

CHAPTER 1

Introduction

In 2013, the president of the Disabled Peoples Organisation Denmark (*Danske Handicaporganisationer*) wrote to the National Social Appeals Board (*Ankestyrelsen*), inquiring why the Board did not refer to the Convention on the Rights of People with Disabilities (CRPD) more often. The reply he got back was the following:

“The Board only refers to the CRPD in cases where national law does not provide the same protection as the Convention, i.e. if further services should be provided. In cases where national law is in accordance with the CRPD the Board finds it superfluous to make reference of this fact, as it will yield no further services for the applicants”.¹

The focus as described by the Board is strictly on the immediate effect of the CRPD, i.e. whether applying the Convention will provide any services in addition to the ones accorded by Danish administrative law. This might be perfectly acceptable in the short run, on a material level, as the individual's rights are not violated, but it might also be problematic in the long run, and on a larger scale.

This is because human rights conventions can – and should – work on two levels: One, by setting obligations for States to live up to, sometimes supported by a system of enforcement, such as the European Convention of Human Rights (ECHR) has in its European Court of Human Rights (ECtHR); and two, by making the public aware of these obligations so that they can hold the States up to them.

1. Svar fra Thorkil Juul på DH's brev om Ankestyrelsens anvendelse af Handicapkonventionen, <url=<http://www.handicap.dk/handicap/dokumenter/breve/svar-fra-thoril-juul-paa-dhs-brev-om-ankestyrelsens-anvendelse-af-handicapkonventionen>> (accessed March 5, 2013) (my translation, paraphrased).

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It is my impression that this second level of ensuring the public are aware of their rights is often ignored in Denmark, which has a long-standing history of seeing itself as one of the “model” countries when it comes to human rights, the traditional claim being that human rights were in its blood.²

This self-portrait was initially, and for a long time, supported by the lack of case-law against Denmark at the ECtHR.

Though Denmark was a founding member of the Council of Europe (CoE), and ratified the ECHR in 1953, the first case against Denmark was not admitted to the Court until 1972 when the case later known as *Kjeldsen, Busk Madsen & Petersen* was found partly admissible.³ The Court found no violations in this case.⁴

The next case against Denmark was admitted in 1981 and decided in favour of Denmark in 1984.⁵ Three other cases were admitted in 1983, 1987 and 1988, respectively, with the first settled out of court and the other two finding no violations.⁶

However, after having been a member of the CoE for forty years, and thirty-six years after ratifying the ECHR, Denmark was found to be in violation of the Convention for the first time in 1989 with the *Hauschildt* case.⁷

Following *Hauschildt*, several cases against Denmark were admitted to the Court. *Byrn v. Denmark* (1992) was redressed nationally before it reached a judgment, *Sultan v. Denmark* (1993) reached a friendly settlement, and though the Commission found a violation of the Convention in *Olesen v. Denmark* (1994), the case never reached the Court itself, with Denmark opting to pay the compensation suggested by the Commission.⁸ After this string

2. Jens Elo Rytter: Dansk-europæisk menneskerettighedsbeskyttelse – om en fredelig forfatningsretlig revolution, *Juristen*, 92, no. 6/7 (2010): 187-195, p. 187.
3. EComHR December 16, 1972, no. 5095/71, *V.K. and A.K. v. Denmark*.
4. ECtHR December 7, 1976, no. 5095/71 5920/72 5926/72, *Case of Kjeldsen, Busk Madsen and Petersen v. Denmark*.
5. ECtHR November 28, 1984, no. 8777/79, *Case of Rasmussen v. Denmark*, particularly para. 39-42.
6. EComHR October 13, 1983, no. 9893/92, *Pedersen v. Denmark*, Council of Europe and Council of Europe Staff: *Yearbook of the European Convention on Human Rights 1984*, Martinus Nijhoff Publishers, 1990, p. 222, ECtHR November 28, 1988, no. 10929/84, *Case of Nielsen v. Denmark*, and ECtHR February 22, 1989, no. 11508/85, *Case of Barfod v. Denmark*.
7. ECtHR May 24, 1989, no. 10486/83, *Case of Hauschildt v. Denmark*, p. 51-53.
8. EComHR July 1, 1992, no. 13156/87, *Byrn v. Denmark*, EComHR June 30, 1993, no. 17293/90, *Sultan v. Denmark*, EComHR July 5, 1994, no. 18068/91, *Olesen v. Denmark*, and Council of Europe Staff: *Yearbook of the European Convention on Human Rights 1997*, Martinus Nijhoff Publishers, 1997, p. 468.