

School fees through the backdoor

Violation of the right to education through increasing privatisation of the education costs

By Ulf Riebau

„If operating expenditure is trimmed, the quantity of service should not be reduced, even if the quality has to suffer. For example, operating credits for schools or universities may be reduced, but it would be dangerous to restrict the number of students. Families will react violently if children are refused admission, but not to a gradual reduction in the quality of the education given, and the school can progressively and for particular purposes obtain a contribution from the families, or eliminate a given activity.“ (OECD 1996, 28)

Affected families are regarded as legitimate protesters, if their protest is restricted to their direct concern and not extended to the fundamental, ideological and subversive.

The trigger for the lower saxonian popular initiative for free learning material and free student transportation was in 2004 the abolition of the act for free learning material and the announcement of the reduction of free student transportation by the CDU/FDP state government under Christian Wulff.

Most parents and their children are dependent on public education. They become affected when the scope, quality and financing of public education not address their personal needs or the requirements of society. They are especially affected when the increasing privatisation of education costs reaches a level that the single parent can no longer attain equal opportunities through their own compensatory financial means.

Problems of public education has up to now hardly been seen as a violation of human rights by parent representatives and councils. In the ‚wealthy west‘ human rights are accepted as reality. Economic, social and cultural rights are conceived (if known at all) as utopian, especially when they are non-actionable. But if one takes the universally formulated right to education seriously then free education becomes an inalienable foundation to the realisation of this right.

Because parents and students are to day required to make new and increasing financial contributions (e.g. learning material, student transportation and private extra tuition), therefore free education and equal opportunities were violated through the back door.

Free education (especially in the compulsory school years) has a great symbolic meaning. With the abolition of free learning material in the schools and the introduction of university fees the formal free education faces a bigger threat. The curtailing of free human rights related public services with the argument that the rich do not depend on it, is an attack on the universality of human rights that does not affect the rich. Free tuition, free learning material und free access to universities should also be defended for the rich, because this is the only way to defend it for all.

The commercialisation of education goods and services (increasingly in an global context) goes hand in hand with the privatisation of some functions of the educational system, that up to now has been undertaken by the state or municipality (e.g. vocational training, school development, evaluation, research, provision and maintenance of school buildings. The dual education privatisation, i.e. of the educational institutions on one hand and of the private educational costs on the other, makes education an economic entity. In contrast the UN Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos, intends “to continue strengthening the human rights dimension of education by encouraging the shift from education policies that address education as an economic good to the right to education, which States have an obligation to implement and which is justiciable.“ (UN Economic and Social Council 2004, 2)

Lower saxonian popular initiative for free learning material

The lower saxonian popular initiative for free learning material and free student transportation was endorsed by 160.000 voters in the school year 2004/2005. In December 2005 the state parliament upheld with the majority of the CDU/FDP coalition the recommendation of its education committee, “to refuse the request of the popular initiative for free learning material und free student transportation.”

The popular initiative had earlier in its public statement before the education committee repudiated the accusation that the request to reintroduce free learning material would be immoral in view of the public indebtedness, and burdening future generations with huge debt service: “Not the current but the future public debt service is declared a scandal. But future – like current – generations will be affected by the debt burden in very different ways. Some people have to give their last money because the state retreats from public education expenditure, others can build up resources because the state retreats from taking taxes.” (Volksinitiative 2005, 3)

The popular initiative has been supported by the majority of the lower saxonian county and city councils of school parents. The abolishment of free learning material was a further financial disadvantage for families with children in compulsory education. This further burden was seen as particularly inequitable because the parents had in the last years already ‘voluntarily’ compensated for financial shortages in the schools: “We speak of contributions to parent-teachers-associations (“Schulfördervereine”), voluntary work in cafeterias, in school libraries, contributions for and voluntary work in class room and schoolyard renovations, for acquisition of computers and many more things. The more the parents make efforts to cope with the public cutbacks the more the state and the municipality are encouraged to invent new cutbacks, contributions, levies, charges and fees.” (Volksinitiative 2005, 7)

The popular initiative indicated that the families not only had new financial burdens in education, but also in other fields of public services and social security. The alleged negligibility of each particular new introduced charge would misconceive the facts that the families are confronted with a sum of new charges. The established exemption limits would be so high that many families in need would not be exempted from the charges: “The actual available income of this families can therefore decline to the same, or even below the level of the available income of families who receive unemployment benefit. This inequity disturbs the societal cohesion in many areas, and also in our schools.” The introduction of new fees and the accordant exemption limits is combined with a lot of time consuming means-tests by authorities, schools, parent-teacher-associations and other institutions: “Only one means-test may be accepted by the families and children as bearable. A multiplicity of means-tests, repeated every year, surely could be perceived as degrading.” (Volksinitiative 2005, 3)

Free tuition and free learning material in the state constitutions

Education and education politics is the responsibility of the Lander. The welfare state imperative of the constitution of the Federal Republic of Germany is the foundation of compulsory education, free education and equal opportunities. Free tuition and free learning material is expressly mentioned in many Lander constitutions:

- “Tuition and learning material are free in public schools. This gratuitousness will be realized gradually. (Baden-Württemberg)“
- “All children shall be obliged to attend elementary and vocational schools. Tuition at these schools shall be free of charge.” (Free State of Bavaria)

- “The state and the communities have the duty to establish and to support schools. In these schools education/tuition is free (“Schulgeldfreiheit”). Free learning and teaching material should be regulated in an act.” (Brandenburg)
- “Tuition is free at all public schools. Learning and teaching material will be made available free of charge.” (Free Hanseatic City of Bremen)
- “At all public primary and secondary schools and at universities tuition is free of charge. Learning material, except for learning material used at universities, is also free of charge. (...) An appropriate tuition fee (“Schulgeld”) can be levied, if it is affordable in the economic situation of the student and the parents.” (Hesse)
- “Primary and secondary (elementary) education and vocational education shall be free. The introduction and implementation of free school education for schools providing continuing education as well as free teaching and learning material for all schools shall be regulated by law.” (North Rhine-Westphalia)
- „In state schools, tuition and learning material shall be provided free of charge.“ (Free State of Saxony)
- “Tuition at all public schools is free of charge.” (Saxony-Anhalt)
- “Tuition at public schools is free of charge. The financing of learning and teaching material should be regulated by an act.” (Free State of Thuringia)

In the Lander constitutions of the Federal Republic of Germany free education is conceived as education/tuition free of charge, or as the absence of a tuition fee, alone or combined with free learning material. It is not always definitely clear if free education (“Schulgeldfreiheit” = “free of school-fee”) includes free learning material. Free education/tuition shall according to the Lander constitutions be realised (gradually) at all public schools (in one constitution only at the Volksschule and the vocational schools).

Free learning material is expressly mentioned in the Lander constitutions of Baden-Württemberg, Brandenburg, Bremen, Hesse, North Rhine-Westphalia und Saxony (6/16). Free education („Schulgeldfreiheit“) and/or free tuition is guaranteed (in some constitutions with restrictions for certain school types) in the Lander constitutions of Baden-Württemberg, Bavaria, Brandenburg, Bremen, Hesse, North Rhine-Westphalia, Saxony, Saxony-Anhalt and Thuringia (9/16). A special case is the constitution of Hesse, which allows a tuition fee (“Schulgeld” = “school-fee”) “if it is affordable in the economic situation of the student and the parents.”

In 1996 the Federal Republic of Germany reported in its national report to the responsible UN council about the state of realisation of the „International Covenant on Economic, Social and Cultural Rights“ in Germany: „The share of children covered by primary education amounts to 100 per cent. Education is free. The required teaching material is either provided free of charge or lent to the pupils.” (UN Economic and Social Council 1996, par. 340)

The current development is described by Dohmen/Himpele: “Currently parents are increasingly obliged to finance indirect or additional costs in regard to the school education, but there is no national overview.” (Dohmen/Himpele 2006, 7)

The UN Committee on the rights of the child notes in its concluding observations 2004 regarding the situation of the rights of the child in the Federal Republic of Germany, that decentralized education „may lead to some disparities“ in the implementation of the right to education. (UN Committee on the Rights of the Child 2004, 10)

The UN Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos, spoke at the national press conference at February 21st, 2006 in Berlin about disparities which arise from the

federal structure of education in Germany: “We can notice that there are considerable differences among the Lander, e.g. regarding the education expenditures... There are disparities, which have direct consequences for the education process. On the one hand the popular initiative for free textbooks was refused in Lower Saxony, arguing that the lack of public financial resources would be the reason to deny this demand, and on the other hand the Lander are refusing the possibility, that the national government contribute, as of the year 2009, in the financing of university buildings.”

Free primary education as a human right

Many international human rights documents define that primary education shall be available free of charge and that this should be the first step to the full implementation of free education.

- Universal Declaration of Human Rights (UN 1948): „Education shall be free, at least in the elementary and fundamental stages.“
- International Covenant on Economic, Social and Cultural Rights (UN 1966): “...primary education shall be compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education...”
- Convention on the Rights of the Child (UN 1989): “States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: make primary education compulsory and available free to all; encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need...”
- Revised European Social Charter (Council of Europe 1996): “...to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.”
- The Charter of Fundamental Rights (EU 2004): „Everyone has the right to education and to have access to vocational and continuing training. This right includes the possibility to receive free compulsory education.”

The term “primary education“ in the international human rights documents are translated to German with „basic school tuition“ („Grundschulunterricht“). According to the current Unesco education classification primary education covers however “in principle six years of full-time schooling“ (Unesco 2006, 22) In most German Lander basic schools („Grundschulen“) covers only four years schooling, therefore primary education covers, in these Lander, also the first two years of secondary school.

The UN Economic and Social Council in 1999 commented as follows on the definition of “free of charge” regarding the human (children) right to primary education free of charge: „Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization. They are also often highly regressive in effect. (...) Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category. Other indirect costs may be permissible, subject to the Committee's examination on a case-by-case basis.“ (UN Economic and Social Council 1999)

In July 2004, the chairperson of the UN committee for the rights of the child, Prof. Dr. Doek, responded as follows to the question by the lower saxonian popular initiative for free learning material and commented on the concept of gratuitousness in regard to the UN convention on the rights of the child: "The position of the Committee on the rights of the child is clear and consistent. The text of the CRC is that primary education should be free. This means not only that there should not be a tuition fee but also that parents should not be charged with other costs like for books/other teaching material, uniforms, transportation etc. For after school activities (extra curricular) schools are requiring some contributions from parents (that is quite common) but they should make sure that the children of poor families are not discriminated, that is prevented from participating because their parents cannot afford the to pay the costs (possibility is e.g. to create a school fund for this kind of activities to support children of poor families) As far as secondary education is concerned: the CRC sets it as a goal to make that form of education also free (in the sense as mentioned before) Particularly the rich countries are regularly encouraged to take the necessary measures to reach that goal." (Volksinitiative 2005, 6)

An overview of definitions of free education in the,wealthy west' is given by the former UN Special Rapporteur on the Right to Education, Katarina Tomasevski: „Definitions of free education include a range of subsidies provided to offset the cost of enrolment, tuition, books, meals, computers, sports, to encompass transportation for children who live far from school, or extra-curricular activities.“ (Tomasevski 2006, 227)

The right to free primary education in the "International Covenant on Economic, Social and Cultural Rights" can in the view of the responsible UN council ("General Comment Nr. 3") generally „be applied directly by the national courts and authorities". (Schneider 2004, 26)

Right to education, neoliberalism and imperial hegemony

The former UN Special Rapporteur on the Right to Education, Katarina Tomasevski, objected, that the universally guaranteed right to education first was loudly proclaimed, then quietly „betrayed“ by the UN. (Tomasevski 2006, x) Global strategies addressed to the poor could only develop through consensus-building and had therefore lowered political commitments to a minimum that everybody could agree to, namely only primary school and that aim only by 2015: „What should have been affirmed as each child's birthright was converted into a long-term development goal.“ (Tomasevski 2006, xx)

The developing countries are pressurized to make primary education free and compulsory, but at the same time to transfer its cost to families and communities: „If free education is mentioned, there is loud silence about public investment which would make this possible. The necessary policy lever - public finance - is conspicuously absent because of the prevailing distaste for taxation. The global design of education corresponds to the policy of the US government (which denies that education is a right), amplified by the World Bank (ditto), and not challenged by global actors in education and in human rights.“ (Tomasevski 2006, xi)

As far as the international community has recognized the right to education, notorious double standards for poor and rich countries have been established: „A low threshold has been laid down for the poor (primary education as a long-term goal) while the rich continue performing to a much higher standard (secondary education for all and lifelong learning to follow).“ (Tomasevski 2006, 222) An investigation by the Worldbank about school fees in 77 developing countries presents „depressing evidence of the cost of books, uniforms and enrolment.“ (UN Economic and Social Council 2004, 7)

The neoliberal belief ('tax reduction shall lead to public budget disaster') operates also within the US to curtail social programmes 'through the backdoor': "Eliminating social programs has goals

that go well beyond concentration of wealth and power. Social Security, public schools, and other such deviations from the 'right way' that US military power is to impose on the world, as frankly declared, are based on evil doctrines, among them the pernicious belief that we should care, as a community, whether the disabled widow on the other side of town can make it through the day, or the child next door should have a chance for a decent future.” (Chomsky 2003)

In Germany, too, the antagonism between the right to education and neoliberalism is thematized by opponents of mainstream globalisation and of the German corporate Bertelsmann. So e.g. according Barth/Schöller: “Education was thereby for a long time a basic right, that was treated with respect by the neoliberal ideologists. Different from the social rights of the poor, the old and the sick, the right to education could not be discarded as easily as a redundant traditionalism. Because one can not deny the economic benefits of education, at least not in its limited version of vocational training. But all, that goes beyond this, e.g. the concept of education as a social and democratic basic right, does not fit into the neoliberal program of the global restoration of pre-welfare-state capitalism.” (Barth/Schöller 2006, 26)

Bethge collected a huge amount of evidence to prove “that the state organized and tax financed education system has over 20 years been forced into a neoliberal conversion phase which many affected people disavow, and whose consequences many people can not perceive, especially because this conversion is not executed systematically step by step, because it is executed by many different protagonists in different fields, and because it covers elements and steps which have been tested abroad and which are unknown here.” (Bethge 2006, 11) “ For example: “...the surrender of the administration of whole school districts from the state/municipal side to private education consultants, especially in Anglo-Saxon countries.” (Klausenitzer 2005, 3)

The promise that a better quality of school and tuition could be achieved by more evaluation and autonomy of schools, are currently used to prepare the ground for the privatization of the education system: “This simply has nothing to do with independent decisions and autonomy. The responsible state governments allocation of financial resources to the schools and their ‘good reputation’ is always on condition of their involvement in Bertelsmann projects. Whether school management likes it or not: either they participate ‘voluntarily’ in a Bertelsmann project or the state governments oblige them to do so. The state governments themselves are located between Scylla, the politics of empty treasury, and Charybdis, the coercion to prove the quality of education permanently.” (Lohmann 2006, 7)

Protest and resistance

In many Lander protest and resistance emerge against the creeping privatization of education, e.g.:

- The popular petition for free learning material and their boycott of textbook charges in Hamburg: “We from the committee ‘Parents against textbook charges’ will continue our resistance and will further not pay the textbook charges. In Hamburg over 10.000 parents did not pay the textbook charges in the last school year...” (Press release, August 28th, 2006 at elterngegenbuechergeld.blogg.de)
- On September 25th, 2006 the Higher Administration Court cancelled the text book charge order of the education ministry of Thuringia. Before this decision 38.000 parents had lodged an objection and many of them had boycotted the textbook charges. (Thüringer Allgemeine, 26.09.2006)
- In the administrative district of Landkreis Bergstrasse there is a refusal of parental contribution to student transportation costs, which is intended to be introduced from January 2007 in Hesse. (Lampertheimer Zeitung, 12.10.2006)
- In the administrative district Ostprignitz-Ruppin the local council (“Kreistag”) is currently intending to prevent the introduction of student transportation contributions by the Land Brandenburg. (Märkische Allgemeine, 10.10.2006)

- In many community councils („Gemeinderäten“) of North Rhine-Westphalia motions are made to establish a community fund which would cover the learning material charges of unemployed families: “The lump-sum for textbooks and education which is granted to children of unemployed (“Arbeitslosengeld II”) amount to 1,37 Euro monthly. That is not even enough for pad and pencil. The contributions for textbooks (inclusive the “additional packet) amount to 35 to 40 Euro.” (Kölner Stadt-Anzeiger, 30.10.2006)

The defence of free education, free learning material and free student transportation by the parents and students address the currently increasing privatisation of educational costs. In addition, the parent protest is directed against the increased lowering of the quality of education, especially because the education ministry does not allocate enough teacher hours, and consequently accepts considerable cancellation of classes. The attack on public education, on the right to education and on the financial resources of families with children in compulsory education is manifold. The protest and resistance against this needs a significant political victory of a political demand, which is widely acknowledged, which has a great symbolic importance and which can be supported by many people. The absence of tuition fees, free learning material and free student transportation have this great (symbolic) importance, because they are the basic prerequisites of free education (of the gratuitousness of education) and equal opportunities.

In addition to petitions for a referendum, popular initiatives, petitions to parliaments, educational demands before elections and legal disputes, parents should boycott textbook fees and all the other contributions and charges. The forbearance of parents and children affected by the ongoing privatisation of education is like an invitation to further cutbacks. Sooner or later parents will be forced to resist anyway: rather sooner than later.

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