

Schleswig-Holstein's State Constitutional Court and the Legacy of Harro Haring

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[1] The Constitutional Court of the *Land* (federal state) Schleswig-Holstein issued one of its rare opinions on 1 April 2001. In the "Harro Haring Statue" case, the Constitutional Court was confronted with the competing ideals of minority rights, states rights and the role of the localities in an ever more unified Europe. In the opinion, the Constitutional Court shook-off its reputation for being a fiercely local institution and embraced what it called the "now seemingly inevitable power the European Union will exercise over, not only the member states, but the distinct regions like Schleswig and Holstein that make up the true heart of Europe." The case demanded this visionary response from the Constitutional Court, involving, as it did, the struggle over the meaning of the dramatic legacy of the thinker, poet and revolutionary Harro Haring.

A. Procedural History and the Law

[2] Like each of Germany's 16 federal states, the far northern state of Schleswig-Holstein has its own constitution which marks out a handful of unique fundamental rights not addressed by the federal constitution (Basic Law) but predominantly serves to outline the organization of the state's government and election system. The Constitutional Court of Schleswig-Holstein is charged with the review of challenges to and claims of violations of the state's constitution.

[3] The "Harro Haring Statue" case has its origins in the (1 April 1996) resolution of the Gemeinde Verwaltung (Community Administration) of the city Husum in Schleswig-Holstein. The resolution declared the city's intent to commission the erection of a "dignified statue and memorial of the local hero Harro Haring, which will decorate the market place of our proud community and serve as a reminder to the people of Schleswig-Holstein, Germany and the world of the high character of the people of Schleswig-Holstein". The statue was to bear the inscription: "Harro Haring – ein echter Sohn Schlesiws (Harro Haring – a true son of Schleswig)."

[4] Three descendants of Harro Haring (Harold Haring, Hildegard Haring and Henriette Haring-Hoos) joined the representatives of the Friesians (an ethnic national minority that enjoys special cultural protection under the constitution of Schleswig-Holstein) in a request to the Husum Community Administration that sought to halt the erection of the statue. The family's objection centered on the claim that the proposed Harro Haring statue would dishonor Haring's legacy, which was not in the service of "local and petty regionalism but envisioned a greater Europe if not a greater World." The Friesian minority joined the objection out of their interest in protecting the "Friesian character of a Friesian hero against proprietary encroachment by the modern state Schleswig-Holstein." The Husum Community Administration rejected the parties' objections as did the successive courts of Schleswig-Holstein, first the *Verwaltungsgericht* Husum (Administrative Court) and then the *Oberverwaltungsgericht* Schleswig-Holstein (Administrative Appeals Court).

[5] The parties brought their constitutional complaint to the Constitutional Court of Schleswig-Holstein, challenging the Administrative Appeals Court's decision in favor of the Husum Community Administration. The Haring family and the representatives of the Friesian minority argued that the proposed Haring statue, with its strong identification with and endorsement of the state Schleswig-Holstein, violated Articles 5(2) and Article 7 of the state constitution.

Article 5(2) provides:

The cultural autonomy and political involvement of national minorities and ethnic groups enjoy the protection of the state, the community and the institutions of the community. The national Danish minority and the Friesian ethnic group have a claim to protection and support.

Article 7 provides:

The natural conditions of life enjoy the special protection of the state, the community and the institutions of the community – including the other agents of the public administration.

The Haring family sought to characterize Harro Haring's political and literary legacy as a part of the "natural necessities of life" protected by Article 7 of the state constitution.

B. The Constitutional Court's Opinion

The Legacy of Harro Haring

[6] The Court's consideration of the claims necessarily involved a review of Harro Harring's sweeping and dramatic story, once referred to as the "North Friesian Odyssey of Freedom." The Court traced Harro Harring's career from his birth, of Friesian heritage, near Husum in 1798, through the peak of his public engagement and finally his isolated suicide, overcome as he was with disillusionment, in 1870. Central to its ruling in the case, the Court found that Harring's chief goal (as articulated in word and deed) was a free, self-determining and united humankind that disregarded traditional national identification. The Court described Harring's boundless pursuit of this vision and its underlying fundamental values. He was a supporter of a Republicanism, equality for women, abolition of slavery and a unified Europe. The Court thoughtfully reflected on the breadth of Harring's collected literature, now spanning more than 100 volumes, including novels, poetry, drama and political commentary. Harring, of course, was also painter and architect of some ability as well. The Court noted that the breadth of Harring's engagement in just causes around the world inspired the respect of some contemporaries (the American authors Alexander H. Everett and Sarah Margaret Fuller) and the disdain of others (most notably, Marx and Engels), though, the Court conceded, mockery is its own form of admiration. Harring fought with the Greeks in their war of independence against Turkey. Harring was a vocal critic of the Polish monarchy. Harring, alongside Giuseppe Mazzini, joined in the struggle for a united Italy. Harring twice visited the British Island Helgoland in support of its uprising against the crown. Harring helped organize an attempted slave uprising in Brazil and was an active participant in the plans to form a United States of South America.

[7] The Court also detailed Harring's agitation in Germany, especially his appearance at the Hambacher Fest in 1831, which would serve as the foundation for the 1848 revolution against the monarchy. Harring, the Court explained, returned from New York to his homeland in North Friesland upon the outbreak of the 1848 revolution with the hope of leading the Friesians to join the struggle. In a dramatic speech at Bredstedt in July, 1848, Harring implored the North Friesians to embrace the "spirit of the movement of the age . . . to join in the communal struggle against arbitrariness and tyranny on behalf of the freedom of human classes, in the spirit of humanity!" Harring concluded the rally by forbidding the people from succumbing to the "imperial plague of nationalism" and urging his people to accept that they were ripe "to be free, as our fathers were, and better to die than to live as slaves!"

The Court's Conclusion

[8] The Constitutional Court of Schleswig-Holstein dismissed, as ungrounded in the state's constitution, the heirs' claim that Article 7 of the state constitution protected, as a necessity of life, Harring's political and literary legacy. The Court explained that this provision of the Schleswig-Holstein constitution was limited to the tangible necessities of daily living and did not extend to intangibles like the spiritual and/or emotional dignity of the living or the dead. The Court made reference to the considerable body of federal constitutional jurisprudence addressing the issues of human dignity and the right to freely develop one's personality, suggesting that the Harring family might have a claim for such protection under Articles 1 and 2 of the Federal Basic Law. The Court concluded, however, that dismissal of the family's claim was not determinative of the case.

[9] Instead, the Court found merit in the claim of the representatives of the Friesian minority, ordering the state's administrative court's to reconsider the case, this time taking into account a complex mixture of the norms set down in Article 5(2) of the Schleswig-Holstein constitution and the respect and autonomy afforded the regions by the European Union treaties. The Court first embraced Harring's Friesian ethnic heritage and recognized the right of the representatives of the Friesians to claim authority over the characterization of his legacy. Second, the Court, relying on Harring's writings and deeds, adopted the Friesian characterization of Harring's legacy. Harring, the Court summed up, conceived of himself first as a Friesian (as exhibited by his passionate and highly personal return to the region in 1848) but he viewed his Friesian heritage as important only to the degree that it contributed to the greater diversity of a united Europe. By no means, did Harring view himself as a representative of Germany or a political subdivision of Germany like a federal state. The Court quoted the confessional poem Harring wrote, following his failed efforts to summon the Friesian people into the 1848 revolution:

*I have returned to my home shores.
I found no burning embers in any hearth.
Because of that there is no grounds for "fame,"
That I was born a free Friesian;
I was born a free man; the richness of humanity
Beats in every pulse.
And whether I am German – whether Scandinavian:
I am no monarch's toy – no king's slave.
So what am I then: I am a European*

[10] The Court found that the proposed statue and memorial ran counter to this vision and the right of the Friesians to protect this important legacy. The Court then concluded that the rights of the Friesians not only had their roots in the constitution of Schleswig-Holstein but also in the protections of the European Union, with its provision for a role of

regional heritage, including the existence of a Committee of the Regions (Article 263, Consolidated EU Treaty). The Court was particularly moved to invoke these European interests, first because of its feeling that the power of the European Union was, inevitably, ever expanding, but more importantly because it found that the current European model so remarkably matched Haring's vision. The Court suggested that, perhaps, it would be better to commemorate a Harro Haring statue and memorial with the words: "Harold Haring: A Friesian and the father of the European Union."