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European Dimension of the Constitution
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Amendments to the Constitution of the Realm of Denmark in Connection with the Accession to the European Union

Introductory remarks

Each country applying for membership of the European Union must meet a number of conditions and commit itself to complying with the rules therein. One of the main responsibilities is the implementation and compliance of EU law. Individual Member States are preparing for accession to the EU in different ways. However, all countries made changes in their legal systems, some of them even at the constitutional level.

There is no doubt that the European Union's legal system stands out among the legal systems of traditional international organizations. Its peculiar characteristics are supported by, for example, by the legally binding nature of the law established by the EU institutions, or by the effect that this law causes, *i.e.*, a direct effect on internal affairs. There is two different ways for Denmark to transfer sovereignty to international organizations.

In accordance with Article 20 of the Constitution, powers vested in the authorities of the Realm may be delegated 'to such extent as shall be provided by statute'.

This procedure must be done by a five-sixths majority of all members of Parliament, i.e. at least 150 of the 179 members of the Danish Parliament must be present and must vote in favour.

If the delegation of the powers is not provided by statute, or if they are not vested in the authorities of the State in accordance with the Constitution, sovereignty can only be transferred by amending the Constitution itself in accordance with Article 88.

The Constitution also has a Article 19, which allows the Government to sign international treaties that do not transfer sovereignty. This only requires the consent of Parliament by an ordinary majority.

Sources of law in Denmark

The main sources of law in Denmark include constitutional law, parliamentary legislation, regulatory statutes, precedent, and customary law.

Danish law is primarily a private law system, in which the main source of the law is the law established. The root of the Danish constitutional law is the Constitutional Act. The Danish constitution is an ever-evolving constitution. The original constitution of June 5, 1849, was influenced by the Enlightenment and French philosophers such as Montesquieu. Therefore, it includes a clear separation of powers and emphasizes the importance of human rights. In Denmark, there was no revolution, and it was the king himself who decided to cede power to the people, and thus Denmark changed the form of the state from an absolute monarchy to a constitutional monarchy. Immediately after the adoption of the Constitution, the king had several more powers, including appointing and dismissing the Government, until revision in 1901. Until 1915, many social groups, including women, did not have the right to vote. However, in 1915, the Constitution became a fully "democratic" constitution, and, among other things, extended the right to vote onto women and people living in poverty. The Danish constitution mainly regulates the structure of the state and its institutions, as well as human rights. Currently, the highest in the hierarchy of the legal sources system in Denmark is the Constitutional Act of the Realm of Denmark (*Danmarks Riges Grundlov*), signed on June 5, 1953.

The Danish Act of Succession (*Tronfølgeloven*) of March 27, 1953, also has the status of a constitutional law, what is directly provided by Article 2 of the Constitutional Act. Therefore, changes to the Act of Succession require a constitutional amendment procedure to be carried out.

Furthermore, there are a number of particular customs which are not explicitly mentioned in the constitutional law, but which have been recognized in Danish constitutional law as constitutional legal custom:

- the right of the Financial Committee of the Danish Parliament (*Folketinget*) to approve public expenditure outside the national budget;
- the possibility for the monarch to sign legal acts outside the meetings of the Council of State, which were subsequently confirmed by the Council of State;
- the possibility for the legislator to make limited provisions which result in decisions under a given provision being final and to some extent not subject to judicial review[1].

[1] Cf. Article 56(8) of the Danish Act on Foreigners regarding asylum decisions made by the Danish Council on the Foreigners Act.

In relation to the international and European law, both the Constitution and other normative acts do not clearly define the obligation of Danish courts to take them into account. However, it is generally accepted that Danish courts – as an unwritten rule – are generally bound to take into account Denmark's obligations under international law when interpreting and applying Danish law.

Due to its accession to the European Communities in 1972, and later in 1993 (Maastricht Treaty), Denmark transferred part of its sovereignty to the European Union on the basis of Art. 20 of the Constitutional Act. Consequently, EU legislation adopted in accordance with the delegated powers can be directly applied in Denmark, depending on the nature of the act in question. Furthermore, under EU law, Danish courts are bound to respect the primacy of EU law over Danish law.

In its provision of April 6, 1998, the Danish Supreme Court explicitly stated the supremacy of the Danish constitution over EU law but reserving the right to consider concerns and questions as to whether an EU act or decision of the European Court of Justice exceeds the renunciation of sovereignty as set out in the Accession Treaty (ultra vires control). Within these limits, the primacy of EU law is respected[2].

Traditionally, the Danish legal system is based on the dualistic principle, according to which international law is not part of the Danish law, unless it has been explicitly incorporated or implemented in Danish law by the Danish legislator. As regards the European Convention on Human Rights (ECHR), it was incorporated into Danish law in 1992. Consequently, since 1992 the Convention has been an integral part of Danish law and is to be applied in such a way by Danish courts.

The laws adopted by parliament are the main source of law in Denmark. The constitutional law is in principle the most important law; however, only few legal matters are laid down in the Constitutional Law. The main function of the Constitution is to determine what cannot be determined by law or practice. In addition, it is up to the Danish courts to assess the compatibility of the laws within the Constitutional Law. It is generally accepted that Danish courts – acting in accordance with an unwritten (customary) principle – are generally obliged to take into account Denmark's obligations under international law when interpreting and applying Danish law.

In addition, administrative provisions issued by the state also play an important role in Danish law, and many laws are precisely dependent on their issuance. Statutory orders are common in Denmark and are defined as a set of rules that are binding on citizens. These rules do operate the same way as the statutes. Statutory

[2] Cf. H. Norup Carlsen and others vs. Prime Minister Poul Nyrup Rasmussen (*Ugeskrift for Retsvæsen* 1998, p. 800H).

orders are usually issued by a Minister, and the content of an order must comply with the principle of legality. This means that the statutory order must comply with the relevant law or legal act of the EU. It is the jurisdiction of the Danish courts to decide on this matter. Circulars and guidelines also need to respect the principle of legality, but they are not binding on citizens. Even if these administrative guidelines are not binding on citizens, they can, in fact, be used as sources of law, as they often describe an administrative practice, they may have legal significance.

On the other hand, jurisprudence, in particular of the Supreme Court, is considered an important source of law in the Danish legal system and contributes to determining the current law. Danish courts interpret and supplement the above-mentioned legal sources, and judgments, in particular of the Supreme Court, often create a precedent. Moreover, several areas of Danish law, such as, for example, tort and law of obligations, are governed only to a limited extent by ordinary legislation and therefore the jurisprudence plays a very important role in determining the actual law in these areas of law. Importantly, public administration bodies are obliged to administer in accordance with the applicable law specified by a Danish court in a final judgment.

Rules on the application of European Union law in the order of the Member States

The European Community order developed in line with the jurisprudence of the European Court of Justice concerning the interpretation of the founding treaties. The ECJ has established a specific idea of European integration, which has resulted in the emanation of EU law from international law[3]. The remarkable position of EU law is primarily influenced by its specific features. Especially, should be noted the principle of priority before national law and the principle of direct effectiveness of EU law standards should be indicated. Both of these principles have been shaped by the process of decoupling EU law from Member States' law.

Irrespective of the method adopted by a Member State of implementing international law into national order, EU law is part of national law, which is therefore directly applicable[4]. EU law is part of national law, which is directly applicable. Direct application of EU law implies its direct application in the national law of the Member States.

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[3] A. Wyrozumska, *Prawo międzynarodowe w systemie prawa wspólnotowego*, [in:] J. Kolasa, A. Kozłowski (eds.), *Prawo międzynarodowe publiczne a prawo europejskie. Konferencja Katedr Prawa Międzynarodowego, Karpacz, 15 – 18 maja 2002*, Wrocław 2003, p. 48 et seq.

[4] This was pointed out by the ECJ in the aforementioned ruling in Case 6/64 *Costa v. ENEL* while adopting the monistic structure of the Community legal order.

As EU law standards are directly applicable and have a direct effect, the scope of these concepts and their interdependencies are subject to many disputes in doctrine, especially in view of the fact[5], that the EU CJEU is not very consistent with them.

Amendments to Danish law following accession into the European Union

The Danish Constitution itself did not change as Denmark enters the European Union, and accession and cooperation within the EU is possible on the basis of Articles 19 and 20 of the Constitution. Article 19 States:

> The King shall act on behalf of the Realm in international affairs. Provided that without the consent of the Folketing the King shall not undertake any act whereby the territory of the Realm will be increased or decreased, nor shall he enter into any obligation which for fulfilment requires the concurrence of the Folketing, or which otherwise is of major importance; nor shall the King, except with the consent of the Folketing, terminate any international treaty entered into with the consent of the Folketing[6].

Then Article 20:

> Powers vested in the authorities of the Realm under this Constitution Act may, to such extent as shall be provided by Statute, be delegated to international authorities set up by mutual agreement with other states for the promotion of international rules of law and co-operation. 2. For the passing of a Bill dealing with the above a majority of five-sixths of the Members of the Folketing shall be required. If this majority is not obtained, whereas the majority required for the passing of ordinary Bills is obtained, and if the Government maintains it, the Bill shall be submitted to the Electorate for approval or rejection in accordance with the rules for Referenda laid down in section 42[7].

Article 20 was added to Danish Constitution in 1953, inspired by the creation of a Union of Coal and Steel. It was envisaged that in future Denmark would like to take some form of transnational cooperation with this institution. By introducing Article 20 into the Constitution, the amendment of the Constitution based on Article 88 is only possible in an appropriate procedure, which allows for membership of a supranational organization. There are several limitations to the extent that powers can be delegated to the EU under Article 20, the delegated powers must be determined on the basis of that Article. The legislative, executive or judicial authority cannot be transferred, as well as the power to modify the Constitution and to transfer sovereignty, which must be guaranteed the protection

[5] W. Postulski, *Sądy państw członkowskich jako sądy wspólnotowe*, [in:] A.Wróbel (ed.), *Stosowanie prawa Unii przez sądy*, Kraków 2005, p. 472.

[6] https://www.constituteproject.org/constitution/Denmark_1953.pdf?lang=en.

[7] https://www.constituteproject.org/constitution/Denmark_1953.pdf?lang=en.

of human rights. As the Danish Constitution allows some of the sovereignty to be transferred to supranational organizations, it should be said that this Constitution indicates that it is not based on idea of absolute sovereignty. The provisions of the Constitution indicate that the more intense international cooperation, the more complex the procedure must be used to enter it. This is reflected, for example, in the involvement of Parliament and the electorate in the decision-making process. For example, if it is "normal" international cooperation, the procedure in Article 19 of the Constitution will be fully sufficient.

The Danish Constitution also does not contain any regulation of the parliamentary procedure in the EU decision-making process. The role of the Danish parliament is indicated in the Danish Act of Accession, Article 6(2), indicates that the government must inform the European Policy Committee about proposals in the Council, which will have a direct effect in Denmark or will require the participation of Parliament to implement. However, in practice, Parliament has a significant influence. Among other things, a mandate procedure has been established whereby the government will not vote in favour of the proposal in the Council.

By entering the EU, Denmark, like the other Member States, is obliged to comply with and apply EU law. The principles of EU law strictly indicate how Member States should act in this respect. Denmark, as a Member State, is also required to fulfil these obligations.

Conclusion

For a long time now, the learning of the law, especially constitutional law, has been very intense in many EU Member States, and the debate on the role of national constitutions and their place in the legal order of these States has been taking place. It is often combined with a discussion on the contemporary essence of state sovereignty. "The need to protect sovereignty is often invoked by opponents of European integration or by those concerned with its deepening and intensification, arguing that the participation of the State in the EU structures threatens its sovereignty"[8].

It should be noted that:

> [t]he multidimensional and the multi-level nature of the Union provides great flexibility. Participation in European Union policies varies according to their nature and the Member States themselves. The Schengen agreement, the euro area or the Western European Union do not cover the same countries. Similarly, some countries are neutral, and others are NATO members. […] the rejection of one of the policies of the European Union does not mean the rejection of the whole process.

[8] Z. Witkowski (ed.), *Prawo konstytucyjne*, Toruń 2013, p. 129.

Thus, the constitutions of the Member States expressing national sovereignty continue to play their part as a fundamental determinant of national sovereignty and it is impossible in the foreseeable future to assume their disappearance or to replace any other, above national legislation or a group of acts of comparable importance to the constitutions of the Member States.

In addition, in the context of amplified EU cooperation and international cooperation in general, national constitutions played an important role in ensuring democratic participation and decision-making in relation to such cooperation. As far as many constitutions are concerned, which are not frequently revised, it is worth considering whether the electorate should play a greater role in EU cooperation and other international cooperation. National constitutions can also play an important role in defining the constitutional identity, values and rights of the nation.

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Summary: The Realm of Denmark has constitutional traditions. The current constitution was introduced in 1953. Denmark joined the European Communities in 1972 and in 1993, in the Maastricht Treaty, Denmark contributes part of its sovereignty to the European Union on the basis of Art. 20 of the Constitutional Act. Therefore, EU legislation acting under delegated mandates to the EU can be directly applied in Denmark, depending on the specific act. In addition, the law of EU law Danish courts are obliged to respect the supremacy of EU law over Danish law. However, the Danish Supreme Court recognized the supremacy of the Danish constitution over EU law, reserving the right to consider questions as to whether an EU legal act or a decision of the European court over a waiver of exclusivity in the Accession Treaty (ultra vires control). These respect the supremacy of EU rights

Keywords: Amendment to the Constitution, Constitution, Denmark, European Union.

Zmiany w Konstytucji Królestwa Danii w związku z przystąpieniem do Unii Europejskiej

Streszczenie: Królestwo Danii posiada długie tradycje konstytucyjne. Obecnie obowiązująca konstytucja w Danii została przyjęta w 1953 r. Do Wspólnot Europejskich wstąpiła w 1972 r., a w 1993 r. w związku z zawarciem Traktatu z Maastricht Dania przekazała część swojej suwerenności Unii Europejskiej na podstawie art. 20 Ustawy konstytucyjnej. W związku z tym prawodawstwo UE przyjęte zgodnie z uprawnieniami przekazanymi UE może być bezpośrednio stosowane w Danii, w zależności od charakteru danego aktu. Ponadto zgodnie z prawem UE sądy duńskie są zobowiązane do poszanowania nadrzędności prawa UE nad prawem duńskim. Jednak duński Sąd Najwyższy wyraźnie stwierdził nadrzędność duńskiej konstytucji nad prawem UE, zastrzegając sobie prawo do rozpatrywania pytań, czy akt prawny UE lub decyzja Europejskiego Trybunału Sprawiedliwości przekracza zrzeczenie się suwerenności określonej w Traktacie akcesyjnym (*kontrola ultra vires*). W tych granicach szanuje się nadrzędność prawa UE

Słowa kluczowe: Dania, Unia Europejska, Konstytucja, Poprawka do Konstytucji