

UN Expert Mechanism on the Rights of Indigenous Peoples
expertmechanism@ohchr.org

WILDERS PLADS 8K
DK-1403 COPENHAGEN K
PHONE +45 3269 8888
DIRECT +45 3269 8866
LGH@HUMANRIGHTS.DK
HUMANRIGHTS.DK

PROMOTION AND PROTECTION OF THE RIGHTS OF INDIGENOUS PEOPLES WITH RESPECT TO THEIR CULTURAL HERITAGE

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By e-mail of 9 December 2014, the OHCHR called for contributions to a study by the UN Expert Mechanism on the Rights of Indigenous Peoples. The request concerns information related to the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage.

The Danish Institute for Human Rights – the National Human Rights Institution of Denmark and Greenland – is pleased to contribute with the following information concerning indigenous peoples in Denmark and Greenland:

INDIGENOUS PEOPLES IN DENMARK

By the ratification of ILO's Convention concerning Indigenous and Tribal Peoples in Independent Countries, Denmark declared that the original inhabitants of Greenland (Inuit) are the only indigenous people in Denmark within the meaning of the convention.¹

In a case of expropriation and forced relocation of the residents in the Thule Area in 1953, the Danish Supreme Court found in 2003, that the Thule population does not constitute a separate indigenous people in Greenland. The court found that the living conditions and way of life in Thule are not sufficiently different from other Greenlanders in order to constitute a separate indigenous people.²

In 2006, the European Court of Human Rights ruled that the expropriation and forced relocation during the Thule-case did not violate the rights of the residents in the area.³ The case was dismissed

¹ See Denmark's declaration in order no. 97 of 19 October 1997 of the ILO convention no. 169 of 28 June 1989 (Danmarks erklæring i bekendtgørelse nr. 97 af 9. oktober 1997 af ILO-konvention nr. 169 af 28. juni 1989 vedrørende oprindelige folk og stammefolk i selvstændige stater).

² The Supreme Court's judgement of 28 November 2003 (U.2004.382H), page 606.

³ European Court of Human Rights, Hingitaq 53 v. Denmark, 18584/04, 12 January 2006.

by the court because the expropriation and forced relocation took place in 1953 before the convention came into force in Denmark.⁴

Furthermore, the court ruled that the Danish state had found a fair balance between the public interest and the protection of the fundamental human rights at stake.⁵

CITIZENSHIP

The colonial status of Greenland ended by the adoption of the Danish Constitution in 1953 when Greenland became part of Denmark.⁶

Greenlanders have Danish citizenship and individuals moving from Greenland and settling in Denmark enjoy the same rights and responsibilities as other Danes. Accordingly, no special registration of the presence of Greenlanders in Denmark takes place.⁷

AUTONOMY

The Greenlandic People's right to self-determination under international law is implemented in the Self-Government Act from 2009 by which Greenland and Denmark are seen as equal partners.⁸

By virtue of the Self-Government Act, Greenland can gradually expand its self-government in a range of areas. These areas include e.g. industrial insurance and working environment; healthcare and food products; traffic, including aviation and diving; property- and business law; the justice system, including domestic courts and legal services boarder control, passport and foreigners, criminal law and probation service; radio communication; mineral resources; the maritime environment; intellectual property; meteorology; financial regulation and supervision; inheritance and family law; the rights of persons; regulation on weapons. At present Greenland has overtaken e.g. regulation of hunting; fishing; taxes; expropriation; primary schools and high schools; the labour market; electricity- water- and heating supplies; natural resources.⁹

It follows from section 1 in the Self-Government Act that the Government of Greenland has the legislative and executive power within the fields of responsibility taken over by Greenland. Accordingly, the Greenlandic parliament Inatsisartut has the legislative power while

⁴ European Court of Human Rights, Hingitaq 53 v. Denmark, 18584/04, 12 January 2006, page 18.

⁵ European Court of Human Rights, Hingitaq 53 v. Denmark, 18584/04, 12 January 2006, page 20.

⁶ The Danish Constitution, preparatory works for section 1.

⁷ The Ministry of Interior Affairs and Health, Denmark's third report on the Council of Europe Convention for the Protection of National Minorities (Danmarks tredje rapport i henhold til Europarådets rammekonvention om beskyttelse af nationale mindretal), 2010, page 16. Available at: http://www.coe.int/t/dgh/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Denmark_da.pdf.

⁸ See the preamble in act no. 473 of 12 June 2009 on Greenland Self-Government (Lov nr. 473 af 12. juni 2009 om Grønlands Selvstyre).

⁹ The Prime Minister's Office "Overview of matters that are taken over by Greenland Home Rule (I and II), respectively Government of Greenland (III)" (Oversigt over sagsområder, der er overtaget af Grønlands hjemmestyre (I og II) henholdsvis Grønlands Selvstyre (III)) available at: http://stm.dk/multimedia/Oversigt_sagsomr_der_241111.pdf

the self-rule government Naalakkersuisut carries out the executive power.¹⁰

The courts in Greenland has the judicial power in all fields.¹¹ There are four district courts with lay judges as well as the Court of Greenland and the High Court of Greenland with judicial judges. The district courts deal with all criminal cases and some civil cases. Legally complicated cases are referred to the court of Greenland as first instance. The judgements and rulings of the district courts as well as of the Court of Greenland may be appealed to the High Court of Greenland. Some judgments and rulings from the high court may, subject to permission from the Appeals Permission Board be appealed to the Danish Supreme Court.¹²

POLITICAL PARTICIPATION

Two of the Danish parliament's (Folketinget) 179 members are elected in and represent Greenland.¹³

These mandates ensure the parliamentary representation of Greenland in cases which concern Greenland but which are under the responsibility of or considered by the Danish parliament.

LANGUAGE AND PUBLIC LIFE

An analysis published by the Danish Council for Socially Marginalised People (Rådet for Socialt Udsatte) suggests that some Greenlanders are experiencing language and cultural barriers when communicating with Danish public authorities in Denmark.¹⁴

Another issue raised is that prejudices as well as lack of knowledge about Greenland can lead to discrimination from both other residents and public authorities in Denmark.¹⁵

¹⁰ Act no. 473 of 12 June 2009 on Greenland Self-Government (Lov nr. 473 af 12. juni 2009 om Grønlands Selvstyre) section 1.

¹¹ See the preamble in act no. 473 of 12 June 2009 on Greenland Self-Government (Lov nr. 473 af 12. juni 2009 om Grønlands Selvstyre).

¹² Official website for the Greenlandic courts:

<http://www.domstol.dk/om/otherlanguages/english/thedanishjudicialsystem/greenland/Pages/default.aspx> which does not reflect a reduction from 18 to four district courts by Act no. 1388 of 23 December 2012 amending the Administration of Justice Act for Greenland (Change in the number of court districts in Greenland etc.) (lov nr. 1388 af 23. december 2012 om ændring af retsplejelov for Grønland (Ændring af retskredsene i Grønland m.v.)).

¹³ The Danish Constitution, section 28

¹⁴ See the rapport "I Grønland er jeg for dansk, og i Danmark er jeg "bare" grønlander, ("In Greenland I am too Danish, and in Denmark, I am "just" a Greenlander") Rådet for Socialt Udsatte, 2014, page 8-9. Also see Lise Tøgeby, *Grønlandere i Danmark – en overset minoritet*, Aarhus Universitetsforlag (Greenlanders in Denmark – an overlooked minority, Aarhus University Press) 2002, page 38.

¹⁵ The Danish Institute for Human Rights, *Ligebehandling af grønlandere i Danmark, Delundersøgelse 2: En kvantitativ delundersøgelse af grønlanderes møde med offentlige myndigheder og institutioner* (Equal treatment of Greenlanders in Denmark, part study 2: A quantitative part study of Greenlanders meeting with public authorities and institutions), page 33 (Publication expected 2015). See also the Danish Institute for Human Rights, *Ligebehandling af grønlandere i Danmark, Delundersøgelse 3: Grønlandske stemmer – en interviewundersøgelse af grønlanderes oplevelser af ligebehandling i Danmark*, see the section "Synet på grønlanderen og reaktioner på fordomme" (Equal treatment of Greenlanders in Denmark, part study 3: Voices from Greenland – an interview survey of Greenlanders' experiences of equal treatment in Denmark,

In order to counter possible marginalisation of some Greenlanders in Denmark both private and public initiatives have been taken. The Danish Ministry of Social Affairs and the five largest municipalities have adopted a strategy to ensure that Greenlanders in risk of being marginalized enjoy their rights fully and are not excluded from society.¹⁶ Four centres devoted to Greenlandic culture, called the “Greenlandic houses” (“De grønlandske huse”), are found in the four largest cities. Among other things, they offer consultation regarding education and social advising. The Greenlandic house in Copenhagen offer a pilot mentoring scheme for Greenlanders moving to Denmark.¹⁷

Greenlandic children in Denmark have the right to mother-tongue teaching.¹⁸ This right is, however, not absolute. In the case of a lack of qualified teachers or less than 12 students, the municipality can choose not to offer lessons.¹⁹

NATIONAL MINORITY

Denmark ratified the Council of Europe Framework Convention for the Protection of National Minorities in 1995. The convention commits the states to promote the conditions for national minorities.²⁰

The convention does not define what is understood by “national minority”.²¹ The ratifying states thus have the freedom to define which population groups be giving status as national minorities.²²

When ratifying the convention, Denmark declared that only the German minority living in the southern Jutland should be considered as a national minority covered by the convention.²³ The Danish government – supported by Greenland – found that Greenland and

see the section “The sight of the Greenlander and reactions of prejudice”), the Danish Institute for Human Rights (Publication expected 2015). See also the Danish Institute for Human Rights, *Ligebehandling af grønlandere i Danmark – forundersøgelse* (Equal treatment of Greenlanders in Denmark – preliminary study), 2013, page 28.

¹⁶ See the strategy on the webpage for the Social Agency, available at (in Danish only):

<http://www.socialstyrelsen.dk/udsatte/tvaergaende-andre-udsatte/gronlaenderstrategien-2013-2016> .

¹⁷ Read about the mentoring scheme “ILIK” of the Greenlandic House (Det Grønlandske Hus) in Copenhagen (in Danish only) at <http://www.sumut.dk/da/socialt-arbejde/mentorordning-ilik/>.

¹⁸ Order no. 689 of 20 June 2014 on public school and maternal language teaching, section 1 (2) (Bekendtgørelse nr. 689 af 20. juni 2014 om folkeskolens modersmålsundervisning, § 1, stk. 2.).

¹⁹ Order no. 689 of 20 June 2014 on public school and maternal language teaching, section 1 (2) cf. section 3 (1) (2) (Bekendtgørelse nr. 689 af 20. juni 2014 om folkeskolens modersmålsundervisning, § 1, stk. 2. Jf. § 3, stk. 1, nr. 2).

²⁰ Council of Europe, Framework Convention for the Protection of National Minorities and Explanatory report, 1995, H(95)10.

²¹ Council of Europe, Framework Convention for the Protection of National Minorities and Explanatory report, 1995, H(95)10, Explanatory report, section 12.

²² Council of Europe, Framework Convention for the Protection of National Minorities and Explanatory report, 1995, H(95)10, Explanatory report, section 12.

²³ Order no. 13 of 23 April 1998 Council of Europe's Framework Convention of 1 February 1995 (Bekendtgørelse nr. 13 af 23. april 1998 af Europarådets rammekonvention af 1. februar 1995 om beskyttelse af nationale mindretal).

Greenlanders, including Greenlanders in Denmark, do not fall within the scope of the framework convention.²⁴

According to the Government of Greenland, the reason for the decision is that Greenlandic people in Denmark are considered a special group of Danish citizens and not a national minority.²⁵ This was reaffirmed in 2010 by both the Danish government and Greenland.²⁶

FINAL REMARKS

The Danish Institute for Human Rights apologize for the late submission of the contribution. Should the Expert Mechanism on the Rights of Indigenous Peoples have any additional or clarifying questions, please do not hesitate to contact the institute.

Yours sincerely,

Lise Garkier Hendriksen

SPECIAL ADVISOR

²⁴ Proposal for parliamentary decision no. B 69 of 27 November 1996 (Forslag til folketingsbeslutning nr. B 69 af 27. november 1996 (som fremsat) om Danmarks ratifikation af Europarådets rammekonvention af 1. februar 1995 om beskyttelse af nationale mindretal, alm. bem., pkt. II), 24 Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, second opinion on Denmark, 2004, page 10f. Available at:

http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Denmark_en.pdf

²⁵ Foreign Directorate memo dated November 10, 2004 (Udenrigsdirektoratets notat af 10. november 2004, om oplæg til Landsstyret om Europarådets rammekonvention om beskyttelse af nationale mindretal i forhold til grønlandere i Danmark og danskere i Grønland).

²⁶ The Danish Ministry for Health and Interior Affairs, "Third report Submitted by Denmark Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities (Danmarks tredje rapport i henhold til Europarådets rammekonvention om beskyttelse af nationale mindretal), 2010, page 16. The report is available at Council of Europe's website:

http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Denmark_da.pdf