

UACES 44th Annual Conference

Cork, 1-3 September 2014

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Minority Education in Schleswig-Holstein – Legal Provisions and Potential for Transferability of a Model Case

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The border region between Germany and Denmark is often seen as a model region for minority integration and diversity management. The stable and harmonious minority-majority relations on both sides of the border, based on mutual trust and understanding make for a safe environment in which various cultures can be maintained and nurtured without fear of conflict. However, as in many other border regions the situation was not always as peaceful; it developed out of the need for both states to protect their respective people on the other state's terrain. The mutual declarations of both states (Bonn-Copenhagen Declarations), formally settling the minority question between both states, were one of the conditions for Germany's accession to NATO in 1959. One of the main pillars of these declarations was the education of the minorities on both sides of the border. Education thus takes a special place in the development of the region and its peaceful and stable state. South of the border, in the German state of Schleswig-Holstein, education is arranged in the state school law, guaranteeing not only the possibility to found minority schools but also their funding on equal footing with German public schools. These legal provisions are unique in the European minority regime and form the base for a non-discriminatory minority education, which in turn is regarded to have a positive influence on the stability of minority-majority relations in the region.

The significance of education in the Danish-German border region in terms of minority-majority relations holds the question if the educational system of this region could foster similarly positive effects in other regions with minority populations. However, this would be possible only if the system was transferable at all. The purpose of this paper is therefore to evaluate if, and if yes how, the Schleswig-Holstein minority school system can be used as a model for other minority groups in Europe. In order to get to this evaluation, I will give a broad overview of the legal provisions in international and German federal law concerning minority education and conduct a qualitative analysis of the strengths and weaknesses of

Schleswig-Holstein's school law concerning the Danish minority schools and the resulting system. Finally, I will examine the potential for a transfer of the Danish minority school system in Schleswig-Holstein into other regions with minority populations in Europe.

For the purpose of this work the narrow interpretation of education – as usually used in international documents – is applied, thus referring to *"instruction imparted within a national, provincial or local education system, whether public or private"* (M'Bow, 1979: 11).

Education as a right

The role of education concerning the personal development of children has been acknowledged in numerous declarations, conventions, articles, speeches, and constitutions. International law has dealt with education as a right that enables individuals to lead an economically sustainable life and to take an active role in their political surrounding ever since the end of the First World War. Additionally, education has in recent years been increasingly seen as an influential factor for the wellbeing and development of societies.

On the international level the right to education was first implied and protected through the minority treaties, attached to the peace treaties of Paris after WW I, under the auspices of the League of Nations. The Universal Declaration of Human Rights was the next international agreement to explicitly protect the right to education for everyone (Beiter, 2006:21–25), followed by the UN Covenant on Economic, Social and Cultural Rights of 1966, the UN Convention on the Right of the Child of 1989, and the UNESCO Convention Against Discrimination in Education. Article 5 of the Convention Against Discrimination in Education is exceptional among the international legal provisions as it refers to the effects that education is expected to have; *"Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace"* (United Nations Educational, Scientific and Cultural Organisation, 1960:Article 5).

The European Union recognizes the right to education in its 2000 Charter of Fundamental Rights. The right to education is therein granted for everybody and includes the possibility to

receive free compulsory education. It furthermore respects the freedom to *"found educational establishments and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions [...]"* (European Union, 2000: Article 14). Additionally, in Articles 165 and 166 of the Treaty on the Functioning of the European Union (TFEU) the EU regards education as an area of EU interest in stating that *"[t]he Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action"* (European Union, 2010: Articles 165-166).

As becomes clear from the conventions and declarations listed above, the right to education is usually categorized as an economic, social, and cultural right which often suffers from a lack of legal means to enforce them. Therefore they are often treated as "quasi-rights" which are not enforceable and consequently breaches and violations are often not persecuted. Tomasevski (2001), however, argues that "[...] the right to education is also a civil and political right" that embodies individual and collective rights alike (Tomasevski, 2001: 8). Regardless of the way these provisions might categorize the right to education, however, at the core of the above stated conventions and declarations lies the call for education that is available to everybody and free of charge at least on the compulsory levels as well as accessible without discrimination.

Concerning the education of the minorities the UNESCO states in its 1960 Convention Against Discrimination in Education that *"It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language"* (United Nations Educational, Scientific and Cultural Organisation, 1960: Article 5). Other provisions that explicitly refer to the right to education and its application to minorities are the UN Convention on the Right of the Child (United Nations, 1989: Article 30), the UN International Covenant on Civil and Political Rights (United Nations, 1966: Article 27), and the Framework Convention for the Protection of National Minorities (FCPNM) issued by the Council of Europe. Besides making clear that persons belonging to minority groups cannot be deprived of their right to education (Council of Europe, 1995: Article 13), the European Council recognizes that education is not only a right applicable to everyone

but also has a positive impact on the cross-cultural understanding within the diverse European society (Council of Europe, 1995: Article 12).

It is thus well established that the right to education applies to minorities the same way as it does to dominant majority groups in one society or nation including the right to use their own language and establish and operate education facilities according to their needs and beliefs. However many states still struggle to integrate minority pupils into their educational systems in an appropriate way. Their access to and treatment in education depends to a great extent on their legal status as a minority in the respective country. Some ethnic minorities are not officially acknowledged as such and are therefore not entitled to minority rights, a number of Member States do not officially acknowledge any minority and accordingly do not grant any special rights to certain groups (Luciak, 2004: 4–5). Luciak (2004) notes in his report for the European Monitoring Centre on Racism and Xenophobia (EUMC), that migrants and minority groups notably lag behind in their educational performance, resulting in severe consequences for their employment prospects and livelihood. Children of minority heritage tend to enrol in schools with lower academic demands, drop out more often than their peers and finish school earlier. Further they tend to be overrepresented in special education and vocationally oriented tracks of education (Luciak, 2004: V). The reasons for the high rates of underachievement among ethnic minority pupils are complex, *"however, it seems fair to say that in many cases, a history of social exclusion, assimilationist tendencies, and a monocultural orientation in education lead to distrust in the educational system and to low expectations about the benefits of educational attainment"* (Luciak, 2004: 57). Additional problems are created by the low socio-economic status most national minorities are confronted with in comparison with the majority population, well demonstrated through segregate housing situations and a generally low standard of living (Luciak, 2004: 57).

Minority Education in Schleswig-Holstein

A clear exception from this situation is provided in the Danish-German border region. Minority students are guaranteed equal access to education in their mother tongue by law and the schools of the minority communities, despite being in private ownership, comply

with the educational standards of all state schools. Funding on equal footing with public schools is guaranteed and students graduating from the respective minority schools do not experience disadvantage or discrimination (Klatt, 2014:7–8). The minority schools in the region enjoy a good reputation and are increasingly attractive to members of the majority population, due to small classes and a respective high attention to the individual student as well as the multilingual education provided (European Academy Bolzano, 2007:20–22).

South of the border, in the German state of Schleswig-Holstein, there are three recognised minority communities to be found; the Frisian group, the Sinti and Roma, and the Danish minority. While the state constitution recognises all three of them and the school law provides that education shall also cover language and history of the Frisian people (Schleswig-Holstein Parliament, 2014a: Article 4 (5)), and foster respect for Sinti and Roma (Schleswig-Holstein Parliament, 2014a: Article 4 (6)), only the Danish minority is provided with own schools in which the predominant language is Danish. The schools of the Danish minority are fully recognised private schools harmonised with the German school system and under German jurisdiction. By law all private schools have to comply with the standards of the public school system in order to be recognised and allowed to hold exams and issue diplomas. School law in Germany is dealt with on state level, accordingly, the Danish minority schools are subject to Schleswig-Holstein state law (Teebken & Christensen, 2001:77–79). The schools are owned by the Dansk Skoleforening i Sydslesvig (Danish School Association of South Schleswig), which dates back to 1920 and today organises 46 schools and 55 kindergartens (Dansk Skoleforening i Sydslesvig, 2013); (Teebken & Christensen, 2001:77). As the Frisian and Sinti and Roma communities do not have special provisions concerning education in Schleswig-Holstein except for Frisian language courses in public schools, in the course of this paper minority schooling system or minority education system of Schleswig-Holstein generally refers to the school system of the Danish minority in the state.

One of the reasons for the positive situation of the Danish minority schools and their pupils can be seen in the respective legal provisions. Schleswig-Holstein state law deals with the schools of the Danish minority as schools in private ownership. Several articles deal with this type of schools and establish the conditions for their approval and recognition, as well as subsidies to be paid by the state. Articles 115 to 118 of the Schleswig-Holstein school law

deal with the approval, recognition and conditions for and of schools in private ownership but merely hint at the fact that these provisions are the same for the schools of the Danish minority. Explicit provisions for minority schools - which partly differ from those of other private schools - are made only with respect to subsidies in article 124, which also refers to the respective provisions for private schools in general:

“(1) The schools of the Danish minority grant their cultural autonomy as referred to in article 5 of the Constitution of the state Schleswig-Holstein.

(2) The owner of the schools of the Danish minority gets a subsidy of 100% of the pupil’s costs calculated in accordance with article 121, paragraphs 1 to 6; The allowances for the adjustment for costs not covered by the grants for student transportation, however, amounts to 200 Euro. Articles 119, 123 and 123a are to be applied.” (Schleswig-Holstein Parliament, 2014a: Art. 124)

This means firstly, that the state recognises the importance of the schools of the Danish minority for the cultural autonomy of the community and secondly, that minority schools are paid the same amount per pupil by the state of Schleswig-Holstein as any public school is and additional subsidies of 200 Euro per pupil to organise transport to and from school. As minority schools tend to be smaller than public schools and transport is more complex however, due to the dispersed settlement of the minority community, the costs per pupil in a minority school are higher than in public schools. The cost difference is covered partly by payments of the kin-state and by fees imposed by the carrier of the schools, the Danish School Association of South Schleswig (European Academy Bolzano, 2007:22). This situation reflects on the one hand a strong determination of the Federal Republic of Germany as well as of the state Schleswig-Holstein to the non-discrimination laws and principles rooted in their respective constitutions, and on the other hand the willingness and ability of Schleswig-Holstein, the Danish government, and the members of the Danish minority community in Germany to pay for the education of the children of the Danish minority. The dedication of Schleswig-Holstein to protect the minorities on its territory and grant equality to the respective students becomes apparent in the efforts of the committee for changes to the constitution of the state parliament to integrate the financial equality of Danish minority schools to the public schools of the majority, as proposed in a plenary session on 9 July 2014 (Schleswig-Holstein Parliament, 2014b: 17).

The legal framework in which the minority education system of Schleswig-Holstein is rooted concerns both the constitution of Germany, which provides a non-discrimination clause (German Federal Parliament, 2012:Art. 3 (3)), and of the state Schleswig-Holstein, which refers to the basic rights established in the German constitution and refers explicitly to the special protection and promotion of the Danish minority (Schleswig-Holstein Parliament, 2008:Art. 2a, Art. 5). The provisions concerned with the protection and promotion of the minority communities in Schleswig-Holstein are partly rooted in the Bonn Declaration which was issued in 1955 by Germany. It is one of two parallel unilateral declarations issued that year concerning the minority question in the German-Danish border region; the other was issued by Denmark in Copenhagen and granted a similar set of rights to the German minority on Danish territory. The accession-efforts of Germany to NATO in 1954 provided the Danish Ministry of Foreign Affairs with a welcome opportunity to demand a permanent settlement of the minority issue in order to “create a better atmosphere for the ratification debate” concerning Germany’s accession in the Danish parliament. Pressured in this manner, Germany suggested negotiations which eventually lead to the issue of the Bonn-Copenhagen declarations (Kühl, 2005:49). Two of the main pillars of the declarations are the right to self-determination and the right to establish and run cultural institutions, including schools (Klatt, 2014:12). In this respect the Bonn declaration states:

“In Schleswig-Holstein general schools and (also specialist) adult education centres as well as kindergartens may be set up by the Danish minority in line with the relevant legal provisions. At schools where teaching is in Danish, adequate teaching shall be given in the German language. Parents and persons legally responsible for a child’s education may decide freely whether their children are to attend schools where teaching is in Danish.”(Kühl, 2005:52)

In combination with another statement of the declaration this forms the base of today’s legal provisions for Danish minority schools in Schleswig-Holstein:

“In respect of financial assistance and other benefits from public funds on which a discretionary decision is taken, members of the Danish minority may not be treated differently from other citizens.” (Kühl, 2005:51)

Additionally, in the supplement of the declaration it was specified that the Schleswig-Holstein school authorities would cover 80% of the average cost for a pupil in public schools for pupils enrolled in Danish minority schools (Klatt, 2014:13). These provisions already differ greatly from all previous provisions based on the peace treaties after WWI, which established a public Danish school in the area, enrolment in which was however restricted to those using Danish as their native language. Only in 1928 admission to Danish schools, which were no longer necessarily public schools, was based on the parent's free decision in all of South Schleswig. During this period the financial situation of the schools depended on their status; while public schools were funded by the respective municipality, private schools were paid only small subsidies and the larger part of the costs had to be covered by the kin-state. These provisions were sustained during WWII, after which all minority schools were transformed into private schools and eventually the issues concerning minority education in Schleswig-Holstein were formally settled with the Bonn declaration (Klatt, 2014:8–12). From there the minority regime – and along with it the minority education system – developed further and along with other provisions the terms of education for Danish minority pupils was increasingly institutionalised with the integration of the issue in the state constitution and the state school law.

Naturally, as the current Danish minority school system developed over a period of almost 7 decades, a number of setbacks and conflicts accompanied its development. The most recent one concerned the state subsidies for the minority schools. While the minority schools on both sides of the border have the right to financial support by their kin-state, they also receive subsidies from the state on which territory they reside, as described above. The initial share of 80% of the average cost per pupil covered by Schleswig-Holstein as agreed in the Bonn declaration was increased to 100% in 1985. The assessment base of the share changed several times over the years to the disadvantage of the minority schools and funding was set equal to that of public schools only in 2007. Three years after this breakthrough for the equal treatment of minority schools the Schleswig-Holstein state government announced to cut the share of cost covered per pupil to 85% of public school funding. The state government's argument that the cuts did not interfere with its obligations towards the minority community was fiercely debated but despite strong opposition within the state, the federal government and among Danish politicians, the cuts were implemented and thus resulted in a crisis in the relations between the state and the minority as well as

between Germany and Denmark. In order to appease the minority as well as the Danish government, the Federal Ministry of the Interior issued a supplementary grant to the Danish School Association of South Schleswig covering the greater part of the losses, thus sending clear signals to the Schleswig-Holstein state government. Additionally, Berlin supported the claims of the minority for equal treatment and political support also came from local politicians as well as the broader public. The cuts were perceived as a breach of the spirit of the Bonn-Copenhagen declarations and resulted in a loss of trust of the minority towards the state government (Kühl, 2010:289; Klatt, 2014:15). Subsequently, with the election of a new state government in Schleswig-Holstein in 2012 the equality of funding for minority pupils was re-established and the relationship between the minority and the state government gained stability. Nonetheless, this incident demonstrated the vulnerability of a system that was understood to be one of the most stable minority systems in Europe and the crisis could only be softened by the dedication of the federal government, the support of the kin-state, and the notion of public support in the majority population (Klatt, 2014:16). The proposed change of the constitution in order to further institutionalise the equality of the Danish minority pupils can be considered an important step towards the reparation of the relationship between the minority community and the state authorities and towards a stable minority schooling system.

Determinants and issues

The analysis of the Schleswig-Holstein minority education system results in the notion that it is a system which, while reflecting a high degree of equality when compared to the situation in other regions and a corresponding amount of well-educated and integrated pupils, it remains a vulnerable system that can easily be disturbed by political decisions of regional politicians. In this respect the notion of the Schleswig-Holstein minority education system as a model case needs to be questioned. However, this question has been debated elsewhere in respect to the minority regime of the region at large and is not the subject of this work (see Kühl & Bohn, 2005). Nonetheless, the vulnerability of the system has implications for its transferability insofar as it is questionable if a system which is only seemingly stable is desirable for other regions with minority populations to apply. An instable system applied in a region with smouldering conflict might lead to a situation in which arguments over

educational issues tip over the atmosphere and lead the conflict to break out. While one might argue that the Schleswig-Holstein educational system is the most stable system available at the moment and its perception as a model case is rooted in exactly this relative stability, this line of argument can be understood as a doctrine of the least problematic case and can therefore not be taken as a valid argument for the transferability of the system. This point of criticism of the current system would of course decrease in significance if the proposed integration of the funding equality-issue into the constitution was approved, thus giving greater stability to the system and making it less vulnerable to political decisions of stand-alone actors in power positions.

Another weak spot of the Schleswig-Holstein minority education system is that it is a system of segregated schooling. A number of cases have demonstrated that segregated schooling of minority children has the potential to lead to alienation of the community from the majority population and thus makes room for prejudice and conflict. Accordingly, the application of a system like this requires careful consideration and evaluation of the region in question. The Danish-German border region is marked by a harmonious relationship between the minority and majority populations and the area has been without violent conflict for more than 50 years. The large-scale support from the German majority population during the funding crisis in 2010-2012 reflects this relationship well and demonstrates that segregated schooling in this case holds very little potential for conflict between the populations. This will however likely be different in areas with a more tensed relationship between the minority and the majority populations.

One decisive factor for the working of the minority schooling system in Schleswig-Holstein is the legal framework in which the provisions for the establishment, recognition and funding of minority schools are embedded. As I have pointed out above, the provisions for minority schooling are part of a larger legal framework including the state constitution of Schleswig-Holstein, the federal constitution of Germany, and Schleswig-Holstein school law. This integration of the issue in legal documents demonstrates a large dedication of the authorities to institutionalise the system and grant a basic stability to agreements. As the funding crisis in Schleswig-Holstein has demonstrated, political decisions to the disadvantage of a community are quickly made and even the need to change a law is barely a hindrance to a decision like that, however, it can be expected that the integration of the respective

provisions in the constitution will have a stabilising effect on the relationship between authorities and minority communities. Accordingly the transferability of this system largely depends on the possibilities and willingness of the public authorities in the target region to dedicate resources and energy to the establishment of a legal system allowing for a similar degree of institutionalisation. While agreements between authorities and minority community might be an important first step, it is the institutionalisation of the issue that provides security and stability to the minority community in making it less likely for agreements to be disregarded or breached by a new government. However, the integration of provisions concerning minority rights into the constitution of a state or a region is also a much more elaborate process than establishing an agreement on certain provisions and will accordingly take up more time and resources.

Next to the dedication of the public authorities of Schleswig-Holstein to the issue, the economic power of the actors involved play a decisive role in the educational system of the Danish minority. I have elaborated above that the funding of the Danish minority school rests on three pillars; the Schleswig-Holstein school authorities, the Danish government, and the Danish School Association of South Schleswig. The higher costs per pupil in the minority schools pointed out above makes additional funds necessary and especially the support from the kin-state plays an important role in this case. Accordingly, even if a state is willing to pay private minority schools the same amount of money that a majority pupil in a public school costs, it is likely that additional funds will be needed unless the community in question constitutes a majority in the specific region. In cases where there is no kin-state involved, or where the kin-state cannot provide extensive financial support, this system reaches its limits. Even in Schleswig-Holstein the difference between the Danish minority which has a kin-state to support its activities, and the Frisian community which does not, is significant (see Wolf, 2014). Additionally, the economic power of the community itself is much more challenged in many cases than it is in Schleswig-Holstein, further limiting the system in respect to funding. While in Schleswig-Holstein the Danish School Association funds itself from member's fees, the schools themselves are tuition-free. However, in economically deprived communities neither of these two options might be feasible.

Moreover, kin-state support has had a significant role in the development of the minority education system in Schleswig-Holstein not only in financial terms as discussed above but

also in political terms, as becomes apparent when examining the very base of the current minority regime. The Bonn declaration was a result of both, a high interest of Germany to join NATO and the pressure Denmark put on Germany in that moment to settle the minority question. In the Schleswig-Holstein minority school funding crisis of 2010-2012, political support and diplomatic pressure from the Danish side, paired with the demonstration of a “good example” likely had an influence on the solving of the conflict. In the absence of a kin-state, a lack of power of the kin-state or of strong enough incentives for the residing state the minority community in question is lacking a significant supporting force. Not only will the funding possibilities for the community be severely limited, but also political support will be missing in the decisive moments.

Furthermore I have hinted earlier at the historical development of the minority education system of Schleswig-Holstein and the larger context in which it developed as playing a significant role in the working of the system. I referred especially to the legal framework and the relationship between the Danish community and the German majority population, which both have developed in the larger context of a minority regime on both sides of the border; specific interests led to specific agreements, which triggered developments and institutionalisation of dialogue, finally creating a space in which a system of minority schooling developed which is today seen as the model case this paper is concerned with. Against this background it needs to be said that the context and development of the target region needs to be considered carefully in order to evaluate the applicability of the Danish minority school system of Schleswig-Holstein. This is not to say, that the Schleswig-Holstein system can be applied only in regions with the same or very similar historical development but rather that a deep knowledge of the region and intense research are needed in order to evaluate the possibilities to transfer the system or adjust it to the needs and provisions present in each case individually.

Conclusions – or transferability of a “model case”

In consideration of the individuality of each region with minority populations, it needs to be said that general assumptions concerning the applicability or transferability of the Schleswig-Holstein minority education system are close to impossible to make. However, after the

analysis of the system in question and the reflection on its determinants and issues I conclude that a number of factors need to be regarded if a transfer of the system described here is considered. These include but are not exhaustive of:

1. The historical, economic and social development of the region
2. The legal system in which provisions for minority education are embedded, including constitutions (state and regional) and school law
3. The dedication (and interests) of public authorities - on local, regional, and state level - to deal with the issue and institutionalise agreements and provisions
4. Support of a kin-state in economic and political questions
5. The economic power of all actors involved
6. The relationship between the minority community and the majority population

While this list, drawing on an evaluation of the transferability of the Schleswig-Holstein minority regime by Jørgen Kühl (2005), is not hierarchical, the factors listed might prove to be of varying importance for the process. Accordingly, additional research is needed not only for the evaluation of possibilities for the application of the system in each region individually, but also for the evaluation of a possible hierarchy of the listed points.

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