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Synthèse / Summary / Kurzfassung / резюме

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The Supreme Court of Denmark
Højesteret

Anglais / English / Englisch / английский

Cooperation of Constitutional Courts in Europe – Current Situation and Perspectives

Questionnaire for the national reports

SUMMARY

Denmark has no separate constitutional court. As the highest judicial body for Denmark, the Faroe Island and Greenland, the Danish Supreme Court deals with all kinds of cases, including constitutional cases.

I. Constitutional courts between constitutional law and European law

1. Is the constitutional court obliged by law to consider European law in the performance of its tasks?

The obligation of Danish courts to consider international law, including European law, is not explicitly dealt with in the Danish constitution or in 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.

2. Are there any examples of references to international sources of law such as a) the European Convention on Human Rights, b) the Charter of fundamental Rights of the European Union, c) other instruments of international law at European level, d) other instruments of international law at international level?

There are many examples of references to international sources of law in the jurisprudence of Danish courts, including the ECHR, the EU-Charter, other instruments of international law at European level (e.g. EU legislation, the

European Convention on Nationality of 1997 and the European Social Charter of 1961), and other international source of law at international level (e.g. the UN Convention of 1966 on Civil and Political Rights, the ILO Conventions, the UN Convention of 1966 on Economic, Social and Cultural Rights, the UN Convention on refugees, and the Geneva Conventions).

Examples are given in the national report.

3. Are there any specific provisions of constitutional law imposing a legal obligation on the constitutional court to consider decisions by European courts of justice?

No.

4. Is the jurisprudence of the constitutional court influenced in practice by the jurisprudence of European Courts of justice?

Yes. In practice the jurisprudence of the Danish courts, including the jurisprudence of the Supreme Court, is influenced by the jurisprudence of international courts, especially the European Court of Justice and the European Court of Human Rights.

5. Does the constitutional court in its decisions regularly refer to the jurisprudence of the Court of Justice of the European Union and/or the European Court of Human Rights? Which are the most significant examples?

Yes. Danish courts, including the Supreme Court, regularly refer to the jurisprudence of the European Court of Justice and the European Court of Human Right.

Examples are given in the national report.

6. Are there any examples of divergences in decisions taken by the constitutional court and the European courts of justice?

There are only very few examples of divergences in decisions taken by Danish courts and international courts.

Two examples are given in the national report.

7. Do other national courts also consider the jurisprudence of the European courts of justice as a result of the constitutional courts taking it into consideration in its decisions?

The jurisprudence of the Supreme Court is guiding for the Danish courts in general, but one cannot say that other national courts consider the jurisprudence of international courts "as a result of" the Supreme Court taking it into consideration. The obligation to consider international law, including the jurisprudence of international courts when interpreting and applying Danish law applies independently to all Danish courts, and not merely to the Supreme Court.

8. Are there any examples of decisions by European courts of justice influenced by the jurisprudence of national courts?

Not to our knowledge.

II. Interactions between constitutional courts

1. Does the constitutional court in its decisions refer to the jurisprudence of other European or non-European courts?

In general, The Supreme Court of Denmark does not in its decisions refer to jurisprudence of foreign courts. However, this does not mean that foreign jurisprudence cannot be relevant for the decisions of the Supreme Court.

Decisions of the Supreme Court are published in the official journal, *Ugeskrift for Retsvæsen*. When published, an editorial note is added to the decision. In some cases the editorial notes refer to foreign jurisprudence. An example is given in the Danish national report.

2. If so, does the constitutional court tend to refer primarily to jurisprudence from the same language area?

Norwegian and Swedish are to a large extent intelligible to Danish speakers and there are numerous similarities between the judicial systems of the Scandinavian Countries (Norway, Sweden and Denmark). For these reasons case law from Norway and Sweden is examined more often by the Supreme Court of Denmark than case law from other jurisdictions.

3. In which fields of law (civil law, criminal law, public law) does the constitutional court refer to the jurisprudence of other European or non-European constitutional courts?

See the answer to question II.1 above.

4. Have decisions of the constitutional court noticeably influenced the jurisprudence of foreign constitutional courts?

It is difficult to assess to which extent the decisions of the Supreme Court of Denmark have influenced jurisprudence of foreign constitutional courts.

In its decision of 31 May 2013 (HR-2013-1143-A) the Supreme Court of Norway referred to the judgment of the Supreme Court of Denmark in **Ugeskrift for Retsvæsen 2008, p. 1587 H.**

5. Are there any forms of cooperation going on beyond the mutual acknowledgement of court decisions?

The Supreme Court of Denmark is a member of:

- Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA Europe)
- Network of the Presidents of the Supreme Judicial Courts of the European Union
- International Association of Supreme Administrative Jurisdictions (IASAJ)

III. Interactions between European courts in the jurisprudence of the constitutional courts

1. Do references to European Union law or to decisions by the Courts of Justice of the European Union in the jurisprudence of the European Court of Human Rights have an impact on the jurisprudence of the constitutional court?

Such references have not yet had an impact on the jurisprudence of the Supreme Court of Denmark.

2. How does the jurisprudence of constitutional courts influence the relationship between the European Court of Human Rights and the Court of Justice of the European Union?

The jurisprudence of the Supreme Court of Denmark does not seem to influence the relationship between these two courts.

3. *Do differences between the jurisprudence of the European Court of Human Rights, on the one hand, and the Court of Justice of the European Union, on the other hand, have an impact on the jurisprudence of the constitutional court?*

There has not yet been a case where such differences have had an impact on the jurisprudence of the Supreme Court of Denmark.