

## **Some Basic Questions Regarding the Distribution of Financial Support to Organizations Representing National Minorities**

Detlev Rein\*

*Independent Researcher*

### **Abstract**

National minorities and their organizations need special funding by the responsible public organs and offices in order to be able to e.g. live their special customs, to learn and preserve their minority languages, and to exercise political participation. The cost of cultural life, self-organization and effective political participation per capita tends to be higher for a minority than for the majority population, when the former wants to reach and keep equivalent levels with the majority. Questions to be analysed are: who are the appropriate recipients of public financial means, by what methods and ways – national and international - can the funding take place and what are the well-understood safeguards in respect of the public interest in proper budget management. Last but not least the international law frame for special funding of national minorities has to be examined.

This article is based on a key note speech given to the participants of the expert workshop on ‘Distribution of Financial Support to Organizations Representing National Minorities’ held at the European Centre for Minority Issues in Flensburg, Germany, December 2013.

**Keywords:** Funding of minorities, organizations of minorities, project funding, political participation, minority parties, transnational funding, kin-states, bilateral treaties, Germany.

\* Former Principal of the Federal Ministry of the Interior; additional member to the advisory board to the FCNM in respect of Germany.

## Introduction

The funding of national minorities and their organizations by the state is of high importance to them. And when they have achieved most of the basic rights which are guaranteed in the Council of Europe Framework Convention for the Protection of National Minorities (henceforth Framework Convention), the permanent financing of their undertakings is perhaps one of the predominant items of their activities in relation with the institutions and organs of the state. Two examples will illustrate this:

When the government of Schleswig-Holstein reduced the funding of the school system of the Danish minority in 2010 in respect of the 2011 budget very suddenly from 100 % of the costs of an average majority pupil to 85 %, quite a number of demonstrations took place in the settlement region of the Danish minority in Germany (Kühl 2012: 27).

In 2013 a scientific colloquium on Sorbian/Wendish items with the title ‘Money rules the world and makes it go round’ took place at the Brandenburg University of Technology at Cottbus, the biggest lower Sorbian city.<sup>1</sup>

In contrast to the importance of the funding by the state from the point of view of the minorities, there is nearly no literature on this topic. Half an exemption can be found in the work of the late DH-MIN, the Committee of Experts on Issues Relating to the Protection of National Minorities under the Steering Committee for Human Rights (CDDH). Inter alia DH-MIN had the tasks

...To act as a forum for the exchange of information, views and experience on policies and good practices for the protection of national minorities ...” and “...to carry out a reflection on transversal issues relevant to Member States... (DH-MIN(2006)022, Appendix 1)

According to these terms of references, the elaboration of actual academic analyses on quite a number of topics of interest to all or to some member states was begun by sending out questionnaires to the member states and publishing the answers. One of the questions was ‘Do you distribute public subsidies to national minorities’ associations? Which budget (national, regional, local) is used for this purpose?’

This was also one of twelve questions in a questionnaire<sup>2</sup> by the DH-MIN, which agreed in 2008:

...to discuss the distribution of public financial support for projects concerning persons belonging to national minorities and their associations, and to hold ... an exchange of views on the existing practices, criteria and models in this field. In addition, it decided to examine the draft questionnaire...(DH-MIN(2008)007, p. 4)

The questionnaire was answered by (only) 23 member states of the Council of Europe, and the answers were published in 2009 (DH-MIN(2009)007 rev 2). As the DH-MIN was suspended in 2010 (Rein 2013: 229-31), unfortunately no analysis of the collected material took place. But it seems that this collection of factual and legal data is the only one dealing with the subject of this article. And some material on the topic of this article can be found in the context of two other questionnaires of DH-MIN.

With no intention to discuss the definition of a 'national minority', this article only deals with national minorities that are recognized in a given state as a national minority in the interaction between that state, the minorities and their organizations, and the bodies of the Framework Convention resp. the Council of Europe European Charter for Regional or Minority Languages (henceforth Language Charter). The important problems – not only with regard to financial support – when this triangle is not given, are kept out by this limitation. If, for instance, a state does not accept the concept of special protection of national minorities and of positive action according to Article 4 of the Framework Convention, the problem of financial support is secondary.

Additionally, the legal and factual situation of minorities, which live in regions of a territorially defined partial autonomy, where most of the inhabitants are – on the level of the nation state - members of a minority, will not be discussed. Prominent examples are the Åland Islands, South Tyrol and the German-language community in Belgium.<sup>3</sup> The parliamentary and governmental bodies of such regions have many possibilities to distribute financial support according to the priorities of the minority which forms the majority of citizens and voters in that region.

The subject of distribution of financial support to organizations representing national minorities shall be considered under the following topics:

- Funding of projects proposed by minority organizations,
- Funding and political participation,
- Minority funding in an international perspective,
- The international law framework for the funding of minorities.

## **1. Funding of projects proposed by minority organizations**

### ***1.1. Equation of the members of a minority and any organization***

Identifying the members of a minority and any organization presents a problem when considering the funding of minority organizations.

In contrast to a civil law association, with its membership defined by accession of persons known by name, there are no lists of members of a minority in many countries in Europe<sup>4</sup> and not even precise figures on its size. According to Article 3 Paragraph 1 of the Framework Convention, every person belonging to a minority has the right to choose freely to be treated or not be treated as such. Germany, for instance, could not consider collecting any such data due to basic legal considerations. In addition to Article 3 Paragraph 1 of the Framework Convention, also the Bonn-Copenhagen Declarations of 1955,<sup>5</sup> Article 8 of the EU Data Protection Directive<sup>6</sup> and national provisions render this impossible. The final statement on this matter of the German Government in its comments in 2002 to the first opinion of the advisory Committee on Germany is worded:

Bearing all of these facts in mind, the Federal Government does not intend to collect any statistical data on persons belonging to national minorities, especially since none of the national minorities have yet expressed, to the Federal Government, the wish that any such data be collected (GVT/COM/INF/OP/I(2002)008, p. 8).

The members of a minority may be members of a minority association, but they are not obliged to be. According to Article 3 Paragraph 1 of the Framework Convention one may explicitly confess to being a member of a national minority, but one can also keep it secret. And lastly, there may be concurring civil law associations to one minority in the same country.<sup>7</sup>

### ***1.2. Figures regarding the size of a minority and of the membership of minority organizations***

Figures regarding the size of a minority and of the membership of a minority organization would be very helpful when the state has to decide on a fair division of the available subsidies within the public budget and of appropriate costs of an undertaking in relation to the size of the supported group.

This question needs not be discussed deeper, but it must be kept in mind, when it comes to the satisfaction of the needs of a minority not by direct actions by the public administration but by funding minorities to run projects or even long term undertakings such as the running of a private minority school.

### ***1.3. The rationale of funding of national minorities' enterprises***

The next question could concern the rationale of funding of such enterprises. The members of a minority and the majority are inhabitants and citizens of a given state to which on the one hand they pay taxes and social charges, and which on the other hand offers services of general interest to everybody. The streets, the airports, the railways or the buses are to serve everybody, whether members of the majority or minorities. And lastly, both majority and minority members can take part in the elections on all levels and thus are actors in the realization of the principle that all state power emanates from its citizens.

The members of a minority have an identity which differs from that of the majority. They are characterized, for instance, by a language of their own, by a special historical consciousness, by the compliance of specific traditions or the close mental kinship to a kin-state.

The members of the minorities argue that because of this specific identity they have specific needs, which cannot be satisfied by the general public services and financial assistance from public funds, but demand special expenditures.

Often they wish school teaching of and in their minority language; therefore perhaps special schools or classes are required, dormitories at secondary level schools and specific teacher training.

Teaching pupils of minorities is *per se* more expensive than teaching majority pupils, because the minority language is taught in addition to the state language and the usual foreign languages. According to the number and regional distribution of the minority members the classes are often smaller, which has influence on the ratio of teachers to pupils, and also the school transport might be more expensive.

There are quite a number of such needs of the minority which – regarding the number and settlement structure of minority members – can only be satisfied by higher per capita expenses. To take for example the daily newspapers of some minorities: ‘Serbske Nowiny’ of the Sorbs in Germany, ‘Flensburg Avis’ of the Danish minority in Germany, and ‘Der Nordschleswiger’ of the German minority in Denmark can only be published because they receive public funding.<sup>8</sup>

Further cultural necessities might be directed towards libraries, museums, theatres and operas. Social necessities may aim at kindergartens, retirement homes and social services that use the minority language. But even the wishes of different minorities in one country may

differ distinctly, which can be demonstrated by some examples from Germany: dance- and music theatre is only important to the Sorbian People,<sup>9</sup> a school system run by a civil law association is only prioritized by the Danish minority,<sup>10</sup> to the German Sinti and Roma the presentation of their history of persecution is a basic need,<sup>11</sup> the North Frisians and the Sorbian People put much emphasis on the further research and development of their languages, which are spoken nowhere else, by scientific institutes,<sup>12</sup> whereas the Danes – having very strong relations to a kin state – can have recourse to the linguistic and didactic scientific efforts in Denmark, while the German Sinti do not even wish to have a publication nor any public use of their language at all.<sup>13</sup>

To examine the details of the different wishes and needs of minorities in any given country gives an impression of the complicated situation when the state has to decide on the funding of very divergent projects of perhaps very different costs and very different terms of duration. This might be also important for the decision regarding whether long-term basic and perhaps institutional subsidies or short-term project subsidies are appropriate measures.

#### ***1.4. Bureaucracy***

As the minority organizations have to deal with public administration and therefore with bureaucracy, the question of the form of funding will come up after the questions towards the appropriateness of funding – to some administration officials the formal aspect comes first. The relevant questions on that point and some answers can be found in the questionnaire of the DH-MIN.<sup>14</sup> They regard the form of the request and the decision, the bookkeeping and auditing, and the monitoring of the results.

## **2. Funding and political participation**

This subject can be approached in a twofold manner: on the one hand there is the question of how the political participation of minorities is funded, and on the other hand one can ask in what manner the minorities participate in the making of decisions in the field of minority funding.

### ***2.1. Funding of political participation***

With regards to the first question, perhaps three subgroups must be analysed:

- The funding of private law associations of minorities, which more or less represent a given minority - on a democratic basis and by number of their members - and can

transfer, on that basis, their wishes and demands to the public entities; and which are also the recipients and administrators of public money earmarked for minority projects and long term undertakings.

- The funding of special associations, bodies and committees, where minority questions are dealt with, either among minority associations on a national or international basis or where they meet with representatives of the political or administrative spheres.
- The funding of special minority parties or associations running for seats in local, regional or national parliaments, perhaps according to special favourable conditions in the electorate system.

There is a rising complexity of problems in the order of these three sub-items:

#### *Funding of private law associations*

It is the predominant situation in most of the European countries to have one or more civil law associations bringing together members of a given minority. In contrast to the first item of this article, here we are not dealing with the funding of short or long term projects but with the funding of the association itself, for example for running headquarters with employees, reimbursing travel expenses, distributing news to the members, paying advocates to be advised in case of conflicts with the state and so on. One basic question is how representative such an organization is with regards to a minority, what portion of self-financing by membership fees can be expected, which undertakings and expenditures should be subsidized, should the funding follow a project or an institutional scheme, and how the proper use of the funding is audited and evaluated in the end.

#### *Funding of special associations, bodies and committees*

Some examples from Germany are the following:

On the one hand there are associations and institutions, which receive funding and are run by the national minorities themselves: the Federal Union of European Nationalities (FUEN), the Youth of European Nationalities (YEN) and the Secretariat for Minorities (Minderheitensekretariat). The latter represents all federal associations of minorities in Germany. Its task is to promote the circulation of information among the two chambers of the Parliament, the Federal Government and national minorities, to improve coordination among national minorities on federal policies, and to inform the interested public about minorities in general. Further, the Secretariat for Minorities receives and coordinates comments of the

individual national minority associations addressed to official national and international organizations (e.g. Council of Europe, OSCE).

On the other hand there are commissions which are run by the public administration, where the attending representatives are entitled to travel allowances. Such bodies are the yearly ‘Implementation Conferences’ on the Framework Convention and the Language Charter, and the minority specific Consultative Committees at the Ministry of the Interior. Some information on the funding of such committees between the minorities and the state may be found in the ‘Compilation of replies to the questionnaire on the consultation mechanisms concerning national minorities’, where the answers of 25 member states of the Council of Europe to a questionnaire of the DH-MIN are collected.<sup>15</sup>

#### *Funding of minority parties running for elections*

The third sub item seems to be the most complicated: the funding of minority parties and their running for elections. Even without considering the regulations for parties of minorities, one can find a broad diversity in Europe already. And when one does consider the special regulations for the participation of minority parties in elections and representation in parliaments, one can find an astonishing set of solutions. DH-MIN decided in 2005 to work on the subject of electoral systems, party law and the protection of minorities. Information was requested from all member states of the Council of Europe, but only nine replied.<sup>16</sup> Of those nine, only Germany’s contribution contained information on funding minority parties. The DH-MIN asked David Hine to prepare a report on the matter, and this report only contained information about concrete findings on the funding of minority parties in the German case (DH-MIN(2009)013final). So the particularities of the German case in providing better funding to minority parties than to other parties should be roughly sketched, confined to the federal level:

Within the legal system of the Federal Republic of Germany, the protection of national minorities also finds expression in the federal electoral law and the law on political parties. The Federal Electoral Act states that political parties of minorities are exempt from the five per cent clause for parliamentary representation; according to this clause, political parties can enter the Bundestag only if they receive at least five per cent of the second votes or win a direct mandate in at least three constituencies. But under the Federal Electoral Act, this principle does not apply to political parties of national minorities.<sup>17</sup> The Federal Electoral Act also contains special provisions for parties of national minorities regarding the nomination of district candidates<sup>18</sup> and state party lists.<sup>19</sup> The Political Parties Act<sup>20</sup> also takes into account



the special situation of parties of national minorities. According to the Act, these parties may claim government subsidies even if they do not receive the usually necessary share of votes, as specified in the Act.<sup>21</sup> Further, parties of national minorities have certain privileges with regard to fundraising from foreign sources.<sup>22</sup> With these provisions, the Federal Electoral Act and the Political Parties Act take into account the fact that, precisely due to their minority status, the parties of national minorities may not be in the same position to win votes and financial support on the same scale as other political parties. These provisions therefore do not constitute preferential treatment - in the legal and narrower sense of the word - for the parties of national minorities, but rather represent an attempt to compensate for the difficult situation of such parties.

#### *Participation of minorities in decision making in the field of funding*

It is quite understandable that minority organizations wish to decide themselves as much as possible what concrete undertakings the public funding earmarked for them should be used for. However the public administration is responsible to the respective parliament and the parliament is responsible to the people for public money to be used economically and effectively. So a way must be found between the minorities' wish for self-determination and the duty of the administration to control public expenses. Again an example from Germany:

The Sorbs are a Western Slavic people living exclusively in Germany, specifically in the federal states of Brandenburg and Saxony, and speaking languages, Upper and Lower Sorbian, which cannot be found anywhere else. Government grants allocated to the Sorbian institutions are distributed via the Foundation for the Sorbian People (Stiftung für das sorbische Volk), a foundation under public law established in Saxony by an inter-governmental agreement between Brandenburg and Saxony.<sup>23</sup> Based on a co-funding agreement, this Foundation is jointly financed by the Federal Government and the federal states of Brandenburg and Saxony, and distributes these funds to civil society associations and Sorbian cultural institutions that are registered corporations under German trade law, such as a music theatre (Sorbisches Nationalensemble) and a publisher (Domowina Verlag), owned by the Foundation.<sup>24</sup>

The Foundation is of particular importance with regards to the cultural interests of the Sorbs, because it decides how much of the annual budget will be spent on the different undertakings in, among other things, scientific research, professional theatre, amateur music associations, a daily newspaper, the production of books, and the organization of big public

events. The distribution of the financial means for undertakings of and for the Upper Sorbs in proportion to the Lower Sorbs is a permanent aspect of the decisions to be made.

The main parameters of the Foundation's activities and its annual budget are decided by the Foundation's Board of Trustees. Its 15 members include six representatives of the Sorbian people, two members each of the Federal Government, Saxony, and Brandenburg, as well as three regional/local representatives of public administration. Habitually, the board members sent by the administrations do not intervene in the decisions on the priorities of the Sorbian People, but they intervene when the wishes of the Sorbs would exceed the given budget or be otherwise unlawful. In its opinion on Germany's first State Report in 2002, the Advisory Committee to the Framework Convention came to the conclusion that this Foundation made "a highly positive contribution as a fine example of good co-operation between the federal authorities and the Länder for the benefit of national minorities". The Advisory Committee noted nonetheless,

...that only six of the 15 members of the Foundation's governing board are representatives of the Sorbian minority - the others belong to the majority. The Sorbian members therefore represent less than half of the board and have no right of veto, even on fundamental issues. The Advisory Committee considered that the authorities should examine ways of strengthening the representation of the Sorbian minority in the functioning of the Foundation and in other fora. (ACFC/INF/OP/I(2002)008, No. 65)

### **3. Transnational funding of minorities**

#### ***3.1. The breaking down of the Iron Curtain at the end of the 1980s***

It sounds contradictory, but despite growing prosperity all over Europe there is a growing interest in and actual realization of transnational funding of minorities. There might be two main reasons for this: one is the breaking down of the Iron Curtain at the end of the 1980s, and the other one is the quite important increase in the number of states in Europe since then. During the Cold War it was nearly impossible to fund a kin-minority from west to east over the Iron Curtain. This became possible at the end of the eighties. The increasing number of minorities in Europe was the result of the dissolution of the former Soviet Union, of Yugoslavia and Czechoslovakia. The Soviet Union was followed by 14 successor states, Czechoslovakia by two states, and Yugoslavia by six to seven, depending on whether you regard Kosovo as a state (Caruso 2013). During the same period from 1989 until today there was only one reduction in the number of states in Europe, namely by the German reunification. Through the dissolution of states, two effects occurred. One was that an existing

kin minority in one state was divided into many kin minorities in the succeeding states. For example, there was one German minority in the Soviet Union before 1990, and afterwards there were German minorities in 11 of the successor states. The other effect was that in the dissolved states new minorities came into existence – for example two new minorities were born by the separation of Slovakia from Czechia: Czechs in Slovakia and Slovaks in the new Czech Republic. So around 1990 there was quite an increase in the number of minorities with kin states in Europe.

### ***3.2. The reasons for transnational funding of a kin-state minority by its kin state***

But what are the reasons for transnational funding of a kin-minority by its kin-state? From the point of view of the funded minority the motivation is quite clear: minorities are nearly always and everywhere short of money to realize their basic needs and their wishes above the basic needs, so they will always welcome a kin-state delivering money across the border.

There seem to be two sets of motivations from the point of view of the funding state, those that are officially named and those that are secret. Official justifications recall historic developments as a lost war or the result of a referendum, for which this part of the population has to suffer over-proportionally. The motivations that are not spoken of might look to the future, where one day there might be a faint possibility of a reunification with the separated kin, irrespective of the 11<sup>th</sup> recital of the Framework Convention to respect the territorial integrity and national sovereignty of states.

### ***3.3. Three levels of the mode of transnational funding of minorities***

So as it might be a delicate subject to judge the motivations of foreign governments, only some examples from Germany are to be cited here, showing a development at three levels:

#### *Clandestine funding*

The author has heard, but did not yet find any documents to confirm that in the first years after the Second World War, German Minorities in France and Belgium were sponsored by Germany by taking money in big suitcases secretly across the borders. But this is not the method of transnational funding of minorities to be discussed for the present and the future.

#### *Principal understanding of two states*

A very early official document from the times after World War II on transnational funding of minorities are the “Bonn-Copenhagen Declarations”,<sup>25</sup> which are, to cite the former German

chancellor Gerhard Schröder in the foreword of a scientific book published on the occasion of the fiftieth anniversary of the Declarations,

...extraordinary in their unusual formal character: no bilateral treaty under international law was conducted, instead both heads of government unilaterally gave declarations of intent, which were confirmed shortly thereafter by the respective national parliaments (Schröder, 2005: 11).

One of the articles of each of these Declarations reads as follows:

The special interest of the Danish minority in fostering contacts with Denmark in the religious and cultural as well as in specialist fields shall be acknowledged.

and vice versa in the Danish Declaration.

These harmless wordings in two texts, which are not a bilateral treaty but (only) two nearly synallagmatic declarations, form the basis for funding the respective minority on the other side of the common border. The minorities receive an amount of money yearly, which they use *inter alia* for purposes of their administration, running their private law minority school organizations, and many cultural undertakings. The party of the German minority in Denmark, which, according to Danish law, is not obliged to be an organization separated from the minority civil law association, takes a share of the German funding of the German minority organization. According to the German Political Parties Act, the political parties must be separate organizations from other associations, so the Danish party can't take a share of the general funding of Denmark for its minority in Germany. However, the Political Party Act contains a special permission that minority parties may be funded by donors in neighbouring countries.<sup>26</sup> This is the legal basis for the funding of the Danish party in Germany, which received about 458,000€ in recent years from a ministry of the Danish Government (BT-Drs. Drucksache 18/4301, p. 237 ff).

There is no established regular contact between Denmark and Germany on matters relating to minorities and their funding, however when intensive contacts are needed, the Governments take appropriate measures by installing working groups or direct meetings on very high levels.<sup>27</sup>

### *Bilateral treaties containing the recognition of the minority, and the establishing of a joint commission*

The third level was reached by Germany, and perhaps a number of other states, when it became possible to conclude Neighbourhood or Friendship Treaties between the states of the former NATO and the former Warsaw Pact. In the 1990s Germany concluded such treaties - containing rules in respect of the German minorities in the respective countries - with 16 states of Central and Eastern Europe and of Central Asia, from Belarus to Ukraine, from Lithuania to Tajikistan.<sup>28</sup> None of the treaties is equal to the others, but all of them have wordings recognizing the German minority, and some of them contain rules on the establishing of a joint commission on cultural matters in general or on minority questions in particular. In the meetings of such commissions the annual economic plan of funding the respective German minority by Germany is discussed and approved; similar issues are dealt with in direct talks with the relevant embassy or from ministry to ministry without an underlying clause in any treaty.

#### **3.4. Transnational funding of churches**

A very special form of appearance of transnational funding is that of the protestant minority communities in North-Schleswig and South-Schleswig:<sup>29</sup>

The 'Nordschleswigsche Gemeinde', a free church according to Danish church law, is funded by the 'Evangelisch-Lutherischen Kirche in Norddeutschland', which is a public law corporation sui generis according to German law. The 'Nordschleswigsche Gemeinde' serves the rural minority population, whereas in the four cities of North-Schleswig priests of the German minority are employed by the 'Folkekirken', which receives funding from the Danish state.

The 'Dansk Kirke i Sydslesvig' is funded to provide the salary of the priests by 'Danske Sømands- og Udlandskirker'. By far the greatest part of their expenses are covered by fund raising and by contributions from its congregations, while the Danish Ministry for Ecclesiastical Affairs gives a grant that covers a substantial part of salary expenses.

## **4. The international legal framework for the funding of minorities**

### **4.1. Funder and recipient reside in the same state**

The question of funding national minorities is answered differently by the European states depending on whether the funding of national minorities and their languages is permitted or

even obligatory. Some of them, including the EU members France and Greece, which are not member states of the Framework Convention,<sup>30</sup> follow the opinion that the mere practice of non-discrimination norms is enough, and that no special standards are required in the case of minorities.<sup>31</sup>

In contrast to that position, 39 European states have ratified the Framework Convention for the Protection of National Minorities and thereby consented to its Article 4 Paragraphs 2 and 3, which read:

2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

From the point of view of the organizations of the national minorities, the problem with the Framework Convention is that the verbs in the phrases, according to which the state should fund undertakings, are fairly soft, for example: ‘...in order to facilitate...’<sup>32</sup>, ‘...shall, where appropriate, take measures in the field of...’<sup>33</sup>, or: ‘...undertake to promote...’<sup>34</sup>

It also must be kept in mind that Article 13 of the Framework Convention states that the exercise of the right of the minorities to set up and to manage their own private educational and training establishments shall not entail any financial obligation for the member states.

Besides the Framework Convention, there exists another European instrument to protect the National Minorities, which is the European Charter for Regional or Minority Languages, ratified by 25 states. Fields of practical action to foster the languages of national minorities are described more concretely by this Charter, but the wordings on the duties of the State are as vague as in the Framework Convention, for example:

...the Parties undertake... to the extent that the public authorities are competent, have power or play a role in this field:...to encourage ... and foster, ...to ensure, ...to promote, ...to encourage and/or facilitate, ...if necessary, to create and/or promote and finance,...undertake, if the number of users of a regional or minority language justifies it, to allow, encourage and/or provide...<sup>35</sup>

So at least a justification for the funding of national minorities with a wide margin of appreciation for the states about the concrete funding can be found in international law.

## ***4.2. Transnational funding***

The Framework Convention is also the source for a European norm regarding transnational funding of minorities. According to Article 17 Paragraph 1:

The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

And according to Article 18 Paragraph 1:

The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.

One will perhaps raise the question of the importance of the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations of the High Commissioner for National Minorities of the OSCE (OSCE 2008) in this context. The author does not give them a high ranking in the sphere of standard setting documents, as these recommendations were not elaborated together with government representatives and have not passed any examination or voting by international bodies, and experts were only invited on a personal basis, not representing any bodies.<sup>36</sup> In view of the Bolzano Recommendations the author would like to cite Martin Luther's grading of the Apocrypha books of the Old Testament: 'These are books, though not equivalent to the Holy Scriptures, nevertheless valuable and good to read.'<sup>37</sup>

## **Concluding Remarks**

The European law on the protection of national minorities allows the special funding of national minorities, as well within the state, where the minority settles, as well as transnationally. The Framework Convention and Language Charter welcome such financial support and encourage it, although with restrained formulations.

The task of the state is to recognize the special needs of the national minorities and to support them adequately with financial means. It is in the interest of the minority

organizations to explain their financial wishes to the public organs and offices in charge of budgets in a continuous dialogue, and when planning and realizing their activities to observe the respective rules concerning the efficiency and economy of the use of those means, provided by the taxpayers.

The task of the sciences dealing with national minorities is to build a bridge between the spheres of the national minorities with their specific needs and those public bodies in charge of the administration and distribution of public means by empiric research and theoretical foundation, thereby observing and imparting the international examples of good practice.

## Notes

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<sup>1</sup> See Rein (2014) p. 72-79.

<sup>2</sup> All questions are reprinted in the Appendix.

<sup>3</sup> The latter is, despite its perhaps misleading name, a territorially defined autonomy, because it is geographically defined, and the government of the community has power over all persons resident in this defined region and under certain circumstances over all persons present in that region. According to the Prime Minister of the German Language Community, this Community can be compared to the Länder of the Federal Republic of Germany; see Lambertz 2005, p. 11.

<sup>4</sup> For exemptions see: Detlev Rein, *Gewährung des Status einer öffentlichen-rechtlichen Körperschaft an nationale Minderheiten?* ECMI Working Paper #76 (May 2014), p. 19f.

<sup>5</sup> Full text at the European Centre for Minority Issues:

<http://www.ecmi.de/about/history/german-danish-border-region/bonn-copenhagen-declarations/>.

<sup>6</sup> Directive 95/46/EC of 24 October 1995 on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of Such Data.

<sup>7</sup> See for example in Germany the situation of the associations of Sinti and Roma in: Federal Ministry of the Interior (2010), p. 23–27.

<sup>8</sup> ‚Serbske Nowiny‘ by Germany and the Länder Brandenburg and Sachsen via the Foundation for the Sorbian People, ‚Flensburg Avis‘ by the Kingdom of Denmark and ‚Der Nordschleswiger‘ by Germany.

<sup>9</sup> Sorbisches Nationalensemble in Bautzen.

<sup>10</sup> Run by Dansk Skoleforening for Sydslesvig e.V. with 46 schools and 57 kindergarten (2015); see Dansk Skoleforening for Sydslesvig e.V.:

<http://www.skoleforeningen.org/deutsch>.



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- <sup>11</sup> Especially at the Dokumentations- und Kulturzentrum Deutscher Sinti und Roma at Heidelberg.
- <sup>12</sup> Nordfriesisches Institut at Bredstedt, Sorbisches Institut at Bautzen and Cottbus.
- <sup>13</sup> See regarding the situation of Romani in the Federal Land of Hesse, in which Romani is protected according to part III of the Language Charter: Fifth periodical report of Germany presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter 2013, p. 74 f.
- <sup>14</sup> See Appendix.
- <sup>15</sup> DH-MIN(2005)010; The relevant question was: ‘What is the situation with regard to the resources allocated to the advisory bodies/consultation mechanisms (finance, staff) and what is the source of funding (central/local authorities, mixed funding)?’
- <sup>16</sup> DH-MIN(2006)002
- <sup>17</sup> Section 6 (3) second sentence, Federal Electoral Act of 7 May 1956, Federal Law Gazette 1956, I, p. 383 ff., revised by promulgation of 23 July 1993, Federal Law Gazette 1993, I, p. 1288 ff., 1594; last amended by Article 9 of the act of 31 August 2015, Federal Law Gazette 2015, I, p. 1474).
- <sup>18</sup> Section 20 (2) third sentence.
- <sup>19</sup> Section 27 (1) fourth sentence.
- <sup>20</sup> Political Parties Act in the version of 31 January 1994, Federal Law Gazette 1994, I, p. 149 ff., last amended by Article 1 of the Act of 23 August 2011, Federal Law Gazette 2011, I, p. 1748 ff.
- <sup>21</sup> Section 18 (4) third sentence.
- <sup>22</sup> Section 25 (2) no. 3 b.
- <sup>23</sup> All legal texts regarding the Foundation for the Sorbian People can be found at their website at [http://stiftung.sorben.com/wobsah\\_de\\_42.htm](http://stiftung.sorben.com/wobsah_de_42.htm).
- <sup>24</sup> For further details on the organization and funding of Sorbian activities see Rein (2015)
- <sup>25</sup> See note 7.
- <sup>26</sup> See note 23.
- <sup>27</sup> Both ways were taken in the above-mentioned situation when the Parliament of Schleswig-Holstein very suddenly reduced the per capita funding of the private Danish school association from 100 per cent of the expenditures of an average majority pupil to 85 per cent. See: ‘Bericht der dänisch-schleswig-holsteinischen Arbeitsgruppe zur Behandlung von Gleichstellungsfragen in der Finanzierung der Schulen der dänischen und deutschen Minderheiten’, (2010); Kühl, (2011) p. 308–314.
- <sup>28</sup> See Anna Fontaine, Detlev Rein, Article 17-18, Germany, recital 8 ff in: Hofman et al (2015).
- <sup>29</sup> On the history and present situation of both communities see: Pedersen (2005), p. 91-137, 107 f, 126 ff.
- <sup>30</sup> On the non-members of the Framework Convention see: Hofmann (2015).
- <sup>31</sup> On this controversy see Rein (2013) with further bibliographical references.
- <sup>32</sup> Article 9 Para 4.
- <sup>33</sup> Article 12 Para 1.
- <sup>34</sup> Article 12 Para 3.

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<sup>35</sup> Article 12 Para 1.

<sup>36</sup> See Phillips (2001: 111); Emma Lantschner regards them nevertheless as part of the soft jurisprudence of the HCNM and as standards of the OSCE: Lantschner (2009), p. 42 f.

<sup>37</sup> Die Bibel, oder die ganze Heilige Schrift alten und neuen Testaments nach der deutschen Übersetzung D. Martin Luther's (1837) (Part I) Die Heiligen Bücher des Alten Testaments, p. 447 („Apocrypha: Das sind Bücher, so der Heiligen Schrift nicht gleich gehalten, und doch nützlich und gut zu lesen sind.“)

## Bibliography

Advisory Committee on the Framework Convention for the Protection of National Minorities, “Comments by the Federal Republic of Germany on the opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities in the Federal Republic of Germany”, GVT/COM/INF/OP/I(2002)008, *Council of Europe* 2002, [https://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_Com\\_Germ\\_any\\_en.pdf](https://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_Com_Germ_any_en.pdf)

Advisory Committee on the Framework Convention for the Protection of National Minorities, “Opinion on Germany Adopted on March 1 2002”, ACFC/INF/OP/I(2002)008, *Council of Europe* 2002, [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_OP\\_Germany\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_OP_Germany_en.pdf)

Caruso, Ugo, “A Frame with multiple Shapes: The UNMIK-CoE Agreement”, in Tove H. Malloy, Ugo Caruso (ed.), *Minorities, their Rights, and the Monitoring of the European Framework Convention for the Protection of National Minorities*, Leiden /Boston, Martinus Nijhoff Publishers (2013), p. 181-203.

Dansk Skoleforening for Sydslesvig e.V., “Willkommen”, *Dansk Skoleforening for Sydslesvig e.V.*, accessed 30 November 2015, <http://www.skoleforeningen.org/deutsch>

Deutscher Bundestag, “Unterrichtung durch den Präsidenten des Deutschen Bundestages, Bekanntmachung von Rechenschaftsberichten politischer Parteien für das Kalenderjahr 2013”, BT-Drs. Drucksache 18/4301, 11 March 2015, <http://dip21.bundestag.de/dip21/btd/18/043/1804300.pdf>

Die Bibel, oder die ganze Heilige Schrift alten und neuen Testaments nach der deutschen Übersetzung D. Martin Luther's (1837) (Part I) Die Heiligen Bücher des Alten Testaments

DH-MIN (Committee of Experts on Issues Relating to the Protection of National Minorities), Replies to the questionnaire on Consultation Arrangements Concerning National Minorities”, DH-MIN(2005)010, *Council of Europe*, Strasbourg 21 October 2005, [https://www.coe.int/t/dghl/monitoring/minorities/6\\_resources/PDF\\_DH-MIN\\_Replies\\_questionnaire\\_Consultation\\_arrangements\\_bil.pdf](https://www.coe.int/t/dghl/monitoring/minorities/6_resources/PDF_DH-MIN_Replies_questionnaire_Consultation_arrangements_bil.pdf)

DH-MIN, “Information provided by the DH-MIN Members on the regulations contained in electoral laws and the laws on political parties that are of relevance to national

- 
- minorities”, DH-MIN(2006)002, *Council of Europe*, Brasov, Romania 8-10 March 2006, [http://www.coe.int/t/dghl/monitoring/minorities/6\\_Resources/PDF\\_DH-MIN\\_MemberStates\\_Contributions\\_Electorallaw\\_bil.pdf](http://www.coe.int/t/dghl/monitoring/minorities/6_Resources/PDF_DH-MIN_MemberStates_Contributions_Electorallaw_bil.pdf)
- DH-MIN, “Activity Report Period between 1 January 2005 and 31 December 2006”, DH-MIN(2006)022, dated 23 October 2006.
- DH-MIN, “List of Adopted Decisions”, DH-MIN(2008)007, *Council of Europe*, Strasbourg 15-16 October 2008, [https://www.coe.int/t/dghl/monitoring/minorities/6\\_resources/PDF\\_DH-MIN\\_8th\\_AdoptedDecisions\\_en.pdf](https://www.coe.int/t/dghl/monitoring/minorities/6_resources/PDF_DH-MIN_8th_AdoptedDecisions_en.pdf)
- DH-MIN, “Information provided by the DH-MIN Members on the Questionnaire on the ‘distribution of public financial support (subsidies) for projects concerning persons belonging to national minorities and their associations (organisations)’”, DH-MIN(2009)007 rev 2, *Council of Europe*, Strasbourg 5 May 2010, [https://www.coe.int/t/dghl/monitoring/minorities/6\\_resources/PDF\\_DH-MIN\\_CompilationSubsidies.pdf](https://www.coe.int/t/dghl/monitoring/minorities/6_resources/PDF_DH-MIN_CompilationSubsidies.pdf)
- ECMI, “Bonn-Copenhagen Declarations”, *European Centre for Minority Issues*, accessed 13 September 2015, <http://www.ecmi.de/about/history/german-danish-border-region/bonn-copenhagen-declarations/>
- Federal Ministry of the Interior, *National Minorities in Germany*, Berlin: Publikationsversand der Bundesregierung, 2010, [http://www.bmi.bund.de/SharedDocs/Downloads/EN/Broschueren/2010/nat\\_minderheiten.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/EN/Broschueren/2010/nat_minderheiten.pdf?__blob=publicationFile)
- Hine, David, “Electoral Systems, Party Law and the Protection of Minorities”, DH-MIN(2006)013final, *Council of Europe*, Strasbourg 2 April 2009, [http://www.coe.int/t/dghl/monitoring/minorities/6\\_Resources/PDF\\_DH-IN\\_ElectoralSystemsPartyLaw\\_Hine\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/6_Resources/PDF_DH-IN_ElectoralSystemsPartyLaw_Hine_en.pdf)
- Hofmann, Rainer, Doris Angst, Emma Lantschner, Günther Rautz, Detlev Rein, *Rahmenübereinkommen zum Schutz nationaler Minderheiten. Handkommentar*, Baden-Baden: Nomos (2015)
- Hofmann, Rainer, “Das Rahmenübereinkommen zum Schutz nationaler Minderheiten; Einführung, Überblick, Würdigung, recital 23, 45”, in: Rainer Hofmann, et. al. (2015)
- Kühl, Jørgen, *Minderheitenmodell in Gefahr*, Flensburg, Dansk Skoleforening for Sydslesvig, 2012.
- Kühl, Jørgen, “Von der Abgrenzung zum Miteinander 1955 – 2010“, in Lars N. Henningsen, (ed.) *Zwischen Grenzkonflikt und Grenzfrieden; Die dänische Minderheit in Schleswig-Holstein in Geschichte und Gegenwart*, Flensburg, Dansk Centralbibliothek (2011), p. 207–317
- Lambertz, Karl-Heinz, “Drei Alleinstellungsmerkmale der Deutschsprachigen Gemeinschaft Belgiens”, in Karin Stangherlin (ed.): *La Communauté germanophone de Belgique. Die Deutschsprachige Gemeinschaft Belgiens*, Bruxelles, la charte, (2005), p. 7-13.
- Lantschner, Emma, *Soft jurisprudence im Minderheitenrecht*, Baden Baden: Nomos, 2009.

- 
- OSCE High Commissioner on National Minorities (HCNM), “The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations & Explanatory Note”, The Hague (2008).
- Pedersen, Karen Margrethe, “Languages and identities in the national minorities”, in: Jørgen Kühl, Marc Weller (ed.): *Minority Policy in Action: The Bonn-Copenhagen Declarations 1955 – 2005*, Flensburg/Aabenraa, ECMI/Institut for Graenseregionsforskning (2005) p. 91-137.
- Phillips, Alan, “The Rights of Minorities and their Interstate Dimension. Interrelationship between the HCNM Recommendations and the Framework Convention”, in: Francesco Palermo, Natalie Sabanadze (ed.) *National Minorities in Inter-State Relations*, Leiden: Martinus Nijhoff (2001) p. 111-127.
- Rein, Detlev, *Gewährung des Status einer öffentlichen-rechtlichen Körperschaft an nationale Minderheiten?* ECMI Working Paper #76 (May 2014), p. 19f.
- Rein, Detlev, “The Sorbian People in Germany”, in Tove H. Malloy, Alexander Osipov, Balázs Vizi, *Managing Diversity through Non-Territorial Autonomy*, Oxford, Oxford University Press (2015), p. 163-182.
- Rein, Detlev, “Die Finanzierung nationaler Minderheiten in Deutschland”, *Lětopis* 2 (2014): 72-79
- Rein, Detlev, “Working with the Committee of Experts on Issues relating to the Protection of National Minorities” in: Tove H. Malloy, Ugo Caruso (ed.), *Minorities, their Rights, and the Monitoring of the European Framework Convention for the Protection of National Minorities*, Leiden/Boston, Martinus Nijhoff Publishers (2013) p. 229-254
- Schröder, Gerhard, “Foreword”, in: Jørgen Kühl, Marc Weller (ed.): *Minority Policy in Action: The Bonn-Copenhagen Declarations 1955 – 2005*, Flensburg/Aabenraa, ECMI/Institut for Graenseregionsforskning, 2005.
- Stiftung für das sorbische Volk, “Entstehung der Stiftung”, *Stiftung für das sorbische Volk*, accessed September 13 2015, [http://stiftung.sorben.com/wobsah\\_de\\_42.htm](http://stiftung.sorben.com/wobsah_de_42.htm).

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## Appendix

### Questionnaire on the ‘distribution of public financial support (subsidies) for projects concerning persons belonging to national minorities and their associations (organizations)’

(DH-MIN(2009)007 rev 2

1. Please give the following information for each national minority:

- description/name and size of the national minority;
- number of minority associations receiving subsidies per year (including umbrella associations).

2. Do you distribute public subsidies to national minorities’ associations? Which budget (national, regional, local) is used for this purpose?

3. Who determines the total amount of the subsidies to be distributed to national minorities’ associations (parliament, public administration)?\*

4. Which criteria is used to determine the amount of the subsidy for each national minority association? Is the number of persons affiliated with a national minority one of the criteria?

5. Who decides on the allocation of the subsidy to a minority association within a national minority and are there any criteria, priorities or guidelines or advisory bodies?

6. Is the distribution of subsidies made by public administration, outsourced institutions or by minority associations? Which advantages or disadvantages are associated with your own national system; which experience have you encountered and what should be avoided?

7. Is the distribution of these subsidies made by a contract or by a formal decision of an authority?

8. Please indicate the purpose(s) of the subsidies. Which targets/priorities are favoured when attributing subsidies? Are there any guidelines for national minority associations and/or public administration or institutions which grant the subsidy contract or subsidy decision?

9. How concrete should the subject/object/topic of the financial support request be? Is there a distinction between basic subsidies and project subsidies? In the affirmative, please clarify.

10. Are the minority associations obliged to set up corresponding financial accounts? When, to whom, and in which manner (submission of invoices or only written reports or both)? Is the

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reporting controlled by the same authority or institution which is responsible for the subsidy contract or decision?

11. Are the lasting results, success, and efficiency of the subsidy awarded to minority associations evaluated?

12. Is public administration, or the institutions which are responsible for the subsidy contracts or decisions audited? Are there any reporting duties for public administration or institutions responsible for awarding these subsidies with regard to concrete actions (e.g. to the parliament, Audit Office or internal revision department)?

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\*Please specify only the organ responsible for determining the amount of the subsidies, and the procedure followed. Do not indicate the amount of the subsidies. Please do not include information on the financing of the education system for minorities.

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