

Part I:

Solidarity as a Legal and Constitutional Principle in European Countries

Denmark

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Introduction: Solidarity in the Danish Welfare State

Since the Nineteenth Century, the Danish Welfare State has been grounded in the so-called ‘Danish ethos of solidarity’, which reflects the idea of a unified society that aspires for equality among its citizens and attributes a strong role to the state to redistribute income and provide social security for everyone. In the process of establishing the Danish Welfare State according to the universalistic principle of inclusion, has become embedded and is rarely contested. The term solidarity is therefore rarely used in explicit terms in legal texts and documents, while its meaning is contained in the notion of ‘welfare’. In recent years, these founding principles of the Danish Welfare State have become increasingly challenged and replaced by a more libertarian, individualistic approach to solidarity.

In this chapter, we first trace the origins of the Danish Welfare State, going back to the Constitutional Act of Denmark from 1849 (*Grundloven*).¹ We then explore the recent transformation of the Danish welfare regime, which needs to be understood partly as a response to globalisation and liberal European market integration, and partly in relation to the realignment of the solidarity principle to respond to the changing demands of various groups within society. The welfare state is thus adjusted to meet new transnational challenges and adapt national law and policies to European standards, but it also faces various domestic pressures: First of all, the ethos of solidarity is questioned by rising costs of welfare services and a tax burden that many Danish citizens consider as excessive. Secondly, it is challenged by growing social inequality and a growing population of people under risk of social exclusion. Thirdly, the ethos faces the challenge of cultural diversification and increasing controversies over the extension of welfare state services to different categories of immi-

1 The Constitutional Act of Denmark: http://www.ft.dk/Dokumenter/Publikationer/Engelsk/~media/PDF/publikationer/English/The_Constitutional_Act_Of_Denmark_2013.pdf.ashx.

grants (EU and non-EU citizens and refugees). Lastly, it is challenged by the ongoing economic and financial crisis and the need to secure the competitiveness of the Danish economy on the global market. Although the majority of Danes continue to uphold their belief in this ethos of solidarity, there is a growing gap between principle and practice, which is also the background of this chapter.

Solidarity: From the Danish Constitution to the Danish Welfare State

The Principle of Solidarity in the Constitutional Act of Denmark from 1849 (Grundloven)

The foundation of modern Denmark as a constitutional monarchy goes back to the Nineteenth Century. The division of powers, legal protection and civic and political rights of its citizens were first formulated in The Constitutional Act of Denmark (*Grundloven*), which was passed on June 5th, 1849. As one of the oldest constitutions still in place in Europe, *Grundloven* establishes the tripartition of power and contains the most fundamental provisions of Danish society dealing with matters such as “democracy, free choices, legal protection by independent courts and laws aimed to protect civic and personal rights, the freedom of speech, and the rights to unite and associate” (Christensen et al. 2012, 19). Most importantly for our purpose, *Grundloven* lays the foundations for solidarity in Article 75 (2):

“Any person unable to support himself or his family shall, when no other person is responsible for his or their maintenance, be entitled to receive public assistance, provided that he shall comply with the obligations imposed by statute in such respect”.

Grundloven has been revised several times – in 1866, 1915, 1929 – latest on June 5th, 1953 (Christensen et al. 2012, 19). However, in contrast to the other European countries (e.g. Germany and Italy), *Grundloven* has more of a symbolical value than practical relevance in jurisdiction, what Christensen et al. (2012, 34) refer to as, “*Grundloven* regulates the frame, not the entire picture”. In the absence of a Constitutional High Court, case law that explicitly refers to constitutional provisions is limited. Solidarity is thus put into practice mainly through state intervention and negotiations and is rarely enforced by law. Before we turn to the constitutional provisions of solidarity and related case law of solidarity, we consider the emer-

gence of the welfare state and the socio-cultural background of solidarity in Denmark.

The Emergence of the Danish Welfare State

The infrastructures of the Danish Welfare State are said to have developed since 1870, more forcefully in the 1920s, and up until the Oil Crisis in 1974 (Kærgård 2002; Kærgård 2006). This development has been facilitated by a number of smaller and bigger reforms, through collective agreements (*overenskomster*) between the trade unions and employer associations. These are mediated by political parties and the government (Christiansen and Petersen 2001). In the tradition of Danish consociationalism, major welfare policy reforms do not divide the political forces, but are carried by broad legislative coalitions that seek agreement among all partners involved (Christoffersen et al. 2014, 144). These particular features of consociational democracy further explain the low-key role played by Danish jurisdiction, which is often not needed for conflict settlement.

Esping-Andersen (1990) classifies the Danish Welfare State within the Social Democratic Nordic Welfare Model, where a strong state builds on the principles of universalism by providing tax-financed benefits and services. Traditionally, solidarity has a high value in the small and egalitarian Scandinavian societies and can rely on the homogenous composition of the populations in terms of ethnic, religious and linguistic unity (Stjernø 2004, 109). The expansion of social rights was further backed by the strong role played by the Social Democratic Parties, who formed the government over most of the Twentieth Century and entered close coalitions with the trade unions. In the following, we outline the emergence of the Danish Welfare State in the ways in which the state, over time and through successive policy and legislative changes, has provided social security to e.g. workers, women, the sick and the disabled.

At the beginning of the Twentieth Century, the trade unions' unemployment funds were recognised by the state, which supplemented their financing (Christiansen and Petersen 2001, 179). Along with this early social legislation, the employer associations and national trade unions built a model for negotiation and conflict resolution based on an autonomous labour market with the active consent of the state (*ibid*, 180). In the 1920s and 1930s, the Social Democrats had significant support from the labour movement and the farmers. In 1930, the Social Reform Bill was passed,

which was considered as revolutionary at that time as it provided social security to all citizens regardless of their gender, class and/or social needs (ibid, 182). These principles established in the interwar period still form the basis of today's welfare state in Denmark. Its golden era, however, was the period between 1950 and 1973, when economic growth and flourishing industries led to a surplus that was taxed and redistributed (ibid, 184-186.). In this period, the Danish Welfare State became more inclusive, particularly encouraging female labour market participation. Gender equality was enhanced in 1925 by important changes in family law: the man was no longer the head of the family.² In the 1960s, family reforms such as financial support for single mothers, and the provision of public daycare for children, aimed to free house-bound women from domestic duties and encouraged them to enter the labour market (ibid, 186). This resulted in an increase in female labour participation to 75%, which was only a few percent lower than the participation of men (ibid, 186). Another important reform of the 1970s was related to healthcare, which from then on was provided through a universal welfare state system funded by taxes and replacing the old sickness insurance funds (ibid, 190).

The Oil Crisis in 1973, followed by an increase in unemployment, low growth and inflation, gave way to the retrenchment of the welfare state. Among these new restrictions, a reform of 1993 aimed at the 'activation' and 'self-empowerment' of unemployed, investing in skills training, but also narrowing down the eligibility criteria for unemployment benefits and shortening the period one could receive benefits (ibid. 194-195).

The Socio-Cultural Dimensions of Solidarity: High Levels of Taxes, Trust and Voluntarism

The Moral Dimension of Solidarity

The Danish ethos of solidarity is deeply engrained in national history and was first formulated in the mid-nineteenth century by the influential protestant moral philosopher N.F.S. Grundtvig and his vision to build a community of solidarity and responsibility, in his own words, a country in which "few have too much and fewer too little" (Einhorn and Logue 2003,

2 See Pedersen (1971) for changes regarding family law.

192). As part of this protestant tradition, the ethos of solidarity is often moralised in public discourse, emphasising the responsibility of the individual towards the community and blaming the abuses of single beneficiaries or groups who are perceived as relying excessively on welfare services. There is an emphasis on citizens' reciprocal obligations and on values that all Danes share in principle and in practice. At the same time, it is seen as the state's responsibility to make the necessary efforts to provide the necessary material conditions for everyone to conduct a life with dignity.

This moral dimension of solidarity is still upheld in current public discourse on Danish national identity. In a recent survey, commissioned by the Ministry of Culture, Danes voted on a cultural canon listing the 10 most important values for 'Tomorrow's Society of Denmark'. The welfare state is praised as one of the core values as well as volunteer work and trust as others. As the canon states: "Citizens of Denmark enjoy great protection against social and physical risks. The Danish people benefit from a large number of public aid".³ This is meant to defend, in particular, the universal and tax funded welfare state system, which is seen as superior to the insurance-based welfare system in other parts of Europe. In the description of the canon, explicit reference is made to the principle of solidarity. The excerpt reads as follows:

In the long term, such awareness can spark a better general education, sense of self and solidarity – and prepare the ground for better integration – including non-ethnic Danish citizens. The Minister for Culture would also like to see the canon process result in material/content that can inspire teaching in primary and lower secondary schools, upper secondary schools and adult education schools, the citizenship test and maybe UNESCO's list of intangible cultural heritage. The purpose of the canon is also to make it clearer what creates our national identity and cohesion, to give us all a better sense of self and general education, create solidarity and make us a people of increased cultural awareness and common cultural experience.⁴

3 See <https://www.danmarkskanon.dk/om-danmarkskanonen/english/> (last accessed 15.12.2016.).

4 See <https://www.danmarkskanon.dk/om-danmarkskanonen/english/> (last accessed 15.12.2016.).

Redistribution through Taxing and High Levels of Trust

An important pillar of solidarity in Denmark is the fiscal system and its schemes of redistribution. Like other Scandinavian countries, Denmark is distinguished by heavy income taxes that are meant to protect the low-income population and in turn facilitate a more equal income distribution. Denmark is estimated to be one of the heaviest taxed countries in the world: Marginal income taxes are a fraction over 60 % for half of the population; the value added tax is 25 % (with few exceptions); cars are taxed with an additional 120 % (Christoffersen et al. 2014). According to Christoffersen et al. (2014, 40): “Denmark’s pretax inequality is generally very similar to the EU-15 average but then redistribution heavily reduces inequality.”

Redistribution by taxing is the most important instrument of the state to guarantee cohesion in Denmark, alongside the constitutional and social rights of its citizens.⁵ As part of these redistribution schemes, Denmark grants, for instance, free education and educational grants that cover living costs of all Danish (and EU) students. Around 300,000 Danes benefit from this type of educational support with the annual budget amounting to one per cent of the Danish gross national expenditure (Uddannelses- og Forskningsministeriet 2016). Denmark further grants healthcare to all citizens, financed through local taxation. It is interesting to note that redistribution through taxes is rarely framed explicitly as a solidarity issue, as this can be found, for instance, in legal texts and documents in Germany. One reason for this might be that reciprocal solidarity through taxation is much less contested in Denmark since the principle of equal distribution of wealth is widely accepted and questions of redistribution between regions or municipalities rarely arise.

One could also argue that the Danish Welfare State and the high level of taxes can only be sustained by a correspondingly high level of trust between the population and its public institutions. And according to Christoffersen et al. (2014, 139, 174-177), this is the case in Denmark. Denmark, as shown in ESS surveys, places a high level of trust, in generic terms, in its fellow citizens, its institutions and its rule of law. And for several consecutive years, Denmark has been ranked as the world’s least

5 As stipulated by § 75 and 76 in Grundloven, these are mainly the right to work, the right to social security and the right to education.

corrupt and most transparent country.⁶ This is enforced by the fact that Denmark is a homogenous and small country with what could be termed “a tribal mind” (Olgwig and Paerregaard 2011).

Volunteering in Denmark

On the official website of Denmark, volunteering is described as one of the corner-stones of the Danish society, and volunteerism, trust and social welfare are represented as complementary.⁷ Here as well, no explicit references to the principle of solidarity are made, but the meaning of reciprocal solidarity comprises the general notion of welfare. While the welfare state provides the structural and economic basis for social care, such as taking care of elderly people, the volunteers contribute to the social aspect of the same case. This entails e.g. voluntary organisations such as *Ældre Sagen* that coordinate the so-called “besøgsvenner” – people who visit and spend time with the elderly.⁸

Most of the voluntary organisations are in the field of arts, sports and hobbies. In the European Value Survey 2008 survey, 74.8% of Danes reported being a member of a voluntary association (Christoffersen et al. 2014, 168). This is related, for instance, to the high level of individual resources (educational level and income) that have a strong positive effect on membership in voluntary associations (Christoffersen et al. 2014, 170). Social cohesion and trust is thus enhanced by the dense network of voluntary associations, and Denmark can be said to have a strong and well-functioning civil society. In Denmark as in other Nordic countries, we find strong overlaps between the public and the voluntary sector.

Apart from these voluntary civic networks, the high working ethos helps to sustain the welfare state structure. This is reflected in high levels of trade union membership. The great majority of employers in Denmark are organised into trade unions, which do not only play an important role

6 See <http://www.transparencyinternational.eu/>.

7 <http://denmark.dk/en/practical-info/work-in-denmark/volunteer-work-in-denmark>.

8 <https://www.aeldresagen.dk/viden-og-raadgivning/hjaelp-og-stoette/aktiviteter/aktiviteter/besoegsven>.

as a social partner, but are also essential for salary negotiations and the administration of unemployment funds.⁹

In conclusion, the welfare state can be said to form part of the national identity in Denmark (Jöhncke 2011). The high taxes are returned to the people as free education, child, unemployment and sickness benefits, maternity and paternity leave (supporting both partners for up to a year), free and comprehensive healthcare, pensions, and cultural activities in the form of public libraries, theatre, radio and television. Esping-Andersen (1990, 23-25) states that the Danish Welfare State does not abolish class, but it creates across-class solidarity. A strong welfare system does, for instance, not lead to marginalisation of a group of welfare-dependent people, who are permanently excluded from the labour market. On the contrary, social security, as provided by the welfare state, has always correlated with a high participation of labour in Denmark.

The Constitutional Entrenchment of Solidarity: Case Law and Administration

The Constitutional Entitlement to Public Assistance and Relevant Case Law

In *Grundloven*, the articles concerning personal, political and human rights are defined as “inviolable” (§ 71 (1)) and mainly formulated in Chapter VIII (§ 71-79). Traditionally, these articles have been separated into three sections: the civic rights (§ 71-73), the social rights (§ 74-76) and the political rights (§ 77-79) (Christensen et al. 2012, 263). Here, we will focus on the social rights (§ 74-76) and specifically on § 75 (2) – the entitlement to public assistance when needed.¹⁰ It is the legislative power which is responsible for enforcing § 75 (2) and providing the relevant social legislation to protect those who are entitled to assistance because they are “unable to support himself and his family” (Christensen et al. 2012, 383; § 75 (2)). This entitlement for assistance is not further specified, but

9 Christoffersen et al. (2014, 169) speaks of a more or less gentle pressure to join a trade union.

10 The other articles in the social rights-section include the right to work (§ 74 (1)) and the right to free education (§ 76).

is normally referred to as “a deserved subsistence level” (Rytter 2012, 376).

The courts have not paid § 75 (2) much attention for two reasons: first because the entitlement of public, social assistance is considered a self-evident and well-functioning condition in Denmark, and secondly because the direction in which the article has been written is somewhat general (as exemplified above): it simply leaves plenty of room for interpretation by the legislators (Christensen et al. 2012, 263). Examples of interpretation of the entrenchment of the § 75 (2) do, however, exist and here, we will discuss two recent cases from The Supreme Court: *Aktiveringstilbud-sagen* (U 2006.770 H) and *Starthjælp-sagen* (U 2012.1761 H).¹¹

In *Aktiveringstilbud-sagen*, the Supreme Court ruled in a case between J and the Municipality of Køge. J had not received basic welfare assistance over a period of two months, because he had refused to participate in an obligatory work offer provided by the municipality. This, he claimed, was unconstitutional in relation to § 75 (2). The Supreme Court ruled in favour of the municipality, because J had not acted according to the aforementioned “obligations imposed by statute”. Had he done so, he would have received a reasonable welfare assistance exceeding his subsistence level. Thus, the municipality did not act counter to § 75 (2) in *Grundloven* according to the Supreme Court (Christensen et al. 2012, 385).

In *Starthjælp-sagen*, the Supreme Court ruled in a case between A and the Municipality of Egedal. A argued that the municipality had acted counter to § 75 (2) in *Grundloven* because they had provided him with a type of welfare benefits (*Starthjælp* – starting allowance) – due to the fact that he was a refugee – that was substantially lower than other welfare benefits (here, specifically *Kontanthjælp* – social assistance). The Supreme Court ruled that under this specific circumstance, the Municipality of Egedal had not acted counter to § 75 (2) in *Grundloven*. The Court, however, qualified that disabled citizens (including A) are entitled to receive social benefits according to their deserved subsistence level – and that citizens can ask courts for clarification of their status (Christensen et al. 2012, 384-85; *Starthjælp-sagen*). This revoked the earlier interpretation that citizens were thought unable to invoke the social right of § 75 (2) before the courts (Christensen et al. 2012, 383). Still, the constitutional pro-

11 These cases translate into The Work Offer-Case and The Social Welfare Scheme for Immigrants-Case.

tection can be considered as weak, since no citizen has yet been able to prove in a specific case that the public has acted unconstitutionally in relation to § 75 (2). According to Peter Germer (2007, 328), this could change: If the impact of international human rights in the jurisdiction increases, people who are struck “disproportionately hard by legislative and socio-political entrenchments” would have the possibility to claim these rights specifically before the courts.

Solidarity as Municipal Self-Determination under Governmental Control

In this section, we first outline the territorial-administrative structure of Denmark in order to explain how solidarity is ingrained in the system, especially in the ways in which municipalities are constitutionally responsible for the distribution of the welfare services. *Grundloven* (§ 28) states that ‘Denmark proper’ consists of 3 parts: South Denmark, Greenland and the Faroe Islands. These three parts are semi-independent, thus not claiming to constitute a federal union that is based on redistribution and solidarity. Today, Greenland and the Faroe Islands have home rule; only some sectors like foreign and defence policy remain under the Danish government’s responsibility (Christoffersen et al. 2014, 153). Both Greenland and the Faroe Islands are dependent on financial aid from South Denmark, which are subject to inter-regional negotiations. The system of annual financial aid that is established by the central government needs to be negotiated in terms of recognising at the same time the autonomy of Greenland and the Faroe Islands and the historical responsibility of Denmark towards its formerly dependent colonies. The administrative structure of South Denmark consists of three layers: a central government; 5 regions; and 98 municipalities. As Denmark is a highly centralised state, the regions and the municipalities have limited autonomy. The regions are mainly concerned with administering the hospital system; they have no tax authority but are financed through grants from the central government and payments from the municipalities.

The municipalities are conceived more as ‘units of administration’ and less as ‘units of self-governance’, but, in contrast to the regions, they have their own sources of tax income. Municipalities receive the main bulk of income taxes plus income from various other taxes (e.g. private property). These taxes vary but inequality of income across the municipalities is equalised (called ‘Mellemkommunal udligning’), which implies that

wealthier municipalities have to subsidise the less wealthy ones (Christoffersen et al. 2014, 153-154). Even though the Danish constitution (§ 82) guarantees the right of the municipalities to manage their own affairs under state supervision, their autonomy is nevertheless restricted in practice. Solidarity in the form of municipal self-determination is thus balanced by vertical controls from central government. The law that was meant to define the sphere of autonomy of the municipalities has never been passed and hence the precise limits of municipal autonomy have never been formally established (ibid, 153).

The main task of the municipalities is to administer welfare services. In accordance with the strong egalitarian orientation of the Danish Welfare State, administrative autonomy of the municipalities in providing welfare services is limited. Christoffersen et al. (ibid.) report that most social transfers are given as a fixed amount of money, which is determined and regulated by law and “national minimum standards and national requirements”. In all these redistributive decisions, the central government maintains a high level of control over the Danish municipalities, whose competencies can be delegated, but also withdrawn. In practice, the limits of the responsibilities of the municipalities are based on precedence and have changed considerably over time (ibid.). As Christoffersen et al. (ibid.) conclude: “The principle of subsidiarity definitely does not apply in the Danish case. While the principle of “municipal self-determination” is a forceful political battle cry regularly sounded when relationships between central government and the municipalities become strained, it has in fact very little judicial content.” Every year, the central government and the association of Danish municipalities negotiate and agree on the municipal spending and taxing (Christoffersen et al. 2014, 156).

The volunteer sector often supports municipalities in the implementation of social welfare, such as providing day care, low-cost meals, rehabilitation, work integration and training. There is no legislation for cooperatives or social cooperatives in Denmark, so the social enterprises mostly define themselves as ‘self-owning institutions’ and adopt the legal status of cultural, educational, environmental and social institutions/organisations. As non-profit, voluntary associations, their revenue typically comes

from a variety of sources.¹² Some also function in the form of associations and foundations and adopt the third-sector oriented-legal form (Hulgård 2006). Their legal framework is thus in between the public and the third-sector. Traditionally, there have been very close ties between voluntary associations and the municipal system. This close cooperation has however been affected by the municipal reform of 2008 when the number of municipalities in Denmark was reduced substantially (271 municipalities were amalgamated into 98 new and larger entities). This has increased geographical distance between local municipalities and voluntary associations, and made it less likely that local politicians or officials in larger municipalities have personal contact with and knowledge of smaller voluntary associations in the municipality (Levensen et al. 2012, 398).

Labour and Social Rights

The Constitutional Act of Denmark only introduces the main principles for the regulation of labour, but states no specific provisions that regulate the rights of workers. There is no general statute regarding working conditions and industrial relations in Danish law (Hasselbalch 2005, 36). In the Constitution § 75(1) states that every citizen who is capable of working, is given the opportunity to work in order to sustain itself, with the condition that the labour is for the public good. Freedom of association provisions (§ 78) and freedom of demonstration rights (§ 79) make it possible for citizens to initiate trade union movements (Hasselbalch 2005). Unlike other European countries (e.g. France and Italy), the freedom to strike is not guaranteed in the constitution and Denmark has no special social or labour law courts (like, for instance, Germany). Cases affecting the social rights of the citizens (welfare, pensions or family related issues) are instead typically dealt with by the office of the *Ombudsmand* and by *Ankestyrelsen*. These social appeal boards were established as independent bodies by the

12 The main source of income of Danish voluntary associations comes from public funding, provided by municipality funds (Social- og Integrationsministeriet 2013, 28). Voluntary associations (charitable and/or non-profit) are in principle not liable to pay taxes. If a non-governmental association has an annual turnover of less than 50,000 DKK (roughly 6700 Euro), they are not liable to pay VAT (25%) either. See <http://frivillighed.dk/guides/skat-og-foreniger>
<http://frivillighed.dk/guides/moms-og-foreniger> (last accessed 1.12.2017.).

Ministry of Social Affairs to deal with complaints and appeals brought forward by citizens or associations who claim that their rights have been violated by public or private authorities.¹³ Other appeal boards exist that comprise different jurisdiction, e.g. in the field of education or immigration. The decisions of these appeal boards are legally binding and they can also decide to refer cases to the court, even to the European Court of Justice.

The aforementioned high participation in the labour market and a low unemployment rate contribute to the accumulation of taxes, which are distributed mainly in three forms of cash benefits for people with labour and/or social challenges: *starthjælp* (starting allowance), *kontanthjælp* (social assistance) and *dagpenge* (unemployment benefit). The logic behind these cash benefits is based on solidarity and residency (Pedersen 2016). If the person has been a resident in Denmark for 7 years, s/he is entitled to *kontanthjælp* benefits, if a spouse is not able to support them. If the person has been a resident for a less time, s/he gets *starthjælp*, which is lower.¹⁴ The unemployment insurance fund is voluntary, but as the unemployment benefits are strongly subsidised by the government, most Danes are members of unemployment insurance funds (the so-called “A-kasser”, see Christoffersen et al. 2014, 193). This insurance then allows them to receive up to two years of unemployment benefit.

Social security benefits and social services are as mentioned in section 1.2. financed by general taxation and their administration lies with the Ministry of Social Affairs. The Danish Welfare State and labour system is based on the ‘flexicurity model’, which allows the Danish labour market a ‘hire and fire policy’ that is safeguarded by the existing schemes of unemployment benefits. At the same time, welfare support is increasingly coupled with restrictive demands, which stipulate that recipients must make constant efforts to escape their situation of need. Long-term unemployment therefore remains exceptional. Also, the trade unions have adapted to the Danish flexicurity model and the need to keep the labour market dynamic. They support, for instance, short-term employment or short periods of notice (knowing that this can be advantageous for the employment of

13 See: http://www.udln.dk/da/GlobalMenu/english/Information_for_Applicants.aspx

14 See European Commission 2013. http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20Denmark_en.pdf
See also part 1.3 of this chapter.

young people) or they help employees to negotiate flexible-time contracts, with working hours adapted to individual needs or wishes. Another Danish particularity is the so-called ‘flex-jobs’ for people with partial work capacities (e.g. disabled people). In these cases, up to two thirds of the salaries are subsidized by the welfare state (Bengtsson 2009). This principle of flexicurity is uncontroversial and accepted by all major parties. It is also supported by the two main organisations – The Danish Confederation of Trade Unions (LO) and The Confederation of Danish Employers (DA). These organisations, in cooperation with the Ministry of Employment have also jointly contributed to the development of the common principles of flexicurity in the EU.

The adaptation of the traditional welfare state regime to the need of flexible labour markets and liberal market economies has thus been rather smooth. On the one hand, Denmark has established one of the most developed welfare states in the world. This is maintained by heavy taxes and government expenditure which are higher than anywhere else in Europe. On the other hand, throughout the last 20 years, Denmark has very successfully defended its competitiveness on the international market (ranked 9th place in Global competitiveness report in 2010, see Christoffersen et al. 2014, 21). Denmark has liberalised the market and capitalist entrepreneurship has been allowed to expand with few state-owned enterprises, free trade and a flexible labour market. This is why Danish high-ranking politicians confidently promote Danish flexicurity as an archetypal model for the rest of Europe.¹⁵

Conclusion

The principle of solidarity is rooted in The Constitutional Act of Denmark from 1849 (*Grundloven*) granting public assistance for those in need. Over the years, the Danish ethos of solidarity has facilitated the establishment of a strong welfare system based on universal access to state-funded services. Denmark, like other Nordic countries, has a universal social-democratic welfare state tradition, where the welfare state and civil society are closely related. General trust in institutions, the Danish work ethic and

15 See the report of the Economic Council of the Labour Movement prepared by Lykketoft (2009).

volunteerism and last but not least high taxation contribute to the maintenance of the welfare state and its relative stability over time. Comparatively high levels of social security and standards of protection for vulnerable groups have been established through negotiations between the social partners and the state. This type of partnership model also accounts for a particular mode of conflict solution mainly through self-steering mediating bodies and administrative appeal boards and only occasionally through the courts.

Denmark, while being rooted in the same tradition as other Nordic countries, has nevertheless moved away from a traditional Scandinavian model in the important sense of having developed the flexicurity model, which is combined with a system of earning access rights to welfare benefits. This has laid the ground for an increasing emphasis on individual initiative, responsibility and merit. The flexicurity model has combined neo-liberal and communitarian elements, and allowed the Danish government to insist on a more exclusive principle restricting services over time, e.g. for the unemployed and the immigrants. In light of these restrictions, the Danish Welfare State has been through a long phase of reconstruction and has adapted to an open European labour market. This is based on the assumption that high quality services are still available for those in need but that the number of recipients of these services is kept low. We thus observe a slow but steady transformation of the Danish Welfare State from the universalistic and inclusive model of high protection to the liberal model of subsidiarity, relying increasingly on market dynamics and providing only for the basic needs of its citizens.

References

- Bengtsson, S. (2009)* "Report on the employment of disabled people in European countries: Country report Denmark". The Academic Network of European Disability Experts (ANED) <http://www.disability-europe.net/>
- Christiansen, N. F. and K. Petersen (2001)* "The Dynamics of Social Solidarity: The Danish Welfare State, 1900–2000." *Scandinavian Journal of History* 26 (3): pp. 177–196.
- Christensen, J.P., J.A. Jensen and M.H. Jensen (2012)* *Dansk statsret*. Copenhagen: Jurist- og Økonomforbundet.
- Christoffersen, H., M. Beyeler, R. Eichenberger, P. Nannestad and M. Paldam, M. (2014)* *The Good Society: A Comparative Study of Denmark and Switzerland*. Berlin: Springer.

- Einhorn, E.S. and J. Logue (2003) *Modern Welfare States: Scandinavian Politics in the Global Age*. Westport: Greenwood Publishing.
- Esping-Andersen, G. (1990) *Three worlds of welfare capitalism*. London: Polity.
- European Commission (2013) *Employment, Social Affairs and Inclusion. Your social security rights in Denmark*. http://ec.europa.eu/employment_social/
- Germer, P. (2007) *Statsforfatningsret*. Copenhagen: Jurist- og Økonomforbundet.
- Haldrup, K. (2014) "On security of collateral in Danish mortgage finance: a formula of property rights, incentives and market mechanisms." *European Journal of Law and Economics* 43(1): 1-29
- Hasselbalch, O. (2005) *Labour Law in Denmark*. Copenhagen: DJØF Publishing.
- Hulgård, L. (2006) "Danish social enterprises: A public-third sector partnership". In M. Nyssens, S. Adam and S. T. Johnson (eds.), *Social Enterprise: At the Crossroads of Market, Public Policies and Civil Society*. New York: Routledge.
- Jöhncke, S. (2011) "Integrating Denmark: The Welfare State as a National(ist) Accomplishment". In K.F. Olwig and K. Paerregaard (eds.), *The Question of Integration, Immigration, Exclusion and the Danish Welfare State*. UK: Cambridge Scholars Publishing.
- Kærgård, N. (2002) "Economic theory and Economic development in Denmark 1848-1914." In M. Psalidopoulos and M.E. Mata (eds.), *Economic Thought and Policy in Less Developed Europe – The Nineteenth Century*. London: Routledge.
- Kærgård, N. (2003) "Den danske velfærdsmodel og indvandringen: En note." *Samfundsøkonomen* 8: 42-44.
- Kærgård, N. (2006) "The foundation for the Danish Welfare State: Ethnic, Religious and linguistic harmony." Preliminary research paper presented at XIV International Economic History Congress, Helsinki, August 21-25 2006. <http://www.helsinki.fi/iehc2006/>
- Laursen, F., T. Andersen and D. Jahn (2016) *Country Report Denmark, Sustainable Governance Indicators 2016*. Gütersloh: Bertelsmann Stiftung <http://www.sgi-network.org/>
- Levinson, K., M. Thøgersen and B. Ibsen (2012) "Institutional Reforms and Voluntary Associations." *Scandinavian Political Studies* 35 (4): 295-318.
- Lund-Andersen, I. (2015) "Contracts in Danish Family Law – In the Cross Field Between Civil Law and Public Law." In F. Swennen (eds.), *Contractualisation of Family Law: Global Perspectives*. (Vol. 4). London: Springer.
- Lykketoft, M. (2009) "The Danish Model. A European Success Story." Report for AE – The Economic Council of the Labour Movement. <http://www.ae.dk/>
- Olwig, K. F. and K. Paerregaard (2011) *The Question of Integration, Immigration, Exclusion and the Danish Welfare State*. UK: Cambridge Scholars Publishing.
- Pedersen, I.M. (1971) "Recent Trends in Danish Family Law and Their Historical Background." *The International and Comparative Law Quarterly*, 20 (2): 332-341.
- Pedersen, M.J. (2016) "Real-world Europeanisation: the silent turning of small gears." *Policy Studies* 38(1): 91-107
- Rytter, J. E. (2012) *Individets grundlæggende rettigheder*. Copenhagen: Karnov Group.

- Schraad-Tischler, D and C. Schiller (2016). *Social Justice in the EU – Index Report 2016*. Gütersloh: Bertelsmann Stiftung. <https://www.bertelsmann-stiftung.de/>
- Social- og Integrationsministeriet (2013) ”Den frivillige sociale indsats. Frivilligrapport 2012” Center for frivilligt socialt arbejde. <https://frivillighed.dk/>
- Stjernø, S. (2004) *Solidarity in Europe. The History of an Idea*. Cambridge: Cambridge University Press.

Supreme Court of Denmark decisions

- Supreme Court: Aktiveringstilbud-sagen (U 2006.770 H)
- Supreme Court: Starthjælp-sagen (U 2012.1761 H)

