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# Respecting Autonomies and Minorities

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## Abstract

The following chapter deals with Nordic territorial autonomies found in Denmark and Finland and with non-territorial cultural autonomy created for the indigenous Sami populations in Finland, Norway and Sweden. In addition minority situations in all Nordic countries will be discussed.

1.

## Introduction

In several Nordic countries there are areas where a form of autonomy<sup>1</sup> or other special arrangements for minority populations may be found to differing degrees. The reason behind the existence of, for instance, autonomy is that a group of persons that lives in a particular area differs ethnically or culturally from the dominant population group in the country. More often than not, this group has its own language or other particular cultural characteristics, or both. Some minority groups are called indigenous peoples. Autonomy is often, although not always, associated with protection of these minorities.

In this context, the term “minority” means a national or ethnic, linguistic or religious<sup>2</sup> minority with a historically long-lasting and permanent attachment to their country of residence.<sup>3</sup> Refugees and immigrant groups are not generally covered by the notion of a minority.<sup>4</sup> In the following chapter, the constitutional position of Nordic minorities will be analysed and discussed.

In Europe, a majority-minority constellation in a country is normally a product of the concept of the nation state, which from the 19th century and against the background of the ideology of nationalism started to claim that states be organized according to the maxim “one people, one language, one state”. In the European context, autonomy for indigenous peoples came into particular focus in the 20th century, as most colonies received increased or full independence. Denmark, Finland, Norway and Sweden have signed and ratified the European Framework Convention on National Minorities and the European Charter on Regional or Minority Languages, while Iceland has only signed the two treaties<sup>5</sup> but not ratified them. Denmark and Norway have ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

In this article, we are dealing with Nordic territorial autonomies found in Denmark and Finland, with non-territorial cultural autonomy created for the indigenous Sami populations in Finland, Norway and Sweden, and with minority situations in all Nordic countries.<sup>6</sup>

2.

## Nordic Territories with Special Status

2.1.

### Denmark and Finland: Differently Constructed States with Territorial Autonomies

Among the Nordic countries, Denmark occupies a special position by being constructed as a commonwealth (*rigsfællesskab*), usually referred to as either “the realm” or the Kingdom of Denmark,<sup>7</sup> while Finland is constituted as a more regular unitary state, although not as a pure

unitary state. The Kingdom of Denmark is constituted as a sovereign state with two sub-state entities: the Faroe Islands and Greenland. Each part has its own ethnicity and official language. However, the Danish language may be used in relation to public authorities in all parts of the kingdom. In Finland, the Åland Islands is the sole sub-state entity, fashioned as a monolingual Swedish-speaking territory, although the Finnish Constitution identifies two national languages, Finnish and Swedish, for the rest of the country.

Danish legislation recognizes that the populations of the Faroe Islands and Greenland are distinct peoples. In contrast to Denmark, the Faroe Islands and Greenland are not members of the European Union (EU). However, Greenland is one of the overseas countries and territories (OTC) associated with the EU, while the Faroe Islands are not. In public international law (*jus gentium*), Greenland and the Faroe Islands are not considered independent states but parts of the kingdom, which means that the state of Denmark is ultimately responsible under public international law for the conduct of the public authorities of the Faroe Islands and Greenland.

By contrast, the Swedish-speaking population of Åland (or the Åland Islands) is not identified as a people under national or international law, but shows a distinct identity and is counted as part of the Swedish-speaking population of Finland. Åland is also within the EU, apart from certain exceptions concerning particular rights guaranteed to the Åland Islanders that are contrary to the provisions of EU law. In Protocol 2 to the Accession Treaty of Finland, Åland is granted exemptions from some features of the right of establishment and the purchase of real property, and Åland is also regarded as a third country with regard to indirect taxes. Thus, although Åland is a part of the EU, it has in some respects a position that moves it slightly towards the status of the Faroe Islands and Greenland. The state of Finland is responsible under both international law and EU law for the conduct of the public authorities of the Åland Islands.

The Kingdom of Denmark is characterised by a common constitution,<sup>8</sup> common citizenship<sup>9</sup> and the sharing of certain general functions (primarily foreign, security and defence policy, justice as well as currency and monetary policy).<sup>10</sup> In accordance with the Finnish Constitution,<sup>11</sup> Åland enjoys self-government, including legislative powers, the exercise of which is clearly defined in Section 18 of the 1993 Self-Government Act of Åland.<sup>12</sup> In relation to those areas of competence where legislative powers have been granted to the Faroe Islands, Greenland and Åland, these autonomous entities can be considered as independent legal orders on a par with national legal orders, and in principle no supremacy or national pre-emption exists in relation to the legislation of the autonomous entities. However, the courts of law applying the legislation of the Danish autonomies are the Danish state courts, with the Danish Supreme Court as the highest instance, and in Finland, too, the courts are state courts, with the Supreme Court and the Supreme Administrative Court as the highest instances. Competence control concerning legislation passed by the Åland Legislative Assembly is performed in the first instance by a particular body, the Åland Delegation, and if a potential *ultra vires* situation is detected, the matter is submitted to the Supreme Court for an opinion prior to a decision by the President of Finland on whether or not the Åland act or part thereof can enter into force. The Danish mechanism of competence control established in the 1948 Home Rule Act has never been used, and the competence control system has been latent also in relation to Greenland. This might mean that disputes over who is entitled to legislate on what have been resolved by means of negotiations.

In principle, Denmark proper has no “regional” parliament. The Danish parliament (*Folketing*) is the parliamentary assembly of the entire kingdom. Typically, with legislative acts passed by the Danish parliament, the extent to which the particular law also applies to the Faroe Islands and to Greenland is explicitly considered and stated in the act itself. The Finnish parliament does not enact its legislation with explicit mention of whether or not the enactment should apply within the jurisdiction of Åland (although *travaux préparatoires* might sometimes make such a reference).

Instead, the competence line established in Sections 18 and 27 (and in 29) of the Self-Government Act is observed when legislation is implemented. The Danish constitution ensures that the Faroe Islands and Greenland each have two members in the Danish parliament, out of a total of 179 members, while according to the Finnish Constitution Åland has one member among the 200 in the Finnish parliament.<sup>13</sup>

Autonomy in relation to the Faroe Islands and Greenland is established by ordinary legislation<sup>14</sup> passed by the Danish parliament and not based on specific provisions in the Danish Constitution. The situation is different in Finland, where Sections 75 and 120 of the Constitution refer to Åland and its self-government, as defined in a particular Self-Government Act. This Act is of a constitutional nature and requires qualified majorities for its amendment, supplemented by the requirement that the Åland legislative assembly must adopt the amendments by the same qualified majority.<sup>15</sup> Theoretically, therefore, the Danish autonomies can be amended or abolished by a majority in the Danish parliament. In practice, however, it is unlikely that a political situation could arise in which it would be possible to limit the autonomy that the Faroe Islands and Greenland have already achieved, in particular as the basic acts concerning autonomy are based on agreements between the two entities on the one hand, and the Danish government, on the other. In connection with the Greenland self-government law, an advisory referendum was held in Greenland in 2008 in which 75.5% of the votes were in favour of introducing self-government.<sup>16</sup>

2.2.

## Home Rule in the Faroe Islands

The Faroe Islands consist of a group of 18 islands in the northern Atlantic Ocean, to the north of Scotland (Shetland) and to the west of Norway, with a population of around 50,000. The majority of the population is Faroese, a west-Nordic people of primarily Norwegian and Scottish/Irish descent. The Faroese language is related to Icelandic and Norwegian. From 1035, the Faroe Islands were under Norwegian rule. By the Treaty of Kiel in 1814, at the end of the Napoleonic wars, Norway entered into a union with Sweden. The treaty did not include the Faroe Islands, Greenland and Iceland, which therefore remained with Denmark.<sup>17</sup>

Until 1948, the Faroe Islands enjoyed the legal status of a county of Denmark and had only the same limited competence to govern their own affairs as other parts of Denmark according to the legislation on local government. In 1946, after the Second World War, a referendum held on the Faroe Islands showed a slim majority among voters for independence, but the Danish government refused to recognise this result. However, the Faroe Islands were granted widened autonomy through the Home Rule Act in 1948 in which the Faroe Islands took over legislative and executive power within a number of policy areas.

In 2005, the 1948 Home Rule Act was supplemented by the so-called Takeover Act<sup>18</sup> that extended the number of policy areas under Faroese self-government to include all policy areas in relation to internal affairs. After this time, Faroese autonomy is often described as a form of self-government instead of home rule.<sup>19</sup> By contrast to Greenland, the Faroe Islands are not guaranteed by law the right to make any decisions of their own on becoming fully independent. The Faroe Islands' home rule is constituted by their own legislative assembly (*Løgtingið*) and government (*landsstyret*), which is chosen by the legislative assembly and which is politically accountable to the legislative assembly.

It is an inbuilt feature of the system that the Faroe Islands can themselves decide when to take over a specific policy area from the legislative powers of Denmark proper. Certain policy areas are, however, established as areas that cannot be transferred to the Faroe Islands.<sup>20</sup> Takeover of policy areas is partly an economic question, since the costs associated with acquired policy areas are to be borne by the Faroe Islands. However, the kingdom does offer the Faroe Islands financial support in

relation to a number of portfolios in health, education and the social spheres. These portfolios had already been taken over by the Faroese authorities before enactment of the Self-Government Act.<sup>21</sup> The extent of financial support is fixed by agreement between the parties and is given as a so-called block grant. This allows the Faroe Islands' government significant freedom in allocating funds within specific areas.<sup>22</sup> In relation to certain more complex portfolios, such as the police and the judiciary, the law provides that the timing of a takeover is fixed by negotiation between the Danish and Faroese authorities.

A number of portfolios have not yet been taken over. Such areas include banking, family and migration/refugee law, as well as the police and justice. Portfolios that have not been taken over fall within the Danish realm's competence and are financed by the realm.

Despite the general rule that the realm is responsible for foreign policy questions, a proxy system<sup>23</sup> is in place that enables the Faroese government to negotiate and conclude international law agreements in relation to policy areas that have been taken over by the Faroe Islands. This is not the equivalent of delegated power, because the Faroe Islands government, in principle, negotiates on behalf of the realm. The system similarly allows for the Faroe Islands to seek membership of international organisations and for representatives of the Faroe Islands government to be deployed at embassies of the realm. In 2005, an agreement was concluded whereby the Faroe Islands are involved in decisions on foreign and security policy of significance to the Faroe Islands (*Fámjín-erklæringen*).<sup>24</sup> The Faroe Islands have their own coat of arms and flag.

2.3.

## Greenland's Self-government

Greenland, which geographically belongs to North America, is populated by almost 57,000 inhabitants, some 88% of whom belong to the indigenous Inuit population. From the 17th and 18th centuries onwards, Greenland came under Danish authority. With the Constitution of 1953, Greenland's status was changed from a colony<sup>25</sup> to that of a municipality, albeit without consulting the indigenous population. At this point, Greenland achieved the same form of limited competence to govern its own affairs as the Faroe Islands had enjoyed until 1948. In 1979, the Greenland Home Rule Act<sup>26</sup> entered into force. With this act, Greenland achieved autonomy, albeit of a somewhat limited kind. Among other things, the opportunity was created allowing policy areas under state power to be transferred to Greenland. At the same time, Greenland achieved its own legislative assembly and government.

In 2009, the Self-Government Act<sup>27</sup> entered into force and replaced the 1979 Home Rule Act. The 2009 Act expanded on the autonomy that Greenland had been allowed under the home rule system, and it clearly resembles the system that applies on the Faroe Islands. The self-government authorities in Greenland comprise a legislative assembly (*Inatsisartut*) and a government (*Naalakkersuisut*). Greenland has its own coat of arms and flag.

The Self-Government Act has extended the number of political areas that may be taken over by the Greenland self-government. In practice, this includes all internal affairs. However, a large number of areas have not yet been taken over. This is partly so because self-government has not existed for very long. Again, this is partly explained by the fact that the Greenland self-government must finance these areas, while the areas that are not taken over are financed by the realm. One of the areas taken over is mining (taken over in 2010). This area was taken over because of expectations of considerable revenue from the extraction of raw materials, including hydrocarbons. However, these expectations have yet to be fulfilled.

The Self-Government Act fixes an (indexed) yearly block grant from Denmark to Greenland of around 3.5 billion Dkr. (approximately euro 420 million). The grant is not earmarked for special projects. According to a special provision in the Self-Government Act, the block grant is reduced by

an amount that is the equivalent of one half of the income that the self-government receives from mining revenue above 75 million Dkr. In contrast to the situation applying to the Faroe Islands, fixing the size of the block grant means that, for example, increased expenditure in the social sphere due to change in the age composition of the population will exclusively be covered by Greenland. The kingdom is responsible for foreign and security policy. However, as with the Faroe Islands, a system has been established which, within the portfolios that Greenland has taken over, authorizes the Greenland government to negotiate and conclude international law agreements which only concern Greenland. The authorisation system is established in the Self-Government Act. Nevertheless, areas may exist where a conflict could arise about the extent to which a particular relationship falls under an area taken over by Greenland or falls under the kingdom's competence. In reality, disputes have arisen about the extent to which extraction and export of uranium is a common raw material issue (and thereby under Greenlandic competence) or a security policy concern (and thereby under the kingdom's competence). Similarly to the Faroe and Åland Islands, Greenland enjoys independent representation in Nordic cooperation.

The Self-Government Act contains a special provision that allows Greenland the right to decide about full independence at an appropriate time. This type of right is rare in the international context. The pre-conditions for full independence are approval of the independence plan in an advisory referendum in Greenland and the negotiated agreement between the Greenlandic and the Danish governments as well as the consent of the legislative assembly of Greenland. The Self-Government Act does not address the situation where the Danish parliament refuses to give consent. The explanatory notes to the government proposal on the Self-Government Act state that the provision requires the government to commence negotiations with a view to actual conclusion of an agreement. Independence must finally be approved by a decisive referendum in Greenland whereas no referendum on Greenland's independence is foreseen for the other parts of the kingdom.

2.4.

## Åland

Åland is an archipelago comprising a main island and approximately 200 inhabited islands and more than 6000 islets and rocks in the Baltic Sea between Finland and Sweden. The islands are inhabited by some 30,000 persons, the majority of whom, linguistically and culturally, are Swedish-speaking (although around 5% of the population is Finnish-speaking). The islands are under Finnish sovereignty and are self-governing on the basis of the Finnish Constitution and the Åland Islands Self-Government Act.<sup>28</sup> The inhabitants of Åland are not, in Finnish legislation, identified as a people. The inhabitants of Åland have their own identity, and are, at the same time, a part of the Swedish-speaking population of Finland.

The connection to Finland can be traced back to the Treaty of Fredrikshamn in 1809, which ended the war between Sweden and Russia and which forced Sweden to surrender to Russia not only mainland Finland, which had been an integral part of the Kingdom of Sweden since the 14th century, but also Åland, which historically belonged to this eastern part of Sweden. The Åland Islands were thus part of Finland at the time of its independence in 1917. The population of Åland, however, petitioned the Swedish government to negotiate a secession of Åland and to join the territory with Sweden. As a consequence, a dispute arose between Finland and Sweden. This was resolved in 1921 through the intervention of the League of Nations, when Finland and Sweden agreed in the so-called Åland Islands Settlement that the archipelago should continue under Finnish sovereignty, but that autonomy, originally established in 1920 with a publicly-elected assembly, should continue and that the area should maintain Swedish as the sole language<sup>29</sup> and preserve its own Swedish culture.<sup>30</sup> The international guarantee of the Åland Islands' autonomy thus arises out

of a conflict between the two states.<sup>31</sup> This Åland Settlement should not be confused with the Åland Convention on demilitarisation and neutrality of the Åland Islands (see below).

Åland enjoys competence in a number of areas that would generally come under state or regional administration. The areas of competence include municipal and regional tax law, municipal division, building, zoning and expropriation law, rental law, social and health law, nature conservation and environmental law, education, land, forestry and fisheries law, mining law, the police, and postal services. In general, the legislative assembly of Åland possesses legislative powers in the sphere of public law and that part of criminal law which is auxiliary to its competence in public law, while the Finnish parliament is competent to legislate for Åland mainly within the sphere of private law and criminal law. Because the self-governing institutions of the Åland Islands take care of public functions that the state otherwise would have to take care of, the Self-Government Act stipulates that Åland is entitled to an equalizing amount from the state budget. This is around 0.45% of state expenditure. In addition, the Åland Islands may receive some more or less discretionary transfers, including compensation for certain taxes. The Åland Islands have their own coat of arms and flag.

Legislative power under self-government belongs to Åland's legislative assembly (*lagting*), while executive power is held by Åland's government (*landskapsregering*). Areas that are not assigned to Åland self-government are assigned in the Self-Government Act to the competence of the Finnish parliament. This includes foreign relations, but the Åland Islands have a certain possibility to participate in treaty negotiations conducted by Finland. After conclusion of a treaty by Finland, the entry into force of the treaty in the Åland jurisdiction requires the consent of the legislative assembly if the contents of the treaty fall within Åland legislative competence. In contrast to the Faroe Islands and Greenland, the Åland Islands are a part of Finland's EU membership, which was agreed to by the population of the Åland Islands in a separate advisory referendum held prior to the decision on consent made by the legislative assembly in 1994. It has been stated that Finland's membership in the EU has meant that "Åland is autonomous in relation to Finland, but not in relation to the EU",<sup>32</sup> meaning that the legislative power of Åland's legislative assembly, as assigned in the Self-Government Act, is limited by EU law.

#### **AQ1**

Åland self-government may be regarded as exclusionary, in that a special regional citizenship (*hembygdsrätt*) is a pre-requisite for voting and the right to stand as a candidate in elections to the legislative assembly. The Åland Islands also impose limitations on the right to own land in relation to persons without regional citizenship,<sup>33</sup> as well as the right to carry out commercial business operations. In addition, Åland islanders who hold regional citizenship are exempt from military service obligations. In contrast to Faroese and Greenland autonomy, permanent residence is not an insignificant feature in the Åland Islands, because regional citizenship, which is a platform for the free exercise of the special rights of the Åland islanders, requires Finnish citizenship and a five-year uninterrupted residence in the Åland Islands.

With the Treaty of Paris of 1856, which brought an end to the Crimean War, the Åland Islands became a demilitarised zone. Demilitarisation was supplemented by neutrality in 1921 in a separate Convention on the neutrality and demilitarisation of the Åland Islands, undersigned by altogether ten states, mainly in the Baltic Sea area. Russia is not a party to the 1921 Convention, but entered in 1940 into a bilateral treaty with Finland about the demilitarisation of the Åland Islands.<sup>34</sup>

### 3.

## Indigenous Peoples and Minorities

### 3.1.

#### The Sami in Finland, Norway and Sweden

The Sami are an ethnic minority which traditionally resides in the northern parts of Finland, Norway and Sweden, as well as in the Kola Peninsula in Russia. It is assumed that they immigrated to the area at least 2000 years ago. They are recognised as an indigenous people in the north. It is assumed that there are around 70,000 Sami, of which at least one-half reside in Norway.

The Sami have their own culture and languages, which form part of the Fenno-Ugric language group. A part of the Sami way of life has traditionally been nomadic or semi-nomadic, with reindeer husbandry<sup>35</sup> as a characteristic feature. Agriculture and fishing are also traditional occupations for Sami.<sup>36</sup> The Sami languages are recognised by Finland, Norway and Sweden as coming within the protection of the Framework Convention and the Language Charter.

Neither in Finland, Norway or Sweden do the Sami enjoy territorial self-government, but instead a non-territorial cultural autonomy. However, various rights are conferred on them as indigenous peoples and as minorities, including a state obligation to protect their language and culture. In addition, in Norway and Sweden, the Sami enjoy particular grazing rights for their reindeer (in Finland, non-Sami can also own reindeer within the reindeer-herding area, which is much larger than the Sami homeland area).

In Norway, the right to use and develop one's own language, culture and lifestyle is constitutionally protected in Section 110a of the Norwegian Constitution and catered for by the Sami Assembly, an independent statutory body.<sup>37</sup> Despite this, it was not until the entry into force of the Finnmark Act of 2005<sup>38</sup> that the Sami's collective land rights were acknowledged in Norway.<sup>39</sup> A specific land area in the northernmost part of Norway, previously mainly owned by the state of Norway, was defined as a particular legal person managed by a board, membership of which consists equally of representatives appointed by the state authorities of Norway and by the Norwegian Sami Assembly.<sup>40</sup> The position conferred to the land area by the Finnmark Act is a consequence of Norway's ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

In Finland, the Sami are recognized as an indigenous people and their right to develop their own language and culture is similarly constitutionally protected (§ 17(3), § 121(4)). As concerns language, the Sami Language Act creates certain guarantees for the three Sami languages spoken in Finland (Northern Sami, Inari Sami and Skolt Sami).<sup>41</sup> As for culture in the broad sense of the term, a Sami Assembly is elected on the basis of the Sami Assembly Act,<sup>42</sup> also often referred to as the Sami Parliament Act, which works for the improvement of the Sami languages and for the status of the Sami. The Sami Assembly is an independent statutory body, but it holds no legislative powers, nor any significant executive powers. Ratification by Finland of ILO Convention No. 169 is still pending after years of preparation.

Sweden acknowledges in its Constitution that the Sami are a people<sup>43</sup> and has established its Sami Assembly as a state agency.<sup>44</sup> An act passed in 2009 on National Minorities and Minority Languages<sup>45</sup> also covers the Sami. In addition, in Sweden's 2009 Language Act,<sup>46</sup> Sami is recognized as a minority language entitled to a certain status before the courts and public authorities, while the public authorities are tasked with protecting and promoting national minority languages. However, Sweden has not ratified ILO Convention No. 169, and in Sweden the Sami's land rights are presumed to be too weak for Sweden to be able to adhere to the Convention. Minority protection for the Sami under minority legislation operates in Sweden within a geographically delimited area (within specified municipalities).

Hence, in each Nordic state where the Sami exist, that is, Finland, Norway and Sweden, a publicly elected representative assembly has been established for the Sami (*Sameting*). Each *Sameting* has its own organisational structure; in Finland and Norway, the assembly is an independent statutory body, while in Sweden it is a state agency. The three *Sameting* cooperate in a collective organisation (the Nordic Sami Council). A common feature of the three *Sameting* is their limited

competence. Typically, however, each of them is conferred special administrative functions in connection with, for instance, language, education, as well as collective representation of the Sami before public authorities.

In this respect, material legislation, such as the mining legislation of Norway and Finland, may open up avenues of participation to the Sami Assemblies as counterparts to state authorities when applications for mining permits are being dealt with. The law may also grant Sami Assemblies the right to file complaints against mining permits granted to companies.<sup>47</sup> Nevertheless, the circumstances surrounding these representative assemblies probably cannot be properly described as effective self-government because the assemblies possess few public powers.<sup>48</sup>

3.2.

## German Minority in Denmark

The two former Duchies of Schleswig and Holstein (between Denmark and Germany) which today form the German state of Schleswig and Holstein and a part of Southern Denmark previously belonged to the Danish Crown. After the Second Schleswig War, these regions passed to Prussia and Austria under the Vienna peace agreement in 1864, and later became a part of Germany. Following a referendum at the end of the First World War in the 1920s, the northern part of Schleswig became a part of Denmark, with the result that a German-speaking minority (currently approximately 15,000 to 20,000 persons) came to live in Denmark, whereas a somewhat bigger Danish minority live in the German state of Schleswig-Holstein.

The Danish Constitution contains no special minority rules concerning the German minority, who have no specific status, not even in relation to political assemblies. In contrast with the Faroe Islanders and Greenlanders, the German minority is not ensured a representative in the Danish parliament.<sup>49</sup>

In the period following the Second World War, the conditions for the German minority—after a short period of sanctions against the minority as a result of their broad cooperation with the German occupying power—have developed into peaceful co-existence with the Danish-speaking population, in exactly the same way as conditions for the Danish minority in Germany. This development can, in particular, be attributed to the so-called Copenhagen Declaration of 29 March 1955 (and the equivalent German Bonn Declaration of the same date),<sup>50</sup> though this involves no greater protection than that applicable under Danish law to any Danish citizen. However, it does involve a political obligation to ensure the German minority the continuing opportunity to be a minority with its own organisations. Within the normal legislative framework, the German minority has established its own schools and a political party, which is represented in several municipal councils.

In connection with ratification of the Language Charter, Denmark has acknowledged the German language as the only language covered by the Charter.

3.3.

## National Languages and Minority Groups in Finland

For historical reasons, Finland also has a Swedish-speaking population outside the Åland Islands, equivalent to approximately 5.4% of the total population of Finland. The official languages as stated in the Constitution are Finnish *and* Swedish (§ 17). The languages are, therefore, placed on an equal footing and there also exist special Swedish language institutions, including educational institutions. Therefore, from a constitutional point of view, the Swedish-speakers of Finland are not a minority population, but a linguistic group equal to the linguistic group of Finnish-speakers. However, from the point of view of public international law, the Swedish-speakers may be regarded as a minority, although, in relation to the Language Charter, Finland has chosen to identify Swedish as a less widely-used official language to which a large number of provisions of the Charter apply.

This set-up, with two national and thus official languages, is the foundation for the national legislation of Finland being enacted in two languages, Finnish and Swedish, on the basis of § 79(4) of the Constitution and in the application of that legislation by administrative authorities and courts of law in the two languages within the framework of a combination of the personality principle and the territoriality principle, as established in the Language Act. This means that central government authorities are bilingual in relation to the entire country, while regional state authorities are bilingual only to the extent to which their jurisdictions contain bilingual municipalities or unilingual municipalities where the other national language is the language of the municipality. Municipalities are thus the basis of the system, and a municipality may be unilingually Finnish-speaking, unilingually Swedish-speaking or bilingual either with Finnish or Swedish as the language of the majority.

Within this framework, and with some variation on the basis of material legislation,<sup>52</sup> the individual right to service in a person's own language, Finnish or Swedish, is guaranteed, although not always implemented with complete success.<sup>53</sup> The Swedish-speaking Peoples' Assembly (*folktinget*), indirectly elected in conjunction with local government elections, is a statutory body of an advisory nature that has been created to promote the position of the Swedish-speaking population in Finland.<sup>54</sup>

In the 2015 Sign Language Act,<sup>55</sup> the point of departure is that there is both a Finnish and a Finland-Swedish sign language, each of which is entitled to protection by the public authorities. To varying degrees and in addition to the population groups mentioned above, Roma, Karelians, Tatars and Jews<sup>56</sup> are also recognised as minorities, and the languages of these groups are recognised under the Language Charter.

3.4.

## Minorities in Norway and Sweden

According to the 2009 Act on National Minorities and Minority Languages of Sweden,<sup>57</sup> Jews, Roma, the Sami, Sweden-Finns and Tornedal Finns are national minorities in Sweden. Thus two groups of Finnish-language origin are recognised as separate minorities in Sweden.

In addition, in the 2009 Language Act of Sweden,<sup>58</sup> the national minority languages Finnish, Yiddish, Meänkieli (a variant of Finnish spoken in the North of Sweden by the Tornedal Finns), Romani Chib and Sami as well as sign language are recognized minority languages entitled to a certain status before the courts and public authorities. At the same time, the public authorities are given a duty to protect and promote the national minority languages. Approximately four per cent of the population of Sweden is Finnish-speaking.

No particular language act or minorities act exists in Norway, but some provisions in material legislation take into account minority groups, often in a very extensive manner so as also to cover migrant groups. In addition to the Sami, it is possible to identify at least two minority groups of Finnish origin in Norway, the Kvens and the Forest Finns.

4.

## Conclusion

As in Europe generally, a number of minorities of varying sizes have a long-lasting connection to one or more Nordic countries.<sup>59</sup> In addition to the Sami, a number of other minority groups are recognised in Finland, Norway and Sweden and these enjoy various minority rights. To the extent that they use their own language, these languages have been acknowledged as being covered by the Language Charter.

Territorial autonomy is a distinctive feature of Denmark and Finland but an exception in the Nordic region in general, with Iceland, Norway and Sweden organized as pure unitary states. By contrast,

many minority groups exist in the Nordic region. To varying degrees, these enjoy a recognized or special status in all Nordic countries but Iceland, where no minorities of this kind exist. For instance, the Sami are entitled to non-territorial cultural autonomy in Finland, Norway and Sweden. In relation to Denmark, it is noteworthy that Faroe Islanders and Greenlanders residing in Denmark are not regarded as minorities.

Denmark differs from Finland, Norway and Sweden in that protection of minorities and self-governing territories is not in any way founded upon constitutional provisions. Only political representation for Faroe Islanders and Greenlanders in the Danish parliament is constitutionally established. However, ordinary constitutional rights and freedoms are applied in these two jurisdictions. Primary protection is adopted in law and formally amended by law. In addition, whereas Denmark only recognises one minority language (German), Finland, Norway and Sweden recognise more minority languages under the Language Charter.

In relation to the formalised cooperation between the Nordic countries in the Nordic Council, the Faroe Islands, Greenland and the Åland Islands each act independently and are represented by their own delegations in that inter-governmental organisation. The three autonomous regions are referred to explicitly in several provisions of the cooperation agreement between the Nordic countries.<sup>60</sup>

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<sup>1</sup> Autonomy is not a precisely defined concept in international law. For an attempt at a definition in constitutional law, see Suksi (2011), pp. 130–139.

<sup>2</sup> In addition to ethnic and linguistic minorities, religious minorities also exist in the Nordic countries. Their status is mainly catered for on the basis of freedom of religion. In Finland, in addition to the statutorily established Evangelical-Lutheran Church, the Finnish Orthodox Christian Church is also recognized as an official Church.

<sup>3</sup> For a definition of minorities, see resolution of the United Nations General Assembly A/Res/47/135 with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in particular Article 2.

<sup>4</sup> But see General Comment No. 23: The rights of minorities (Article 27), para. 5.2., where the Human Rights Committee of the United Nations presents a more expansive view of what could constitute a minority.

<sup>5</sup> No actual national minorities or minority languages exist in Iceland. This is the likely reason for Iceland only having signed but not ratified the Framework Convention for the Protection of National Minorities (ETS No. 157) and the European Charter for Regional or Minority Languages (ETS No. 148).

<sup>6</sup> The special territory of Svalbard in Norway is under Norwegian sovereignty but is governed by a special treaty.

<sup>7</sup> In translations of the Self-Government Act into English the term “Realm” (*Riget*) is used. However, a more correct translation of the Danish wording in the Self-Government Act is “the Kingdom of Denmark”. In this chapter the term “the Kingdom of Denmark” or “the kingdom” or “the realm” is used.

<sup>8</sup> See Danish Constitution, *Grundloven* 1953 no 169.

<sup>9</sup> The population figures in relation to Denmark; the Faroe Islands and Greenland in 2012 were respectively 5,580,516; 48,372; and 56,749. See <http://www.stat.gl/sa/sad2014.pdf> and <http://www.dst.dk/pukora/epub/upload/16252/19faer.pdf>.

<sup>10</sup> Greenland’s area measures 2,166,086 km<sup>2</sup>, while Denmark and the Faroe Islands are only 43,098 and 1399 km<sup>2</sup> respectively. When Greenland left the European Community in 1985, the EC lost 50% of its land mass.

<sup>11</sup> Finnish Constitution, *Suomen perustuslaki/ Finlands grundlag* 731/1999, § 75 and § 120. This is in contrast to the autonomy of the Faroe Islands and Greenland, which is not mentioned in the Danish Constitution.

<sup>12</sup> Self-Government Act, *Självstyrelselag för Åland* 1144/1991 in relation to Åland. By 2015, committee work was under way with a view to enacting a new Self-Government Act in around 2020 to mark the 100th anniversary of the autonomy of the Åland Islands.

<sup>13</sup> Danish Constitution § 28, and Finnish Constitution § 25(2). However, this is more a mechanism of guaranteed regional representation for citizens of Denmark and Finland, not tied to membership in a particular people or population.

<sup>14</sup> Act on Greenland’s Self-Government, *Lov om Grønlands Selvstyre* 2009 no 473 and Act on Faroe Islands home rule, *Lov om Færøernes Hjemmestyre* 1948 no 137.

<sup>15</sup> See note 14 above.

<sup>16</sup> In an advisory referendum in 1979, a majority of 70.1% of the inhabitants of Greenland supported creation of home rule for Greenland.

<sup>17</sup> Iceland gained independence from Denmark in 1944.

<sup>18</sup> Act on the Faroese authority’s take-over of cases and case-areas, *Lov om de færøske myndigheders overtagelse af sager og sagsområder* 2005 no 578. This Act did not revoke the 1948 Home Rule Act, which remains in force in amended form. Further, the Faroe Islands acquired a limited right to enter into international treaties although the kingdom remains responsible even for obligations entered into by the Faroe Island Government 579/2005.

19

The difference between home rule and self-government lies in the degree of autonomy. There is no definitive qualitative difference.

20

According to Section 1(2) of the 2005 takeover act, the following policy areas cannot be taken over by the Faroe Islands: the Constitution, citizenship, the Supreme Court, foreign, security and defense policy, and foreign exchange and monetary policy.

21

The Danish state has no immediate legal basis to support portfolios that are transferred to the Faroe Islands after the coming into effect of the takeover act.

22

The block grant was for 2,014,644 DKK. It had previously been higher but was reduced following a request from the Faroe Islands.

23

Act about the Faroe Islands government's conclusion of international law agreements, *Lov om Færøernes landsstyres indgåelse af folkeretlige aftaler* 2005 no 579.

24

Common statement of principles of 29 March 2005 between the Danish government and the Faroe Islands government about the Faroe Islands' involvement in foreign and security policy.

25

It has been argued (by Thorkild Kjærgaard, a Danish historian from the University of Greenland) that Greenland never had the status of a colony as the population of Greenland had Danish citizenship with the same rights and duties as other Danish citizens. However, Greenland is in general counted as one of the former colonies of Denmark (together with the Danish West Indies and colonies in Africa and the Indian subcontinent). See for instance The Danish Institute for International Studies (2007), p. 67.

26

Act on Greenland's Home Rule, *Lov om Grønlands hjemmestyre* 577/1978.

27

Act no. 473 of 12 June 2009 on Greenland's Self-Government. The Act revoked the previous Home Rule Act.

28

*Ahvenanmaan itsehallintolaki/ Självstyrelselag för Åland* 1144/1991.

29

Finland is in any event a bilingual nation, with Finnish and Swedish as national languages.

30

This agreement is the so-called Åland Islands Settlement. It is not an international treaty, but the Settlement is still regarded by Finland as unilaterally binding under international law.

31

The first act on autonomy was passed in 1920 (Act No 124/1920), but opposition from the local population initially blocked the functioning of autonomy. The Åland Islands Settlement was implemented by Act No. 189/1922, after which the autonomy arrangement started to function.

32

Suksi (2014a, b), p. 50.

33

The right to own land is regulated by the *Ahvenanmaan maanhankintalaki/Jordförvärvslag för Åland* 3/1975. On the basis of this Land Acquisition Act concerning Åland, enacted by the Finnish parliament, the Legislative Assembly of the Åland Islands has enacted Åland legislation that specifies the provisions of the 1975 Act.

34

See Björkholm and Rosas (1990).

35

Reindeer husbandry consists of looking after animals (reindeer), which are moved around to different pastures during the course of the year, in the same way as wild deer would move around seeking grazing opportunities. Therefore, the flock remains partially nomadic.

36

Ravna (2012), p. 261.

37

The Norwegian Constitution, *Kongeriket Norges Grunnlov* 1814 § 110a. See also Act on the Sami Assembly and on other Legal Relations (the Sami Act) of 1987 no 56. In addition to creating the Sami Assembly as a national body for the interests of the Sami in Norway, the Act equalizes the Sami language with the Norwegian language.

38

Law on legal matters and management of basic and natural resources in Finnmark County, *Lov om rettsforhold og forvaltning av grunn og naturressurser i Finnmark fylke* 2005 no 85. See § 5.

39

For a description of the difficult process for formal acceptance of this right, see Ravna (2012), p. 263 ff.

40

See Suksi (2008), pp. 76–78.

41

The Sami Language Act (Act No. 1086/2003).

42

The Sami Assembly Act (Act No. 974/1995).

43

Section 1(2), sub-section 6, of the Instrument of Government.

44

*Sametingslag* 1992:1433.

45

*Lag om nationella minoriteter och minoritetsspråk* 2009:724.

46

*Språklag* 2009:600.

47

See Amatulli (2015).

48

See Suksi (2015).

49

By contrast, the Danish minority in Germany enjoys special minority protection in the state of Schleswig-Holstein's administration (*Verfassung des Landes Schleswig-Holstein in der Fassung vom 2. Dezember 2014*). Therefore, in accordance with article 6, a citizen may freely associate with a minority, without being detached from normal civil duties. In addition, the state must protect cultural uniqueness. Pursuant to article 12, the state is obliged to accept and co-finance Danish schools. Following voting legislation, the Danish minority is further exempt from the normal threshold to the states parliament in Schleswig-Holstein.

50

Reprinted by executive order no. 24 of 7 June 1955 concerning the German minority's common rights.

51

Language Act, *Kielilaki/Språklag* 423/2003. For comparative reviews, see Suksi (2012) and (2014a, b). In the Åland Islands, legislation is enacted in Swedish only.

52

In addition to the Language Act, more than 200 different Acts and Decrees establish the manner in which a system with two national languages should operate. See also § 122(1) of the Constitution of Finland on administrative division on linguistic grounds. See Suksi (2017).

53

Ministry of Justice (2013).

54

*Lag om Svenska Finlands folkting* 1331/2003.

55

*Viittomakielilaki/Teckenspråkslag* 359/2015.

56

Jews are deemed to be a religious minority, but in accordance with their own wishes are also recognised as a national minority.

57

*Lag om nationella minoriteter och minoritetsspråk* 2009:724.

58

Act No. 2009:600.

59

Defining who belongs to a minority can be problematic. And who belongs to the group is especially relevant when the group acquires special rights.

60

Cooperation Agreement signed on 23 March 1962 between Denmark, Finland, Iceland, Norway and Sweden (*Helsingforsaftalen*).