Danemark

Cour suprême

Denmark

Supreme Court

Hierarchy of norms in Danish law

Danish law is a civil law system with emphasis on statutory law as the main legal source. The Constitutional Act of Denmark was signed on June 5th 1849. The Constitutional Act is based on the separation of powers into three branches of government, *the legislative*, *the executive* and *the judiciary branches* and thus influenced by the French philosopher Montesquieu. It is within the jurisdiction of the courts to assess whether laws are in accordance with The Constitutional Act.

I. Norms comprising the Danish legal system

1. Constitutional norms

At the top of the national legal system is *The Constitutional Act of Denmark* (*Danmarks Riges Grundlov*) signed on June 5th 1953.

The Constitutional Act has been written five times, in 1849, 1866, 1915, 1920 and 1953 – no constitutional act has ever been amended; each time, a new constitutional act has replaced the existing one. The procedure for amending The Constitutional Act or for enacting a new one as provided for in article 88 of The Constitutional Act is complex and burdensome as it includes, among other things, a referendum in which 40 % of all voters have to support the proposal.

The Act of Succession to the Danish Throne (*Tronfølgeloven*) of March 27th 1953 also has status as a constitutional law, as it is directly referred to in article 2 of The Constitutional Act. Therefore, amendments to the Act of Succession require adherence to the constitutional amendment procedure.

There are a few certain particular customs, not explicitly referred to in The Constitutional Act, that have been recognised in Danish constitutional law as *constitutional legal custom*:

- The right of the Finance Committee of the Danish Parliament (*Folketinget*) to authorize public expenditure outside of the national budget.

- The opportunity for the monarch to sign acts of legislation into law outside of meetings in The Council of State, with the signing subsequently being confirmed in The Council of State.

- The legislator's opportunity of a limited extent to enact provisions to the effect that decisions pursuant to the provision in question are final and to a certain extent not subject to judicial review, cf. section 56 (8) of the Danish Aliens Act regarding decisions on asylum made by The Danish Aliens Act Board (Flygtningenævnet). The Danish Aliens Act Board has a High Court judge as chairman. In a number of decisions The Supreme Court has concluded that The Danish Aliens Act Board is an expert board of a quasi-judicial nature and that deliberations of the courts are limited to points of law, cf. *A vs. Flygtningenævnet (Ugeskrift for Retsvæsen 2008, page 511/3 H), A vs. Flygtningenævnet (Ugeskrift for Retsvæsen 2007, page 262 H), and R & H vs. Flygtningenævnet (Ugeskrift for Retsvæsen 2001, page 861 H).*

It is within the jurisdiction of *Danish courts* to assess whether laws are in accordance with The Constitutional Act. Only once has a rule in a statute been declared unconstitutional, cf. The Supreme Court case *Den Selvejende Institution Friskolen i Veddinge Bakker vs. Undervisningsministeriet (Ugeskrift for Retsvæsen 1999, page 841 H).*

2. <u>European and international law</u>

The obligation of Danish courts to consider *international law*, including *European law*, is not explicitly dealt with in The Constitutional Act or in other Danish legislation. It is, however, commonly understood that Danish courts – as an unwritten principle – are generally obliged to consider Denmark's obligations under international law when interpreting and applying Danish law.

In connection with the accession in 1972 (and again in 1993 and 1998) Denmark has transferred sovereignty to the European Union under article 20 of The Constitutional Act. Consequently, *EU legislation* adopted in accordance with the powers delegated to the EU may be directly applicable in Denmark, dependent on the nature of the relevant act. Furthermore, under EU-law Danish courts are obligated to respect the supremacy of EU law over Danish law.

In its decision of April 6th 1998, The Supreme Court explicitly stated the supremacy of the Danish Constitution over EU law by reserving the right to try questions as to whether an EC act of law or a decision by the European Court of Justice exceeds the limits for surrender of sovereignty determined by the Accession Act (ultra vires control). Within those limits *the supremacy of EU law* shall be respected, cf. *H. Norup Carlsen and others vs. Prime Minister Poul Nyrup Rasmussen (Ugeskrift for Retsvæsen 1998, page 800 H).*

Traditionally, the Danish legal system is based on a "dualist" principle, according to which *international law* is not part of Danish law, unless it is explicitly incorporated or implemented in Danish law by the Danish legislator. To a certain extent, the principle of duality is modified by two unwritten principles of constitutional law. Firstly, the so-called "rule of interpretation" states that Danish law – to the fullest extent possible - is to be interpreted in accordance with Denmark's obligations under international law. Secondly, according to the so-called "rule of assumption" it is generally to be assumed that Danish legislation is adopted in respect of Denmark's obligations under international law, unless the Danish legislator has explicitly stated otherwise.

The European Convention of Human Right (ECHR) has been incorporated in Danish law in 1992. Consequently, since 1992 the Convention has been an integral part of Danish law and is to be applied as such by the Danish courts.

3. Parliamentary law

In the Danish civil law system statutes enacted by parliament are the primary legal source. The Constitutional Act is in principle the most important statute but it is only in relation to rather few legal issues that specific rules in The Constitutional Act are relevant. The foremost function of The Constitution Act is to lay down what cannot be determined by statute or legal practice.

As stated above, it is within the jurisdiction of *Danish courts* to assess whether statutes are in accordance with The Constitutional Act.

As further stated above, it is commonly understood that *Danish courts* – as an unwritten principle – are generally obliged to consider Denmark's obligations under international law when interpreting and applying Danish law.

4. Administrative rules

An important role in Danish law is also played by administrative rules issued by the state and many statutes are dependent on such rules being issued.

Statutory orders are common in Denmark and are defined as a set of rules that are binding for citizens. These rules function in the same way as rules in a statute. Statutory orders are normally issued by a minister and the contents of a statutory order must be in compliance with the principle of legality. This entails that the statutory order must be in pursuance of the relevant statute or EU legislative act. It is for the Danish courts to decide whether that is the case.

Circulars and *provisions of guidance* must also be in compliance with the principle of legality but are not binding for the citizens. However, even if these administrative rules are not binding for the citizens they may actually be used as legal sources and as they sometimes describe administrative practice they can be legally relevant.

5. Case-law

Case-law, in particularly from The Supreme Court, is recognized as an important legal source in Danish law and contribute to how current law is determined. The Danish courts interpret and complement the legal sources mentioned above and judgments, in particularly from The Supreme Court, often create precedent.
Further, several areas of Danish law, such as for example torts and contract-law, are only to a limited extent regulated by means of legislation and consequently case-law plays a very significant role in determining current law in these areas.
Administrative authorities are obliged to administer in accordance with current law as determined by a Danish court in a final judgment or verdict.

II. Hierarchy of norms in Denmark

Danish law is a civil law system with emphasis on statutory law as the main legal source. In Denmark constitutional norms stand at the top of the national legal order. Case-law on the interpretation of The Constitutional Act is on that level of the national legal order. The principle of legality entails that every legal norm must comply with all norms in force that have higher status in the hierarchy of norms.