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Advisory Committee on the Framework Convention for the Protection of National Minorities



Opinion on Denmark, adopted on 22 September 2000

Table of contents:

I	Preparation of the present opinion
II	General remarks on the Report
III	Specific comments in respect of Articles 1 - 19
IV	Concluding remarks
V	Proposal for conclusions and recommendations by the Committee of Ministers

EXECUTIVE SUMMARY

Following the receipt of the initial Report of Denmark on 6 May 1999 (due on 1 February 1999), the Advisory Committee commenced the examination of the Report at its 4th meeting on 25 - 28 May 1999. In the context of its examination, the Advisory Committee requested additional information in writing from the Danish Government and subsequently visited Denmark, on 22 - 24 May 2000, in order to seek further information on the implementation of the Framework Convention from representatives of the Government as well as from NGOs and other independent sources. The Advisory Committee adopted its opinion on Denmark at its 8th meeting on 22 September 2000.

As concerns the implementation of the Framework Convention, the Advisory Committee considers that Denmark has made particularly commendable efforts in respect of the German minority in Southern Jutland.

However, the Advisory Committee considers that the personal scope of application of the Framework Convention in Denmark, limited to the German minority in Southern Jutland, has not been satisfactorily addressed. In particular, it notes that persons belonging to groups with long historic ties to Denmark such as Far-Oese and Greenlanders appear to have been excluded *a priori* from protection under the Framework Convention. Similarly, despite the historic presence of Roma in Denmark, they appear to have been *a priori* excluded from the protection of the Convention. This approach is not compatible with the Framework Convention. Furthermore, the Advisory Committee considers a limited territorial application, leading to the *a priori* exclusion of persons no longer residing in the traditional area of settlement, not to be compatible with the Framework Convention. The Advisory Committee therefore considers that the Danish Government should, in consultation with those concerned, examine the application of the Framework Convention.

While noting that a state church system is not in itself in contradiction with the Framework Convention and that the latter does not entail an obligation *per se* to fund religious activities, the Advisory Committee considers that Denmark should review, in the light of the right to equality before the law and equal protection of the law, the privileged funding of the Evangelical Lutheran Church. Furthermore, it considers that persons not belonging to the Evangelical Lutheran Church should not be obliged to have the names of their children registered through the state church.

The Advisory Committee is of the opinion that specific conclusions and recommendations by the Committee of Ministers could help to further improve the implementation of the

Framework Convention in Denmark. It believes that such conclusions and recommendations could be helpful in a continuing dialogue between the Government and those concerned. The Advisory Committee, therefore, submits detailed draft conclusions and recommendations for consideration by the Committee of Ministers. The Advisory Committee stands ready to be involved in the follow-up to the conclusions and recommendations adopted by the Committee of Ministers in accordance with Rule 36 of the Committee of Ministers' Resolution (97) 10.

I. PREPARATION OF THE PRESENT OPINION

1. The initial Report from Denmark (hereinafter: the Report), due 1 February 1999 was received on 6 May 1999. The Advisory Committee commenced the examination of the Report at its 4th meeting on 25 - 28 May 1999.

2. The Advisory Committee requested additional information from the Danish Government in accordance with Rule 29 of the Committee of Ministers' Resolution (97) 10 by letter of its President to the Permanent Representative of Denmark to the Council of Europe dated 13 September 1999. The additional information was transmitted to the Advisory Committee by letter of the Permanent Representative dated 18 November 1999. Further to the request of the Government of Denmark to meet with the Advisory Committee in accordance with Rule 32 of the Committee of Ministers' Resolution (97)10, a meeting was organised between representatives of the Government and of the Advisory Committee in Copenhagen on 23 May 2000. In the course of their visit to Denmark (22 - 24 May 2000), the delegation of the Advisory Committee also obtained information from other relevant sources, namely members of Parliament, representatives of communities and NGOs as well other institutions and experts. When preparing the present opinion, the Advisory Committee also consulted a range of written materials from various Council of Europe bodies, other international organisations as well as from NGOs and other independent sources.

3. The Advisory Committee subsequently adopted the present opinion at its 8th meeting on 22 September 2000 and decided to transmit this opinion to the Committee of Ministers.

4. The present opinion is submitted to the Committee of Ministers pursuant to Article 26(1) of the Framework Convention for the Protection of National Minorities (hereinafter: the Framework Convention), according to which, in evaluating the adequacy of the measures taken by the Parties to give effect to the principles of the Framework Convention, "the Committee shall be assisted by an advisory committee", as well as pursuant to Rule 23 of Resolution (97) 10 of the Committee of Ministers, according to which the "Advisory Committee shall consider the state reports and shall transmit its opinion to the Committee of Ministers".

II. GENERAL REMARKS ON THE REPORT

5. While noting that the Report was some months late, the Advisory Committee welcomes the effort which was made to prepare the Report and the fact that the German minority in Southern Jutland, the only group of persons to which the Danish authorities have applied the Framework Convention, was consulted in the course of its preparation. The Advisory Committee nonetheless notes that the information provided pertains mainly to

existing legal and policy standards and does not always provide a great deal of information on the factual situation concerning their implementation in practice. However, a great deal of complementary information and further clarifications were obtained in response to the request for additional information and during the meeting with Government representatives and with other persons and organisations. The Advisory Committee finds that these meetings provided an excellent opportunity to have a direct dialogue with the representatives of the various sources. The Advisory Committee recognises the co-operative spirit in which Denmark participated in the process leading to the adoption of the present opinion.

6. In the following part of the Report, it is stated in respect of a number of articles that, “on the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations”. The Advisory Committee wishes to make clear that this statement is on no account to be understood as signalling that enough has now been done and that efforts in this respect may be diminished or even halted. Indeed, the Advisory Committee considers that the nature of the obligations of the Framework Convention requires a sustained and continued effort by the authorities to respect the principles and achieve the goals of the Framework Convention. Furthermore a certain state of affairs may, in the light of the recent entry into force of the Framework Convention, be considered acceptable now but that need not necessarily be so in further cycles of monitoring. Finally, it may be the case that issues that appear at this stage to be of relatively minor concern, prove over time to have been underestimated.

7. In evaluating the measures taken by Denmark to give effect to the principles of the Framework Convention, the Advisory Committee notes that according to the Danish authorities, the Framework Convention applies only to the German minority in southern Jutland. The Advisory Committee will return to the matter of the personal scope of application of the Framework Convention under Article 3 below.

8. The Advisory Committee has some concern that awareness in Denmark about the Framework Convention for the Protection of National Minorities appears to be rather limited. Numerous interlocutors admitted not having heard about the Framework Convention prior to having been contacted by the Advisory Committee. Awareness of this instrument (as well as of other international standards) not just by persons who may benefit directly from their application, but by society as a whole is an essential factor in establishing and maintaining a pluralist and genuinely democratic society. The Advisory Committee therefore considers that the Danish authorities should undertake more activities in this respect.

III. SPECIFIC COMMENTS IN RESPECT OF ARTICLES 1 - 19

9. In the specific comments which follow, the Advisory Committee addresses mainly the situation of the German minority in Southern Jutland, because the Report submitted by the Danish authorities focuses mainly on this group of persons. However, in respect of some articles, also in the light of the observations concerning the personal scope of the implementation of the Framework Convention under Article 3 below, the Advisory Committee considers some issues from a more general perspective.

Article 1

10. The Advisory Committee notes that Denmark has ratified a wide range of relevant international instruments. On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

Article 2

11. On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

Article 3

12. As mentioned above, the Advisory Committee notes that according to the Danish authorities, this instrument applies only to the German minority in southern Jutland. This position was reflected in the declaration made by the Danish authorities at the time of ratification and was repeated in the State Report. In the meeting with the Danish Government, it was clarified that the Framework Convention covers all of the Kingdom of Denmark, thus also the areas covered by particular home rule arrangements, Greenland and the Far-Oer Islands.

13. The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Danish Government is therefore deemed to be the outcome of this examination.

14. Whereas the Advisory Committee notes on one hand that parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this margin of appreciation must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

15. For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

16. The Advisory Committee notes that the Danish Government takes the view that because territorial home rule arrangements exist for Greenland and the Far-Oer Islands, the population of these territories, who, like persons belonging to the German minority, have deep historic ties with the Kingdom of Denmark, do not fall within the scope of application of the Framework Convention. The Government adds that, according to its information, these persons have never asked for protection granted by this instrument and indeed do not consider themselves as national minorities, because they are entitled to a different form of protection as *an indigenous people* or *a people*. In this context, attention was drawn to the fact that the Far-Oer Islands are currently discussing with the Danish Government their full independence, whilst Greenland is discussing an extension of its autonomy.

17. The Advisory Committee notes two problems with respect to the approach presented by the Danish authorities. Firstly, the reasoning appears to assume that the recognition of a

group of persons as constituting *an indigenous people* or *a people* excludes the possibility of at the same time benefiting from protection as a national minority. The Advisory Committee does not share this view. The fact that a group of persons may be entitled to a different form of protection, cannot by itself justify their exclusion from other forms of protection. The second problem in this reasoning concerns the territorial aspect. If the reasoning of the Danish Government is to be followed, the result is that the Greenlanders and Far-Oese persons enjoy an effective protection of their identity (language, education, culture etc.) within the respective home rule areas, but no such protection outside these areas, notably in mainland Denmark. Although the Framework Convention attaches importance in a number of its provisions to the criterion of traditional inhabitation of certain areas for protection, the majority of its provisions are designed to apply throughout the territory of the state concerned, of course taking into account all relevant circumstances.

18. It follows from the above that the Advisory Committee considers that the *a priori* exclusion of Greenlanders and Far-Oese persons from the implementation of the Framework Convention on the basis of the reasoning presented is not compatible with the Framework Convention.

19. The Advisory Committee therefore considers that the Danish authorities should examine the application of the Framework Convention to these persons, in consultation with those concerned, notwithstanding and in addition to home rule arrangements. During its visit to Denmark, the delegation of the Committee noted a considerable interest in this matter among communities concerned.

20. In line with the reasoning developed above and taking into account the level of autonomy enjoyed and/or the nature of the powers exercised by the Home Rule Authorities, it can also not *a priori* be excluded that the Framework Convention could apply in respect of persons of ethnic Danish origin living in the home rule areas.

21. Also, in line with this reasoning, persons belonging to the German minority but living outside the area of Southern Jutland cannot *a priori* be excluded from the personal scope of protection of the Framework Convention.

22. Furthermore, the Advisory Committee considers that, given the historic presence of Roma in Denmark, also persons belonging to the Roma community cannot *a priori* be excluded from the personal scope of application of the Framework Convention.

23. The Advisory Committee is therefore of the opinion that the examination mentioned above should extend to these persons as well.

24. The Advisory Committee further notes with approval that the Report also provides some information on other groups that the Government does not consider, at this stage, to be covered by the Framework Convention. The Advisory Committee is of the opinion that it would be possible to consider inclusion of persons belonging to these groups in the application of the Framework Convention on an article-by-article basis and is of the opinion that the Danish authorities should consider this issue in consultation with those concerned. The Advisory Committee notes in this context, on the basis of information received from other sources as well as from the Government itself, that a range of measures have been introduced in Danish legislation from which these persons may benefit, such as the possibility

to have extra-curricular teaching of the (non-Danish) mother tongue within the public school system.

Article 4

25. The Advisory Committee considers that, as provisions on non-discrimination may not themselves constitute a source of unjustified distinctions, such legislation and enforcement structures and procedures should protect all persons from discrimination on the grounds of language, culture, ethnicity and religion. Whereas many legal provisions prohibiting such acts are in force, it seems that effective remedies are not always available. Despite the existence of useful institutions such as the Ombudsman and the Board for Ethnic Equality, it is noted that these bodies do not have the competence to address the full range of individual complaints which may arise about discrimination. The Advisory Committee considers that the Danish Government should 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.

Article 5

26. The Advisory Committee considers that the implementation of this article, leaving aside the issue of the personal scope identified above, does not give rise to any other observations.

Article 6

27. The Advisory Committee is concerned about information on intolerant attitudes in Danish society. In this respect the Advisory Committee is particularly concerned about reports of discrimination against foreigners and naturalised Danes in the labour market, housing etc. It therefore considers that the Danish authorities should maintain continuous vigilance in this respect as well as take measures to counteract the spreading of intolerant attitudes.

Article 7

28. The Advisory Committee considers that the implementation of this article, leaving aside the issue of the personal scope identified above, does not give rise to any other observations.

Article 8

29. The Advisory Committee notes in the context of this article that under the Constitution of Denmark, the Evangelical Lutheran Church shall be the established Church of Denmark and, as such, shall be supported by the State. While considering that a state church is not in itself in contradiction with the Framework Convention and that the latter does not entail an obligation *per se* to fund religious activities, the Advisory Committee considers, given the existence of other religions in Denmark, that the question arises whether the fact that state support is made available only to the Evangelical Lutheran Church (both through direct funding from income tax and through a Church tax, from which persons not belonging to the Evangelical Lutheran Church can be exempted at their request) is in conformity with the principle of equality before the law and equal protection of the law as guaranteed under Article 4 of the Framework Convention. The Advisory Committee considers that this question merits being reviewed in detail and considers that the Danish Government should carry out a review of this question.

Article 9

30. The Advisory Committee notes that the implementation of this article could well encompass creating the possibility for broadcasting some German language programmes in the framework of the (regional) public broadcasting system. It notes that the absence of such programmes is explained by the fact that no request to that effect was ever made, but points out that a formal request to that effect is not a legal precondition for considering the implementation of such a facility. The Advisory Committee also refers to its observations above concerning the personal scope of implementation.

Article 10

31. The Advisory Committee considers that the implementation of this article, leaving aside the issue of the personal scope identified above, does not give rise to any other observations.

Article 11

32. It is noted that for the registration of the names at birth, the state church, under the authority of the state, is exclusively competent, in all areas of Denmark, except Southern Jutland where a names register exists. Thus, all persons, regardless of their religion, are obliged to address the authorities of the Evangelical Lutheran Church in order to have the names of their children registered. The Advisory Committee considers that this requirement raises problems of conscience for those who do not belong to the state church and is therefore of the opinion that modifications should be introduced in order to allow persons who so wish, to register the names of their children directly with the State authorities, without having to involve the authorities of the state church.

33. The Advisory Committee notes that, depending on the personal scope given to the Framework Convention as a result of the review mentioned above, there may be further questions about the registration of names, notably concerning rules on which first and family names are acceptable.

34. The Advisory Committee notes that no request pertaining to the use of bi-lingual signs have been forwarded (paragraph 3) and that therefore no issue in respect of this matter arises. However, the Advisory Committee is dismayed by and rejects the view expressed by the Danish Government in its Report (p37): *“that signs are less clear and less readable if bi-lingual. When aimed at road-users, such signs must therefore be considered to have a negative impact on road traffic safety”*.

Articles 12 - 14

35. The Advisory Committee refers to its observations above concerning the scope of implementation. On the basis of the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any other observations.

Article 15

36. The Advisory Committee considers that home rule for Greenland and the Far Oer Islands are important arrangements contributing to the effective participation of the individuals concerned in cultural, social and economic life and in public affairs. However, in this context the Committee refers to its observations under Article 3 concerning the personal scope of application of the Framework Convention.

Articles 16 - 19

37. The Advisory Committee refers to its observations above concerning the scope of implementation. On the basis of the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any other observations.

IV. CONCLUDING REMARKS

38. As concerns the implementation of the Framework Convention, the Advisory Committee considers that Denmark has made particularly commendable efforts in respect of the German minority in Southern Jutland.

39. However, the personal scope of application of the Framework Convention in Denmark, limited to the German minority in Southern Jutland has not been satisfactorily addressed. In particular, persons belonging to other groups with long historic ties to Denmark such as Far-Oese and Greenlanders appear to have been excluded *a priori* from protection under the Framework Convention. Similarly, despite historic presence of Roma in Denmark, they appear to have been *a priori* excluded from the protection of the Convention. This approach is not compatible with the Framework Convention. Furthermore, the Advisory Committee considers a limited territorial application, leading to the *a priori* exclusion of certain groups, not to be compatible with the Framework Convention. The Advisory Committee therefore considers that Denmark should, in consultation with those concerned, examine the application of the Framework Convention.

40. While noting that a state church system is not in itself in contradiction with the Framework Convention and that the latter does not entail an obligation *per se* to fund religious activities, the Advisory Committee considers that Denmark should review, in the light of the right to equality before the law and equal protection of the law, the privileged funding of the Evangelical Lutheran Church. Furthermore, it considers that persons not belonging to the Evangelical Lutheran Church should not be obliged to have the names of children born to them registered through the state church.

41. The Advisory Committee is of the opinion that specific conclusions and recommendations by the Committee of Ministers could help to further improve the implementation of the Framework Convention in Denmark. It believes that such conclusions and recommendations could be helpful in a continuing dialogue between the Government and those concerned. The Advisory Committee, therefore, submits detailed draft conclusions and recommendations for consideration by the Committee of Ministers. The Advisory Committee stands ready to be involved in the follow-up to the conclusions and recommendations adopted by the Committee of Ministers in accordance with Rule 36 of the Committee of Ministers' Resolution (97) 10.

V. PROPOSAL FOR CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE OF MINISTERS

With a view to the foregoing, the Advisory Committee is of the opinion that the Committee of Ministers should consider the adoption of the following draft conclusions and recommendations with respect to Denmark:

The Committee of Ministers,

Having regard to the Framework Convention for the Protection of National Minorities and the initial Report submitted by Denmark, on 6 May 1999, on the implementation of the Framework Convention;

On the basis of the opinion adopted by the Advisory Committee on 22 September 2000;

Welcoming the efforts that have been made to implement the Framework Convention for the Protection of National Minorities;

Considering that specific conclusions and recommendations could further help to improve the implementation of the Framework Convention by Denmark;

Adopts the following conclusions and recommendations and invites Denmark to inform the Advisory Committee, within one year from the adoption of the present decision, of the follow-up made in this respect.

General Remarks

The Committee of Ministers *concludes* that the awareness in Denmark about the Framework Convention appears to be rather limited and *recommends* that the Danish authorities undertake more activities in this respect.

In respect of Article 3

The Committee of Ministers *concludes* that the *a priori* exclusion of Greenlanders and Far Oese persons from the implementation of the Framework Convention on the basis of the reasoning presented is not compatible with the Framework Convention. It therefore *recommends* that the Danish authorities should examine the application of the Framework Convention to these persons, in consultation with the persons concerned, notwithstanding and in addition to home rule arrangements.

The Committee of Ministers *concludes* in line with the above and taking into account the level of autonomy enjoyed and/or the nature of the powers exercised by the Home Rule Authorities, that it can also not be *a priori* excluded that the Framework Convention could apply in respect of persons of ethnic Danish origin living in the home rule areas.

Also, the Committee of Ministers *concludes* that persons belonging to the German minority but living outside the area of Southern Jutland cannot *a priori* be excluded from the personal scope of protection of the Framework Convention.

Furthermore, the Committee of Ministers *concludes* that, given the historic presence of Roma in Denmark, also persons belonging to the Roma community cannot be *a priori* excluded from the personal scope of protection of the Framework Convention.

The Committee of Ministers therefore *recommends* that the examination mentioned above should extend to these persons as well.

The Committee of Ministers further *concludes* that it would be possible to consider inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *recommends* that the Danish authorities consider this issue in consultation with those concerned.

In respect of Article 4

The Committee of Ministers *concludes* that, despite the existence of useful institutions such as the Ombudsman and the Board for Ethnic Equality, these bodies do not have the competence to address the full range of individual complaints which may arise about discrimination. The Committee of Ministers *recommends* that Denmark 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.

In respect of Article 6

The Committee of Ministers *concludes* that there is reason for concern about 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. It therefore *recommends* that Denmark maintain continuous vigilance to avoid the spreading of intolerant attitudes.

In respect of Article 8

While noting that a state church system is not in itself in contradiction with the Framework Convention and that the latter does not entail an obligation *per se* to fund religious activities, the Committee of Ministers *concludes* that the question arises whether the privileged funding made available to the Evangelical Lutheran Church, is in conformity with the principles set out in Article 4 of the Framework Convention of equality and *recommends* that this question be reviewed in detail by Denmark.

In respect of Article 11

The Committee of Ministers *concludes* that the requirement for all persons, except those living in Southern Jutland, to address the authorities of the Evangelical Lutheran Church in order to have the names of their children registered, regardless of their religion, raises problems of conscience for those who do not belong to the state church. It therefore *recommends* that modifications be introduced in order to allow persons who so wish, to register the names of their children directly with the State authorities, without having to involve the authorities of the state church.