



Greenland – constitutional overview

Greenland Self-Government and Hydropower Activities: The Community of the Realm and the Constitutional Context

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Introduction

Greenland is the world's largest island, situated east of Canada and northwest of Iceland. Greenland's land area is 2.2 million km², of which 0.4 million km² is coastline areas and other ice-free areas and 1.8 million km² are covered by the Greenland ice sheet. The northernmost extremity of Greenland is Cape Morris Jessup, which is also the northernmost land area in the world, situated less than 730 km from the North Pole. Greenland has 56,000 inhabitants and is thus sparsely populated compared to its vast land area.

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Greenland is an autonomous part of the Kingdom of Denmark (the Community of the Realm). It comprises Denmark proper, Greenland and the Faroe Islands. The Kingdom of Denmark is a member state of the European Union, but its membership only comprises Denmark proper and not Greenland and the Faroe Islands.

Greenland Self-Government

Greenland had home rule from 1979 until 2009 when it obtained self-government. The Greenland Self-Government (in general 'Government of Greenland') was formally established by the Danish Act no. 473 of 12 June 2009 on Greenland Self-Government¹, which entered into force on 21 June 2009. The Bill for the Act was based on the Danish White Paper no. 1497 of 2008 which was prepared and published by a Greenlandic-Danish Self-Government Commission in 2008. The Bill was then endorsed by the people of Greenland at a guiding referendum in Greenland on 25 November 2008 and subsequently accepted by the Greenland Parliament before being passed by the Danish Parliament in 2009.

The Greenland Self-Government comprises the Greenland land territory, internal waters, territorial sea, continental shelf and exclusive economic zone. Greenland has extensive self-government under the Act.

¹ In Danish: "Lov om Grønlands Selvstyre" <https://www.retsinformation.dk/eli/lt/2009/473>

For most areas of legislation and government, the Act on Greenland Self-Government either transferred or provided for the transfer of the legislative power from the Danish Parliament to the Greenland Parliament (in Greenlandic: ‘Inatsisartut’) and of the executive power from the Government of Denmark to the Government of Greenland (in Greenlandic: ‘Naalakkersuisut’).

In relation to *hydropower* the legislative power was transferred from the Danish Parliament to the Greenland Parliament by the Danish Act no. 1075 of 22 December 1993. The Government of Greenland obtained the executive power by Greenland Parliament Act no 14 of 6 November 1997 on Energy. It comprises matters concerning hydropower prospecting, exploitation and other related activities.

In connection with the transfer of powers, the former Danish Act on Hydropower in Greenland was repealed. The present Greenland Parliament Act no. 5 of 27 November 2018² became effective on 1 January 2019. It regulates prospecting, and exploitation of hydro for production of energy and related activities.

Judicial power in Greenland is exercised by courts of law established by the Danish Act no. 305 of 30 April 2008 on Administration of Justice in Greenland³.

The administration of justice system comprises:

- *The district courts* (courts of first instance sitting with lay judges),
- *The Court of Greenland* (court of first instance sitting with lawyers as judges in Nuuk),
- *The Greenland High Court* (second instance appeal court sitting in Nuuk) and
- *The Danish Supreme Court* (third instance appeal court sitting in Copenhagen, Denmark).

The judicial power and the administration of justice, including the establishment and regulation of courts of law, may be transferred from the Danish State to the Greenland Self-Government. Courts of law established by the Greenland Self-Government will then generally exercise judicial power in Greenland in all fields of responsibility, but the court of last instance will be the Danish Supreme Court.

² In Danish: "Inatsisartutlov nr. 5 af 27. november 2018 om udnyttelse af vandkraftressourcer til produktion af energi": <https://lovgivning.gi/lov?rid={83DD2BC5-DB3B-4E08-BB2D-970999A94AB7}>

³ In Danish: "Bekendtgørelse af retsplejelov for Grønland": <file:///C:/Users/awni/Downloads/A20160158129.pdf>

Section 21 of the Greenland Self-Government Act confirms that Greenland has a right to independence. Greenland may decide to become an independent State. A decision regarding Greenland's independence shall be taken by the people of Greenland. If such a decision is taken, the Greenland Government and the Danish Government shall commence negotiations in order to implement independence for Greenland. An agreement between the Greenland Government and the Danish Government on implementation of independence for Greenland shall be concluded with the consent of the Greenland Parliament and shall be endorsed by a referendum in Greenland. The agreement shall also be concluded with the consent of the Danish Parliament. Independence for Greenland shall entail that Greenland assumes sovereignty over Greenland, including its territory.

The Greenland Self-Government Act includes the following preamble:

“Recognising that the people of Greenland are a people pursuant to international law with the right of self-determination, the Act is based on a desire to foster equality and mutual respect in the partnership between Denmark and Greenland. Accordingly, the Act is based on an agreement between Naalakkersuisut [the Greenland Government] and the Danish Government as equal partners.”

The Act and the Danish Parliament thus recognised that the people of Greenland are a people under international law and that they have the right of self-determination and the other rights of a people under international law.

The right of self-determination and other rights of the people of Greenland as a people under international law are vested in and exercised by the Greenland Self-Government and its authorities, the Greenland Parliament and the Government of Greenland. They may exercise these rights in relation to the Kingdom of Denmark, Denmark proper and other subjects of international law.

The right of self-determination of all peoples under international law has been recognised, directly or indirectly, in many sources of international law, including international and regional treaties and other instruments as well as declarations of the General Assembly of the United Nations.

Greenland Government's competence in relation to international agreements

The Greenland Self-Government Act contains provisions on foreign affairs, including international competence, in Part 4, sections 11-16.

Pursuant to section 11(1), the Government of Greenland may act in international affairs as laid down in Part 4 and in agreements with the Government of

Denmark. Subsection (2) provides that the Greenland Government and the Danish Government shall cooperate in international affairs as laid down in Part 4 with a view to safeguarding the interests of Greenland as well as the general interests of the Kingdom of Denmark (the Community of the Realm).

Under section 12(1), the Government of Greenland may, on behalf of the Kingdom of Denmark, negotiate and conclude agreements under international law with foreign states and international organisations, including administrative agreements, which only concern Greenland and solely relate to areas of responsibility taken over by the Greenland Self-Government. Such agreements must be negotiated and concluded by the Greenland Government ‘on behalf of the Kingdom of Denmark in respect of Greenland’.

As mentioned above, the legislative and administrative powers in the hydropower area have been transferred from the Danish State to the Greenland Self-Government. Accordingly, the Government of Greenland may, on behalf of the Kingdom of Denmark in respect of Greenland, negotiate and conclude international agreements on matters within the hydropower area. Such agreements may be made with foreign states and international organisations.

An exception to the main rule on competence in section 12(1) is set out in subsection (4). It provides that an international agreement shall be negotiated and concluded according to the rules set out in section 13 if the agreement is negotiated within an international organisation of which the Kingdom of Denmark is a member.

As an exception to the main rule, subsection (4) must be constructed strictly and in good faith in accordance with the ordinary meaning to be given to the provision in its legal and factual context and with its purpose and the general purpose of the Act.

Section 13 of the Greenland Self-Government Act provides that the Danish Government shall inform the Greenland Government before negotiations are initiated regarding international agreements which are of particular importance to Greenland. In matters which only concern Greenland, the Danish Government may authorise the Greenland Government to conduct the negotiations, with the cooperation of the Danish Foreign Affairs Service. If Denmark and Greenland have been jointly involved in the negotiation of an international agreement, it shall be signed by the Danish Government, to the widest extent possible together with Greenland Government. An international agreement which is of particular importance to Greenland must be submitted to the Greenland Government for comments before the agreement is concluded or terminated. If the Danish

Government deems it necessary to conclude an agreement without the prior consent of the Greenland Government, this shall be done so it has no effect for Greenland to the widest extent possible.

International agreements and regulations related to hydropower activities

Various international agreements and regulations concern more general matters directly or indirectly related to hydropower activities.

Some international agreements have been agreed or accepted by the Danish Government, on behalf of the Kingdom of Denmark, in respect of all parts of the kingdom (Denmark proper, Greenland and the Faroe Islands), or in respect of Greenland (or Greenland and the Faroe Islands). Others have been agreed or accepted by the Greenland Government, on behalf of the Kingdom of Denmark, in respect of Greenland, or simply by the Greenland Government in respect of Greenland.

The Kingdom of Denmark is a member state of the International Labour Organization (ILO) and a party to many of the ILO conventions. Most of these conventions are also applied in Greenland, including Convention concerning Indigenous and Tribal Peoples in Independent Countries (1989, ILO Convention no. 169).

In the Thule Air Base case concerning ILO Convention no. 169, the Governing Body of the International Labour Organisation confirmed that the people of Greenland are a people under international law regarding rights of indigenous peoples, and that the people of Greenland, as a single people and not several different peoples, have collective rights to the land and natural resources of Greenland. In its judgement in the Thule Air Base case, the Danish Supreme Court also held that all peoples of Greenland are a single people pursuant to ILO Convention no. 169. The court further mentioned that the Danish Government, when it ratified the convention, declared with the consent of the Greenland Government that the indigenous population of Greenland are the only indigenous peoples in Greenland and the Kingdom of Denmark.

The United Nations Declaration on the Rights of Indigenous Peoples was adopted in 2007 by a resolution of the General Assembly of the United Nations. Pursuant to the Declaration, indigenous peoples have the right of self-determination and may thereby freely determine their political status and freely pursue their economic, social and cultural development. In exercising the right to self-determination, indigenous peoples have the right to autonomy or self-government in matters relating to their internal and local affairs as well as to ways and means for financing their autonomous functions. Indigenous peoples

further have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the state.

The Kingdom of Denmark is a party to the European Convention on Human Rights (1950) which also applies to Greenland.

The Kingdom of Denmark is a member state of the World Trade Organizations (WTO) and a party to the General Agreement on Trades and Tariffs (GATT) (1947) and the General Agreement on Trade in Services (GATS) (1993). The two agreements and related instruments are also applied in Greenland, but with certain modifications because Greenland has an economy in development. Greenland Government participate in Global Forum cooperation as part of OECD.

The United Nations Framework Convention on Climate Change (1992) and the Kyoto Protocol to the convention (1997) have both been ratified by the Danish Government on behalf of the Kingdom of Denmark and have both entered into force for the Kingdom of Denmark, including Greenland. Denmark and other developed parties (states and the European Union) listed in annex B to the Kyoto Protocol have undertaken binding commitments to limit or reduce their emissions of six greenhouse gases – carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆) – in the five-year commitment period from 2008 to 2012. Pursuant to the Kyoto Protocol, both Denmark and the EU member states jointly have binding emission reduction commitments of 8%.

Denmark's ratification of the Kyoto Protocol with effect also for Greenland was based on a political framework agreement from 2001 between the Greenland Government and the Danish Government. It is stated in the agreement that Greenland will make an active effort to reduce greenhouse gas emissions and contribute to the fulfilment of the Danish emission reduction commitment of 8% under the Kyoto Protocol in the period 2008-2012.

Today, Greenland has a territorial reservation for the Paris Agreement from 2015. As of 2021 the Government of Greenland has started the process of becoming a party of the Paris Agreement.