<sup>578</sup>

The 'possibility' to receive an education, as stipulated by Article 14, suggests that the education system established by the State must fulfill certain quality requirements. The Committee on Economic, Social and Cultural Rights explains that the right to receive an education includes the elements of availability, acceptability and adaptability. Availability means that functional educational institutions in sufficient quantity must be in place. Such institutions require, among others, buildings, sanitation facilities, and trained teachers. Moreover, the form and content of teaching must be acceptable, thus, be relevant, culturally appropriate and of good quality. Finally, education must adapt to the needs of students and changing societies. It must take account of and respond to students' age, ability and cultural background.<sup>579</sup>

By making education compulsory, the second sentence of Article 14 imposes obligations on both the State and the individual, requiring the former to provide education, and the latter to make use of his or her right to receive an education. The provision leaves it to the particular Member State to decide on the nature and extent of education it wishes all children under its jurisdiction to receive. Pursuant to Member States' obligations under international law, however, and the constitutional guarantees most of them have in place, compulsory education must encompass at least elementary education.<sup>580</sup>

This being said, it must be borne in mind that the Community presently does not have jurisdiction over the regulation of education systems, and therefore cannot guarantee free compulsory education in Member States. By applying the principles of free movement of workers and equal treatment, the ECJ can award a right to Community nationals moving to another Member State to make use of free and

<sup>576</sup> ECJ, Case 9/74, *Casagrande v. Landeshauptstadt München*, [1974] ECR 773 (judgment of 3 July 1974), paras. 8-9.

<sup>577</sup> Belgium (Art. 24(3)); Cyprus (Art. 20(2)(3)); Czech Republic (Art. 33(1)(2)); Denmark (Art. 76); Estonia (Art. 37); Finland (Art. 16); Greece (Art. 16(3)(4)); Hungary (Art. 67(2)); Ireland (Art. 42(3)(4)); Italy (Art. 34(2)); Latvia (Art. 112); Lithuania (Art. 41); Luxembourg (Art. 23(1)); Malta (Art. 10(2)); Netherlands (Art. 23(4)); Poland (Art. 70(1)(2)); Portugal (Art. 74(3a)); Slovakia (Art. 42(1)(2)); Slovenia (Art. 57); Spain (Art. 27(4)); Sweden (Art. 21).

<sup>578</sup> See Updated Explanations relating to the text of the Charter of Fundamental Rights by the Praesidium of the European Convention of 18 July 2003, CONV 828/1/03 REV 1.

<sup>579</sup> See UN Committee on Economic Social and Cultural Rights, General Comment on the Right to Education (Art. 13) of 8 December 1999, 21<sup>st</sup> sess., UN Doc. E/C.12/1999/10 (1999), para. 6.

<sup>580</sup> See Art. 26(1) of the UDHR, Arts. 13(1) and 14 of the CESCR, and Art. 28(1) of the CRC.

compulsory education available in that State on the same conditions as nationals. Should a State decide, however, not to offer public education at all, there is nothing that the Community can do about it.

Given the expansive interpretation of education rights by the ECJ in the past, there is a chance that the Court will interpret the freedom of movement of workers in the context of the right to education in such a way as to impose an obligation on Member States to have free, elementary education facilities in place, however. The Court may argue that the absence of free education for migrant workers' dependants' in a Member State will discourage workers from moving to that State and therefore constitutes a violation of the principle of free movement.

### 3. *Freedom to found educational establishments in accordance with national law*

The third sentence of Article 14 guarantees the freedom to found educational establishments 'with due respect for democratic principles and ...in accordance with the national laws...' It thus imparts the freedom on persons and entities other than the state to establish schools, while leaving it to the discretion of Member States to set minimum standards as to, for example, school curricula and methods of teaching, including discipline.

Private schools may pursue religious, philosophical or pedagogical aims of their choice. However, it is imperative that both Member States and private educational institutions observe 'democratic principles.' This means that private schools must provide instruction in an objective, critical and pluralistic manner, on the same lines as public institutions.<sup>581</sup> For Member States, it involves a duty to regulate both public and private schools so that the fundamental rights and freedoms of all students are protected. In *Campell and Cosans*, the European Court of Human Rights held that the legality of administering corporal punishment on students had, apart from violating other rights guaranteed by the Convention, denied the applicant's son the right to education. His refusal to accept such punishment had resulted in prolonged suspension.<sup>582</sup>

The obligation to teach objectively and pluralistically also follows from the principle of academic freedom which the right to education includes. The enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination.<sup>583</sup>

In granting the said right, the Community relies on the freedom to conduct a business as guaranteed by Article 16 of the Charter,<sup>584</sup> and the freedom of movement of services. Although the ECJ has never expressly declared private education to be a service, such can be inferred from its ruling in the *Humbel* case, which concerned a course taught under the national education system. In its judgment, the Court held that secondary education provided under the national education system cannot be considered a service since it is not provided in exchange for remuneration.<sup>585</sup> As a consequence, once private schools collect enrolment fees, they qualify as service providers.

While Article 14 grants a right to private education, it does not entail an obligation on the part of Member States to fund or subsidise private schooling. This follows from the fact that the regulation of education systems, including funding and the distribution of subsidies, falls entirely within the

<sup>581</sup> Eur. Ct. H.R., *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (Appl. No. 5095/71), judgment of 7 December 1976, *Ser. A*, No. 23, para. 53. In this case, a group of parents complained that sex education in Danish public schools violated their convictions as to how their children should be educated.

<sup>582</sup> Eur. Ct. H.R., *Campbell and Cosans v. United Kingdom* (Appl. No. 7511/76), judgment of 25 February 1982, *Ser. A*, No. 48, paras. 40-41.

<sup>583</sup> See UN Committee on Economic Social and Cultural Rights, General Comment on the Right to Education (Art. 13) of 8 December 1999, 21<sup>st</sup> sess., UN Doc. E/C.12/1999/10 (1999), para. 1.

<sup>584</sup> See Updated Explanations relating to the text of the Charter of Fundamental Rights by the Praesidium of the European Convention of 18 July 2003, CONV 828/1/03 REV 1.

<sup>585</sup> ECJ, Case 263/86, *Belgium v. Humbel*, [1988] ECR 5365 (judgment of 27 September 1988), paras. 17-18.

jurisdiction of Member States. The European Court of Human Rights in the *Belgian linguistics* case,<sup>586</sup> as well as the European Commission of Human Rights,<sup>587</sup> confirmed that states' need not subsidise private educational establishments. The UN Human Rights Committee held that preferential treatment given to public sector schooling is reasonable since parents are free to take advantage of public sector schooling, or to choose private schooling for their children.<sup>588</sup>

#### 4. *Respect of parents' convictions in accordance with national law*

The third sentence of Article 14 also guarantees respect for the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions. The reference to national laws governing the exercise of such right, applies in order not to encroach upon Member States' jurisdiction over the regulation of education systems.

The wording is based on the second sentence of Article 2 of Protocol 1 to the ECHR, which holds Contracting States to respect the right of parents 'to ensure ... education and teaching in conformity with their own religious and philosophical convictions.' The drafters also relied on Member States recognition, by virtue of their obligations under international law, of parents' role as the primary caregivers and educators of their children, as well as the freedom of thought, conscience and religion. Thus, the CRC in Articles 14(2) and 18(1) recognises parents' role in their children's upbringing. Article 18(4) of the International Covenant on Civil and Political Rights holds State Parties to respect the right of parents 'to ensure ... education and teaching in conformity with their own religious and philosophical convictions.'

The European Court of Human Rights in *Campbell and Cosans* specified that only such 'philosophical convictions' must be respected 'as are worthy of respect in a democratic society...and are not incompatible with human dignity; in addition, they must not conflict with the fundamental right of the child to education.'<sup>589</sup> The Court further held in *Kjeldsen* that the state's respective duty is not satisfied by permitting the establishment of private schools. The state must ensure respect for parents' convictions throughout the entire State education programme.<sup>590</sup> Such obligation does not prevent the state from 'imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind.'<sup>591</sup> However, 'the State...must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination.'<sup>592</sup>

While Article 14 does not expressly mention children's rights in choosing the kind of education they receive, the Convention in its *Explanations relating to the Charter* states that parental rights as stipulated in the third sentence of Article 14 must be interpreted in conjunction with Article 24 of the Charter, which discusses 'The rights of the child.'<sup>593</sup> Accordingly, in deciding the nature of the child's education, the child's best interest must form the primary consideration. Moreover, pursuant to Art 24(1), children's views 'shall be taken into consideration on matters which concern them in accordance with their age and maturity.'

<sup>586</sup> See Eur. Ct. H.R., *Case relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium* judgment of 23 July 1968, Ser. A, No. 6, para. 7.

<sup>587</sup> See Eur. Comm. H.R., *Family H. v. United Kingdom* (dec.), No. 10233/83, 6 March 1984, (1984) 37 D.R. at p. 105.

<sup>588</sup> See Human Rights Committee, Views on Communication No. 298/1988, *G. and L. Lindgren and L. Holm v. Sweden*, 7 December 1990, (CCPR/C/40/D/298/1988), para. 10.3.

<sup>589</sup> Eur. Ct. H.R., *Campbell and Cosans v. United Kingdom* (Appl. No. 7511/76), *op. cit.*, para. 36.

<sup>590</sup> Eur. Ct. H.R., *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (Appl. No. 5095/71), *op. cit.*, paras. 51-52.

<sup>591</sup> *ibidem*, paras. 51-52.

<sup>592</sup> *ibidem*, para. 53.

<sup>593</sup> See Updated Explanations relating to the text of the Charter of Fundamental Rights by the Praesidium of the European Convention of 18 July 2003, CONV 828/1/03 REV 1.