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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States Parties due in 1977

Addendum

DENMARK

/Original: English/

/21 March 1977/

This report is submitted in pursuance of article 40 of the International Covenant on Civil and Political Rights, which entered into force with respect to Denmark on 23 March 1976.

The report deals with three main subjects, presented under the following headings:

1. General principles of Danish law on the impact on domestic law of international conventions and other legal instruments, which are binding upon Denmark under international law
2. The impact on domestic Danish law of the International Covenant on Civil and Political Rights
3. Legislative amendments with a view to ratification by Denmark of the International Covenant on Civil and Political Rights

1. General principles of Danish law on the impact on domestic law of international conventions and other legal instruments, which are binding upon Denmark under international law

The Danish Constitution contains no express provision with regard to the effect of a validly concluded treaty on domestic law. The legal principles governing this question are, however, quite clear.

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Under Danish law provisions of a treaty, which are binding upon Denmark, are, generally speaking, not directly enforceable by Danish courts of law or by Danish administrative authorities. In case a provision of a treaty lays down a rule which is inconsistent with an express provision of a domestic statute or other rule of law the domestic rule prevails, and that rule, not the treaty provision, must be applied by Danish law-enforcing authorities. Neither can a provision of a treaty serve as legal authority for those acts of Danish authorities, which under domestic law may be carried out only when authorized by law. Consequently any provision of an international treaty in order to be enforceable by Danish courts or administrative authorities has to be transformed into an internal law or an administrative regulation.

The traditional method in Denmark for transforming treaties is to reformulate the treaty, or rather the part of it that needs implementation, in a statute or administrative regulation. But a treaty may also be adopted or incorporated into Danish law by statute or administrative regulation. In the latter case the text of the treaty is directly applicable in Danish law, but only to the extent specified in the domestic legal instrument concerned.

Of course, the contracting of an international obligation does not always make it necessary to pass a statute or other domestic rule of law, transforming the pertinent provisions of the treaty into internal law. This becomes necessary only to the extent that the provisions of a treaty do not conform to a pre-existing legal situation.

2. The impact on domestic Danish law of the International Covenant on Civil and Political Rights

When considering ratification by Denmark of the International Covenant on Civil and Political Rights it was found that principles and rules similar to the provisions of the Covenant were to a large extent already in force in Denmark by virtue of the Constitution, of express statutory provisions, and of general principles of Danish law. As regards those provisions of the Covenant where this was considered not to be the case, special legislation was passed, see below under 3.

The explanatory memorandum appended to the proposal for parliamentary consent to ratification of the Covenant contained a detailed survey of the legal situation in Denmark covered by the Covenant. Against the background of principles outlined above and in accordance with ordinary practice, a general incorporation by statute of the Covenant was regarded as unnecessary.

It should, however, be stressed that this, of course, does not imply that the Covenant is without legal impact in Denmark. The provisions of the Covenant serve as a basis, binding upon Denmark under international law, for a corresponding set of domestic rules of law.

The practice generally followed by Denmark - and adhered to also in respect of the International Covenant on Civil and Political Rights - does, however, raise a question as to what the legal situation is, if these corresponding rules give rise

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to doubts as to their proper interpretation, or if they are amended in a way which is in conflict with the underlying international obligation.

On this point a principle generally recognized in domestic legal systems comes into play, i.e.: that in the event of ambiguity the domestic rules should be interpreted in accordance with the State's international obligations.

This rule is also recognized in Danish law, but its contents and scope under Danish law have been greatly clarified during the debate on the constitutional problems related to Denmark's accession to the European Communities. During this debate the Danish Ministry of Justice prepared a memorandum regarding these problems, which was submitted to Parliament in the summer of 1972. The first part of this memorandum contains a survey of Danish law on the implementation of treaties.

In this survey reference is made to recent Danish legal literature, where it is maintained that the law-enforcing authorities, when in doubt about the interpretation of a legal provision, should prefer the interpretation that will best comply with existing treaty obligations. This is known as the rule of interpretation.

In these writings it is further maintained that in the absence of any special indications to the contrary a conflict between a treaty provision that has previously been observed in Denmark, and a provision in legislation enacted later, should be solved by applying the new provision in a manner that will respect the treaty provision, even if the tenor of the new provision is clearly at variance with the treaty. This is known as the rule of presumption: the courts should "presume" that it has not been the intention of Parliament to pass legislation contrary to Denmark's international obligations. These views are fully upheld in the memorandum from the Ministry of Justice, where the conclusion of the survey on this point reads as follows:

"... In the Ministry's view, Danish law courts would in all probability prefer a more ad hoc application of a law to a literal interpretation if the latter would make the State of Denmark responsible under international law for an unintentional violation of a treaty."

This extensive formulation of the rule of interpretation was not only accepted by the Danish Government when evaluating the questions of constitutional law raised in regard to the Danish entry into the European Communities; it has also been relied upon by the Danish Government in other contexts, e.g. the bi-annual report submitted to the Committee on the Elimination of Racial Discrimination under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination.

In the present context one aspect of the widening of the rule of interpretation is particularly worth noting, i.e. its consequences for the exercise of discretionary powers by administrative authorities. On this point the memorandum from the Ministry of Justice states that administrative authorities should exercise

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discretionary powers in such a way that the administrative acts - be it decisions or general regulations - conform to validly contracted international obligations. This should be regarded as a legal obligation, enforceable by judicial review under article 63 of the Danish Constitution.

3. Legislative amendments with a view to ratification by Denmark of the International Covenant on Civil and Political Rights

With a view to Danish ratification of the International Covenant of 16 December 1966, on Civil and Political Rights, including the so-called Optional Protocol, and the International Convention of 21 December 1965, on the Elimination of All Forms of Racial Discrimination, the following acts were passed:

- (i) Act No. 288 of 9 June 1971, amending the Civil Criminal Code. Under this Act any person who publicly or with intent to propagate it in a wider circle makes a statement or other communication by which a group of persons is threatened, insulted or exposed to indignities on grounds of race, colour, national or ethnic origin, or religion, shall be punished by a fine, mitigated imprisonment or regular imprisonment for any term not exceeding two years.

By Decree No. 26 of 3 February 1972, the Act became effective in Greenland and by Decree No. 381 of 12 August 1972, in the Faroe Islands.

- (ii) Act No. 289 of 9 June 1971, on Prohibition of Discrimination on account of Race *et al.* Under this Act any person, who in the performance of a professional or public activity refuses to serve a person on a par with others on account of that person's race, colour, national or ethnic origin or religion, shall be punished. The same penalty shall apply to any person who on any of the aforesaid grounds refuses to admit a person on a par with others to a place, performance, exhibition, gathering or similar event that is open to the general public. The penalty shall be a fine, mitigated imprisonment or regular imprisonment for any period not exceeding six months.

The two acts cited above may be found on page 80 of the 1971 United Nations Yearbook on Human Rights.

- (iii) Act No. 153 of 16 April 1971, amending the Administration of Justice Act. In order to ensure complete consistency between the Administration of Justice Act and the requirements set out in article 14, paragraph 3, letters d and e, of the Covenant on Civil and Political Rights, concerning the right of a defendant to appear in person during the hearing of his case and the defendant's right to summon witnesses on a par with the prosecuting authority, some minor changes to this effect were made in the provisions of the Administration of Justice Act.

Hence the Convention on the Elimination of All Forms of Racial Discrimination was ratified by Denmark on 6 December 1971, while the Covenant on Civil and Political Rights was ratified on 6 January 1972.