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Questionnaire - Answers from the Danish Supreme Court

Preliminary remarks

Denmark has no separate constitutional court. As the highest judicial body for Denmark, the Faroe Islands and Greenland, the Danish Supreme Court deals with all kinds of cases (civil cases, criminal cases, administrative cases and constitutional cases). There are very few cases of “pure” constitutional law. Typically, questions of constitutional law arise in connection with civil cases, criminal cases or administrative cases.

In the following, reference to the decisions of the Supreme Court is made to the weekly law journal, *Ugeskrift for Retsvæsen*.

A. Court description

Please refer to the description of the Danish Supreme Court in the CODICES database (enclosed).

B. Social integration

1. Challenges of social integration in a globalised world

1.1.-1.3.

Challenges of social integration before the Danish Supreme Court have included, *inter alia*, questions of family reunification, the right to social security benefits under Danish law (for example non-Danish citizens residing in Denmark or Danish citizens residing abroad), and questions of double taxation of social security benefits.

There is a significant trend towards an increase in cases relating to social integration, especially in connection with the principles of free movement under EU law.

Examples include the following:

Ugeskrift for Retsvæsen 2003, p. 1055, judgment of 14 February 2003: The Supreme Court ruled that State pension under Danish law received by a person residing in Germany was subject to Danish taxation.

Ugeskrift for Retsvæsen 2006, p. 770, judgment of 5 December 2005 (included in the CODICES database): The Supreme Court ruled that the conditioning of the right to social security on participation in work activities did not run counter to article 75 (2) of the Danish Constitution (concerning the right to social security), the European Convention on Human Rights, or the ILO conventions.

Ugeskrift for Retsvæsen 2010, p. 1035, judgment of 13 January 2010: The Supreme Court ruled that the so-called “28-year rule” concerning family reunification was not contrary to the European Convention on Human Rights or the 1997 European Convention on Nationality.

Ugeskrift for Retsvæsen 2012, p. 1761, judgment of 15 February 2012: The Supreme Court ruled that a social welfare scheme for immigrants did not run counter to article 75 (2) of the Danish Constitution (concerning the right to social security), the European Convention on Human Rights or the 1951 UN Refugee Convention.

Ugeskrift for Retsvæsen 2014, p. 529, judgment of 21 November 2013: The Supreme Court ruled that the Danish State was not obligated under regulation no. 1408/71 EC, cf. Agreement of 30 April 2002 between the EU and Switzerland, to pay the cost of health insurance under Swiss law for a person residing in Switzerland who received State pension from the Danish as well as the Swiss State.

2. International standards for social integration

2.1. - 2.5.

The main international influences regarding issues of social integration before the Danish Supreme Court come from EU law. Other influences include the European Convention on Human Rights as interpreted in the case law of the European Court of Human Rights, the UN Convention on Refugees, the ILO Conventions, and the European Convention on Nationality. In some cases, the Supreme Court will explicitly refer to international standards for social integration, for example specific provisions of EU law or provisions in international conventions. In other cases, the influence of such standards is more indirect or implicit. For example, international standards may be used indirectly in connection with the Court's interpretation of Danish law. So far conflicts between standards applicable on the national and on the international level have been solved without any constitutional court cases setting aside legislation.

See the examples mentioned in the answer to question 1 above.

3. Constitutional instruments enhancing/dealing with/for social integration

3.1. – 3.2.

The Danish Constitution entails very few provisions dealing with the issue of social integration, namely article 75 (1) (concerning the right to work), article 75 (2) (concerning the right to social security), and article 76 (concerning the right to education).

It is commonly understood that article 75(1) is primarily a political (and not a legal) standard which cannot be invoked by individuals before the courts. As regards article 75 (2) and article 76, case law of the Supreme Court is very limited. See the two examples mentioned in the answer to question 1 above (**Ugeskrift for Retsvæsen 2006, p. 770**, and **Ugeskrift for Retsvæsen 2012, 1761**).

3.3.

Yes. The Danish Supreme Court is, in principle, competent to deal with legal conflicts arising between social groups. In order to admit such a case, however, the litigant group must show a standing in relation to the legal question at issue. Under Chapter 23a of the Danish Administration of Justice Act, a group of individuals may under certain conditions collectively file a civil case before the Danish courts.

Such cases are to be settled by the courts according to the same rules, procedures and under the implementation of the same measures that generally apply in civil cases.

3.4.

The Danish Supreme Court has only once found that a legal provision was unconstitutional and therefore invalid. See **Ugeskrift for Retsvæsen 1999, p. 841**, decision of 19 February 1999 (included in the CODICES database). In that case, the Court ruled that a certain legal provision was invalid in relation to the appellant.

3.5.

The Danish Supreme Court's decisions are normally not described as preventive actions to avoid social conflict. The Danish Constitution does not provide for a procedure in which the Supreme Court examines the constitutionality of legislation before it enters into force.

3.6.

Not relevant. See the answer to question 3.5 above.

3.7.

Access to the Danish Supreme Court is limited in the way that, normally, only cases of general public importance can be brought before it.

4. The role of constitutional justice in social integration

4.1.

The Danish Constitution enables the Danish Supreme Court to act effectively in settling legal questions related to a social conflict. See also the answer to question 3.5 above.

4.2.

In principle, the Danish Supreme Court may act as mediator (section 268 of the Danish Administration of Justice Act). However, in practice this occurs very seldom.

4.3.

The Danish Supreme Court settles the legal questions in cases brought before it. The Court has refrained from settling questions which it considered to be political. See the Court's **decision of 17 January 2014** in case 96/2013 *et al.* (not yet printed in *Ugeskrift for Retsvæsen*).