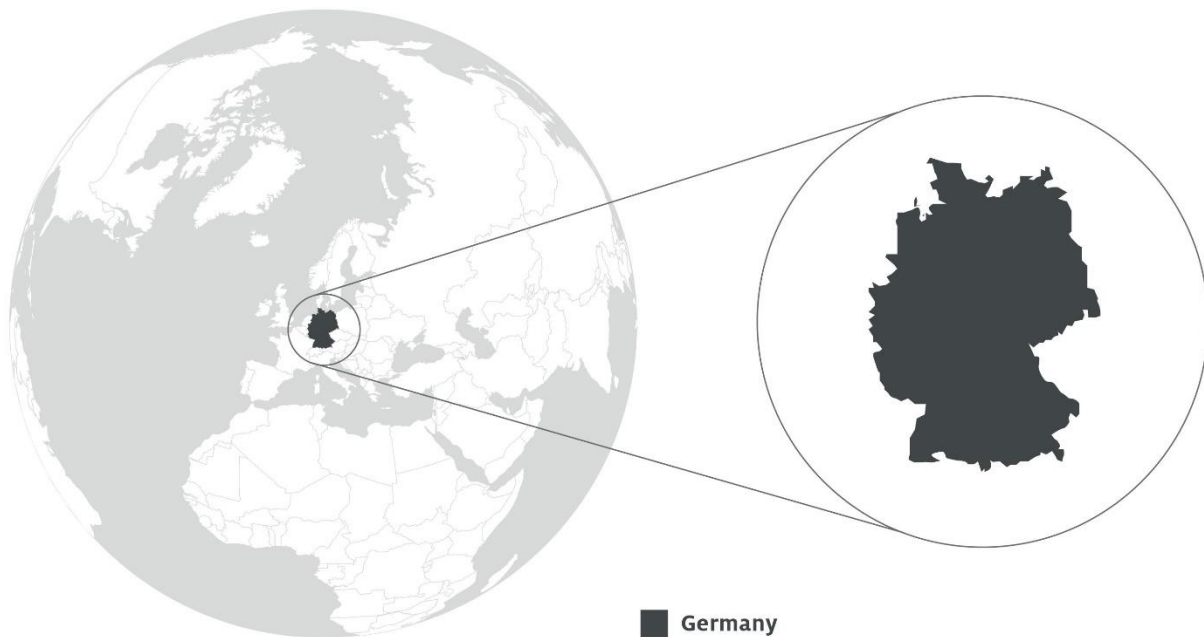




Functional Minority Autonomy in Germany

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1. Essential Facts and Figures

Germany has traditionally been home to a diverse population. While the majority population of the country is made up of Germans, four officially recognized national minorities enjoy special protection and promotion (Bundesministerium des Innern 2015): Frisians (0.5%; 400,000), German Sinti and Roma (0.1%; 70,000), Sorbs (0.1%; 60,000), and Danes (0.1%; 50,000). The Frisians are mostly concentrated in the federal states of Lower Saxony (East and Saterland Frisians: 4.4%; 348,612) and Schleswig-Holstein (North Frisians: 1.8%; 51,084); Sorbs in Saxony (Upper Sorbs: 1%; 41,490) and Brandenburg (Lower Sorbs: 0.8%; 20,000); and Danes in Schleswig-Holstein (1.8%; 50,000); while German Sinti and Roma communities live throughout the country (Hansen 1997, 46, 58, 140, 144–45).¹ Additionally, Germany is home to large communities of *new minorities* who migrated to the country mainly after the Second World War as guest workers. However, these communities do not enjoy any special rights beyond the individual freedoms granted in the German Constitution (*Grundgesetz*).

The foundations for modern minority protection in Germany were laid in the aftermath of the First World War with the establishment of the Weimar Republic (1919). The Weimar Constitution stipulated that those parts of the population with a mother tongue other than German were not to be hindered in their cultural development, particularly with regard to their use and learning of the mother tongue, as well as their self-management. The implementation of this regulation was subsequently further detailed in individual legal acts (Hahn 1993, 67; Steensen 2017, 102). These legal acts recognized three national minorities (the Polish, Sorbian, and Danish communities) and allowed for the establishment of educational facilities and a broad network of cultural and social associations (Rasmussen 2011, 88–92). For the Danish minority, the establishment of the Weimar Republic also had major implications, as it coincided with the redrawing of the border between Germany and Denmark through plebiscites. Since the Danish–Prussian war of 1864, the region had been occupied by Prussia and a strict German nationalization policy was pursued. After losing the First World War, however, the Versailles Treaty forced Germany to provide an opportunity for border revision in the spirit of national self-determination. As a result, two plebiscites were held in February and March 1920, which fixed the present-day borderline. Through this plebiscite, the northern part of Schleswig became Danish once again, while the southern part remained a part of Germany, including its small Danish community which remained as a minority (Kühl 2003, 26–31; Rasmussen 2011, 77–87).

¹ It is important to note that these numbers are based on estimates, as data collection based on ethnicity is illegal in Germany.

The Weimar period of relative progress was brought to an abrupt end by Adolf Hitler's totalitarian regime, leading to the Second World War and a genocide of the Jewish, Sinti and Roma communities (Schulze 2007; Weitz 2010, 581–91). After its defeat, Germany was soon drawn into the Cold War and, in 1949, separated into two states: the German Democratic Republic (GDR), as a socialist state and Soviet Union satellite, and the Federal Republic of Germany (FRG), as a democratic and capitalist state, supported by the United States and Western European countries (Schulze 2007). The minority protection regimes in the two Germanies developed quite differently. While minority protection was included in the Constitution of the GDR including even a stipulation that the minorities had to be supported in their cultural development, no such guarantee was included in the Constitution of the FRG (Steensen 2017, 102–103). The GDR constitutional guarantees were further detailed in the so-called Sorbian Law of 1948² and subsequent legal acts allowing for the (re-)establishment of a broad organizational network and bilingual education up to high-school level in the Sorbian settlement area. However, the implementation of the legal guarantees was limited through the generally totalitarian state regime and was subjected to political shifts. Particularly, anti-Sorbian attitudes in the majority population prevailed and resulted in periodical back-pedaling of the government regarding the granting of rights. In addition, the industrial development of Lusatia – the settlement area of the Sorbs – meant large-scale in-migration of Germans, while many Sorbs left the area for employment elsewhere in the GDR, resulting in further assimilation of the community (Nikolov 2005, 1131; Pech 1999, 232–41; Wölke 1995, 187). The Sorbian umbrella organization *Domowina* and its member associations were largely monitored and partly controlled by the state party, rendering any autonomy arrangements that were in place on paper, largely ineffective (Pech 1999, 232–33).

In the FRG, the lack of a reference to minority protection in the Constitution was justified by the argument that only the Danish community was considered a national minority and that their protection was enshrined in the Constitution of Schleswig-Holstein. Protection of the Danish community was later solidified and expanded in several legal acts and declarations, partially due to geopolitical interests of the FRG, the most prominent example being the Bonn–Copenhagen declarations (1955) that came about as a result of Denmark accepting Germany's accession to the North Atlantic Treaty Organization (NATO) only under the condition that the minority question between the countries is resolved and that the Danish minority be granted far-reaching rights (see section 3 of the case study) (Kühl 2003, 45–46). In the 1949 Kiel Declaration (*Kieler Erklärung*) on

² Law on the protection of the rights of the Sorbian population of 23 March 1948 (*Gesetz zur Wahrung der Rechte der sorbischen Bevölkerung*). The Sorbian people were the only recognized minority in the GDR (Steensen 2017, 103).

the protection of the Danish minority, the (North) Frisian community also received recognition, albeit only in a side note. Other minorities were not recognized in the FRG (Hahn 1993).

The separation, exacerbated by a closed border between the two Germanies, furthermore interrupted the contact between the Sorbs living in the GDR and the minorities living in the FRG (Kühl 2005, 508). In 1989, internal opposition led to the collapse of the GDR government and, subsequently, the unification with FRG in 1990 (Schulze 2007). Germany later extended and further solidified its minority protection provisions by signing two major European instruments, the European Charter for Regional or Minority Languages (ECRML) and the Framework Convention for the Protection of National Minorities (FCNM), through which it currently recognizes four national minorities on its territory: the Frisian community, the German Sinti and Roma, and the Danish and Sorbian minorities. The implementation of these legal documents is, first and foremost, the responsibility of Germany's federal states (*Länder*).

2. Autonomy and State Structure

Along traditional borders, partly modified by economic and political decisions, Germany today is divided into 16 federal states (*Länder*). Legislative, executive and judicative competences can be exclusively federal or state realms, or might be shared (March 2006, 196–97). This division has important implications for minority protection generally in Germany, as well as for the autonomy arrangements in place in the various states, making the minority rights regime in Germany rather complex and fragmented.

German is the language of administration and education in Germany. The recognized minorities and other communities may use their languages at home and within their organizations, although, only Danish, Sorbian, and Frisian can be used in their respective settlement areas in communication with the authorities and in education.³ Educational policy is within the competence of the *Länder* and is thus rather fragmented. The *Länder* Schleswig-Holstein, Lower Saxony, Saxony, and Brandenburg have special provisions in place regarding education in minority languages, allowing the Danes to run their own educational system, the Frisians to learn their respective mother tongue (North Frisian, Sater Frisian, or Low German) in corresponding language classes in public schools, and the Sorbs to have Sorbian and bilingual public schools and private kindergartens (Council of Europe 2013).⁴

³ Additionally, Low German is recognized as a regional language and can thus be used in communication with the authorities in several *Länder*.

⁴ The German Romany language is recognized as a minority language in Germany through the ECRML but is currently not taught in the public education system or spoken in German state agencies. The German Sinti and Roma umbrella organization (Central Council of the German Sinti and Roma) takes the view that "Romany should neither be taught

Whether the rights provisions in place for its national minorities in Germany amount to any form of autonomy is subject to serious debate in the academic realm. At one end of the spectrum, Detlev Rein argues from a legal perspective that one can only speak of autonomy if the state (or its sub-entities) grants the right to a community to “exercise state authority otherwise exercised by or reserved for the state itself” and, therefore, the establishment of a minority school system under private law in a state in which anyone can establish and run private schools (or similar arrangements) is not a form of autonomy (Rein 2015, 171). Following this line of argument, the conclusion of an analysis of the minority rights provisions in Germany would be that there is no autonomy for minorities in Germany beyond the individual autonomy guaranteed through human and civil rights.

At the other end of the spectrum, Tove Malloy points to the term *functional autonomy*, which looks at autonomy from a governance perspective and defines societal management as one of the core functions of autonomy. In this line of argument, communities that establish institutions to take over functions of societal management that are typically in the realm of the state or its bodies, exercise autonomy. The state, in this perspective, provides the legal frame for the institution but the community that sets up and administers the institution makes the decisions regarding the form of organization and subject matter and exercises autonomy, even though it might not have legislative and executive powers (Malloy 2015, 183–86). Following this line of argument, the analysis of minority rights provisions and minority institutions would conclude that some of the recognized minorities in Germany enjoy some degree of non-territorial, functional autonomy.

The federal structure of Germany and the resulting fragmentation of minority protection results in vastly varying degrees of autonomy across the minorities based on where they live. Out of the four recognized minorities in Germany, only the Danish and Sorbian communities enjoy autonomy to a considerable degree and the Sorbs have variations in their autonomy between the two states they reside in. While the Danish and Sorbian communities have relative autonomy over their educational, cultural, linguistic, political, and religious affairs within the limits of their registered private law associations, the Frisians and German Sinti and Roma have decision-making powers only in relation to their internal cultural activities and so do not enjoy a significant degree of autonomy (Malloy 2015; Rein 2015). This case study, therefore, focuses on the Danish and Sorbian communities.

nor learnt by non-Sinti/non-Roma within the public educational system”. This view is, however, contested within the community (Council of Europe 2000, 132).

3. Establishment and Implementation of Autonomy

In the case of the Danish minority, the implementation of the institutions of the functional autonomy began after the First World War, when the current border between Denmark and Germany was established and the Weimar Constitution was designed to include minority protection provisions. During this time, the Danish minority founded its school association that now runs the minority school system and established the cultural association *Slesvigsk Foreningen* (today *Sydslesvigsk Forening*, SSF) that currently functions as the umbrella organization for the institutions of the minority and the main contact point between public authorities and the minority. Several associations within and outside the umbrella of the *Slesvigsk Foreningen* took on tasks of social management already then, such as poverty relief and childcare (Rasmussen 2011, 88–112). Under the Nazi Regime and during the Second World War, the activities of the minority institutions were severely limited, enrolment numbers in the minority schools dropped and even though the Danish minority was not openly persecuted, identification with the minority became a mainly private matter. After the war, the community grew exponentially, in part due to the opportunism of parts of the local population and incoming refugees from Eastern Europe hoping to receive some of the benefits of Danish support for its kin-minority; however, the numbers normalized within a decade after the end of the war (Kühl 2003, 38–39; Lubowitz 2017, 22).

The post-war period was marked by mutual mistrust between Germans and Danes, while the Federal Republic of Germany (FRG) government made concessions to the minority in order to appease the occupying forces and Denmark made a strategic move to support its geopolitical interests. The German request to join the North Atlantic Treaty Organization (NATO) in 1954 provided opportunities for the Danish minority to solidify their organizational network and ensure certain legal guarantees. Thus, the resulting Bonn Declaration of 1955 established the legal foundation for the Danish minority in Germany to manage their own school system and cultural affairs, funded through public funds from Schleswig-Holstein and Denmark (Kühl 2003, 45–46). In the decades since, the minority has developed a number of institutions that effectively fulfil public functions for its members, partially funded through public funds from Schleswig-Holstein and Denmark (see section 7 of the case study). These institutions include a mixture of private law associations, and consultative and advisory bodies (see section 5). Germany's geopolitical interests and Denmark's ability to potentially block German NATO accession in the 1950s played a central role in bringing about the functional autonomy the minority enjoys today. Furthermore, the Council of Europe, and especially its Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) and Expert Committee on the European Charter for Regional or Minority Languages (ECRML) helped in providing legal structures and guarantees for many of the

informal structures and agreements that have existed for some time (Malloy 2015). Legal guarantees supporting the autonomy of the Danish minority today include the following: an exemption from the usual 5% threshold in national and regional elections for the minority party South Schleswig Voters Association (*Südschleswigscher Wählerverband*, SSW), the right to establish and operate their own educational facilities, the right to establish and run associations, the right to use Danish in communication with public administration, and the right to receive funding for their activities from Denmark. In order to uphold the institutions and organizations that implement these autonomy arrangements, the Danish minority receives strong financial and political support through the Danish government (Malloy 2015).

The Sorbian autonomy in Germany took its beginnings in 1912 with the foundation of the umbrella organization *Domowina*, which today functions as the interest representation of the community vis-à-vis the state and thus is the main contact point between the community and state bodies. Subsequently, the minority established and maintained a number of institutions aiming to protect and promote Sorbian culture and language (Nikolov 2005, 1131). The minority protection provisions of the Weimar Republic allowed for the maintenance of a strong minority identity, despite increasing outward migration of members of the community in search of employment, and inward migration of Germans seeking work in the coal mines of Lusatia, the Sorbian settlement area. However, Hitler's Nazi regime and the Second World War brought this development to a halt through the oppression of Sorbian traditions and language and prohibition of many Sorbian organizations. After the war, the settlement area of the Sorbs was part of the Soviet occupation zone, initially leading to a strengthening of the rights of the Sorbs, who were seen as a Slavic kin-people and were treated accordingly. As the Russian occupation zone became the German Democratic Republic (GDR), the Constitution that was put in place further cemented the rights of the community, although this came at the price of central Sorbian organizations, media outlets, and events being controlled and abused for propaganda by the GDR regime (Steensen 2017, 112–13). The reunification of the two Germanies meant that the minority became a small community within a much larger state on the one hand and that their rights were implemented in a liberal democratic context, allowing for the development of a more autonomous community life on the other hand. Today, a number of private law organizations, unified under the umbrella of *Domowina*, take on public functions for the minority including individual aspects of education, childcare, the media, and libraries. Moreover, consultative bodies represent the interests of the community in communication with the respective municipal, state, and federal bodies in decisions regarding the minority, and the Sorbian Foundation (*Stiftung des sorbischen Volkes*) receives and administers the public funds dedicated to the community (Elle 2005, 25, 43–44). In 2018, the minority established a parliament,

which is, however, not yet recognized by the federal or state governments and does not enjoy legislative powers (Serbski Sejm 2018).

The Sorbian community is a group of people without a kin-state. The Advisory Committee on the FCNM and the Expert Committee on the ECRML took on the same role for the Sorbian people as for the Danish minority in ensuring the legal manifestation of rights and autonomous arrangements that were often already practiced, based on the political goodwill of the respective governments (Rein 2015).

4. Legal Basis of Autonomy

On a federal level, minorities in Germany do not enjoy special protection. The only exception to this is a provision in the federal electoral law stating that the party of the Danish minority is exempted from the 5% threshold in elections for the federal parliament.⁵ This regulation has allowed for representation in the federal parliament in the past (1949–1953), yet, since 1961, the Danish minority party has not run for federal elections (Kühl 2011, 210).⁶

On the *Land* level, the minorities are protected through the respective Constitutions, but their autonomy is secured mainly through individual acts of ordinary law and cooperation agreements or state contracts between minority organizations and the respective *Land* governments (Bundesministerium des Innern 2015, 64–73). Such contracts are legitimized through the standard legislative procedures in the *Land* parliaments (*Landtag*) (Malloy 2015; Rein 2015).

Ordinary law in Germany, including those laws establishing provisions relevant to the exercise of autonomy for the minorities, can be amended through a simple majority in parliament, both on *Länder* and federal level. The minorities in question do not have to be specifically involved in this process, even if the legal amendment affects them directly. However, through consultative bodies both at the *Länder* (where relevant) and federal levels in which the umbrella associations are represented, the minorities are regularly heard where legal changes affect them. Such hearings are, however, not legally binding. They are, more exactly, a customary process that has so far mostly worked to the minorities' satisfaction (Elle 2005, 43–45; Minderheitensekretariat n.d.).

The institutions and organizations that implement the autonomy in and for the minority communities are mainly registered, non-commercial, private law associations (*eingetragener Verein*).

⁵ Article 6 (3) of the Federal Electoral Law of 23 July 1993 [*Bundeswahlgesetz vom 23. Juli 1993*, (BGBl. I S. 1288, 1594)].

⁶ At the time of writing, the SSW has announced and is preparing to run for the federal parliamentary elections again in 2021 (Südschleswigscher Wählerverband 2020).

5. Autonomous Institutions

The Danish minority developed a number of institutions that effectively fulfil public functions for its members, partially funded through public funds from Schleswig-Holstein and Denmark (see table 1). In a similar fashion, the Sorbian people have a number of organizations taking over public functions for its members, partially funded through public funds from the federal government, as well as Brandenburg and Saxony (see table 2).

Table 1. Autonomous institutions of the Danish minority

Institution	Function
<i>Dansk Skoleforening for Sydslesvig</i> (South Schleswig School Association)	Administration of kindergartens, primary schools, and secondary schools, direct funding from Schleswig-Holstein exclusively for education purposes
<i>Sydslesvigsk Forening</i> (SSF) (South Schleswig Association)	Cultural umbrella association, administrator of public funding
<i>Dansk Sundhedstjeneste for Sydslesvig</i> (Danish Health Service for South Schleswig)	Health services, elderly care, funded through SSF and fees for services
<i>Südschleswigscher Wählerverband</i> (SSW) (South Schleswig Voters Association)	Political party, representation of the Danish community in decision-making processes ⁷
<i>Beratender Ausschuss für Fragen der dänischen Minderheit beim Bundesministerium des Innern</i> (Advisory Committee for Questions of the Danish Minority with the Federal Ministry of the Interior)	Advisory body with the Federal Ministry of the Interior

Table 2. Autonomous institutions of the Sorbian people

Institution	Function
<i>Stiftung für das sorbische Volk</i> (Foundation for the Sorbian People)	Administration of public funding, organization of cultural events, funding for research on Sorbian people
<i>Sorbischer Schulverein</i> (Sorbian School Association)	Administration of childcare facilities, advisory role for Sorbian language education in schools with governments of Brandenburg and Saxony
<i>Domowina</i>	Umbrella organization of Sorbian associations, representation of Sorbian interests in decision-making processes
<i>Serbski Sejm</i> (Sorbian parliament)	Non-recognized, elected parliament, role and influence unclear
<i>Beratender Ausschuss für Fragen des sorbischen Volkes beim Bundesministerium des Innern</i> (Advisory Committee for Questions of the Sorbian People in the Federal Ministry of the Interior)	Advisory body in the federal government
<i>Rat der Sorben und Wenden</i> (Brandenburg) (Council of the Sorbs and Wends) ⁸	Consultative body in the parliament of Brandenburg
<i>Rat für sorbische Angelegenheiten</i> (Sachsen) (Council for Sorbian Affairs)	Consultative body in the parliament of Saxony

⁷ The SSW represents portions of the North Frisian community alongside the Danish community.

⁸ Wends is an alternative name for the Sorbian people (Elle 2004, 152).

The organizations and institutions listed above are almost all private non-commercial associations registered under German law. Their role as quasi-public institutions has been formalized through various legal acts and agreements regarding education, elections, day care, and the media. In addition, a number of representative and consultative bodies at regional (Brandenburg, Saxony, Schleswig-Holstein) and national level, ensure the political participation of the communities (Malloy 2015, 192; Rein 2015). Only the Sorbian Foundation is a body of public law.⁹

The decision-making procedures are different in each of the institutions and bodies listed. In the Sorbian case, not only the procedures within the organizations and institutions of the minority are different for each of them, but the procedures for finding Sorbian representatives for the consultative bodies and the Sorbian Foundation also differ between Saxony and Brandenburg. In Brandenburg, the Sorbian representatives to the Council of the Sorbs and Wends are elected by registered voters¹⁰ and the Sorbian representatives to the board of the Sorbian Foundation are appointed by the Council.¹¹ In Saxony, the Sorbian representatives of the Council are elected by the *Landtag* and the associations and organizations of the Sorbian community only have the right to propose candidates, and the Sorbian representatives to the board of the Sorbian Foundation are appointed by *Domowina*.¹² This makes for a highly complex landscape in which decision-making procedures and responsibilities appear unclear and opaque.

According to the regulations on associations in the German Civil Code, all registered non-commercial associations must have a board to be elected from their members. Decisions regarding the work of the association are made either in the general assembly or by the board based on a simple majority vote. By-laws can only be changed through a three-quarter majority.¹³ As the institutions and organizations responsible for implementing the autonomy arrangements are mostly private law, non-commercial associations, they are structured accordingly. The only specificity in the cases of the *Sydslesvigsk Forening* (SSF) and *Domowina* is that since they are umbrella organizations their members include other associations as well as individuals.

Exceptions from the rule include the Sorbian Foundation, which is a public law body, and the consultative and advisory bodies, which are committees of the respective *Land* parliaments or the

⁹ Article 1 (1) of the Treaty between the State Brandenburg and the Free State Saxony on Establishing the “Sorbian Foundation” of 28 August 1998 [*Staatsvertrag zwischen dem Land Brandenburg und dem Freistaat Sachsen über die Errichtung der „Stiftung für das sorbische Volk“ vom 28. August 1998*, (SächsGVBl., 630)].

¹⁰ Article 5 of the Brandenburg Sorben/Wenden Law of 7 July 1884 [*Gesetz über die Ausgestaltung der Rechte der Sorben/Wenden im Land Brandenburg – Sorben/Wenden Gesetz vom 7. Juli 1994*, (GVBl.I/94 [Nr. 21], 294)].

¹¹ Note to Article 7 (1) point 1 of the Treaty between the State Brandenburg and the Free State Saxony on Establishing the “Sorbian Foundation” [*Protokollnotiz zu Artikel 7 Abs. 1 Nr. 1 des Staatsvertrages zwischen dem Land Brandenburg und dem Freistaat Sachsen über die Errichtung der “Stiftung für das sorbische Volk“*].

¹² Article 6 of the Saxony Sorben Law of 31 March 1999 [*Sächsisches Sorbengesetz vom 31. März 1999*, (SGVBl., 161)].

¹³ Articles 26, 27, 32 and 33 of the German Civil Code of 2 January 2002 [*Bürgerliches Gesetzbuch vom 2. Januar 2002*, (BGBl. I, 2187)].

Federal Ministry of the Interior. In the Sorbian Foundation, decisions regarding how funds will be distributed among the Sorbian institutions are made by the board by a simple majority vote and there are no veto rights. The board is composed of members from the federal public authorities, the public authorities of Brandenburg and Saxony, as well as members of the Sorbian people.¹⁴

The consultative and advisory bodies are furthermore not registered as associations but are working committees attached to the respective institutions. They are composed of members of the respective community as well as representatives of the various parties represented in the relevant parliaments, and meetings are held regularly (Minderheitensekretariat n.d.). While these bodies potentially have an influence on law and decision-making, their input is not binding for the legislative or executive bodies of the state or *Länder*. While these bodies do not only involve members of the minorities and are thus not immediately autonomous bodies, they, nevertheless, play a significant role in representing the interests of the community with the respective governments. They are, in fact, the only official and guaranteed channels that the minorities have to make their voices heard with the relevant governments.

6. Autonomous Powers

The minority institutions in Germany do not have legislative powers. Accordingly, neither do they have executive powers in the narrow sense. The powers of the minority institutions are limited to their own immediate realm of work. As most of them are not public bodies, but private organizations, they can only implement provisions in the narrow realm that the respective law or agreement appoints to them. Their activities are supervised by public bodies to the degree that any private law association is in Germany and through the funding agreements they sign. The only exception is the Sorbian Foundation, which is a public body. Through its decision-making procedure and the composition of its executive board, it is tightly supervised by the federal, as well as respective *Land* governments.

The autonomy of the communities is conferred through an acceptance of their associations and institutions as effectively fulfilling public tasks, which is manifested through public funding, as well as the conferral of decision-making power (albeit very limited) by specific laws and contracts.

¹⁴ Article 7 (1) of the Treaty between the State Brandenburg and Free State Saxony on Establishing the "Sorbian Foundation".

7. Financial Arrangements

The Sorbian people receive institutional funding from the *Land* governments of Brandenburg and Saxony, as well as the federal government through the Sorbian Foundation. The Danish minority receives funding from Schleswig-Holstein through its main cultural organization, the *Sydslesvigsk Forening* (SSF) (Council of Europe 2013, 16–25). Both these organizations are subject to regular audits in line with public funding regulations. Additionally, both communities can apply for project-related funds for specific purposes (Ibid.; Wolf 2015).

Both communities have some spending autonomy. As the main share of the funding is institutionalized, the organizations distributing the funds can decide what they spend it on. This is balanced by previously agreed on funding plans with the Schleswig-Holstein government in the case of SSF, and through the specific composition of the board in the case of the Sorbian Foundation (Wolf 2015). Both school associations receive specific funds earmarked for education purposes exclusively. However, in terms of the precise and practical implementation of these purposes, they are autonomous within the frame of the law. In the case of the Danish school association, as the schools and kindergartens are private institutions, this allows room to decide how many schools and kindergartens to operate, the level of remuneration, to which degree they support class trips, subsidize teaching and other school materials, invest in teachers' further training, provide additional pedagogical support to students and so on. This is in line with the regulations regarding all private schools in Schleswig-Holstein.¹⁵ However, the Sorbian School Association has such far-reaching autonomy only with regard to the kindergartens they operate, as it merely has an advisory role regarding Sorbian language teaching, which takes place in public schools. The association thus has no influence on teacher salaries and its spending autonomy is limited to investments in teaching materials, trainings and language education for teachers and other staff as well as other supportive measures for the teaching of Sorbian (Sorbischer Schulverein n.d.).

8. Intergovernmental Relations

As the communities in question do not have governments, their contacts with state authorities are mainly channeled through their respective umbrella organizations. When it comes to conflict management, remedies for violations of the autonomy arrangements, therefore, rely entirely on the court systems rather than intergovernmental relations. As the autonomy arrangements for the

¹⁵ Articles 124–125 of the School Law of Schleswig-Holstein of 24 January 2007 [*Schleswig-Holsteinisches Schulgesetz vom 24. Januar 2007* (GVOBl. 39/2007, 276)].

Danes and the Sorbs are based on contracts and ordinary law, a breach of these on either side would generally have to be dealt with through the courts.

In the case of the Danish minority, the role of the Danish government as a mediator in conflict situations is also not to be underestimated. In 2010, the Danish minority was subject to cuts in the funding for their schools, which caused large-scale protests in Schleswig-Holstein, including also large numbers of ethnic Germans, as well as declarations of discontent from Copenhagen. The pressure from Denmark on the German federal government eventually led to an intervention from Berlin in the form of a substitute payment. After elections in 2012 and a change in government, not only was the previous funding level re-established but the respective guarantee was also included in the Constitution of Schleswig-Holstein (Wolf 2015, 7–8).

The umbrella organizations *Sydslesvigsk Forening* (SSF) and *Domowina*, which take a central role in implementing the autonomy arrangements under scrutiny, are represented at the Minority Council, an advisory body of the four recognized minorities in the Federal Ministry of the Interior and the federal parliament. At the *Land* level, the Danish minority in Schleswig-Holstein is represented through its political party that is exempt from the usual 5% threshold for regional elections and has consistently been represented in parliament since 1947. Between 2012 and 2017, the *Südschleswigscher Wählerverband* (SSW) was part of the governing coalition in Schleswig-Holstein, in which it held the ministry of culture, justice, and Europe. The Sorbian community is represented in Brandenburg and Saxony through consultative councils (Bundesministerium des Innern 2015, 64–73; Südschleswigscher Wählerverband, n.d.).

Both the Danish minority and the Sorbian people have contacts across the borders in their respective regions fostering and implementing cross-border cooperation, as well as in pan-European organizations, such as the Federal Union of European Nationalities (Elle 2005, 46–48).

9. Inter-group Relations within the Autonomous Entity

The *Sydslesvigsk Forening* (SSF) functions as an umbrella organization not only for Danish associations but also for *Friisk Foriining*, a North Frisian association. Through this cooperation, a share of the Frisian community that identifies as a national minority¹⁶ and makes use of Danish associations can be seen as benefitting from the functional autonomy arrangements of the Danish

¹⁶ While parts of the Frisian community consider themselves a minority with similar characteristics to the Danish minority and feel their interests represented through the cooperation with SSF and SSW, this is not the case for others. This difference in self-understanding as a minority for part of the community and as a German tribe for another part of the community is a historical legacy that remains unresolved (Kunz n.d.; Steensen 2017, 106–09).

minority. Other than this, the functional non-territorial autonomy arrangements do not apply to individuals of other communities.

10. Membership and Special Rights

In both the Danish and Sorbian institutions and organizations, anyone who is interested in working towards the aims of the community can become a member. As most of these associations are guided by private law, the respective non-discrimination rules apply. However, by the same token, individuals can be excluded from the association if they are seen as disrupting its functionality. According to German law, the affiliation with a minority cannot be challenged or tested, therefore the willingness to become a member of a minority association is usually seen as a statement of affiliation (Elle 2005, 21–22).

11. General Assessment and Outlook

Minority protection in Germany is a complex issue, as due to the federal structure of the state, it is a highly fragmented system with partly unclear structures and channels for minorities to access their rights. The autonomy arrangements in place are functional and non-territorial and arguably rather limited in scope if compared with other cases of non-territorial autonomy in Europe. Out of the four recognized national minorities, only two – the Danish minority and the Sorbian people – enjoy a significant degree of autonomy.

The rules and regulations specifying the different aspects of autonomy differ greatly between communities, making it difficult to understand and assess how they work. Several different legal documents of varying governmental levels, by-laws, and organizational documents have to be explored in order to understand the dynamics of the autonomy in place. This creates a considerable degree of opacity and provides the potential for incoherent implementation. The legal framework for those autonomy arrangements in place, while relatively stable at the moment, is founded entirely on ordinary law and agreements that could be changed relatively easily or undercut by future, less minority friendly governments. While the relevant legal texts provide clear rules of how individual aspects of autonomy are to be handled (albeit without calling them that), the quality of their implementation continues to depend on the goodwill of the authorities involved. While this potentially destabilizing aspect needs to be kept in mind, it is noteworthy that currently no tendencies to undercut the autonomy arrangements in place are noticeable. In the case of the North

Frisian community, moves have even been made to extend its autonomy and increase funding stability.¹⁷

Additionally, the internal organization of the communities and the role of their associations in the implementation of their respective autonomy arrangements are a critical aspect. Interest representation of the communities with the Land and federal governments is not handled through democratic processes from within the community in all cases, potentially creating obstacles to oppositional voices within the communities being heard and considered and thus presenting a false monolithic picture of the community, as well as inviting questions by the authorities about the legitimacy of negotiating and the implementing partners.

As regards the two cases discussed in more detail in this article (the Danish and Sorbian communities), even the comparison between just these two shows significant discrepancies in the extent and implementation of autonomy. The scope of application for the Danish community extends to questions of culture, education, the media, and social services (to a certain degree), while the Sorbian people have significant autonomy only over culture and the media, and specific aspects of education. This being said, the past two decades have shown considerable dedication on the part of the governments of Brandenburg, Saxony, and Schleswig-Holstein, as well as the federal government, to increase the stability and to strengthen the legal foundation of the autonomies in place, as well as providing the necessary funds to the communities.

In the case of the Sorbian people, the main limitation to the implementation of the functional autonomy is created by the integration of Sorbian education into public schools (Elle 2005, 42). Generally, the combination of public schools and private kindergartens in the Sorbian settlement area seems to fulfil the community's educational needs. However, in the past Sorbian schools and classes have been closed and Sorbian teaching hours decreased against the expressed wishes of the parents, teachers, and children affected (Council of Europe 2015, 34–35). Not having the competences to decide if such measures should be taken severely limits the autonomy of the community. Arguably, this aspect of the autonomy arrangement is closely connected to the funding of the community through the German authorities, which provide only limited resources for the specific educational needs of the community.

Additionally, the way in which the interests of the community are represented poses a potential hindrance to the implementation of the community's autonomy. In the Sorbian case, political representation is handled by *Domowina*, their cultural umbrella organization and chief implementer

¹⁷ The Frisians have been working to establish a Foundation for the Frisian People (similar to the Sorbian Foundation) since 1995. Negotiations intensified since 2014 and in 2017 a cooperation with the state of Lower Saxony was proposed to create a foundation for all Frisians, however, unsuccessfully. In January 2020, the Schleswig-Holstein Landtag decided to establish said Foundation, which took up its work in August of the same year (Landtag Schleswig-Holstein 2020).

of the autonomy arrangements, which has been criticized from within the community for a lack of democratic legitimization. However, attempts to change this situation, including the decision of parts of the community to set up an elected parliament, led to significant tensions within the community and dismissive reactions from *Domowina* (Elle 2012, 27–35). Such internal tensions have the potential to slow down and even halt important decision-making processes within the community and tend to bind resources. While this situation has, so far, not led to issues in negotiations with the authorities, it might provide a welcome reason for the authorities to question the legitimacy of their negotiating and implementing partner.

Finally, as mentioned above in more general terms, the legal insecurity of ordinary legal acts and agreements, or state contracts, is a potential threat to the community's autonomy in the future. However, in Saxony and in Brandenburg, recent developments do not indicate any inclination to alter any of the arrangements in place to the detriment of the Sorbs. On the contrary, legal acts have been added, and channels for more political representation have been established in both states, further solidifying and extending the scope of application of rights and autonomy for the Sorbs.

The Danish community finds itself in a very similar legal situation, with legal security standards that could be improved, although state governments have invested in increased legal security and improved implementation of autonomy in recent decades. Regarding political representation, democratic legitimization is slightly higher, as it is handled by the political party *Südschleswigscher Wählerverband* (SSW) in cooperation with the *Sydslesvigsk Forening* (SSF), as the main implementer of the autonomy arrangement. This arrangement, while certainly not having the same legitimacy as an elected parliament, allows for a more pluralist approach to interest representation.

Regarding education as an aspect of the community's autonomy, the Danish minority is in a rather comfortable position. The massive Danish financial support for private educational facilities, paired with the constitutional guarantee for funding on a par with public schools, is an important factor here, as it allows for the community to operate a relatively large number of schools in a largely rural region for a small community, with high expectations of a secure future. This arrangement is, of course, a result of the historical development of the community and the influence of a kin-state just across the border. The geopolitical interests of both states involved and (since the Second World War) generally friendly relations between them are thus a significant factor for the autonomy arrangements of the Danish minority.

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List of abbreviations

ECRML – European Charter for Regional or Minority Languages

FCNM – Framework Convention for the Protection of National Minorities

FRG – Federal Republic of Germany

GDR – German Democratic Republic

NATO – North Atlantic Treaty Organization

SSF – Sydslesvigsk Forening

SSW – Südschleswigscher Wählerverband

About the author

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