



7 June 2001

GVT/COM/INF/OP/I(2001)005

**ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION
FOR THE PROTECTION OF NATIONAL MINORITIES**

**COMMENTS OF THE GOVERNMENT OF
DENMARK ON THE OPINION OF THE
ADVISORY COMMITTEE ON THE
IMPLEMENTATION OF THE FRAMEWORK
CONVENTION FOR THE PROTECTION OF
NATIONAL MINORITIES IN DENMARK**

On 22 September 2000, the Advisory Committee set up under the Council of Europe's Framework Convention for the Protection of National Minorities submitted an opinion to the Council of Europe's Committee of Ministers on Denmark's implementation of the Framework Convention.

In its concluding remarks the Committee starts by pointing out that Denmark has made commendable efforts in respect of the German minority in South Jutland. The Committee considers, however, that the personal scope of application of the Framework Convention in Denmark, limited to the German minority in South Jutland, has not been satisfactorily addressed. The Committee notes in particular that persons belonging to other groups with long historic ties to Denmark such as Faroese persons and Greenlanders seem to have been excluded *a priori* from protection under the Convention. The same applies to Roma (gypsies) in Denmark and certain other groups. The Committee therefore considers that Denmark should, in consultation with the groups concerned, examine the application of the Convention to these groups. The Committee further notes that while a state church system is not in itself in contradiction with the Framework Convention, Denmark should review the privileged position held by the Danish National Church. Lastly, the Committee considers that persons not belonging to the Danish National Church should not be obliged to have the names of children born to them registered through the Danish National Church.

On the above basis, the Advisory Committee has prepared a proposal for the Committee of Ministers' conclusions and recommendations with respect to Denmark.

The Danish Government holds the view that Denmark cannot support the critical conclusions made concerning Denmark in the opinion adopted by the Advisory Committee.

Denmark's ratification of the Convention is based on the following views:

The Framework Convention does not contain a definition of the notion of national minority, nor do the other international instruments in the field of minorities.

According to the Explanatory Report to the Framework Convention, it was decided in connection with the preparation of the Convention not to define the notion of national minority in the Framework Convention, thus leaving it to Participating States to determine the content of the notion through their practice.

Under general rules of interpretation, the fact that it follows from the previous history of the Framework Convention that the Convention is aimed at minorities created by the upheavals of European history must be taken into account when determining the notion of national minority in relation to the Framework Convention. Thus, according to the preamble of the Convention, the Convention is needed because the upheavals of European history have shown that the protection of national minorities is essential to stability in Europe. Further, the preamble and Article 18 of the Convention state that the implementation of the principles of the Convention implies transfrontier co-operation between local and regional authorities.

According to their wording, several of the provisions in the Convention contain territorial limitations, dealing with areas which are inhabited by persons belonging to national minorities (Article 10(2), Article 11(3) and Article 14(2)) traditionally or in substantial numbers. Lastly, it

appears from point 66 in the Explanatory Report that the term "inhabited traditionally" refers to the fact that the provisions of the Convention apply to persons still living in their traditional geographical area.

Against this background, Denmark has identified the German minority in South Jutland as a national minority covered by the Framework Convention.

Therefore, in connection with the ratification of the Framework Convention, Denmark declared that the Framework Convention applies to the German minority in South Jutland of the Kingdom of Denmark. As appears from the report on Denmark's implementation of the Framework Convention, Denmark's declaration reflects the fact that the border between the Kingdom of Denmark and the Federal Republic of Germany actually does not delimit the areas inhabited by the two peoples. In the regions north and south of the border (which has been fixed since the referendums in 1920) – i.e. South Jutland in Denmark and Schleswig in Germany - Danes and Germans live together in traditional residential areas. The members of the German minority in Denmark are nationals of Denmark.

In view of the foregoing, it is the fundamental opinion of the Danish Government that the international obligations that Denmark has assumed according to the Framework Convention only relate to the German minority in South Jutland and do not apply to any wider extent.

The Danish Government is thus also of the opinion – which is fully shared by the Faroese and Greenland home rule authorities - that the provisions of the Convention do not apply in relation to the populations of the Faroe Islands and Greenland who, as a result of the home rule arrangements, are not regarded as minorities in the Danish Realm.

Further, it should be noted that it is established in point 43 of the Explanatory Report concerning the Framework Convention that not all ethnic, cultural, linguistic or religious differences are necessarily tantamount to the existence of a national minority. The Danish Government thus holds the view that immigrants and refugees cannot be considered to be covered by the notion of national minority.

As to the individual points of the Advisory Committee's opinion, the following comments are made:

Re general remarks

The proposal for increased awareness about the Convention in Denmark (point 8 in the Advisory Committee's report)

The Advisory Committee has some concern that awareness in Denmark about the Framework Convention appears to be rather limited. The Committee is therefore of the opinion that the Danish authorities should undertake more activities in this respect.

Initially, it should be noted that the Framework Convention does not contain provisions specifying how Participating States should spread awareness of the Convention.

The Framework Convention provides that the provisions of the Convention shall be applied in good faith, cf. Article 2. According to Article 3(2), every person belonging to a national minority may exercise the rights and enjoy the freedoms flowing from the principles enshrined

in the Convention, and the States are under an obligation to adopt adequate measures in order to promote full and effective equality between persons belonging to a national minority and those belonging to the majority, cf. Article 4(2).

As appears from Denmark's first report on Denmark's implementation of the Framework Convention, Denmark had even long before its ratification of the Convention provided solutions that satisfy the principles of the Convention, one of the aims being to ensure effective equality between the German minority in South Jutland and persons belonging to the majority. The report contains much information about measures adopted in specific areas for the purpose of providing this equality.

Denmark has therefore found no grounds for carrying through amendments to legislation or otherwise adopt special measures to implement the principles of the Framework Convention.

The Liaison Committee concerning the German Minority, whose object is to discuss political home affairs of interest to the minority, has discussed the content of the Framework Convention and Denmark's ratification of it at its annual meetings. Moreover, the Danish authorities have continuously discussed the solutions established to create equality between the German minority and the majority in South Jutland with the German Minority's Secretariat in Copenhagen.

In connection with the entry into force of the Framework Convention for Denmark, the Danish Centre for Human Rights published a folder "Beskyttelse of nationale mindretal i Europa" ("Protection of National Minorities in Europe"). The folder contains an introduction to the Framework Convention and a review of the contents of the Convention.

Lastly, it should be noted that, in connection with Denmark's ratification, the Framework Convention – like all conventions acceded to by Denmark – was published in the Danish Law Gazette, Lovtidende C; that the Framework Convention is electronically available in Retsinformation (Legal Information); and that both the Convention and Denmark's first report are electronically available on the home page of the Danish Ministry of the Interior. The report can also be obtained at public libraries etc, and anyone requesting the report on Denmark's implementation of the Framework Convention will receive the report free of charge.

In the near future, the Danish Ministry of Foreign Affairs will publish a folder on the European Charter for Regional or Minority Languages for the use of the German minority and the authorities in South Jutland. The folder will contain a general section on the protection of minority rights, which will also mention the Framework Convention. The folder will be published in co-operation with the German minority and will be sent to all public libraries in South Jutland, the German minority's libraries, local government authorities in the South Jutland County and to all the minority's institutions, schools etc.

The Danish Government is thus of the opinion that the public has received adequate information about the Framework Convention.

Re Article 3

The Advisory Committee recommends that the Danish authorities should examine the application of the Convention to Faroese persons and Greenlanders, to persons of ethnic Danish origin who are living in the Faroe Islands or in Greenland, to persons belonging to the German

minority but living outside the area of South Jutland, and to Roma in Denmark as well as other groups.

As stated above, the Framework Convention does not contain a definition of the notion of national minority. However, it appears from the previous history of the Framework Convention that the Convention is aimed at minorities created by the upheavals of European history. As mentioned, Denmark has identified the German minority in South Jutland as the only national minority covered by the Framework Convention.

The basis of the declaration made appears from the following comments on the Advisory Committee's recommendations etc.

The question of application of the Convention to Greenlanders and Faroese persons (points 16-19 in the Advisory Committee's report)

As mentioned, Denmark has not identified Greenlanders and Faroese persons as national minorities within the meaning of the Convention.

Denmark ratified the Convention in 1997 with territorial validity for the Faroe Islands and Greenland. The ratification was made after submission to and acceptance by the Faroese and Greenland home rule authorities in accordance with the procedures applying under the home rule arrangements.

Denmark's declaration at the time of the ratification of the Convention that in Denmark the Framework Convention applies to the German minority in South Jutland was also made with the acceptance of the home rule authorities.

Even though the Framework Convention only applies in relation to the German minority, the Danish Government wishes to point out generally that the home rule arrangements of the Faroe Islands and Greenland are extensive self-governing arrangements within the Danish Realm, under which these communities take over former central government tasks and receive financial grants from the Danish State. This is in accordance with the desire of these populations to strengthen their independent cultural identities by having the right to act in the specific way that is characteristic of the populations.

The home rule arrangements are favoured by the fact that they do not imply territorial changes because the Faroe Islands and Greenland, situated in the North Atlantic, can be geographically delimited.

The home rule arrangements are thus based on territorial delimitation and not on ethnic criteria. For the citizens of the Danish Realm there is one common citizenship, namely "Danish citizenship".

The mentioned arrangements protect and strengthen the identity and influence of these populations but they do not create any privileges for persons belonging to these parts of the Realm, which might lead to positive discrimination.

Further, under the UN Covenant on Civil and Political Rights, Denmark holds the view that the citizens of Greenland and the Faroe Islands are covered by Article 1 of the Covenant and thus they cannot simultaneously be characterised as minorities under Article 27 of this Covenant.

The Danish Government is therefore of the opinion that the home rule arrangements of the Faroe Islands and Greenland establish within the Realm a solution model which in a democratic form takes account of the individual rights of persons in the Faroe Islands and in Greenland in peaceful interaction with the citizens in Denmark.

The question of application of the Convention to persons of an ethnic Danish origin who live in home rule areas (point 20 in the Advisory Committee's report)

According to the previous history of the Framework Convention, the Convention is aimed at minorities created by upheavals in European history. It is characteristic of persons of ethnic Danish origin who are resident in or take up residence in, work, marry and settle down etc. in Greenland and the Faroe Islands that they can in no way be said to have taken up residence in the home rule areas because of historic upheavals.

Denmark has not identified persons of ethnic Danish origin living in the home rule areas as national minorities within the meaning of the Convention.

In the light of the above, the following comments are made on the Committee's recommendations in point 20:

Persons born in Denmark who choose to live and work, marry and settle down etc in the Faroe Islands or in Greenland are not registered as a group or individuals according to criteria of origin.

The home rule authorities are subject to the Danish Constitution and the fundamental freedoms flowing therefrom. The home rule authorities are moreover subject to the human rights conventions, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the UN Convention on the Elimination of All Forms of Racial Discrimination, that have been ratified by Denmark and which with the acceptance of the home rule authorities comprise Greenland and the Faroe Islands.

Danes taking up residence in the Faroe Islands or in Greenland are thus protected by the international instruments, which protect the rights of the individual and afford protection against discrimination.

Similarly, persons born in the Faroe Islands or in Greenland who choose to take up residence in Denmark are not registered as a group or individuals according to criteria of origin but enjoy similar protection, both nationally and through the international instruments which protect the rights of the individual and afford protection against discrimination.

In this connection, reference is made to the explanations given by Denmark to the European Commission against Racism and Intolerance, ECRI, concerning the rights of persons born in the Faroe Islands and in Greenland who take up residence in Denmark.

The question of application of the Convention to persons belonging to the German minority but living outside the area of South Jutland (point 21 in the Advisory Committee's report)

As mentioned, Denmark has only identified the German minority in South Jutland as a national minority within the meaning of the Convention.

As can be seen from the report on Denmark's implementation of the Framework Convention, the minority in South Jutland numbers 15-20,000 persons according to information received from the German minority. The German minority lives mainly in the South Jutland County, representing from 5 to 20 per cent of the population in some of the 23 municipalities.

The report also mentions that the German minority has established kindergartens, basic schools, after-school centres, school-based leisure-time activities, a continuation school, an upper secondary school and libraries, all in the South Jutland County; that the German minority's newspaper, *Der Nordschleswiger*, has its principal editorial offices in Åbenrå, South Jutland; and that the German minority's main organisation *Bunddeutscher Nordschleswiger* has its head office in Åbenrå, South Jutland. At the local elections in 1997, the German minority achieved representation on the County Council of South Jutland and on local councils in six of the county's municipalities.

Thus, the German minority only manifests itself as a national minority in South Jutland. It should be noted that persons from the German minority, who all speak Danish, enjoy the same rights as all other Danish citizens whether they are living in or outside South Jutland.

As mentioned, Denmark's ratification of the Framework Convention has not required amendments to legislation, and no measures have been adopted as a result of the ratification to meet the obligations according to the Convention because solutions living up to the provisions of the Convention had already been established before the ratification of the Convention.

The solutions which contribute to equality between the German minority and the majority include partly general arrangements which apply to everybody in Danish society and partly special arrangements in the form of positive discrimination of the German minority. The solutions comprising positive discrimination reflect – of course – the German minority's historic ties with South Jutland and the fact that the German minority only manifests itself as a national minority in this area. A few of the solutions that constitute positive discrimination of the German minority relate especially to the area of South Jutland. By way of example can be mentioned the appointment of rectors with equal status in the Danish National Church in the towns in South Jutland (report pages 18 – 19), certain provisions regulating the language of the church (report page 21), the German minority's continuation school at Tinglev (report page 41) and the minority's library system (report page 23).

The access to establish, with a particularly large amount of public co-financing, kindergartens, basic schools and after-school centres, school-based leisure-time activities as well as an upper secondary school represents general arrangements which can also be used by persons belonging to the German minority in South Jutland who take up residence in other parts of the country.

Consequently, the Danish Government holds the view that there is no need for additional initiatives in Denmark in order to comply with the obligations according to the Framework Convention.

The question of application of the Convention to Roma (gypsies) in Denmark. (points 22-23 in the Advisory Committee's report)

As mentioned, Denmark has not identified Roma in Denmark as a national minority within the meaning of the Convention.

In Denmark, the Central Population Register contains information on age, sex, marital status, citizenship, place of birth, present address and family information. Moreover, the register provides up-to-date information on births, deaths, changes of residences within the country, immigration and emigration. There is no information in the Central Population Register, which could be used for determining the number of persons belonging to Roma.

However, it is estimated that there are about 1,500 Roma in Denmark. Of these about 800 came to the country in the late 1960s and are now living in Helsingør. The majority of the remaining about 600 came to Denmark in the mid 1990s in connection with the wars in ex-Yugoslavia and they are spread over the rest of the country. Few of the Roma are Danish citizens. Any Roma who have taken up residence in Denmark before the 1960s are completely assimilated and are not covered by the mentioned group of 1,500 persons.

Thus, the estimated 1,500 Roma in Denmark have no historic or long and coherent ties with Denmark but are either immigrants or refugees.

The Roma are thus not a national minority in Denmark in the opinion of the Danish Government.

The question of application of the Convention to persons belonging to other groups, based on a review of the individual articles of the Convention in consultation with the groups concerned. (point 24 in the Advisory Committee's report)

As mentioned above, Denmark has identified the German minority in South Jutland as the only national minority in Denmark. Thus there are no grounds for reviewing the articles of the Convention in consultation with other groups as these groups do not constitute or represent national minorities within the meaning of the Framework Convention.

Re Article 4

The question of effective remedies for persons who suffer from discrimination. (point 25 in the Advisory Committee's report)

The Advisory Committee recommends that the Danish Government examine its legislation in order to ensure that effective remedies are available to all persons who suffer from discrimination, both by public authorities and private entities.

On this point, the Danish Government wishes to mention that the Framework Convention does not contain provisions committing the States to establish special complaints bodies or similar to deal with complaints about the treatment of national minorities.

Generally, it is pointed out that Denmark has ratified the UN Convention on the Elimination of All Forms of Racial Discrimination, the UN Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms and that Denmark's implementation of these conventions is monitored by the control bodies attached to the conventions.

Further, the information can be given that the Danish Penal Code contains a provision according to which any one who publicly or with intent to propagate them to a wider circle makes

statements or any other communication by which a group of persons is threatened, insulted or exposed to indignities on the grounds of race, colour, national or ethnic origin, religion or sexual orientation is liable to a fine or imprisonment for a term not exceeding two years.

In addition, Denmark has a special Act on Prohibition against Discrimination in the Labour Market.

Further, Denmark has a Board for Ethnic Equality which provides advice on issues relating to ethnic equality. The object of the Board is to counteract differential treatment of persons of Danish and other ethnic origins.

Lastly, the Danish Government wishes to refer to the initiatives taken under the auspices of the EU, including in particular Council Directive (2000/43/EC) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The Directive contains a number of provisions on remedies and enforcement. According to the Directive, Member States are to designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. The object of the body is to analyse problems in connection with discrimination on the grounds of racial or ethnic origin, examine possible solutions and provide specific assistance to the victims. In this way, the body is to help to increase the protection against such discrimination. The Directive was adopted on 29 June 2000 and must be implemented within a period of three years.

Moreover, all matters involving discrimination may be brought before the Danish courts of law. The Parliamentary Ombudsman may also take positions on matters involving public authorities' equal treatment of all persons irrespective of these persons' ties with Denmark.

Re Article 6

The question of intolerant attitudes in Danish society and in particular in respect of discrimination against foreigners and naturalised Danes in the field of the labour market, housing etc. (point 27 in the Advisory Committee's report)

The Advisory Committee expresses concern about information regarding intolerant attitudes in Danish society. The Committee is therefore of the opinion that the Danish authorities should maintain continuous vigilance to avoid the spreading of intolerant attitudes.

According to Article 6 of the Framework Convention, the Participating States must encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

According to the wording of the provision, the scope of application of Article 6 is quite broad but must in accordance with the general principles of interpretation of treaty law be interpreted in the light of the general scope of application of the Convention which only relates to the protection of national minorities.

The general question of intolerant attitudes in the States and the question of discrimination against foreigners etc who do not belong to a national minority, as raised by the Advisory

Committee, are thus outside the scope of application of the Convention in the opinion of the Danish Government.

Reference is made to the remarks on Article 4.

Re Articles 4 and 8

The question of the status of the Danish National Church (point 29 in the Advisory Committee's report)

The Advisory Committee raises the question whether the fact that state support is made available only to the Danish National Church is, given the existence of other religions in Denmark, in conformity with the principle of equality before the law and of equal protection of the law as guaranteed under Article 4 of the Framework Convention. The Committee therefore recommends that this question be reviewed in detail by Denmark.

According to their wording, the provisions of Articles 4 and 8 apply to persons belonging to national minorities. As mentioned above, at the time of ratification Denmark made a declaration to the effect that the Framework Convention applies to the German minority in South Jutland. Articles 4 and 8 are therefore only relevant to that minority. As a result, the general question raised by the Advisory Committee concerning state support to the Danish National Church falls outside the scope of application of the Convention.

As regards the German minority in South Jutland, it should be noted that in Denmark's report on the implementation of the Framework Convention it is stated that, in terms of denomination, the vast majority of persons belonging to that minority are Evangelical Lutherans. They are either members of the Danish National Church or belong to one of the German independent congregations in South Jutland. Further, it is stated that the detailed rules on freedom of religion in Denmark are found in section 67, section 68 and section 70 of the Danish Constitution and in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Thus, the provision in Article 8 of the Convention has not necessitated any changes in the state of law in Denmark.

Further, the Danish Government is of the opinion that the status of the Danish National Church, cf. section 4 of the Constitution of Denmark, does not contravene Article 8, cf. Article 4, of the Framework Convention. Freedom of religion is secured in Denmark through section 67 of the Constitution of Denmark, according to which all citizens are at liberty to form congregations for the worship of God in a manner in accordance with their convictions, provided that nothing contrary to good morals or public order is taught or done.

As regards the financial support that the State grants to the Danish National Church, it should be noted that this support currently accounts for approx. 13% of the income of the Danish National Church. The balance of the income stems mainly from the church tax, which is only paid by members of the Danish National Church. While members of the Danish National Church cannot deduct church tax from their taxable income, members of congregations outside the Danish National Church are allowed to deduct their membership contributions.

Re Article 11

The question of registration of names (point 32 in the Advisory Committee's report)

The Advisory Committee considers that persons not belonging to the Danish National Church should not be obliged to have the names of children born to them registered through the Danish National Church

Article 11 of the Framework Convention ensures every person belonging to a national minority the right to use his or her surname and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

In the opinion of the Danish Government, the provision does not relate to the question as to in which registers the naming is to be entered. For several hundred years the fundamental civil registration in Denmark, except South Jutland, has taken place through notification to the church registers of the Danish National Church. This also applies to naming. The registration is carried out by the clergymen of the Danish National Church as a central government task. The registration may be made in writing and consequently does not assume that the person concerned appears in person.

* * *