

## Integration and Special Rights

Greenlanders living in Denmark and the Council of Europe's Framework Convention for the Protection of National Minorities

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## **Integration and special rights: Greenlanders living in Denmark and the Council of Europe’s Framework Convention for the Protection of National Minorities**

### **Abstract**

For almost 25 years, the Council of Europe and the Danish authorities have entertained a fruitless and stalled dialogue on an option to apply the Council’s Framework Convention for the Protection of National Minorities in the societal integration of Greenlanders living in Denmark. So far, the Danish authorities have not been willing to award the Greenlanders any special rights citing their individual and universal rights to non-discrimination and equal civil rights as sufficient for integration. The refusal is based on the authorities’ specific interpretation of the status of Greenland and Greenlanders under international conventions. A review of the dialogue from 1999 till today set against a short Nordic-Canadian perspective reveals that a combination of special rights and universal equal civil rights puts the view of the Danish authorities in question. This seems, therefore, to indicate an unwillingness on behalf of the authorities to consider feasible alternatives.

**Keywords:** Council of Europe, Greenlanders in Denmark, integration, equality, civil rights, special rights.

### **1. Introduction**

Societal integration with regard to Greenlanders residing in Denmark has been criticized by the Council of Europe since 1999. In focus are primarily problems with access to the labour market and to public services. These are the same issues that are identified with regard to immigrants and refugees. However, Greenlanders residing in (mainland) Denmark are not newcomers, and those who have moved to Denmark from Greenland are not immigrants. In fact, many are born in Denmark are Danish citizens. Moreover, they represent a culture, which has historically been a part of Danish self-understanding for several hundred years. The Greenland nation is historically, politically and legally anchored in the Danish society through the union under the royal crown. Such circumstances are precisely emphasized as the foundation for the right to protection under the Framework Convention for the Protection of National Minorities (FCNM).<sup>1</sup> The FCNM includes a number of special rights in the area of culture and aims to promote integration of multicultural societies, where national minorities, indigenous peoples and other ethnic groups have joint historical and political ties with the majority population. According to the FCNM, societal integration is best promoted by recognizing the existence of minorities and by expanding knowledge about them and their culture among the majority population as well as by protecting their identities and cultures while also securing their cultural competencies to function on equal footing with all other

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<sup>1</sup> Framework Convention for the Protection of National Minorities and Explanatory Report. ETS No. 157 of 1.2.1995 < [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/157](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/157) > visited on 25 May 2021.

cultures in society. Those goals are achievable among other through special rights to language education and other positive measures. Societal integration is thus promoted through special rights assigned to specific groups with permanent affiliation to the state and the nation.

The fact that special rights of national minorities, indigenous peoples and other ethnic groups with a long historical attachment to the nation can lead to good and mutual integration and co-habitation has been seen in a number of countries.<sup>2</sup> In Denmark, this has been achieved with regard to the German minority, which, with moral, political, legal and financial support from the government, has managed to establish a network of cultural and educational organizations. These have prepared the members to become culturally competent to function well in the Danish society as well as in their minority community. Members of the German minority are Danish citizens like the Greenlanders. However, there has not been the same political courage to ensure Greenlanders residing in Denmark special rights under the FCNM. The Danish position is that the Greenlanders enjoy the equal individual civil rights applied universally to all Danish citizens and residents, and thus no special rights are required. Since the entering into force of the FCNM on 1 February 1998, the Council of Europe's Committee of Ministers (CM) and the Advisory Committee on the FCNM (ACFC) have conducted a dialogue with the Danish authorities regarding the application of the FCNM, or of individual articles of the instrument, as a means to promote the societal integration of Greenlanders residing in Denmark. This dialogue has not produced any results in spite of renewed interest among the Greenlanders in application of the FCNM to protect their rights in Denmark.

In the following, the dialogue will be examined with a view to shed light on the standpoints of the involved parties on the application of the FCNM's rights and provisions with regard to Greenlanders residing in Denmark. After a short introduction to the FCNM, the main part of the paper will describe the dialogue as it has unfolded since Denmark submitted its first state report to the Council of Europe in 1999. Next, the FCNM's application in Denmark will be put in perspective drawing on a short description of its application in the Nordic countries, which are also home to indigenous peoples residing outside their traditional areas. In the concluding discussion, a very short examination of Canada's approach to the connection between the collective right to territorial self-determination and individual equal civil rights universally applied will be offered. Even though Canada is not a member of the Council of Europe, the Canadian example is a good illustration of how universal equal civil rights do not cancel or result in exemptions from (territorial) special rights outside the traditional areas – a purpose that is also promoted by the United Nations' 2007 Declaration on the Rights of Indigenous Peoples (hereafter UN Declaration). The article thus questions the rejection by the Danish authorities of the possibility to apply the FCNM's special rights as a legal basis for societal integration involving Greenlanders residing in Denmark.

## **2. The Framework Convention**

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<sup>2</sup> The Council of Europe publishes all reports regarding the situation of minorities in the member states that have ratified its various treaties related to protection of minorities and their languages at its homepage [www.coe.int](http://www.coe.int).

The FCNM was presented for signatures to the Council of Europe's member states on 1 February 1995 and came into force on the same date in 1998. It is the only legally binding treaty addressing minority rights in Europe. 39 states have ratified the treaty.<sup>3</sup> Denmark ratified it on 22 September 1997. The FCNM follows a five-year monitoring cycle, which begins when a member state submits its state report, usually prepared by the central authorities often with input from stakeholders and civil society organizations. In Denmark it is currently prepared by the Ministry of Culture. Next, follows a country visit by a small delegation or working group consisting of experts holding membership of the ACFC.<sup>4</sup> Monitoring is the prerogative of the CM, and the ACFC supports it in this by preparing expert statements (opinions). A draft expert statement is prepared by the working group on the basis of data collected during a country visit and subsequently verified through scientific sources and other relevant data. The statement is next submitted to the entire ACFC in plenary for adjustment, corrections and eventually approval through voting. The approved statement (the Opinion) is forwarded to the state authorities with a view to give them and the government an opportunity to make comments within a time limit of four months. Following this, the Council of Europe's Rapporteur Group on Human Rights (GR-H), which consists of the permanent (diplomatic) representatives of member states, prepares a resolution to be presented to the CM for approval. Once approved, the resolution is forwarded to the state authorities for implementation.

The choice of the designation 'framework convention' was a deliberate decision made by the drafting committee in 1994. The drafting members wished to give implementing authorities a margin in the adaptation of the provisions, as the legal frameworks for minority protection differ from member state to member state. For the same reason, the FCNM does not include a legal definition of a national minority, as it was the general opinion of the drafting committee that a specific definition could be both inclusive and risk being excluding. Moreover, while the FCNM does not invite the contracting parties to make reservations, it allows for clarification regarding the territorial application of the instrument but not for specification of which minority groups are eligible for protection under the instrument. This was not fully respected, and a number of member states, including Denmark, has specified beneficiaries in connection with ratification.

In connection with the establishment of the ACFC, the CM decided that one of the important tools of monitoring should be constructive dialogue with the authorities of the member states party to the treaty.<sup>5</sup> Another important tool, which has been developed by the ACFC over the years of monitoring, is the so-called article-by-article approach. This method encourages authorities to allow minorities to seek protection under specific articles rather than binding governments to apply all the provisions of the instrument. These two pragmatic tools have proven essential to the success of the FCNM's implementation.

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<sup>3</sup> Belgium, Greece, Iceland and Luxembourg have signed but not ratified the FCNM. Andorra, France, Monaco and Turkey have neither signed nor ratified it. The Russian Federation has been expelled from the Council of Europe but remains a party to the FCNM at this point. Kosovo is not a member of the Council of Europe but applies the FCNM through a cooperation agreement between the Council of Europe and the UNMIK of 2004.

<sup>4</sup> The ACFC consists of 18 independent experts appointed on a rotation principle for tenures of four years.

<sup>5</sup> Res(97)10 of 17/09/1997. *Rules adopted by the Committee of Ministers on the Monitoring arrangements under Articles 24 to 26 of the Framework Convention for the protection of national minorities* adopted 17/9/1997.

### 3. Denmark's Dialogue with the Council of Europe

In connection with the ratification of the FCNM, the Danish government submitted a declaration on territorial applicability. In a note verbal the government established that

In connection with the deposit of the instrument of ratification by Denmark of the Framework Convention for the Protection of National Minorities, it is hereby declared that the Framework Convention shall apply to the German minority in South Jutland of the Kingdom of Denmark.<sup>6</sup>

The official recognition of the German minority helped reinforcing a number of legal rights and entitlements that were previously established, including certain dialogue mechanisms with the authorities and the Danish parliament, the *Folketing*. In addition, a number of the German minority's own organizations are subsidized by the Danish national budget.

After ratification, the Danish authorities submitted their first state report in March 1999.<sup>7</sup> In the report, the authorities clarified the relationship with Greenland and the Faroe Islands within the territorial realm, presumably to explain why they were not included in the declaration made upon ratification. The explanation established that the home rule agreements with the two autonomous territories are not based on ethnic or linguistic criteria, and for that reason, the populations residing in the two territories are not defined as minorities under international conventions. The explanation was surprising given the fact that the both the autonomy agreements between the Danish government and the autonomous territories establish the indigenous minority languages as key definitions of the home rule arrangements.

By way of excursus, declarations are regulated by Article 30 of the FCNM. According to this, any state may "specify the territory or territories for whose international relations it is responsible to which this framework Convention shall apply."<sup>8</sup> Most of the declarations made upon ratification pertain to recognition of national minority groups by naming the chosen ones; only the Netherlands opted for the specific territorial approach with regard to its overseas territories.<sup>9</sup> The Danish government's choice at the time was most probably guided by the fact that the Danish Constitution establishes that all territories of the Danish Royal Realm are protected equally by the Constitution. There are no provisions for territorial divisions or separate territorial rule in the Constitution. At the time of Denmark's ratification, the relations between Greenland and the Faroe Islands and Denmark were regulated by the

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<sup>6</sup> Available on the Council of Europe website at < [www.coe.int/en/web/conventions/cets-number/-/abridged-title-known?module=declarations-by-treaty&numSte=157&codeNature=0](http://www.coe.int/en/web/conventions/cets-number/-/abridged-title-known?module=declarations-by-treaty&numSte=157&codeNature=0) > visited on 24 July 2022.

<sup>7</sup> Danish Ministry of the Interior, *Danmarks første rapport i henhold til Europarådets rammekonvention om beskyttelse af nationale mindretal*, March 1999. All documents regarding Denmark's implementation of the FCNM are available on the Council of Europe website < [www.coe.int/en/web/minorities/denmark](http://www.coe.int/en/web/minorities/denmark) > visited on 24 July 2022.

<sup>8</sup> *Supra* note 1.

<sup>9</sup> On this and Article 30, see Detlev Rein, 'Commentary of Article 30 of the Framework Convention for the Protection of National Minorities' in Rainer Hofmann, Tove H. Malloy and Detlev Rein (eds.), *The Framework Convention for the Protection of National Minorities. A Commentary*. (Brill/Nijhoff, 2018), pp. 350-354.

Danish Constitution of 1953<sup>10</sup> and the home rule acts of 1947 (Faroe Islands)<sup>11</sup> and 1978 (Greenland).<sup>12</sup> With regard to Greenland and the Faroe Islands, the only special regulations in the Constitution pertain to general elections to the Danish national parliament; each territory has the right to elect two representatives. In addition, there is one exception provided for the implementation of habeas corpus in Greenland allowing for flexibility due to geographical circumstances. Given that the southern region of Denmark, where the German minority resides predominantly, is not considered a territory but a region, it is, therefore, a bit curious that the Danish government declares the region a territory in the context of its declaration to the FCNM.

With regard to the Danish authorities' denial of the cultural identities of the people populating the two autonomous territories, the autonomy acts contradict this. The 1947 Home Rule Act for the Faroe Islands, which delegates self-administration powers to a Faroese government in most internal matters, if and when the home rule authorities feel ready to take on such powers, clearly stipulates that the Faroese language is the main language at par with Danish. With regard to inter-state affairs, foreign affairs, security and defence matters as well as judiciary functions are not transferred. The Act provides for the Faroese government to enter into commercial and fisheries agreements with other states. A law of 2005 further provides the Faroese government with the right to enter into international legal agreements and treaties in other matters that do not regulate constitutional and sovereign state status.<sup>13</sup> It specifically stipulates that the Law does not include agreements regarding security and defence as well as international agreements that pertain to the entire realm of Denmark and which are negotiated with international organizations of which Denmark is a member.

The 1978 Home Rule Act for Greenland followed the model of the Faroese Act with a few exceptions. Matters regarding international trade agreements were more restrictive and basically decided by the Danish authorities, albeit allowing for *ad hoc* options to let Greenland's authorities negotiate directly. Matters related to Denmark's membership of the European Community – of which Greenland but not the Faroe Islands was a member at the time – were fully under the Danish government's power only allowing for co-decisions when necessary.<sup>14</sup> The 1978 Act was replaced in 2009 with the Act for Greenland Self-Rule, which is very detailed on how powers will be handed over, if and when the Greenland authorities

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<sup>10</sup> Danmarks Riges Grundlov [Basic Law of the Danish Realm] of 5 June 1953, Retsinformation, Lov nr 169 af 05/06/1953 < <https://www.retsinformation.dk/eli/lta/1953/169> > visited 31 October 2022.

<sup>11</sup> Lov om Færøernes Hjemmestyre (Law on Home Rule of the Faroe Islands) of 23 March 1947, Retsinformation, Lov nr 137 af 23/03/1948 < <https://www.retsinformation.dk/eli/lta/1948/137> > visited 31 October 2022.

<sup>12</sup> Lov om Grønlands Hjemmestyre [Law on Home Rule of Greenland] of 29 November 1978, Retsinformation, Lov nr 577 af 29/11/1978.

<sup>13</sup> Lov om Færøernes landsstyres indgåelse af folkeretlige aftaler [Law on the Faroe Islands Home Rule and international agreements] of 24 June 2005, Lov nr 579 af 24/06/2005 < <https://www.retsinformation.dk/eli/lta/2005/579> > visited on 31 October 2022.

<sup>14</sup> The Faroe Islands decided by referendum to remain outside the European Community when Denmark voted to join. Greenland did not have home rule at the time of the Danish referendum and while 70 percent of Greenland's population voted against joining, it joined together with Denmark in 1972. In 1982, Greenland held a new referendum which came out in favour of leaving the European Community. The exit became effective in 1985.



are ready.<sup>15</sup> It further clearly establishes that Greenlandic is the main language of the island nation, with Danish retained as a second language. With regard to powers in international relations, it follows the path of the 2005 law adopted for the Faroe Islands, albeit with the proviso that Greenland's government will be requested an opinion in those cases that relate directly to Greenland's affairs.<sup>16</sup> Thus, in the case of both the Faroe Islands and Greenland, the indigenous minority languages are clearly a part of the identities of these nations and territories, while international legal treaties pertaining to the entire Danish realm that are relevant through Denmark's membership of an international organization, are decided upon unilaterally by the Danish government. Legally, the decision not to recognize the Greenlanders and the Faroese as national minorities was a unilateral decision of the Danish government.

More importantly, the first state report did not clarify whether the Greenlanders (and Faroese) residing in mainland Denmark are also not defined as minorities under international conventions. This led the ACFC to address both issues in its first Opinion on Denmark's implementation of the FCNM in October 2000. The ACFC argued that the FCNM should be applied legally to the entire Danish territory and that Greenlanders and Faroese apparently had been excluded from the possibility to claim their rights under the instrument. According to the ACFC, the Danish standpoint was surprising given the fact that the two groups have had a long historical connection to Denmark.<sup>17</sup> Subsequently, during the first country visit, the ACFC working group was informed by the Danish authorities that the Greenlandic and Faroese home rule authorities had not requested protection under the FCNM when asked. The ACFC nevertheless points out in its Opinion that if one is to follow the Danish government's reasoning, members of the two population groups would not be able to expect protection of their identities outside the home rule territories. It pointed out that this is not in compliance with the FCNM's objectives, and the Danish authorities should examine whether there was any interest among Greenlanders and Faroese residing in Denmark to seek protection under the FCNM's provisions on language, education and culture. The latter was due to observations made by the ACFC working group during its visit to the effect that such interest did exist. The ACFC, therefore, recommended that the Danish authorities should discuss application of the FCNM both within and outside the home rule territories and that members of the German minority residing outside the municipalities of southern Denmark should also be heard.

The Danish reaction to the ACFC's opinion was extremely negative.<sup>18</sup> The authorities maintained that they had discussed it with the two home rule authorities, who had insisted that the populations of Greenland and the Faroe Islands should not be considered

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<sup>15</sup> Lov om Grønlands Selvstyre [Law on Greenland's Self-Rule] of 12 June 2009, Retsinformation, Lov nr 473 af 12/06/2009 < <https://www.retsinformation.dk/eli/lt/2009/473> > visited 31 October 2022.

<sup>16</sup> Article 13(4) of the 2009 Law on Greenland's Self-Rule.

<sup>17</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Denmark*, adopted 22/9/2000. ACFC/INF/OP/I(2001)5.

<sup>18</sup> *Comments of the Government of Denmark on the Opinion of the Advisory Committee on the Report on the Implementation of the Framework Convention for the Protection of National Minorities in Denmark* of 7/6/2001.

minorities.<sup>19</sup> Moreover, the authorities of the two home rules had also accepted that only the German minority should be protected. Importantly, the Danish authorities established that Greenlanders and Faroese residing in Denmark were not registered as identity groups or belonging to identity minorities. Rather, they enjoy exactly the same protection against discrimination as the rest of the Danish population, including established norms and standards under international law. This did not satisfy the CM, which repeated the ACFC's criticisms in its 2001 resolution on Denmark's implementation of the FCNM and recommended that the Danish government should review its position by consulting again with the involved parties.<sup>20</sup>

Thus, there are two topics that define the dialogue between the Council of Europe and the Danish authorities. First, there is the question of official recognition of Greenland and the Faeroe Islands as territories that should be covered by the FCNM. Second, there is the question of the rights of Greenlanders and Faroese residing in Denmark to be protected by the FCNM as individual members of an identity group living outside the traditional homeland. Both questions are regulated by Article 3 of the FCNM, which protects the right to free self-identification either as a member or non-member of an identity minority.<sup>21</sup> This is a standard and a norm that became a corner stone of the global human rights regime after World War II and which is a value highly respected in the Danish-German border region.<sup>22</sup> The first question was rejected with the Danish declaration submitted at the time of ratification as it only recognized the German minority. The second question was rejected with the references to equal civil rights and universal human rights to non-discrimination. The fact that the home rule authorities were consulted at the time for their standpoint without asking the individual Greenlanders living in mainland Denmark amounts, in the view of the ACFC, to violation of the rights of these individuals. In the end, it was a unilateral decision of the Danish government, as per the legal framework of the autonomous territories.

Unfortunately, there exists no academic examination and analysis of the exclusion of the territories of Greenland and the Faeroe Islands from the protection of the FCNM. But it could be questioned whether the argument of the Danish authorities that the two home rule agreements are not based on ethnic or linguistic criteria is valid, as both home rule agreements in place in 1998, when Denmark ratified the FCNM, stipulated the local languages as national languages at par with Danish. Both Greenlanders and Faroese speak languages that are clearly different from the Danish language. Moreover, the Greenlanders belong to the Inuit-group, a specific anthropological group, while the Faroese identify among other with the Celtic culture. The exclusion from the FCNM due to the two territories'

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<sup>19</sup> Generally, there is a wish among indigenous peoples not to be classified as national minorities, and outside Europe the term is not used about indigenous peoples.

<sup>20</sup> Resolution ResCMN(2001)2 on *the implementation of the Framework Convention for the Protection of National Minorities by Denmark*, adopted 31/10/2001.

<sup>21</sup> *Supra* note 1. For the Danish version of the FCNM, see Beslutningsforslag nr. B69 vedr. *Forslag til Folketingsbeslutning om Danmarks ratifikation af Europarådets rammekonvention af 1/2/1995 om beskyttelse af nationale mindretal*. Available online at < [www.folketingstidende.dk/samling/19961/beslutningsforslag/B69/19961\\_B69\\_som\\_fremsat.pdf](http://www.folketingstidende.dk/samling/19961/beslutningsforslag/B69/19961_B69_som_fremsat.pdf) > visited on 25 May 2021.

<sup>22</sup> The right to free self-identification is one of the fundamental values enshrined in the Bonn-Copenhagen Declarations of 1955. The Declarations are not legally binding but hold a strong moral value in the implementation of minority rights in the Danish-German border region.



overseas situation might be logical due to the geographical distances but not coherent in terms of the aims of the FCNM. Rather, it seems that a fear within the home rule authorities that they would become responsible for the protection of national minorities, including Danish persons residing in Greenland and the Faroe Islands, has perhaps been a key point. Such concerns are valid, but they should not influence on how their members are treated when they reside in mainland Denmark.

With regard to the argument that Greenlanders and Faroese residing in Denmark enjoy equal civil rights with the Danish population, it is well known from the theory of rights that formal equality does not lead to equity of disadvantaged groups.<sup>23</sup> Equality of specific and disadvantaged groups requires temporary or permanent special rights possibly framed as positive measures. The exclusion of special rights because Greenlanders and Faroese are Danish citizens is thus questionable. Moreover, one can also question the historical and political criteria used to exclude these two groups from the FCNM but not the German minority. Members of the German minority were conveyed Danish citizenship when the northern part of the Duchy of Schleswig was returned to Denmark after a plebiscite in 1920. Greenlanders became Danish citizens with the revised Danish Constitution of 1953, but the territory of Greenland has officially belonged to Denmark since 1814 and unofficially most of Greenland has been under Danish control for several hundred years.<sup>24</sup> The Faroe Islands have been under Danish governance even longer and belonged to Denmark officially, first as part of the Seeland County (*Stiftamt*) and later from 1816 as an independent county. The Faroese have been Danish citizens since 1850, when the territory became protected by the Danish Constitution. Notwithstanding Denmark's colonial past and the negative aspects related to this, it is very difficult to neglect the two territories' close historical, political and legal connection to Denmark, and it is very legitimate to question whether the two and their populations are not closer to Denmark than the German minority. As noted, historical belonging is one of the criteria of the FCNM for recognizing and protecting specific groups. Moreover, the two territories have played a part of the Danish national identity for a long time, whereas the culture of the German minority does not appear to be part of the Danish national identity. There seems, therefore, to be historical basis for arguing that Greenland and the Faroe Islands have a strong connection to Denmark and thus for the application of the FCNM and its provisions for the protection of Greenlanders and Faroese residing in mainland Denmark.

The dialogue between the Council of Europe and the Danish authorities did not improve during the next four cycles of monitoring after 2001. It has remained stuck in an unproductive exchange of views primarily with regard to Article 3 on which the parties continue to speak cross purpose.<sup>25</sup> As early as 2004, the ACFC had observed among other

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<sup>23</sup> See for instance, Will Kymlicka, *Multicultural Citizenship* (Oxford University Press, 1995), Tove H. Malloy, *National Minority Rights in Europe* (Oxford University Press, 2005) and Jennifer Jackson Preece, *Minority Rights* (Polity, 2005).

<sup>24</sup> Norway attempted to annex a part of Eastern Greenland in 1931, or take it back, after losing the entire territory to Denmark with the settlement of the Treaty of Kiel in 1814. The illegal annexation was eventually adjudicated by the International Court of Justice in 1933 when it ruled in Denmark's favour.

<sup>25</sup> In excursus it could be noted that the Danish authorities have also been in extensive discussion with the small Roma community in Denmark to no avail. Recently, the Jewish community has also been in discussion with the authorities.

that the Faroese authorities had requested the Danish authorities to contact the Faroese organizations in Denmark with a view to clarify if the FCNM might also be applied to Faroese residing in Denmark.<sup>26</sup> The Danish authorities apparently neglected the request, as they maintained that there was no reason to take contact to the organizations in Denmark. They did, however, acknowledge that financial support had been extended to the Greenlandic organizations in Denmark.<sup>27</sup> The dialogue continued in 2011 with the ACFC observing that the Danish authorities had now been in contact with the Greenlandic and Faroese authorities – as recommended – and that these had again replied that they were not interested in seeing the FCNM applied.<sup>28</sup> This caused the CM to change its tactic and focus on the article-by-article approach. In its 2012 resolution to the Danish government, it suggested that it again explores among Greenlanders and Faroese residing in Denmark whether they wish to claim protection under individual provisions of the FCNM.<sup>29</sup>

In 2015, the ACFC takes a pragmatic step and recommends that Greenlanders residing in Denmark seek protection under Article 14 of the FCNM. Article 14 of the FCNM protects the right to education in one's mother tongue and about the culture of the minority as well as in the official language.<sup>30</sup> It is one of the most important articles for minorities in many countries, as it promotes the possibility for multicultural life with good social and economic opportunities and good co-existence among cultures. According to the Explanatory Report to the FCNM, Article 14 requires that the contracting parties recognize the rights of persons belonging to national minorities to learn their own language, as it is the primary tool by which they can develop and protect their identity.<sup>31</sup> It is a fundamental provision that cannot be neglected. The Explanatory Report notes that it can involve financial, administrative and technical challenges and thus Article 14 is framed flexibly and allows a margin of appreciation for implementation. Among other, it is recognized that there needs to be a substantial number interested in claiming the Article's provisions as long as authorities exercise flexibility regarding thresholds. It is also noted that resources, or lack thereof, can be a defining point and thus contracting parties have a margin of appreciation in selection of methods and tools. Specifically, it emphasizes that dual language education may be a good method to ensure knowledge of the official language. Thus, special emphasis is put on starting dual language education already at the kindergarten level.

Knowledge of the official language has given rise to many misunderstandings between minorities and authorities in the almost 25 years the FCNM has been in force. For this reason, the ACFC has found it necessary to explain the interpretation of Article 14. In its third Thematic Commentary on language rights from 2012, the ACFC describes a number of

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<sup>26</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, *Second Opinion on Denmark*, adopted 9/12/2004. ACFC/INF/OP/II(2004)005.

<sup>27</sup> *Comments of the Government of Denmark on the Second Opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities in Denmark*, received 3/5/2005. GVT/COM/INF/OP/II(2004)005.

<sup>28</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Denmark*, adopted 31/3/2011. ACFC/OP/III(2011)002.

<sup>29</sup> Resolution CM/ResCMN(2012)8 on the implementation of the Framework Convention for the Protection of National Minorities by Denmark, adopted 13/6/2012.

<sup>30</sup> *Supra* note 1.

<sup>31</sup> *Explanatory Report to the Framework Convention for the Protection of National Minorities*. Strasbourg, 1/2/1995. *See* note 1.

aspects that promotes integration.<sup>32</sup> For example, it suggests that knowledge of the official language promotes effective participation in public life and access to higher education as well as to the labour market. As such, there is no need to have to make a choice between learning the minority language and the official language. Authorities should encourage multilingual educational models that allow children of minority parents to be bilingual. The ACFC considers it necessary that legal guarantees for language and cultural education become an obligatory part of the public education system. To master both the minority language and the official language, therefore, plays an important role in societal integration, promotes mutual respect among groups and promotes social solidarity.

When the ACFC's working group met with representatives of the Greenlanders and the Faroese residing in Denmark during its country visit in 2014, the two groups expressed interest in language education as per Article 14. For the Greenlanders it was especially learning Danish that triggered the interest in Article 14 but also mother tongue education was of concern. Even though there has been legal basis and possibilities for offering mother tongue education in Denmark since 2002,<sup>33</sup> it has been minimal what was done in practice to provide such teaching. According to the 2002 legislation, mother tongue education can be offered provided at least 12 persons request it. However, the authorities could not provide statistical information to the ACF working group about exactly how many hours had been offered. Mother tongue education for Greenlanders has instead been offered by the Greenland House,<sup>34</sup> while for the Faroese a co-operation between the Faroese school in Copenhagen and the municipality of Copenhagen has covered the needs. The ACFC thus points out in its Opinion of 2014 that Greenlanders are especially vulnerable due to their lack of knowledge of Danish and that it would promote integration, if more opportunities were made available to them.<sup>35</sup> The Danish authorities replied with a reference to the universal and individual equal civil rights of Greenlanders and to Denmark's general approach to human rights.<sup>36</sup> This led the CM to strengthen the language of its 2015 resolution considerably and recommend that the Danish authorities intensify its consultations with all the groups that wish to claim rights under the FCNM in order that useful solutions to their requests for language education may be found.<sup>37</sup> Specifically, the Danish authorities were encouraged to recognize the possibility of allowing Greenlanders residing in Denmark protection under some of the articles rather than the entire instrument.

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<sup>32</sup> Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities, "The Language Rights of Persons Belonging to National Minorities under the Framework Convention," *Thematic Commentary* No. 3, adopted 24/5/2012.

<sup>33</sup> L142 Lov om ændring af lov om folkeskolen og lov om friskoler og private grundskoler m.v. (*Modersmålsundervisning og sprogstimulering*) [Law on changes to the Law on public education and the Law on independent schools and private schools] of 23/5/2002 < <https://www.retsinformation.dk/eli/ft/200122L00142>> visited 21 May 2021.

<sup>34</sup> The Greenlandic government operates a number of cultural institutions under the name of Greenland House in Denmark.

<sup>35</sup> Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Denmark*, adopted 20/5/2014. ACFC/OP/IV(2014)001.

<sup>36</sup> *Comments of the Government of Denmark on the Fourth Opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities by Denmark*, received 14/1/2015. GVT/COM/IV(2015)001.

<sup>37</sup> Resolution CM/ResCMN(2015)7 on the implementation of the Framework Convention for the Protection of National Minorities by Denmark, adopted 1/7/2015.

The dialogue between the Danish authorities and the Council of Europe intensified further in the latest periodic review in 2019. During its visit to Denmark, the ACFC working group observed that there had been a debate among the Greenlandic organizations in Denmark, and they had concluded that Greenlanders residing in Denmark would like to seek protection under some of the articles of the FCNM. Representatives of the organizations had among other expressed a wish to get support to improve integration in the labour market, to expand the knowledge of Greenlandic culture among the majority population, and to improve their language skills through tutoring in both Greenlandic and Danish.<sup>38</sup> Such rights are protected by Articles 4, 5 and 14 of the FCNM. The ACFC was able to verify these demands via a report issued by the Danish Institute for Human Rights titled, *Ligebehandling af grønlandere i Danmark*.<sup>39</sup> The report presented a number of recommendations to the Danish authorities in regard to the access of Greenlanders residing in Denmark to public services. On this basis, the ACFC's 2019 Opinion, therefore, specifically urges the Danish authorities to implement the recommendations made in the report issued by the Danish Institute for Human Rights.<sup>40</sup>

The Danish authorities rejected the ACFC's recommendations in July 2020 arguing that there is no need to review the individual articles of the FCNM with the Greenlandic organizations, since Greenlanders residing in Denmark are not considered a national minority vis-à-vis the FCNM.<sup>41</sup> They pointed out again that Greenlanders enjoy the same universal civil rights as all citizens of Denmark. This did not deter the CM. It maintained its earlier recommendations in its 2020 resolution requesting continued dialogue with all relevant organizations and minority communities, whether recognized or not under the FCNM, especially addressing the possibility of claiming rights under some of the individual articles of the FCNM where relevant.<sup>42</sup>

In addition to the already mentioned articles with regard to free self-identification, equality and protection of culture and languages (Articles 3, 4, 5 and 14), there are two articles that could have relevance for societal integration in Denmark. First, Article 9 speaks to the right to media both to own media and to be visible in public media. This Article is closely related to and supports the right to protection of culture and cultural identity as well as to speak one's mother tongue since media promotes knowledge about culture and traditions and hence greater knowledge promotes integration. In the meetings with the Greenlandic organizations, it was emphasized by the representatives that there is limited programming about Greenlandic culture in Danish media.<sup>43</sup> Secondly, Article 10 of the FCNM is also relevant. It provides for the right to use one's mother tongue when in contact

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<sup>38</sup> Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities, *Fifth Opinion on Denmark*, adopted 7/11/2019. ACFC/OP/V(2019)003.

<sup>39</sup> Jette Laage-Petersen et al., *Ligebehandling af grønlandere i Danmark: grønlanderes oplevelser af mødet med det danske samfund* [Equal treatment of Greenlanders in Denmark: Greenlanders meeting with the Danish society]. (Danish Institute for Human Rights, 2015).

<sup>40</sup> *Supra* note 26.

<sup>41</sup> *Comments of the Government of Denmark on the Fifth Opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities by Denmark*, received 2/7/2020. GVT/COM/V(2020)002.

<sup>42</sup> Resolution CM/ResCMN(2020)11 on the implementation of the Framework Convention for the Protection of National Minorities by Denmark, adopted 21/10/2020.

<sup>43</sup> *Supra* note 26.

with public authorities. Specifically, the Article provides for the option that national minorities can request the right to use their mother tongue in contact with authorities, if it is verified that there is an actual need. There is no question that Article 10 is controversial and difficult to implement. It has been considered problematic by many member states, because it is difficult to draw up fair guidelines for when there is an actual need as well as a critical mass large enough to warrant that public servants command a minority language. The report from the Danish Institute for Human Rights thus mentions primarily the problem of translation in contact with authorities. However, the FCNM does not limit Article 10 to translation. While it does consider translation an important aspect of having contact with authorities, the ACFC considers direct contact and in person optimal.

Most of the rights of the FCNM that relate to indigenous rights are also found in the UN Declaration of 2007. In contradistinction to the FCNM, the UN Declaration is not legally binding, but it specifically encourages the UN member states to implement the rights of indigenous peoples through other international human rights treaties.<sup>44</sup> Therefore, there seems to be basis for arguing that the Danish authorities should change their standpoint and consider applying individual articles of the FCNM because this would also promote the implementation of the UN Declaration in Denmark.

#### 4. **The FCNM and Indigenous Peoples in other Nordic Countries**

The article-by-article approach can be illustrated by practice followed in the other Nordic countries. The Sami in Finland, Norway and Sweden are also classified as indigenous peoples, and many of their members reside outside the traditional homelands.<sup>45</sup> It is estimated that that a large part of the Sami in Finland lives outside the homeland, especially Sami below the age of ten who represent 70 per cent of their age group. Sweden recognized the Sami at the time of ratification of the FCNM, whereas Norway and Finland recognized them later in connection with the first state reports submitted to the Council of Europe. Norway followed the same procedure as the Danish authorities by asking the Sami directly, if they wished recognition under the FCNM. They did not wish recognition, as they considered protection under the UN system and Norwegian law satisfactory. The Norwegian authorities nevertheless recognized them in their first state report. The Sami in all three countries have furthermore requested recognition via the UN system. With the exception of Finland, all Nordic countries have ratified the ILO Indigenous and Tribal Peoples Convention, known as ILO Convention 169.<sup>46</sup> As such, Denmark is the only Nordic country that has not recognized its indigenous peoples under the FCNM.

Denmark is also the only Nordic country that has not applied the article-by-article approach. Finland has used the approach broadly, especially the right to free self-identification, equality, protection of culture and minority languages, access to own media

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<sup>44</sup> United Nations, *Declaration on the Rights of Indigenous Peoples*, adopted 13/9/2007. A/RES/61/295.

<sup>45</sup> The Sami homeland are scattered across the northern hemisphere around the Arctic Circle in Norway, Sweden, Finland and Russia. In the Scandinavian countries they enjoy partial non-territorial home rule in the areas where they constitute a considerable percentage of the populations.

<sup>46</sup> International Labour Organization, *Indigenous and Tribal Peoples Convention, C169* (No. 169) adopted 27/6/1989.

and the use of mother tongue in contact with authorities. Finland has furthermore applied Article 6 regarding inter-cultural dialogue in connection with the establishment of a truth and reconciliation process in 2017.<sup>47</sup> The aim of the process is the to investigate previous assimilation policies. Sweden also applies Article 6 in connection with a truth and reconciliation process established to investigate assimilation policies aimed at Sami children and youth residing outside Lapland.<sup>48</sup> Norway applies Article 14 outside the Sami homeland of Finnmark and other Sami municipalities as a result of the Norwegian legislation on education, which provides for the right to teach in Sami, if a minimum of ten pupils so request.<sup>49</sup> The above evidences that flexible approaches, which allow a combination of special rights and universal individual equal civil rights, are feasible when applying the FCNM.

## 5. The Canadian Model

The Canadian approach to protecting members of indigenous peoples residing outside their traditional homelands is also instructive. Canada is not a member of the Council of Europe, nor is it party to the FCNM,<sup>50</sup> but several Canadian governments have recognized the responsibility to protect indigenous groups residing outside their home rule reservations.<sup>51</sup> The authorities have focused primarily on social and economic exclusion as a result of many years of assimilation policies, which have resulted in high poverty levels among indigenous groups in urban areas. It is estimated that 70 per cent of the indigenous peoples of Canada live outside their homeland, and approx. 44 per cent live in a megalopolis.<sup>52</sup> Canada has established a broad legal framework for the universal equal protection of individual civil rights, human rights and multiculturalism and commits strongly to the UN Declaration. Moreover, a federal commissioner (*Federal Interlocutor*), was appointed in 1985 with the sole task to improve the socio-economic situation of indigenous peoples. The Canadian authorities have furthermore taken inspiration from the processes implementing the language rights of the French speakers residing outside Québec. Like the indigenous groups, French speakers have autonomy rights (for Québec), and they have been able to transform these into participation in areas, such as education, culture and in some cases health services outside of

<sup>47</sup> Council of Europe, *Fifth State Report submitted by Finland*. ACFC/SR/V(2019)004. <[rm.coe.int/5th-sr-finland-en/1680924bff](https://rm.coe.int/5th-sr-finland-en/1680924bff)> visited on 25 May 2021.

<sup>48</sup> See discussion in Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Sweden*, adopted 22/07/2017. ACFC/OP/IV(2017)004.

<sup>49</sup> Council of Europe, *Fourth State Report submitted by Norway*. ACFC/SR/IV(2015)006. <[rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046fc85](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046fc85)> visited on 25 May 2021.

<sup>50</sup> Article 29 of the FCNM provides for the possibility that the Council of Ministers can invite non-member states to sign and ratify the treaty. This option has been used several times in cases where states were in accession to the Council of Europe but not yet members. It is also applicable to states that are not members, such as Kosovo as well as expelled states, such as the Russian Federation. *Supra*, note 3. See further, Detlev Rein, 'Commentary of Article 29 of the Framework Convention for the Protection of National Minorities' in Rainer Hofmann, Tove H. Malloy and Detlev Rein (eds.), *The Framework Convention for the Protection of National Minorities. A Commentary*. (Brill/Nijhoff, 2018), pp. 348-349.

<sup>51</sup> According to the Canadian Constitution members of the First Nations as well as the Métis minority and Inuits are recognized as indigenous peoples in Canada.

<sup>52</sup> Thomas Anderson, 'Results from the 2016 Census: Housing, income and residential dissimilarity among Indigenous people in Canadian cities.' *Insights on Canadian Society*. Statistics Canada, 10/12/2019.

Québec in areas such as New Brunswick.<sup>53</sup> Thus, the Canadian authorities are not copying the approaches of the French speakers directly but taking inspiration from them to find ways to improve the situation of the indigenous groups residing in urban areas by reducing their dependence and increasing their self-esteem, so they can build capacity to participate at the level of the French speakers.

The Canadian model furthermore shows that recognition of indigenous peoples' special rights to home rule in the reservations can be combined with universal equal individual civil rights outside the homelands. According to Section 25 of the Canadian Charter of Rights and Freedoms of 1982,<sup>54</sup> universal and individual equal civil rights cannot override the collective rights of the indigenous peoples to self-determination in the 1982 Canadian Constitution. This confirms that there is no conflict between the two types of rights. It furthermore means that the 1982 Charter cannot repeal the rights of indigenous peoples recognized in the Canadian Constitution, including the rights in Section 35 that recognizes the special rights of the indigenous peoples, which existed before 1982. Finally, this approach corroborates Article 37 of the UN Declaration, which provisions the need to find solutions that do not allow universal and individual equal rights to exclude special rights. In contradistinction to the Danish approach, which seems to use universal and individual equal civil rights to exclude recognition of Greenland and the Faroe Islands and their subjects living in mainland Denmark under the FCNM, the Canadian approach has secured both type of rights for indigenous peoples.

Critics have pointed out that the Canadian model has its weaknesses in that the wording of both Section 25 and 35 is somewhat vague.<sup>55</sup> This can give rise to legal disputes before the courts. For now, the approach has prevailed. Moreover, the UN Declaration confirms the Canadian approach. Thus, by building both individual and institutional capacity among indigenous peoples residing in urban areas, especially social and human capital, it is expected that they can access their self-determination rights to improve societal integration outside the homeland reservations.

## 7. Conclusions

The dialogue between the Danish authorities and the Council of Europe indicates that there is a simplistic understanding of the relation between special rights in terms of home rule rights, on the one hand, and universal equal civil rights, on the other. Instead of acknowledging that the two types of rights have equal standing and do not exclude each other, as is the case in Canada and as provisioned by the UN Declaration, Denmark has maintained that universal and individual equal civil rights exclude the application of special rights for indigenous peoples residing outside the homeland territory. This is highly problematic. First, it has resulted in excluding Greenlanders and Faroese residing in mainland Denmark from

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<sup>53</sup> Daniel Bourgeois, 'Minority Educational Self-Management in Canada' in Tove H. Malloy, Alexander Osipov & Balazs Vizi (eds.), *Managing Diversity through Non-Territorial Autonomy. Assessing Advantages, Deficiencies, and Risks*. (Oxford University Press, 2015), pp. 141-162.

<sup>54</sup> Canadian Charter of Rights and Freedoms is part of the Constitution Act of 1982 < <https://laws-lois.justice.gc.ca/eng/Const/page-12.html> > visited 31 October 2022.

<sup>55</sup> Bradford W. Morse, 'Developing Legal Frameworks for Urban Aboriginal Governance.' Aboriginal Policy Research Consortium International (APRCi) (2010) 66. < [ir.lib.uwo.ca/aprci/66](http://ir.lib.uwo.ca/aprci/66) > visited on 25 May 2021.



protection under individual articles of the FCNM. Second, it violates the UN Declaration, which requires that UN member states must take necessary steps to ensure that the UN Declaration's aims and purpose are protected by law and that rights are not excluded due to the conflict between universal individual equal civil rights and the collective right to home rule. Granted, the UN Declaration was not adopted until 2007, but it should subsequently have given rise to a change in the standpoint of the Danish government. Societal integration in Denmark should build on all the rights that indigenous peoples have both as individuals and as members of a specific group. In this process, the FCNM should be the means that secures the end.