

Article 23

29 March 2012

Article 23 of the Dutch Constitution gives schools under private patronage (Dutch: *bijzondere scholen*) the same right to funding as state schools. In practice, the schools that qualify for this type of funding are largely founded on the basis of an established religious denomination. Article 23 has been in the Constitution since 1917. The Education Council was asked to revisit Article 23 and produce a new authoritative interpretation.

Broaden the interpretation of Article 23 in order to maintain its value

Article 23 of the Dutch Constitution places state schools and schools under private patronage on an equal footing, and guarantees freedom of education. The Education Council believes that, although 100 years old, this Article is still of immense value because it offers parents the possibility to choose a form of education that conforms with their own views on life. It creates conditions that allow individuals to connect with their education and common values. However, we believe that Article 23 should be interpreted more broadly in order to offer a better fit with modern times. Schools under private patronage can now only be founded on the basis of a religious belief or an ideology which must also be rooted in society in a visible way. The Education Council believes that it should also be possible to found a school on the basis of pedagogical beliefs as well as relatively new ideologies in the Netherlands, as this would ensure that Article 23 better meets the needs of our diverse society. The Education Council also considers the right of individuals to a good education paramount.

Recommendation 1: provide more scope to found schools and impose tighter requirements on initial funding

A broader interpretation of the concept of ‘persuasion’ (Dutch: *richting*), as used in the Constitution, means that the state would then have to assess whether this concept also includes pedagogical beliefs. The Education Council believes that such a role would be beyond the reasonable remit of the government. We therefore advocate a system of *persuasion-free school planning*: a system in which the concept of persuasion no longer plays a role in the foundation of schools. A school that can attract a sufficient number of pupils could be said to have social acceptance and would therefore qualify for state funding. The Education Council makes a number of concrete proposals for the working of this system. Freedom of education would remain the basis for the system, and state schools and schools under private patronage would continue to remain possible, but the scope to establish schools managed by a private patron would be increased. Furthermore, the Education Council recommends that the right to found *state* schools by parental initiative be restored. Finally, it should be possible to secure greater control of the quality of education provided by a school at the time of the school’s foundation. The Education Council proposes that funding requirements are tightened *before* initial funding is granted.

Recommendation 2: reduce the extent to which the concept of ‘persuasion’ pervades education legislation

A broader interpretation of the concept of persuasion necessarily means that persuasion should no longer be a crucial factor in education legislation. Legislation should therefore be brought into line with an open concept of persuasion. This should be done in several areas where the concept is a factor: this includes travel arrangements for pupils, exemption from compulsory education, protection from discrimination and inspection supervision. The Education Council makes concrete proposals for application of the concept of persuasion for each of these aspects. Furthermore, a broader concept of persuasion could cause more discussion in schools about how the school’s fundamental beliefs are expressed. The Education Council therefore requests the competent authority to conduct periodic assessments of parents’ views on this. In

extreme cases, parents could create their own schooling provision either within or outside the existing governance structure.

Recommendation 3: ensure that minimum standards address actual quality issues

The Education Council considers it correct that the government establishes minimum standards for education and that these aim to achieve real quality, because the development of individuals and of society as a whole are strongly related to the quality of education. The Education Council should establish a protocol for how the legislature deals with minimum standards and quality requirements. Standards established by the government must be based on sufficiently clear and, where possible, objective broad statutory norms. Minimum standards are, as the name says, the absolute minimum that must be achieved. If objectivity of the standards is impossible, this shortcoming should be compensated for by the introduction of procedural criteria, such as effective protection of rights.