April 2, 2013

Subject: Contribution from Denmark and Greenland to the study by the UN Expert Mechanism on the Rights of Indigenous Peoples on access to justice in the promotion and protection of the rights of indigenous peoples

Access to justice – Greenland


The reason for the establishment of the Commission was, in particular, that significant social changes had taken place in Greenland since the elaboration of the previous Administration of Justice Act and Criminal Code respectively – both adopted in the 1950’s. Social conditions had become more complicated, as, inter alia, the population had become more concentrated in cities and economic life had been intensively developed. These social changes, among others, had led to a situation where the preconditions for the organisation of the judicial system were no longer the same as in the 1950’s.

In the mandate of the Commission it was, inter alia, underlined that considerations on the re-organisation of the judicial system should take into account the specific Greenlandic conditions, including the traditions linked with the judicial system of Greenland. It has been an essential part of this system that the need for Greenlanders to use the Greenlandic language in the courts has been recognized. Because of this the use of laymen as judges and assessors in the district courts has been a core element in the administration of justice in Greenland. With the implementation of the aforementioned new acts, the administration of justice in Greenland has become more modern and can meet the requirements of contemporary Greenlandic society, but still maintain the aforementioned central elements of the system.

The new Administration of Justice Act for Greenland implements a thorough updating of the administration of the judicial system, bringing its rules closer to those contained in the Danish Administration of Justice Act. In this reform, particular care has been taken to respect the specific Greenlandic conditions. Thus the system with lay judges in the district
courts has been retained, but strengthened, inter alia, by providing for a formal training of these judges.

The languages of the courts are Danish and Greenlandic. If not all members of the court and the parties understand the language used, interpretation must be provided. Furthermore, it is now statutory, that a number of essential legal documents must be translated into a language which the person in question understands, and it is generally presupposed that increasingly legal documents will be translated into Greenlandic.

Concerning the number of judicial districts, these are since 1 January 2013 fixed at 4 (Act no. 1388 of 23 December 2012), whereas the previous number was 18. Thus, district judges (and to a certain degree district court registrars) can be headquartered together in larger permanent entities covering several districts in order to facilitate professional sparring.

District judges are still not required to have obtained a Master degree in law, but now the aim is to appoint them as full-time judges. A real training for the district judges has been introduced.

Another lay element in the system because of the language question is the lay assessors (defenders). The training of the lay assessors and court registrars as well as the provision of legal guidance from the Court of Greenland to the district courts has been strengthened. The Ministry of Justice has the possibility of appointing lawyers to train and give advice to the lay defenders.

The training of, and guidance provided to, the district judges is provided by a new court of law of first instance, the Court of Greenland (Retten i Grønland), which shall also examine legally complicated cases. The Appeals Court of Greenland (Grønlands Landsret) will henceforth only examine appeals cases.

With the entry into force of the new Administration of Justice Act for Greenland, a “Judicial Council” has been established. The Judicial Council shall, inter alia, deal with cases concerning the removal of district judges as well as participate in the nomination of new district judges. Finally, the conditions for, and activities of, solicitors practising in Greenland have now been fixed in law.

In the area of administration of criminal justice the previously applicable rules have been significantly developed, including the rules governing the use of coercive measures in the criminal procedure.

In criminal cases the defence has been strengthened by specifying and extending the role of the defence lawyer to also cover the period prior to the moment when formal charges are being made. In this context an authorisation of persons having successfully concluded a new formalised training to act as “lay defenders” has been introduced.
The new Administration of Justice Act for Greenland provides the courts with the possibility to appoint a solicitor as out-of-court adviser for the “lay defender” in a case before the district courts, and in some cases of a very serious nature solicitors can be appointed as defence lawyers in the district courts. Moreover, the possibility of obtaining advice by telephone from a solicitor’s office for authorised “lay defenders” has been introduced.

The reason for allowing that the offices of district judges and defence lawyers respectively are filled by persons who have not obtained a Master’s degree in law is that it still only rather few Greenlanders have obtained such a degree. As mentioned above, it has always been considered essential that Greenlandic could be used as court language. The Administration of Justice Act for Greenland also provides the legal basis for appointing a legal assistant for the victim in criminal cases.

Furthermore, rules governing the use of video conference equipment during a criminal trial have been introduced. The use of video conference equipment may be relevant in situations where – due to the specific conditions in Greenland – it may not be possible e.g. to bring a witness physically before a court to give a statement.

With a view to providing follow-up to the reform of the administration of the judicial system a “Council for the Judicial System of Greenland” has been established. Similarly, a “Council for Crime Prevention in Greenland” has been established to strengthen and co-ordinate measures to prevent crimes.

Finally, it should be noted that the Administration of Justice Act for Greenland and the Criminal Code for Greenland are applicable to all persons present on Greenlandic territory. Likewise, Greenlanders staying in Denmark are subject to the Danish Administration of Justice Act and the Danish Penal Code.